

Legal Task Force



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Force

WHAT IS THE LEGAL TASK FORCE? WHAT ARE ITS OBJECTIVES?

The Legal Task Force is a permanent working group within the European Civil Aviation Conference (ECAC). Members of the group are legal experts delegated by ECAC Member States. The task force focuses on the study of a wide range of aviation matters emerging in the field of international public law, and on making recommendations on how to approach them in an international and national context. The primary tasks include advising the Directors General of Civil Aviation on legal aviation matters in general, and on matters regarding the ECAC organisation in particular.

The role played by the task force in preparing meetings of the International Civil Aviation Organization (ICAO) is particularly important, as ICAO is a key forum for sharing information and facilitating a common understanding of legal requirements for aviation-related activities. This amongst others involves the preparation and coordination of (common) legal positions to be taken in the ICAO framework.

Since its establishment in 1996, the Legal Task Force has consistently developed its expertise role as the legal cornerstone of ECAC, with rules of procedure, for instance, prescribing the election of a chair and deputy chair. The task force is currently chaired by Machteld Cambridge (the Netherlands) and is in the process of appointing a deputy chair. Supported by the well-organised ECAC Secretariat, the task force meets three times a year with the intention of having both online and in person meetings. If necessary, the meeting schedule is also aligned with international legal meetings, in particular the agenda of the ICAO Legal Committee.

WHAT TOPICS IS THE GROUP CURRENTLY FOCUSING ON?

The Legal Task Force focuses on several items captured in the work programme, which is prepared annually and submitted to the Directors General of Civil Aviation. Currently the main topics include:

- The promotion of the Protocols to the Chicago Convention amending Article 50 (a) and Article 56 of the Chicago Convention on International Civil Aviation. The protocols provide for enlargement of the Council and the Air Navigation Committee and are aimed at enhancing the efficiency of ICAO. The status of ratification in ECAC Member States is continuously monitored and legal support regarding the ratification of the protocols is offered, if requested, to both ECAC Member States and non-ECAC Member States.
- Contribution to ICAO meetings is an essential part of the work of the Legal Task Force. In this respect, a large portion of the work is aimed at discussing legal issues relevant to the work of ICAO, which are mainly scheduled in the ICAO Legal Committee, its subgroups and during the triennial Assembly in the Legal Commission. The development, implementation, and ratification of international legal instruments such as treaties, decisions or resolutions in the field of aviation are important items covered therein. To this end, common positions are discussed and subsequently included in key briefing documents.
- The items on the General Working Programme of the Legal Committee are actively followed and discussed. Currently the most important items on the programme are: review of the ICAO Rules for the Settlement of Differences; international legal aspects of unmanned (pilotless) aircraft operations and integration into civil aviation; processes and procedures for States to fulfil their obligations under Article 12 of the Chicago Convention; acts or offences of concern to the international aviation community, including cyber threats, that may not be adequately covered by existing air law instruments; and promotion of the ratification of international air law instruments.

So far, the Legal Task Force has benefitted from the fact that several of its members are actively involved in the ICAO legal organ-

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isation with experience in co-chairing the Legal Committee and its groups.

- The Legal Task Force reviews agreements to be signed by ECAC. The working group recently advised on the latest Cooperation Arrangement between ECAC and Airports Council International (ACI) for the CASE II Project. This project is an EU-funded and ECAC-implemented project for delivery of aviation security capacity building in Africa, the Middle East and Asia.
- Finally, in discussing the strategy for its future work, the task force agreed to focus on actively exchanging national experiences in the implementation and application of aviation regulations, such as regulations in the field of reporting aviation occurrences, the analysis of which should lead to improving aviation safety.

WHAT CHALLENGES DO YOU SEE ARISING IN THE FUTURE?

Next to the items already enclosed in the agenda of the Legal Task Force, I see major challenges regarding building on the capacity of legal advisers in the field of civil aviation. In February 2023, legal advisers from different parts of the world, invited by ICAO, visited the second Civil Aviation Legal

Advisor Forum (CALAF) in Oman. An important topic during the Forum was the question of how to enhance the capacity and effectiveness of civil aviation legal advisers. The topic elaborated on efforts not only made during the first edition of the CALAF in 2019, but also during the 2022 ICAO Assembly.

The 2022 Assembly stressed the need to raise the quality of legal advisers and thereby contribute to the effectiveness of States to implement air law treaties and update national laws and regulations. One of the CALAF outbreak sessions attended by legal advisers from ECAC countries revealed large differences between experienced and inexperienced legal advisers, as many countries do not even have the possibility for specific academic training of their staff in the field of aviation law. Many of the participants strongly urged for capacity support in order to enhance their legal skills. So, lack of experience caused several attendees to call for the development of a guiding manual for legal advisers on aviation law, and at least a basic package for a training programme tailored to the concrete needs of different countries. Such a programme could be composed of modules offering different courses on demand. Furthermore, cross border assistance between States offering the experience, maybe mentoring services, of other aviation legal advisers could be very helpful.

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Meeting the indicated needs will be an important challenge in the coming years also within ECAC. In this regard, the already-developed competency framework for legal advisers in the field of civil aviation, which was submitted to the 2022 Assembly, can be helpful.

Another challenge arising in the near and distant future will be how to deal with the national implementation arising from international environmental decisions in the field of aviation. The exceptionally important policy decisions currently taken in the ICAO context on the environment will eventually also require legal integration on a national level. The legal consequences for long-term national implementation of the decisions will have to be worked out and might very well require the attention of the Legal Task Force.

WHAT MAIN CHALLENGES FOR ECAC MEMBER STATES DO YOU SEE EMERGING/BEING DISCUSSED BY THE GROUP AT FUTURE MEETINGS?

Partly due to limited resources, important legal matters in the aviation field, mainly scheduled in the ICAO Legal Committee, are discussed based on prioritisation. Where attention is currently being paid to the highest-priority subjects, (i.e. review of the rules for dispute settlement and the Article 12 Task Force), I expect that in due course more and more emphasis will be placed on discussing subjects such as the international legal aspects of unmanned (pilotless) aircraft operations and the legal consequences of acts or offences of concern to the international aviation community, including cyber threats.

Contemporary times are marked by several developments (COVID, the war in Ukraine, climate discussions) with major impacts also on aviation. A proactive, timely discussion of the legal consequences, although sensitive, is important. So, for instance the COVID pandemic has permanently changed the world order. The direct and indirect consequences on aviation requires continued legal attention. This not only concerns the pragmatic aspects such as whether or not to hold online meetings with legal consequences (i.e. voting) but also how to deal with the legal safeguarding of measures (such as health measures) that do not originate from the aviation domain.

| SOME FINAL WORDS?

In the past ten years, working with other experts in ECAC has proved to be very inspiring for my work as a legal aviation adviser. The professional environment with its challenging objectives and shared interests provides an important basis for the further development of the Legal Task Force and subsequently its continued contribution to the efficient functioning of ECAC as a whole. ●

Machteld Cambridge is coordinating legal advisor at the aviation section of the Legal Department of the Dutch Ministry of Infrastructure and Watermanagement in the Hague. She has been vice-chair of the ECAC Legal Task Force since 2019 and chair since 2022. Machteld has been working in the Dutch transport and infrastructure administration since 1987 in legal management, legislation, advising expertise, coaching and coordinating positions. In the last 20 years she has been dealing with legislative and advisory aspects of various national and international aviation matters, including regarding the Caribbean part of the Kingdom of the Netherlands. As coordinating legal advisor in international law, Machteld has experience in complex legal matters, as well as taking part in international aviation fora at both European and ICAO level. Machteld has a masters in public international law from the University of Utrecht, the Netherlands.