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LEGAL COMMISSION

Agenda Item 36: Report on the establishment of a legal framework with regard to CNS/ATM systems including GNSS

CONSIDERATIONS ON THE FINAL REPORT OF THE SECRETARIAT STUDY GROUP ON LEGAL ASPECTS OF CNS/ATM SYSTEMS

NEED OF A BINDING LEGAL FRAMEWORK

(Presented by the 21(*) member States of the Latin American Civil Aviation Commission)

SUMMARY

This working paper presents to the Assembly considerations by the Latin American Civil Aviation Commission on the Final Report prepared by the ICAO Study Group regarding legal aspects of CNS/ATM systems, as well as proposals for the elaboration of a long-term legal framework, mainly for GNSS.

Action by the Assembly is in paragraph 3.

1. INTRODUCTION

1.1 The Latin American Civil Aviation Commission (LACAC), during its XI Ordinary Assembly, celebrated in Manaus on November 1994, adopted Conclusion A11-1, which in para. III states: “Need to count with a legal and institutional framework that preserves GNSS implementation”.

¹ English and Spanish versions provided by LACAC.

* Argentina, Aruba, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay and Venezuela.

1.2 The need to formulate an international legal framework that guarantees, among others, indiscriminate access and continuity of the service safeguarding the use of the GNSS has been a permanent task (from the XI until the XV Assembly) in the biennial LACAC Work Programmes.

1.3 On the other hand, GREPECAS has considered the need to study and formulate legal aspects required for the implementation of the Regional Air Navigation Plan (CNS/ATM) thus creating a Task Group on Institutional Aspects with terms of reference which, among others, include “Analyze those aspects of the CAR/SAM Regional Air Navigation Plan that would require multinational coordinations”.

1.4 The 32nd Session of the ICAO Assembly adopted Resolution A32-20, whereas it entrusted the Council and Secretary General, under their respective responsibilities and starting with a Secretariat Study Group, to consider, among others, the development and preparation of an adequate long-term legal framework to regulate the use of GNSS systems, including the possibility of an international Convention. As per Resolution A32-20, by the end of 1998, the Secretariat Study Group on Legal Aspects of CNS/ATM Systems was established.

1.5 Subsequently, during the 33rd Session of the ICAO Assembly, it was decided to further analyze the legal aspects of CNS/ATM systems with the purpose of finalizing analysis of a provisional contractual framework for CNS/ATM systems in order to foster its implementation.

1.6 The Secretary General presented to the ICAO Council, during its 171st Session, working paper C-WP/12197 containing a final report on the work of the above-mentioned Study Group. The Council decided to present to the Assembly a working paper including the Final Report of the Study Group, which project would be analyzed during the 172nd Session of the Council.

1.7 Similarly, the ICAO Secretariat presented the Final Report of the Study Group (LC/32-WP/5-1) during the 32nd Session of the Legal Committee, held in Montreal, 15 – 21 March 2004. This working paper invited the Legal Committee to take note of same.

2. CONSIDERATIONS ON THE FINAL REPORT OF THE SECRETARIAT STUDY GROUP ON LEGAL ASPECTS OF CNS/ATM SYSTEMS

2.1 In its report, the Study Group referred, among other things, to the following matters:

- Liability
- Contractual framework
- International Convention

2.2 Considerations regarding liability

2.2.1 The Group’s Report points out that responsibility, according to Article 28 of the Chicago Convention, should not be considered equivalent to liability, because it regulates the relationship between States only and does not give a cause of action to private persons to claim compensation for damage. Such claims should rather be handled at the level of the applicable domestic law.

2.2.2 Although it is quite clear that at present some legal aspects of the CNS/ATM systems are regulated by the applicable national law, particularly in the issue related to liability, we concur with the analysis made by the Group whereby the applicable standards of procedure related to jurisdiction are not adequate to initiate legal actions.

2.2.3 We consider an insufficient solution the middle ground adopted by the Group, namely to explore the approach of a contractual framework with respect to liability and on the other side, recommend the inclusion in the contractual framework between the providers of signals and the States with jurisdiction, a group of common elements, several of which are related with liability (paragraph 3.3.4, subparas a, b, c, d, and e of the report).

2.2.4 Furthermore, it is proposed in the Group's Report that those common elements should be mandatory for all the parties involved in the contractual framework; consequently, they should be included in the Framework Agreement (Annex G of said report). However, the common elements suggested to be included are restrictive, inasmuch as each part can reserve the freedom to determine its participation not in the contractual framework; then, what guarantee would there be regarding liability?

2.2.5 After analyzing the aforesaid, we concur with that expressed by "part of the Group" as appearing in para. 3.3.4 of the Group's Report, it mentions that in order to achieve the universality and certainty of the new air navigation system, the issue of liability should be dealt with under a universal regime and should not be left to national law of each State.

2.3 **Consideration of the Contractual Framework**

2.3.1 The Report of the Group indicates that during deliberations it had been clear that, in principle, a contractual framework would not be mandatory; furthermore, the draft contractual framework included as Annex F of the Final Report was accepted.

2.3.2 Regarding this matter, we support the alternative proposal, which takes into consideration inclusion of a Framework Agreement between the States at a governmental level, mainly to define the common mandatory elements that should be applied. We agree with the criterion that the Agreement must not be centered only on relationships between States, but should also regulate certain aspects of the contractual relationships affecting users of the system and service providers (see contents of Annex G).

2.4 **Consideration of an International Convention**

2.4.1 With respect to this matter, we fully agree with what has been said by some members of the Group, as appears in paragraph 5.2.2 of the Final Report, taking into consideration that most developing countries have defended, at all fora where this topic has been analyzed, the need for an binding institutional legal framework.

2.4.2 We believe that the proposal prepared and presented to the Group by some of its members related with the most important elements of an international convention, included as Annex H of the Report, even though it does not represent the opinion of the Group's majority, does respond to the interest of the largest number of developing States.

2.4.3 Therefore, the Latin American Civil Aviation Commission considers necessary that Annex H be once more analyzed, studied, and improved with the purpose of counting with, in the medium to long-term, a draft International Convention establishing the rights and obligations of States related to GNSS services.

3. ACTION BY THE ASSEMBLY

3.1 The Assembly is invited to:

- a) maintain in the general work programme of the Legal Committee the agenda item on the establishment of a legal framework on CNS/ATM systems, including the Global Navigation Satellite System (GNSS);
- b) maintain the tasks of the Secretariat Study Group regarding legal aspects of CNS/ATM systems;
- c) assign the Secretariat Study Group the analysis, study and improvement of the main elements presented as Annex H of the Final Report of the Group, in order to consider an International Convention in the future;
- d) assign the Study Group the continuous study and preparation of a provisional contractual framework, taking into consideration Annex G of the Final Report of the Group; and
- e) provide any other information considered necessary.

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