



ASSEMBLY — 39TH SESSION

LEGAL COMMISSION

Agenda Item 46: Consolidated statement of continuing ICAO policies in the legal field

CONSOLIDATED STATEMENT OF CONTINUING ICAO POLICIES IN THE LEGAL FIELD

(Presented by the Council of ICAO)

EXECUTIVE SUMMARY

This paper proposes to amend Assembly Resolution A37-22, in order to make reference to the *Protocol to Amend the Convention on Offences and Certain Other Acts Committed on Board Aircraft*, done at Montréal on 4 April 2014, and to encourage the Task Force on legal aspects of unruly passengers to complete its updating of Circular 288, including a review of the contents of the Model Legislation on Certain Offences Committed on Board Civil Aircraft contained in Appendix E of said Resolution.

Action: The Assembly is invited to adopt the amended resolution in the **Appendix**.

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| <i>Strategic Objectives:</i> | Supporting Implementation Strategies – Programme Support – Legal and External Relations Services. |
| <i>Financial implications:</i> | As provided by the Regular Budget. |
| <i>References:</i> | Doc 10022, <i>Assembly Resolutions in Force</i> (as of 4 October 2013) Doc 10034, <i>Protocol to Amend the Convention on Offences and Certain Other Acts Committed on Board Aircraft</i> , done at Montréal on 4 April 2014 Final Act of the International Conference on Air Law to Consider Amending the <i>Convention on Offences and Certain Other Acts Committed on Board Aircraft</i> (Tokyo, 1963) held under the auspices of the International Civil Aviation Organization at Montréal, 26 March to 4 April 2014 Circular 288, <i>Guidance Material on the Legal Aspects of Unruly/Disruptive Passengers</i> |

1. BACKGROUND

1.1 On 4 April 2014, a Diplomatic Conference convened under the auspices of ICAO adopted the *Protocol to Amend the Convention on Offences and Certain Other Acts Committed on Board Aircraft* (the Montréal Protocol of 2014). It also adopted a resolution urging the Council to request the Secretary General to update Circular 288: *Guidance Material on the Legal Aspects of Unruly/Disruptive Passengers*. The Council, at the second meeting of its 202nd Session in June 2014, instructed the Secretary General to update the Circular to include a more detailed list of offences and other acts, as well as to make consequential changes arising from the adoption of the Montréal Protocol of 2014. For this purpose, the Task Force on Legal Aspects of Unruly Passengers was established. It held its first meeting from 15 to 17 September 2015 and second meeting from 30 to 31 March 2016. The third meeting will be held in 2017.

2. DELIBERATIONS OF THE TASK FORCE

2.1 As noted by the Task Force, Assembly Resolution A37-22: *Consolidated statement of continuing ICAO policies in the legal field Appendix C: Ratification of ICAO international instruments*, refers to a number of multilateral treaties but not to the newly adopted Protocol mentioned above. The Task Force recommends that Appendix C be amended so as to add the Montréal Protocol of 2014 as one of the international air law instruments which States would be particularly urged to ratify.

2.2 The Task Force further observed that in view of the adoption of the Montréal Protocol of 2014, it may be desirable to review the contents of the *Model Legislation on Certain Offences Committed on Board Civil Aircraft* in Appendix E to Assembly Resolution A37-22 mentioned above. In that regard, the Assembly Resolution would be amended to encourage the Task Force to complete the ongoing work of updating Circular 288 including a review of the model legislation in Appendix E – *Adoption of national legislation on certain offences committed on board civil aircraft (unruly/disruptive passengers)*.

3. INCREASE IN THE MEMBERSHIP OF THE COUNCIL AND THE AIR NAVIGATION COMMISSION (ANC)

3.1 As proposals have been made through Assembly Working Papers A39-WP/13 and A39-WP/18 to amend Articles 50 a) and 56 of the *Convention on International Civil Aviation* in order to increase the membership of the Council and the ANC respectively, it is proposed that a reference to Article 50 a) and 56 be made in the second operative clause of Appendix C on the presumption that the Assembly would adopt the said amendments.

4. CONCLUSION

4.1 Based on the recommendation and observation of the Task Force and other consideration mentioned above, it is proposed to amend Assembly Resolution A37-22 as shown in the **Appendix**.

APPENDIX

~~A37-22~~ **A39-Consolidated Statement of Continuing ICAO Policies in the Legal
xx: Field**

Whereas it is considered desirable to consolidate Assembly resolutions on the Organization's policies in the legal field in order to facilitate their implementation and practical application by making their texts more readily available, understandable and logically organized:

The Assembly:

1. *Resolves* that the Appendices attached to this resolution constitute the consolidated statement of continuing ICAO policies in the legal field, up to date as these policies exist at the close of the ~~37th~~ 39th Session of the Assembly;
2. *Resolves* to continue to adopt at each ordinary session a consolidated statement of continuing ICAO policies in the legal field; and
3. *Declares* that this resolution supersedes Resolution ~~A36-26~~ A37-22.

APPENDIX A

General Policy

Whereas international civil aviation can greatly help to create and preserve friendship and understanding among the nations and peoples of the world, yet its abuse can become a threat to the general security; and

Whereas it is desirable to avoid friction and to promote that cooperation between nations and peoples upon which the peace of the world depends:

The Assembly:

Reaffirms the important role of law in the avoidance and resolution of conflicts and disputes among the nations and peoples of the world and, in particular, in the achievement by the Organization of its aims and objectives.

APPENDIX B

Procedure for approval of draft conventions on international air law

The Assembly resolves:

That the following constitutes the procedure for the approval of draft conventions:

1. Any draft convention which the Legal Committee considers as ready for presentation to the States as a final draft shall be transmitted to the Council, together with a report thereon.

2. The Council may take such action as it deems fit, including the circulation of the draft to the Contracting States and to such other States and International Organizations as it may determine.

3. In circulating the draft convention, the Council may add comments and afford States and organizations an opportunity to submit comments to the Organization within a period of not less than four months.

4. Such draft convention shall be considered, with a view to its approval, by a conference which may be convened in conjunction with a session of the Assembly. The opening date of the conference shall be not less than six months after the date of transmission of the draft as provided in paragraphs 2 and 3 above. The Council may invite to such a conference any non-Contracting State whose participation it considers desirable, and shall decide whether such participation carries the right to vote. The Council may also invite international organizations to be represented at the conference by observers.

APPENDIX C

Ratification of ICAO international instruments

The Assembly:

Recalling its Resolution ~~A36-26~~ A37-22, Appendix C relating to the ratification of the Protocols of Amendment to the Chicago Convention and of the private air law and other instruments which have been developed and adopted under the auspices of the Organization;

Noting with concern the continuing slow progress of ratification of the aforementioned Protocols of Amendment, including in particular those introducing Articles 3 *bis* and 83 *bis* to the Chicago Convention, and the final paragraphs (relating to the Arabic and Chinese texts);

Recognizing the importance of these amendments to international civil aviation, in particular to the viability of the Chicago Convention, and the consequent urgent need to accelerate the entry into force of these amendments not yet in force;

Recognizing the need to accelerate the ratification and entry into force of air law instruments developed and adopted under the auspices of the Organization;

Conscious of the fact that only a universal participation in these Protocols of Amendment and other instruments would secure and enhance the benefits of unification of the international rules which they embody;

Urges all Contracting States which so far have not done so to ratify those Amendments to the Chicago Convention which are not yet in force [i.e. those amending the final paragraph to add Arabic and Chinese to the authentic texts of the Convention], as soon as possible;

Urges all Contracting States which have not yet done so to ratify the Protocols introducing Articles 3 *bis* and 83 *bis* and amending Articles 50(a) (2016) and 56 (2016) of the Chicago Convention;

Urges all Contracting States which so far have not done so to ratify the other international air law instruments, in particular the Montreal Convention of 1999, the Cape Town instruments Convention and Cape Town Protocol of 2001, the two Montreal Conventions of 2 May 2009, the Beijing Convention and the Beijing Protocol of 2010, and the Montréal Protocol of 2014, as soon as possible;

Urges States which have ratified the instruments in question to provide to the Secretary General copies of the text and documents they have used in the process of ratification and implementation of such instruments and which may serve as an example assisting other States in the same process; and

Directs the Secretary General to take all practical measures within the Organization's means in cooperation with States to provide assistance, if requested, to States encountering difficulties in the process of ratification and implementation of the air law instruments, including the organization of and the participation in workshops or seminars to further the process of ratification of the international air law instruments.

APPENDIX D

The teaching of air law

The Assembly, considering the undoubted importance for the Organization and the States of the specialized teaching of air law and the desirability of fostering knowledge of this important subject:

Invites the Council to take all possible action to promote the teaching of air law in those States where it is not yet available;

Urges the States to adopt appropriate measures which would further the achievement of the above objective; and

Calls upon Contracting States and interested parties to contribute to the Assad Kotaite Graduate and Postdoctoral Fellowship Fund.

APPENDIX E

Adoption of national legislation on certain offences committed on board civil aircraft (unruly/disruptive passengers)

The Assembly:

Recognizing that, under the Preamble and Article 44 of the *Convention on International Civil Aviation*, one of the aims and objectives of the Organization is to foster the planning and development of international air transport so as to meet the needs of the peoples of the world for safe, regular, efficient and economical air transport;

Noting the increase of the number and gravity of reported incidents involving unruly or disruptive passengers on board civil aircraft;

Considering the implications of these incidents for the safety of the aircraft and the passengers and crew on board these aircraft;

Mindful of the fact that the existing international law as well as national law and regulations in many States are not fully adequate to deal effectively with this problem;

Recognizing the special environment of aircraft in flight and inherent risks connected therewith, as well as the need to adopt adequate measures of national law for the purpose of enabling States to prosecute criminal acts and offences constituting unruly or disruptive behaviour on board aircraft;

Encouraging the adoption of national legal rules enabling States to exercise jurisdiction in appropriate cases to prosecute criminal acts and offences constituting unruly or disruptive behaviour on board aircraft registered in other States;

Noting that States at the International Conference on Air Law held in Montréal adopted on 4 April 2014 a *Protocol to Amend the Convention on offences and Certain other acts Committed on Board Aircraft* and that the Conference decided not to include a list of offences and other acts within the Protocol but recommended that ICAO Circular 288 – *Guidance Material on the Legal Aspects of unruly/Disruptive Passengers* published in 2002 be updated;

Therefore:

Urges all Contracting States to enact as soon as possible national law and regulations to deal effectively with the problem of unruly or disruptive passengers, incorporating so far as practical the provisions set out below; ~~and~~

Calls on all Contracting States to submit to their competent authorities for consideration of prosecution all persons whom they have a reasonable ground to consider as having committed any of the offences set out in the national laws and regulations so enacted, and for which they have jurisdiction in accordance with these laws and regulations; ~~and~~;

Requests the Council to encourage the Task Force on Legal Aspects of Unruly Passengers to continue its work, including the review of the contents of the Model Legislation on Certain Offences Committed on Board Civil Aircraft found in this Appendix and to report to the 37th Session of the Legal Committee; and

Decides to review this Appendix at its next ordinary session on the basis of the outcome of the work of the said Task Force.

Model Legislation on Certain Offences Committed on Board Civil Aircraft

Section 1: Assault and Other Acts of Interference against a Crew Member on Board a Civil Aircraft

Any person who commits on board a civil aircraft any of the following acts thereby commits an offence:

- 1) assault, intimidation or threat, whether physical or verbal, against a crew member if such act interferes with the performance of the duties of the crew member or lessens the ability of the crew member to perform those duties;
- 2) refusal to follow a lawful instruction given by the aircraft commander, or on behalf of the aircraft commander by a crew member, for the purpose of ensuring the safety of the aircraft

or of any person or property on board or for the purpose of maintaining good order and discipline on board.

Section 2: Assault and Other Acts Endangering Safety or Jeopardizing Good Order and Discipline on Board a Civil Aircraft

- 1) Any person who commits on board a civil aircraft an act of physical violence against a person or of sexual assault or child molestation thereby commits an offence.
- 2) Any person who commits on board a civil aircraft any of the following acts thereby commits an offence if such act is likely to endanger the safety of the aircraft or of any person on board or if such act jeopardizes the good order and discipline on board the aircraft:
 - a) assault, intimidation or threat, whether physical or verbal, against another person;
 - b) intentionally causing damage to, or destruction of, property;
 - c) consuming alcoholic beverages or drugs resulting in intoxication.

Section 3: Other Offences Committed on Board a Civil Aircraft

Any person who commits on board a civil aircraft any of the following acts thereby commits an offence:

- 1) smoking in a lavatory, or smoking elsewhere in a manner likely to endanger the safety of the aircraft;
- 2) tampering with a smoke detector or any other safety-related device on board the aircraft;
- 3) operating a portable electronic device when such act is prohibited.

Section 4: Jurisdiction

1. The jurisdiction of (*Name of State*) shall extend to any offence under Sections 1, 2, or 3 of this Act if the act constituting the offence took place on board:

- 1) any civil aircraft registered in (*Name of State*); or
- 2) any civil aircraft leased with or without crew to an operator whose principal place of business is in (*Name of State*) or, if the operator does not have a principal place of business, whose permanent residence is in (*Name of State*); or
- 3) any civil aircraft on or over the territory of (*Name of State*); or
- 4) any other civil aircraft in flight outside (*Name of State*), if
 - a) the next landing of the aircraft is in (*Name of State*); and

- b) the aircraft commander has delivered the suspected offender to the competent authorities of (*Name of State*), with the request that the authorities prosecute the suspected offender and with the affirmation that no similar request has been or will be made by the commander or the operator to any other State.
2. The term “in flight” as used in this section means the period from the moment when power is applied for the purpose of takeoff until the moment when the landing run ends.

APPENDIX F

A Practical Way Forward on Legal and Institutional Aspects of Communications, Navigation, Surveillance/Air Traffic Management (CNS/ATM) Systems

Whereas the global implementation of Communications, Navigation, Surveillance/Air Traffic Management (CNS/ATM) systems, which, *inter alia*, is intended to provide safety-critical services for aircraft navigation, has made substantial progress since its inception at the 10th Air Navigation Conference in 1991 and received enthusiastic endorsement at the 11th Air Navigation Conference in 2003;

Whereas the existing legal framework for CNS/ATM systems, namely the Chicago Convention, its Annexes, Assembly Resolutions (especially including the Charter of GNSS Rights and Obligations), associated ICAO guidance (especially including the Statement of ICAO Policy on CNS/ATM Systems Implementation and Operation), regional navigation plans, and exchanges of letters between ICAO and the States operating satellite navigation constellations has enabled the technical implementation achieved thus far;

Whereas ICAO has devoted substantial resources to the study of the legal and institutional aspects of CNS/ATM systems in the ICAO Assembly, the Council, the Legal Committee, and a Panel of Legal and Technical Experts and a Study Group, building a detailed record and developing an understanding of the issues, challenges, and concerns facing the global community; and

Whereas there is a need to also consider regional initiatives to develop measures addressing any legal or institutional issues that could inhibit the implementation of CNS/ATM in the region, while ensuring that such mechanisms will be consistent with the Chicago Convention:

The Assembly:

1. *Recognizes* the importance of Item No. 4 of the General Work Programme of the Legal Committee “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”, and resolutions or decisions by the Assembly and the Council relating to it;
2. *Reaffirms* that there is no need to amend the Chicago Convention for the implementation of CNS/ATM systems;
3. *Invites* Contracting States to also consider using regional organizations to develop mechanisms necessary to address any legal or institutional issues that could inhibit the implementation of CNS/ATM in the region, while ensuring that such mechanisms will be consistent with the Chicago Convention, and public international law;

4. *Encourages* the facilitation of technical assistance in implementation of CNS/ATM systems by ICAO, regional organizations and industry;

5. *Invites* Contracting States, other multilateral agencies and private financiers to consider development of additional sources of funding for assistance to States and regional groups in implementation of CNS/ATM;

6. *Directs* the Secretary General to monitor and, where appropriate, assist in the development of contractual frameworks to which parties may accede, *inter alia*, on the basis of the structure and model proposed by the Members of the European Civil Aviation Conference and the other regional civil aviation commissions, and on international law;

7. *Invites* the Contracting States to transmit regional initiatives to the Council; and

8. *Directs* the Council to register such regional initiatives, to consider their value and to make them public as soon as possible (in accordance with Articles 54, 55 and 83 of the Chicago Convention).

— END —