

ELEVENTH AIR NAVIGATION CONFERENCE

Montreal, 22 September to 3 October 2003

Agenda Item 6: Aeronautical navigation issues

6.2 Navigation policy issues in the light of present and envisaged GNSS services : and architectures, integration and back-up options

LEGAL ASPECTS OF GNSS

(Presented by the African States*)

SUMMARY

African States share the fundamental principles of the current GNSS legal framework while being concerned by the lack of more complete and lasting legal framework for the long-term future.

Action by the conference is in paragraph 4.

1. INTRODUCTION

1.1 At the Sixteenth African Civil Aviation Commission (AFCAC) Plenary Session, African States adopted the Resolution S16-1 on the implementation of the communications, navigation, and surveillance/air traffic management (CNS/ATM) systems in the AFI Region. In this resolution, African States supported efforts made by ICAO to regulate the legal framework of the global satellite navigation systems (GNSS) including an international convention on the GNSS.

¹ French version provided by African States.

* Algeria, Angola, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Cap Verde, Central African Republic, Chad, Comoros, Congo, Cote d'Ivoire, Democratic Republic of the Congo, Djibouti, Egypt, Equatorial Guinea, Eritrea, Ethiopia, Gabon, Gambia, Ghana, Guinea, Guinea-Bissau, Kenya, Lesotho, Liberia, Libyan Arab Jamahiriya, Madagascar, Malawi, Mali, Mauritania, Mauritius, Morocco, Mozambique, Namibia, Niger, Nigeria, Rwanda, Sao Tome and Principe, Senegal, Seychelles, Sierra Leone, Somalia, South Africa, Sudan, Swaziland, Togo, Tunisia, Uganda, United Republic of Tanzania, Zambia, Zimbabwe

1.2 It has been generally agreed that there is no legal obstacle to the implementation of CNS/ATM systems and that there is nothing inherent in CNS/ATM systems that is inconsistent with the Chicago Convention. There is also a consensus that GNSS legal framework shall be compatible with the Chicago Convention, its Annexes and other principles of international law.

1.3 The Council has been considering the question of a legal framework for GNSS, in the form of a new legal instrument, or several instruments of different types, for some time, with the assistance of the Legal Committee, a Panel of Legal and Technical Experts and a Secretariat Study Group. Even though there is no consensus on the form of any new instrument, there has been much discussion on what features it might contain. African Experts are actively involved in the aforementioned groups activities. Moreover, the need for the ongoing in-depth study by ICAO on legal aspects related to the CNS/ATM concept including GNSS was initiated by African States during the worldwide CNS/ATM Systems Implementation Conference held in Rio de Janeiro, Brazil, from 11 to 15 May 1998.

1.4 Consequently, the consideration of the legal framework has resulted in the consensus on the text of a draft Charter on the Rights and Obligations of States Relating to GNSS Services, which was adopted by the 32nd Session of the Assembly in the form of Resolution A32-19.

2. NEED FOR A CONVENTION

2.1 In making a strong case for an international convention, African States are restating the views of a large constituent of user states who by themselves cannot provide the GNSS services but yet cannot be relieved of their responsibilities under the Chicago Convention. A great number of these States which include African States would have to authorize the use of the system over which they have no control, the only way to secure confidence is by committing both providers and users to accept certain international rights and responsibilities in a form of a binding legal instrument. This binding and enforceable legal instrument should clearly spell out the rights and responsibilities of all parties involved in the GNSS, CNS/ATM services.

2.2 Any international convention should also provide for an international institutionalised safety and security oversight.

2.3 Furthermore, African States are of the view that some elements in the Resolution A32-19 together with draft Convention prepared sometime ago by the ICAO Secretariat could constitute a preliminary input in elaborating the international convention.

2.4 In addition, the number of GNSS services providers States which are made up of the United States and the Russian Federation through GPS and GLONASS respectively and the inclusion of Europe with the planned GALILEO, represent almost 9.6 per cent of the total ICAO membership. On the question of the adequacy or otherwise of the existing Charter, views have been expressed to the effect that the Charter is not different from Council Policy Statement on the ICAO CNS/ATM system. African States share this view, as well. The Charter does not offer guarantees in the sense that it is merely declaratory and not binding.

2.5 The following principles may be considered in establishing the Convention relating to GNSS services:

- a) Recognition of the responsibility of ICAO to develop principles and techniques and foster planning and development of international air transportation;
- b) Acknowledgement of the paramount importance of safety of international air transport. The right of every state and aircraft to unlimited access on non-discriminatory basis to GNSS services regardless size and ideology of the State;
- c) The sovereign rights of every state to control operations of aircraft and enforce safety within its airspace;
- d) The obligation of providers to assure continuity, availability, accuracy, transparency and liability of GNSS services;
- e) Cooperation on the part of all GNSS providers in view of ensuring uniformity of the service and equipment; and
- f) Compulsory submission to arbitration by all Parties in the event of an accident.

3. RELATIONSHIP WITH CONTRACTUAL FRAMEWORK

3.1 In contrast to the Charter, the Contractual Framework contains enforceable provisions and could coexist along side with any agreed international convention. It should be recalled that the Contractual Framework only serves as an interim arrangement pending adoption of the Convention.

3.2 Unlike the Convention, the Contractual Framework is a bilateral arrangement under which GNSS services are to be provided by a GNSS signal provider. In this regard, the rights and responsibilities of the Parties are to a large extent to be determined according to the bargaining strengths of those involved.

4. ACTION BY THE CONFERENCE

4.1 African States invite the conference to support the establishment of a multilateral treaty in the form of an international convention which spells out the rights and obligations of GNSS service providers and users.