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ASSEMBLY — 42ND SESSION

LEGAL COMMISSION

Agenda Item 29: Other issues to be considered by the Legal Commission

THE ROLE OF THE JUDICIARY IN ENFORCING CIVIL AVIATION REGULATIONS

(Presented by Jordan on behalf of the Member States of the Arab Civil Aviation Organization²)

EXECUTIVE SUMMARY

This working paper explains the role of the judiciary in enforcing civil aviation regulations. It aims to bolster cooperation among Member States in strengthening the role of the judiciary in enforcing civil aviation regulations. The paper presents a unique experience involving a jointly held workshop titled *The Role of the Judiciary in Enforcing Civil Aviation Regulations*, organized in Jordan by the Jordanian Civil Aviation Regulatory Commission, in coordination with the Arab Civil Aviation Organization and the Qatar Civil Aviation Authority.

Action: The Assembly is invited to:

- urge ICAO to raise national awareness on the role of the judiciary in the enforcement of civil aviation regulations;
- invite ICAO to provide the relevant iPacks for the judicial organs in Member States, to ensure, to the extent possible, that they are globally harmonized in terms of the approach applied and the results sought; and
- take note of the unique experience presented in establishing a framework for the role of the judiciary in enforcing civil aviation regulations.

<i>Strategic Goals:</i>	This working paper relates to Strategic Goals: <i>Every Flight is Safe and Secure;</i> <i>Aviation Delivers Seamless, Accessible and Reliable Mobility for All;</i> <i>The International Civil Aviation Convention and other Treaties, Laws and Regulations address all Challenges.</i>
<i>Financial implications:</i>	None
<i>References:</i>	

¹ Arabic version provided by Jordan.

² Algeria, Bahrain, Comoros, Djibouti, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Mauritania, Morocco, Oman, Palestine, Qatar, Saudi Arabia, Somalia, Sudan, Syrian Arab Republic, Tunisia, United Arab Emirates and Yemen.

1. INTRODUCTION

1.1 The work of civil aviation authorities involves several legislative and judicial functions at the national level. National civil aviation legislation falls within the scope of external audits conducted by ICAO under its aviation safety and security audit programmes. The scope of audits also includes effective implementation of international requirements imposed on Member States upon their ratification of international treaties, the most important of which are the *Convention on International Civil Aviation*, signed at Chicago on 7 December 1944 (Chicago Convention), the *Convention on International Interests in Mobile Equipment*, signed at Cape Town on 16 November 2001 (Cape Town Convention) and related international protocols.

1.2 A key indicator of the effectiveness of civil aviation safety and security oversight systems is the ability to enforce civil aviation regulations domestically, without undermining the enforcement of decisions related to aviation safety and security, especially those that fall under Critical Element 8 (CE-8) to address cases of non-compliance (violations).

1.3 The judiciary, especially Administrative Courts, examines cases related to administrative decisions issued by civil aviation authorities, including penalties for violations resulting from non-compliance with civil aviation safety and security requirements based on States' commitments in accordance with international conventions, protocols and their annexes. Such administrative decisions issued by civil aviation authorities under national and international legislation are subject to appeals by the plaintiff, often an air carrier affected by a decision taken by the civil aviation authority that chooses to resort to the judiciary, based on their constitutional right.

2. ENFORCEMENT OF CIVIL AVIATION REGULATIONS

2.1 Decisions issued by civil aviation authorities in States fall under the scope of national laws, regulations and legislations, which makes them subject to appeals in the Administrative Court.

2.2 For example, administrative decisions issued by an aviation authority, such as the decision to suspend the license of an air carrier or the decision to withdraw/suspend/annul the license or privileges of a civil aviation personnel following a violation related to aviation safety or security, are essentially decisions subject to the judicial opinions, resulting from the claims of the plaintiff (natural or legal person) and the administrative judge's perception of the matter. The judge thereupon would suspend the enforcement of the administrative decision issued by the aviation authority that was challenged by the plaintiff on the grounds that the aviation authority has abused its power in taking that decision, until the Appeals Court issues its decision. However, it is that period of suspension that constitutes a risk, as the plaintiff continues to engage in their activity despite the decision of the aviation authority that that activity or act in question poses a hazard to aviation safety and security.

2.3 The reason why administrative judges suspend the enforcement of administrative decisions issued by the authority, which are typically based on solid legal grounds, may be due to judges' lack of specialized legal background information in the field of civil aviation, not to mention lack of in-depth knowledge of international provisions and laws related to civil aviation, which granted the aviation authority the legal means to make its decisions based on solid legislative grounds, rather than arbitrary random decisions.

2.4 Since the aviation authority has the right, as provided for in the basic civil aviation legislation, to take decisions in accordance with its own statutes and in line with the relevant regulations and instructions, failure to take into account the specific nature of civil aviation, relevant international

agreements, treaties and ensuing commitments leads to obstructing the enforcement of the aviation authority decisions by the administrative judiciary and other entities, which in turn results in direct and indirect consequences, such as endangering lives and property, as well as deeming the State non-compliant with the requirements of aviation safety and security, especially those falling under CE-8, namely addressing cases of non-compliance (violations).

3. NATIONAL CIVIL AVIATION LEGISLATION INSTITUTIONS AND AGENCIES

3.1 Reviewing, amending and promulgating national aviation legislation is a process that varies from one country to another. In most countries, however, different institutions are responsible for completing the necessary constitutional instruments to review, amend or promulgate laws and regulations related to civil aviation..

3.2 Accomplishment of the tasks mentioned below necessitates that institutions that are not specialized in aviation, possess sufficient knowledge of relevant international legislation requirements and practices, from a legal or legislative perspective. Other institutions are also responsible for harmonizing proposed legislation with the national legislative system and other relevant laws at the national level. Added to the above are entities that are responsible for improving government performance, such as agencies mandated with supervising integrity, anti-corruption and public sector development, or those involved in restructuring projects and reviewing policies related to air transportation.

4. THE JORDANIAN EXPERIENCE

4.1 The Jordanian Civil Aviation Regulatory Commission organized a two-day collaborative workshop in the Dead Sea region from 7 to 9 November 2024, in coordination with the Arab Civil Aviation Organization and the Qatar Civil Aviation Authority. The title of the workshop was *The Role of the Judiciary in Enforcing Civil Aviation Regulations*.

4.2 The workshop brought together judges, public prosecutors and State prosecutors, in addition to authorities responsible for reviewing and drafting legislation in Jordan, with the participation of civil aviation experts in the Kingdom, to discuss the role of the judiciary in enforcing civil aviation regulations. The workshop was attended by 30 participants representing:

- a) The Judicial Institute;
- b) Public Prosecution;
- c) State Prosecutors;
- d) The Integrity and Anti-Corruption Commission; and
- e) The Legislation and Opinion Bureau

with the participation of specialists from the Jordanian Civil Aviation Regulatory Commission. The workshop addressed the following topics:

- a) International treaties related to civil aviation laws;

- b) Reviewing the Jordanian legislative framework in light of its commitment in accordance with international treaties;
- c) Procedures taken by civil aviation authorities to address violations of civil aviation safety and security; and
- d) International judicial practices related to the enforcement of civil aviation regulations.

4.3 The workshop had a significant impact on reaching a consensus on the necessity of possessing essential background knowledge in the field of civil aviation when considering matters related to that field by institutions and entities not specialized in the aviation industry. Equally important is establishing a platform to facilitate communication between entities and institutions on one side, and the Jordanian Civil Aviation Regulatory Commission, on the other.

5. PROPOSALS

5.1 Civil aviation authorities are the primary national reference point on all aviation-related matters and are expected to provide the necessary expertise, when called upon, to all non-specialized entities. Additionally, education on civil aviation and training judges to handle civil aviation cases are key to ensuring smooth procedures for issuing aviation-related legislation, and ensuring the enforcement of civil aviation regulations, in line with States' commitments in accordance with treaties and conventions.

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