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ASSEMBLY — 41ST SESSION

LEGAL COMMISSION

Agenda Item 42: 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 editorial changes to Assembly Resolution A40-28, *Consolidated statement of continuing ICAO policies in the legal field*.

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

<i>Strategic Objectives:</i>	Supporting Implementation Strategies – Programme Support – Legal and External Relations Services.
<i>Financial implications:</i>	The ICAO activities referred to in this paper are expected to be undertaken within the resources available in the 2023-2025 Regular Budget and/or from extra-budgetary contributions as guided by the ICAO Business Plan 2023-2025.
<i>References:</i>	Doc 10140, <i>Assembly Resolutions in Force</i> (as of 4 October 2019)

1. BACKGROUND

1.1 This paper proposes editorial amendments to Assembly Resolution A40-28, *Consolidated statement of continuing ICAO policies in the legal field*, and more particularly to its Appendices C, D and F.

1.2 In connection with Appendix C on the ratification of ICAO international instruments, it is proposed to include the adoption dates of the Protocols of Amendment to the Chicago Convention relating to the Arabic and Chinese texts, respectively in 1995 and 1998.

1.3 With respect to Appendix D, relating to the teaching of air law, it is proposed to broaden its scope by directing ICAO to promote the teaching and dissemination of knowledge of air law around the world.

1.4 As concerns Appendix F, editorial changes have been made in order to reflect the current title and priority of this item on the Work Programme of the Legal Committee.

2. CONCLUSION

2.1 The Assembly is invited to adopt the amendments to Assembly Resolution A40-28 as shown in the **Appendix**.

APPENDIX

~~A40-28~~A41-xx: Consolidated statement of continuing ICAO policies in the legal 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 ~~40th~~ 41st 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 ~~A39-11~~A40-28.

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 ~~A39-11~~A40-28, 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 amending Articles 50 (a) and 56 adopted in 2016, and the final paragraphs (relating to the Arabic and Chinese texts, adopted, respectively, in 1995 and 1998);

Also noting that while a substantial number of States are party to the Protocols introducing Articles 3 *bis* and 83 *bis* of the Chicago Convention, there is still a need to further progress the ratification of those Protocols;

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 adopted, respectively, in 1995 and 1998, and those amendments to Articles 50 (a) and 56 adopted in 2016, 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* 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 Montréal Convention of 1999, the Cape Town Convention and Aircraft Protocol of 2001, the two Montréal Conventions of ~~2 May~~ 2009, the Beijing Convention and the Beijing Protocol of 2010, the Montréal Protocol of 2014 and the Protocols on the Authentic Quinquelingual Text (1995) and the Authentic Six-Language Text (1998) of the Chicago Convention, 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; and

Welcoming the introduction in 2017 of the ICAO international air law course with the objective to enable representatives of Civil Aviation Administrations, airports and air navigation service providers to support their organizations in the implementation of air law:

~~*Invites*~~ *Directs* the Council ICAO to take all possible action to promote the teaching and the dissemination of knowledge of air law ~~in those States where it is not yet available~~ around the world;

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 aircraft (unruly and 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 and disruptive passengers on board 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 and 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 and 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; and

Noting further the publication of ICAO Doc 10117 - *Manual on the Legal Aspects of Unruly and Disruptive Passengers*, which incorporates changes consequential to the adoption of the Montréal Protocol of 2014 and contains a list of offences and acts most likely to be committed on board aircraft by unruly and disruptive passengers.

Therefore:

Urges all Contracting States to enact as soon as possible national law and regulations to deal effectively with the problem of unruly and disruptive passengers, taking into account the guidance in the ICAO *Manual on the Legal Aspects of Unruly and Disruptive Passengers* (Doc 10117) and incorporating so far as practical the provisions in the Model Legislation set out below;

Calls on all Contracting States to submit to their competent authorities, for consideration of prosecution or application of administrative or any other forms of legal proceedings, all persons whom they have a

reasonable ground to consider as having committed any of the offences and acts set out in the national laws and regulations so enacted, and for which they have jurisdiction in accordance with these laws and regulations; and

Encourages States which have not yet done so to consider introducing civil and administrative sanctions to deal with less serious acts or offences relating to unruly and disruptive behaviour on board aircraft in an expeditious and effective manner.

Model Legislation on Certain Offences Committed on Board Aircraft

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

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

- (1) physical assault or threat to commit such assault against a crew member;
- (2) verbal intimidation or threat 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;
- (3) refusal to follow a lawful instruction given by or on behalf of the aircraft commander for the purpose of:
 - (a) protecting the safety of the aircraft or of persons or property therein; or
 - (b) maintaining good order and discipline on board.

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

- (1) Any person who commits on board an 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 an 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 an Aircraft

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

- (1) smoking in a lavatory, or smoking elsewhere when such act is prohibited;
- (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.

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;

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; and

Whereas the 13th Air Navigation Conference in 2018 reviewed the status of existing and future technologies enabling the global air navigation system:

The Assembly:

1. *Recognizes* the importance of Item No. ~~5~~ 6 of the General Work Programme of the Legal Committee “Study of international legal issues relating to global ~~navigation~~ satellite systems ~~(GNSS)~~ and services supporting international air navigation services”, 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).

APPENDIX G

Enhancing the capacity and effectiveness of States to implement air law treaties and update national laws and regulations

1. *The Assembly:*

Recalling the important role of law (especially air law) for the achievement by ICAO of its aims and objectives and for ICAO, Member States and the aviation industry to respond effectively to new and emerging opportunities, challenges and threats to the development of international civil aviation;

Recognizing that Member States must ensure that appropriate legislation and regulations are formulated to implement, and are applied in accordance with, the Chicago Convention, relevant air law instruments and ICAO provisions;

Affirming the important role that civil aviation legal advisers and air law practitioners play in supporting their States and Organizations to implement air law treaties, to formulate and update national laws and regulations to give effect to national policies and regulatory requirements, and to contribute to adherence to the rule of law;

Considering that legal advisers must continuously update and enhance their competencies, capabilities and capacities to effectively carry out their responsibilities; and

Welcoming the first Civil Aviation Legal Advisers Forum initiative organized by ICAO and hosted in Singapore in May 2019, which enabled legal advisers, particularly those serving in Organizations that

regulate civil aviation, to share and exchange views on current issues of interest to the international aviation community and on strengthening their support for their Organizations and States:

2. *The Assembly:*

1. *Encourages* Member States that have not already done so to establish positions of dedicated in-house legal advisers for their civil aviation administrations;

2. *Encourages* Member States to make use of ICAO seminars and workshops, the International Air Law Course and other similar events for the continuous training and development of their legal advisers and to consider hosting from time to time such events in their States and regions;

3. *Invites* Member States to support the Civil Aviation Legal Advisers Forum initiative and to consider hosting subsequent editions of the Forum as well as encourage and facilitate their legal advisers to participate in and to contribute to the Forum;

4. *Requests* the Secretary General to assist Member States in achieving and maintaining the appropriate competency of civil aviation legal advisers including through developing a competency framework for strengthening their role; and

5. *Urges* Member States to support ICAO's work in the legal field by encouraging the active participation of their legal advisers in the work of the Legal Committee, subcommittees and task forces, panels, working groups, and similar bodies established to examine air law issues and develop legal solutions.

— END —