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5/10/22

ASSEMBLY — 41ST SESSION

PLENARY

REPORT OF THE LEGAL COMMISSION ON THE GENERAL SECTION AND AGENDA ITEMS 40, 41, 42 AND 43

(Presented by the Chairperson of the Legal Commission)

The attached report on the General Section, Agenda Items 40, 41, 42 and 43 has been agreed by the Legal Commission. Resolution 41/x is recommended for adoption by the Plenary.

REPORT OF THE LEGAL COMMISSION TO THE ASSEMBLY

General

1. The Legal Commission held three meetings between 29 September and 4 October 2022. Dr. Jonathan Aleck (Australia) was elected by the Plenary as Chairperson of the Commission.
2. At its first meeting, the Commission elected Ms. Susanna Metsälampi (Finland) and Mr. Peter Amaleboba (Ghana) as its First and Second Vice-Chairpersons, respectively.
3. The three meetings of the Commission were held in open session.
4. Representatives from 127 Member States and several observer delegations attended one or more meetings of the Commission.
5. The Secretary of the Commission was Mr. Michael Gill, Director of the Legal Affairs and External Relations Bureau. Mr. Chunyu Ding, Deputy Director, acted as his Deputy. The Assistant Secretaries were Mr. Benoît Verhaegen, Senior External Relations and Legal Officer, Mr. Arie Jakob, Senior Legal Officer, Mr. Christopher Petras, Mr. Andrew Opolot, Mr. Yaw Nyampong, and Ms. Marla Weinstein, Legal Officers; as well as Ms. Diana Brookes, Mr. Mathieu Vaugeois and Ms. Ao Lei, Associate Legal Officers. Messrs. Silvério Espinola and Pier-Oliver Turcot, Consultants, also assisted the Commission.

Agenda and Working Arrangements

6. Agenda items 40, 41, 42 and 43 referred to the Commission by the Plenary were considered, as follows:
 - Item 40: Annual Reports of the Council to the Assembly for 2019, 2020 and 2021.
 - Item 41: Work Programme of the Organization in the legal field.
 - Item 42: Consolidated Statement of Continuing ICAO policies in the legal field.
 - Item 43: Other issues to be considered by the Legal Commission.
7. The documents and working papers considered by the Commission are listed by agenda items in the Appendix to the Report.
8. The action by the Commission in respect of each item is reported on separately in the paragraphs which follow. The material is arranged according to the numerical sequence of the agenda items considered by the Commission.

Agenda Item 40: Annual Reports of the Council to the Assembly for 2019, 2020 and 2021

40.1 The Commission noted the chapters of the Annual Reports of the Council to the Assembly for the years 2019, 2020 and 2021 as well as the Supplement for the first half of the year 2022 which had been referred to it by the Plenary.

Agenda Item 41: Work Programme of the Organization in the Legal Field

41.1 The Commission considered this item on the basis of A41-WP/53 (presented by the Council), A41-WP/65 (presented by IATA/IFALPA), A41-WP/124 Revision No. 1 (presented by the Republic of Korea), A41-WP/126 Revision No. 1 (presented by the Republic of Korea), A41-WP/208 Revision No. 1 (presented by AFCAC on behalf of 54 African States: Algeria, Angola, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Cabo Verde, Central African Republic, Chad, Comoros, Congo, Côte d'Ivoire, Democratic Republic of the Congo, Djibouti, Egypt, Equatorial Guinea, Eritrea, Eswatini, Ethiopia, Gabon, Gambia, Ghana, Guinea, Guinea-Bissau, Kenya, Lesotho, Liberia, Libya, Madagascar, Malawi, Mali, Mauritania, Mauritius, Morocco, Mozambique, Namibia, Niger, Nigeria, Rwanda, Sao Tome and Principe, Senegal, Seychelles, Sierra Leone, Somalia, South Africa, South Sudan, Sudan, Togo, Tunisia, Uganda, United Republic of Tanzania, Zambia and Zimbabwe), A41-WP/324 Revision No. 1 (presented by Dominican Republic with the support of Argentina, Costa Rica and Panama) and A41-WP/327 (presented by Dominican Republic and supported by Aruba, Belize, Chile, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Uruguay and Venezuela (Bolivarian Republic of) Member States of LACAC). The Commission noted Information Papers A41-WP/125 (presented by the Republic of Korea) and A41-WP/260 Revision No. 1 (presented by Dominican Republic).

41.2 A41-WP/53, presented by the Council, informed the Assembly on the legal work of the organization and highlighted the ongoing activities of the Legal Affairs and External Relations Bureau (LEB), particularly its support to the Council and Standing Committees and the recent establishment of the ICAO Appeals Board. The Secretariat updated the Commission on one subject covered in Section 2 of the working paper; i.e. the legal support to the Fact-Finding Investigation Team, the FFIT, established to investigate the event involving Ryanair flight FR4978 in Belarus airspace on 23 May 2021. The Secretariat mentioned that on 18 July 2022, during its 226th Session, the Council considered an updated Report on the fact-finding investigation and concluded with grave concern that the safety of Ryanair Flight FR4978 was endangered when a false bomb threat was communicated to the flight crew, on the instructions of senior government officials of Belarus. Further, the Council determined that these actions represented a violation by the Republic of Belarus of the Chicago Convention. By decision of the Council, the conclusions and findings of the investigation had been communicated to all Member States by a State letter issued on 4 August 2022, and by publishing the final report on the ICAO public website. The Council also decided, in accordance with Article 54 k) of the Chicago Convention, to submit this matter to the 41st Session of the Assembly for consideration of Member States. The Secretariat advised that the relevant consideration would take place in the Executive Committee.

41.3 The Secretariat invited the Commission to consider the future work of the Organization in the legal field and to decide on the Work Programme of the Legal Committee as set out in paragraph 4.3 of A41-WP/53, including the prioritization of items.

41.4 The delegations who intervened on this matter expressed support for the Work Programme as it currently stood. Two delegations nevertheless urged the Legal Committee to exert more efforts regarding the legal and institutional aspects of GNSS. The issue of cybersecurity and the need to promote adequate safeguards was highlighted by one delegation. The Chairperson noted the widespread support for A41-WP/53 and the appreciation for LEB and the various groups and task forces established under its auspices.

41.5 With respect to Item 1 of the Work Programme, “Review of the ICAO Rules for the Settlement of Differences”, A41-WP/124, Revision No. 1, presented by the Republic of Korea, outlined the provisions of the Chicago Convention on the settlement of disputes (Articles 84, 85 and 86), the limitations of the dispute settlement mechanism under the Chicago Convention, and the efforts of ICAO, particularly through the Working Group for the Review of the ICAO Rules for the Settlement of Differences (WG-RRSD), to revise the dispute settlement system. The paper proposed that the Assembly support the work of WG-RRSD and that ICAO prepare a workshop/seminar for all Contracting States to exchange views on the outcomes of the WG-RRSD, upon the completion of its work. The Secretariat highlighted that the WG-RRSD is continuing its work on the item, and that an informal briefing to the WG-RRSD will take place virtually on 17 October 2022, to be followed by the Seventh Meeting of the WG-RRSD, which is proposed to be held in person in Montréal from 10 to 12 January 2023.

41.6 Several delegations expressed appreciation for the work on the item by the Chairperson of the WG-RRSD, the Rapporteur and the Secretariat. One delegation emphasized that the Council is a political organ entrusted with quasi-judicial authority. In this regard, it highlighted the importance of ensuring equity for disputing States and facilitating the settlement of disputes. One delegation stressed that while the WG-RRSD has identified several areas where there is a high level of agreement on possible revisions to the Rules or where no revisions are needed, there are also a number of other areas that require further consideration by the WG-RRSD. At this time, that delegation questioned the added value of the proposal to hold a workshop/seminar. It mentioned that the next Session of the Legal Committee would provide ample opportunity to present the outcomes of the work of the WG-RRSD. This view was supported by another delegation which, with regard to the content of A41-WP/124, Revision No. 1, concerning the nature of the functions performed by the Council under Article 84, outlined that these functions were subject to various interpretations and that therefore it is necessary for the WG-RRSD to continue its work, including on this issue. On the proposal to hold a seminar/workshop, the Secretariat mentioned that the suggestion could be revisited upon completion of the work by the WG-RRSD.

41.7 The Chairperson of the WG-RRSD commended the Secretariat, the Chairperson of the Legal Committee as well as the Rapporteur for supporting the WG-RRSD’s work and expressed appreciation to the Members of the WG-RRSD for the good spirit of collaboration among the WG-RRSD. He also mentioned that since its establishment the WG-RRSD had held six meetings, two in-person before the outbreak of the COVID-19 pandemic, and subsequently four held virtually. He indicated, without prejudging the outcomes of subsequent meetings, that the WG-RRSD should be in a position to complete its work with a maximum of two additional in-person meetings.

41.8 The Chairperson of the Legal Committee outlined the challenges of holding virtual meetings, including that they were shorter in duration and not conducive to informal consultations among Members, adding that despite these challenges, the WG-RRSD had made significant progress in its work. She also highlighted the importance of this subject for the Council as well as for parties to future disputes and clarified that the revised Rules, when finalized and adopted, will not apply to existing disputes.

41.9 The Commission noted the progress made by the WG-RRSD, that the work is continuing as outlined by the Secretariat, and that the suggestion by the Republic of Korea to hold a seminar/workshop on the outcomes of the work could be for reconsideration upon completion of that work.

41.10 With respect to the item *International legal aspects of unmanned (pilotless) aircraft operations and integration into civil aviation*, the Dominican Republic presented A41-WP/327, which requests the inclusion of the civil liability for RPAS operations in the Work Programme of the ICAO Legal Committee. According to the paper, the growth of RPAS operations requires a uniform framework for civil liability, specifically in cases of injury or damage caused by the RPAS operations. A41-WP/327 concludes that a new international instrument would be needed to address these matters.

41.11 The Secretariat expressed its appreciation for the working paper and, noting that the significant questions raised therein could be covered by the existing item on the Work Programme relating to unmanned (pilotless) aircraft, proposed that the working paper be referred to and addressed by the Secretariat Study Group on Legal Issues related to Pilotless Aircraft (SSG-LIPA).

41.12 Several delegations took the floor to affirm the importance of the matters addressed in A41-WP/327 and expressed support for the subject being considered by the Legal Committee. One delegation, whose delegate serves as Rapporteur of the SSG-LIPA Subgroup on Liability and Security, recalled the earlier work done in this area under the auspices of the Legal Committee and reassured the Commission that the subject of legal responsibility and liability for remotely piloted aircraft system (RPAS) operations would most promptly and efficiently be taken up by the Subgroup. Several States thereafter took the floor to acknowledge the importance of the issues raised by A41-WP/327 and, expressing support for the work of the SSG-LIPA, proposed that further work on these matters be carried out by its Liability and Security Subgroup.

41.13 In summarizing the discussions, the Chairperson highlighted the States' recognition of the importance of the issues raised by A41-WP/327, and affirmed that there appeared to be broad support among the delegations that took the floor to refer the paper to the existing SSG-LIPA for further consideration.

41.14 The Chairperson of the Article 12 Task Force thanked participants of the Task Force which had started its work on Item 3 of the Work Programme, "Processes and Procedures for States to fulfil their obligations under Article 12 of the Chicago Convention", at a virtual meeting held on 23 November 2021. A second meeting of the Task Force to be convened in-person will be held on 5 and 6 October 2022, on the margins of the ongoing 41st Session of the Assembly.

41.15 With respect to Item 4 of the General Work Programme, "Acts or offences of concern to the international aviation community, including cyber threats, that may not be adequately covered by existing air law instruments", A41-WP/65, presented by the International Air Transport Association (IATA) and the International Federation of Airline Pilots Associations (IFALPA), highlighted the importance to implement mechanisms to deal with non-compliance by unruly and disruptive passengers which has been an issue of concern for many years but was more recently exacerbated by the application of COVID-19 pandemic measures. The paper proposed three action items: the implementation of public awareness to ensure travellers are informed of what constitutes prohibited conduct and the legal and other sanctions that could result in line with the SARPs of Annex 9 – *Facilitation*; ratification of the Montréal Protocol 2014 to remove any jurisdictional gaps; and the implementation of a civil and administrative penalties regime as outlined in ICAO Doc 10117.

41.16 The Secretariat referred the Commission to A41-WP/53, paragraph 4.1.4 and Appendix A, paragraph 4, with respect to the Secretariat's support of the work of the Council Aviation Recovery Task Force (CART) in reviewing Doc 10117 and its application to the implementation and enforcement of COVID-19 public health measures, and its response to inquiries relating to the Montréal Protocol 2014. It was pointed out that more than ten Member States have ratified the said Protocol since the onset of the COVID-19 pandemic.

41.17 The Commission was cognizant of the issues highlighted in A41-WP/65 and agreed that it was important to have mechanisms in place to deter unruly and disruptive behaviour effectively, although different views were expressed on the extent of such mechanisms. All of the delegations and one observer who took the floor supported the working paper, sharing the concern on the importance of addressing the problem of unruly and disruptive behaviour on board aircraft. Most of those delegations also supported the paper's three action items, with several delegations highlighting their implementation of administrative and penal sanctions against unruly and disruptive acts or offences, some citing zero-tolerance policies towards behaviour which threatens the good order and safety of the aircraft. One delegation, supported by others, was of the view that the aviation industry is best situated to implement public awareness campaigns with maximum impact. Another delegation stressed the need for risk management in order to reduce the prevalence of unruly and disruptive passenger incidents, which, in turn, would reduce the need to implement sanctions. Two delegations expressed their lack of support for the Protocol, with one citing its failure to effectively modernize the Tokyo Convention 1963, and concerns about the practicality and limitations of certain provisions on in-flight security officers (IFSOs) and the State of landing jurisdiction. Other delegations emphasized the importance of implementing the State of landing jurisdiction, which States are able to do, whether or not they have ratified the Montréal Protocol 2014. There was a unanimous recognition by the Commission of the need for States to keep their approach to responsiveness and deterrence measures for dealing with unruly and disruptive passengers under constant review.

41.18 With respect to Item 5 of the Work Programme of the Legal Committee, "Promotion of the ratification of international air law instruments", A41-WP/126, Revision No. 1, presented by the Republic of Korea highlights the coexistence of rules (treaties or amendments to treaties) that the Contracting States have ratified with those that are not ratified. Different approaches are suggested to accelerate the ratification of amendments with a focus on the Chicago Convention, and, if not all States have ratified international air law instruments, the possibility of ratified and non-ratified rules co-existing compatibly. The paper proposes that the Assembly prepare seminars, symposiums, meetings and other forms of action to facilitate Contracting States' knowledge of amendments, and to convene a meeting for all Contracting States to share their experiences so that they accelerate ratification of international air law instruments.

41.19 With regard to the first action item of A41-WP/126, the Secretariat referred to A41-WP/53 with respect to the report on Item 5 of the Work Programme at paragraph 4.1.7 of the paper and paragraph 6 of the Appendix, which summarize actions to increase ratification of air law instruments including the Assembly's adoption of Resolutions promoting ratification, the issuance of State letters in which States are reminded to ratify certain ICAO treaties, LEB's participation and facilitation of events aimed at promoting ratification, and LEB's assistance to the Global Aviation Training Office (GAT) with the development and delivery of the ICAO International Air Law Course. The Secretariat also emphasized the second Treaty Event which took place earlier in this Assembly Session (27 and 28 September), which was held with a view to encouraging ratification. With regard to the second action item of A41-WP/126, the Secretariat pointed out that LEB has recently conducted meetings with ICAO Regional Directors to assist with ratification matters, and will continue to facilitate such meetings as well as with governments and industry stakeholders to raise understanding and awareness of air law treaties. With respect to provisional

application of treaties, the Secretariat clarified that the Council has expressed a clear preference for administrative action, as opposed to legal measures, to accelerate ratification and entry into force of ICAO treaties. This was last considered by the Council at the Ninth Meeting of its 206th Session in November 2015 concerning the possibility of examining alternatives to facilitate the entry into force as early as possible of the amendment to Article 50 (a) of the Chicago Convention (subsequently adopted by the Assembly at its 39th Session in 2016). At that meeting, the President of the Council had noted that the majority of Representatives was clearly not in favour of fast-tracking its entry into force and considered that it was necessary to respect Article 94, according to which the number of ratifications required for the entry into force of any proposed amendment shall not be less than two-thirds of the total number of Contracting States.

41.20 One delegation recognized the importance of ratification of international air law instruments, and expressed appreciation for the work of LEB with respect to promoting such ratification and referred to regional efforts in their promotion. The delegation questioned the lack of understanding as to the nature of amendments to international air law instruments.

41.21 South Africa introduced A41-WP/208 on behalf of the African Civil Aviation Commission and 54 African States. The working paper highlighted that aspects of the Global Navigation Satellite System (GNSS) require additional legal frameworks/instruments to guide: a) the operational services; and b) the introduction of more satellites within the GNSS constellation. The paper further noted that due to the increased application of GNSS as a primary means of navigation support during all phases of flight, it was important to ensure the safety, availability, and continuity of GNSS. While observing that the item “Study of international legal issues relating to global satellite systems and services supporting international air navigation services” had existed on the General Work Programme of the Legal Committee for such a long period without any recent progress, the paper advocated for a reprioritization of the item and underlined the need to develop regulations to address the probability of private ownership of the satellite systems supporting international air navigation in terms of implications to Member States. While conceding that the implementation of the actions proposed in the working paper would have financial implications for the Organization, it was recommended that this should not deter the resumption of work within ICAO to develop a legal framework/instrument to address aspects of GNSS operations in support of the Global ATM System.

41.22 At the invitation of the Chairperson of the Commission, the Secretariat provided a historical background on the work that had been carried out by the Organization in relation to the subject since it was first included in the Work Programme of the Legal Committee over 30 years ago. It was indicated that the institutional and legal aspects of future air navigation systems was considered by a panel of legal and technical experts (the LTEP) established in 1995, that met several times over the course of many years. Legal aspects of GNSS were also discussed extensively at the World-wide CNS/ATM Systems Implementation Conference of May 1998. The work of the Organization on this subject resulted in the adoption of Assembly Resolutions A32-19, Charter of the Rights and Obligations of States Relating to GNSS Services, Appendix F to A40-28, A Practical Way Forward on Legal and Institutional Aspects of CNS/ATM Systems, and A32-20, Development and elaboration of an appropriate long-term legal framework to govern the implementation of GNSS. The Secretariat noted that it had monitored other organizations and entities in view of identifying substantive work in the field, but had not identified any developments that would necessitate the consideration of legal instruments other than the current Assembly Resolutions. The Secretariat expressed an openness to receive concrete proposals from States on how to advance the work on the item.

41.23 In addition, the Secretariat indicated that States providing GNSS services had established arrangements with the Organization through the exchange of letters pertaining to the USA's Global Positioning System (GPS) done in 1994 and reaffirmed in 2007, the Russian Federation's GLONASS done in 1996 and China's BeiDou done in 2022. These arrangements provide for the free use of the system, assurance of SARP compliance and at least six years of notice prior to any discontinuance of the service. The Secretariat concluded that, as with other long-range air navigation services, international air law instruments remain applicable to GNSS and thus the current GNSS use and operation do not exist outside of a broader legal framework.

41.24 Several delegations who took the floor expressed support for the issues presented in A41-WP/208, as well as for the need to retain the item on the General Work Programme of the Legal Committee. A number of delegations supported the proposal to reprioritize the item on the Work Programme. In noting the need to address legal issues relating to GNSS, such as liability, some delegations acknowledged that a broader discussion encompassing legal, institutional, technical and policy aspects of the subject would be warranted. Some delegations highlighted the work previously done by the Organization, particularly in the LTEP and Secretariat Study Group on the legal aspects, which considered many issues including the need for a new international instrument on GNSS. One delegation noted that the Legal Commission at the 40th Session of the Assembly agreed that the item would be expanded given the developments in satellite-based navigation, but that there was no need to work toward the establishment of a legal framework for GNSS. While taking into account the resource constraints faced by the Secretariat, several delegations expressed support for a proposal by one delegation to make available information on the extensive work previously carried out by the Secretariat Study Group on the Legal Aspects of CNS/ATM Systems. That Study Group had after considering, at great length, the possibility of a new treaty, proposed a contractual framework to address the liability and related aspects instead. That Group had also noted that the technical aspects were addressed under the legal and institutional framework of the Chicago Convention. Resolution A32-20 was adopted after the conclusion of the Group's work. The delegation suggested that the Secretariat would continue to be consulted on the technical and related work on GNSS which may also assist to determine the new developments that have since occurred for the review of the resumption of work on the item.

41.25 In summarizing the interventions, the Chairperson noted the understandable disappointment and frustration expressed by many delegations in connection with the fact that the work on this item had not progressed in the past years and the overwhelming support to keep this important item on the Work Programme of the Legal Committee. While noting that the priority of the item had been recently changed from 8 to 6, the Chairperson observed that a further change in priority would perhaps not bring about the desired outcomes. Instead, taking into account the Secretariat's willingness to consider concrete proposals from States and the widely supported suggestion to review the work previously done on the item a focus on the substance of the work to be carried out rather than the reprioritization of the item could help clarify what needs to be done going forward.

41.26 The Dominican Republic presented A41-WP/324, highlighting the progress made by the Dominican Republic in enacting its domestic legislation and the importance for Member States to establish provisions aimed at preventing or managing conflicts of interest (COI) as an essential means of impartially and effectively regulating civil aviation safety and security. The Secretariat noted that the matters discussed in this paper are covered under the item "Consideration of guidance on conflicts of interest" on the General Work Programme of the Legal Committee and that Assembly Resolution A39-8 asks States to take various actions to establish appropriate legal frameworks on COI.

41.27 There was widespread support for the working paper with some delegations noting that COI could have adverse impacts for aviation safety. Delegations unanimously supported the retention of the item in the Work Programme of the Legal Committee as it requires continuous attention. One delegation expressed its appreciation to ICAO for the publication of the compilation of ICAO provisions on COI in 2019 and its efforts to ensure this compilation remaining up to date. Some delegations noted that different approaches and legal tools could be used in various jurisdictions for the mitigation of conflicts of interest considering local circumstances, with one delegation citing those developed by the United Nations. One observer, while expressing appreciation for the work done on this issue, offered its contribution to future work.

41.28 No delegations took the floor with respect to Item 8 of the General Work Programme, “Implementation of Article 21 of the Chicago Convention”.

41.29 Concluding its deliberations, the Commission confirmed the Work Programme of the Legal Committee as set out in paragraph 4.3 of A41-WP/53.

Agenda Item 42: Consolidated Statement of Continuing ICAO Policies in the Legal Field

42.1 Before commencing consideration of Agenda Item 42, the Commission took note that 30 September 2022 was International Translation Day, and paid tribute to the work of language professionals who provide translation, interpretation, terminology, editing, and support services in ICAO's six official languages to facilitate dialogue, understanding, and cooperation amongst Member States in advancing the work of ICAO in global aviation, and to upholding ICAO's full commitment to multilingualism.

42.2 The delegation of Canada then brought to the attention of the Commission that 30 September was the annual National Day for Truth and Reconciliation during which Canadians reflect on the history of First Nations, Métis, and Inuit Peoples in Canada, and called on all Canadians to work together to advance reconciliation and implement the United Nations Declaration on the Rights of Indigenous Peoples.

42.3 The Commission considered Item 42 on the basis of A41-WP/52, presented by the Council and A41-WP/115, presented by China. The Commission noted Information Paper A41-WP/401, presented by Oman, in which it proposes to host the second edition of the Civil Aviation Legal Advisers Forum.

42.4 With respect to A41-WP/52, the Secretariat highlighted the proposed editorial amendments to Assembly Resolution A40-28, *Consolidated statement of continuing ICAO policies in the legal field*, and more particularly, its Appendix C on the ratification of ICAO international instruments (the addition of the adoption dates of the Protocols of Amendment to the Chicago Convention relating to the Arabic and Chinese texts), Appendix D on the teaching of air law (a broadening of the scope relating to the teaching of air law to provide for the promotion of teaching and dissemination of knowledge of the subject around the world), and Appendix F, to reflect the current title and priority of the item "Study of international legal issues relating to global satellite systems and services supporting international air navigation services" on the General Work Programme of the Legal Committee.

42.5 There was widespread support for the working paper and for the amendments to Assembly Resolution A40-28. In response to a query from one delegation, the Secretariat clarified that the text in the preamble to Appendix A of the Resolution mirrored the wording of the preamble to the Chicago Convention. Another delegation queried the proposed amendment to Appendix D which it felt would be a substantive change given that the directive is addressed to "ICAO", rather than any of its constituent bodies or titular heads, and that this may be inconsistent with the wording of other Consolidated statements adopted by the Assembly which addressed its directives to "the Organization", "the Secretary General" or the "Council". The Secretariat clarified that this change had been discussed at length in the Council during its 226th Session with the intention of ensuring consistency in terminology among Assembly resolutions, and to allow for flexibility for respective organs of the Organization to take responsibility in their respective competencies.

42.6 The Commission then agreed to recommend to the Plenary the adoption of the following resolution, taking into account the need for consistency on directive terminology with other resolutions recommended for adoption at this Assembly Session:

A42/1: 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 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 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 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 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;

Directs the Council and the Secretary General to take all possible action to promote the teaching and the dissemination of knowledge of air law 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. 6 of the General Work Programme of the Legal Committee “Study of international legal issues relating to global satellite systems 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.

42.7 China presented A41-WP/115, which outlines the effectiveness of legal instruments regarding international civil aviation developed or amended under the auspices of ICAO over the past two decades, explains the ratification procedures in China, and informs on the instruments it has ratified. There was broad support for China's call on Member States that have not ratified legal instruments regarding international civil aviation to do so, highlighting the importance of ratification for the achievement of the aims, objectives and principles of the Chicago Convention to safeguard the sound, orderly and efficient development of international civil aviation. Several delegations emphasized the importance of ratifying, as soon as possible, the 2016 Protocols Amending Articles 50(a) and 56 of the Chicago Convention. One delegation, supported by others, emphasized the difficulties that developing States face in ratifying certain international air law instruments, mentioning a lack of human and financial resources and called for additional support in this respect. Other delegations also pointed to the limited resources in smaller States. The Secretariat drew attention to the information it had given during the Commission's consideration of A41-WP/53 under Agenda Item 41 on the various actions taken to increase ratification of air law instruments. One delegation highlighted the text in the various administrative packages which ICAO has developed and posted on its Treaty Collection website to assist States with ratification. Some delegations mentioned the importance of the continued action by the Secretariat to promote the ratification of these legal instruments.

Agenda Item 43: Other issues to be considered by the Legal Commission

43.1 Singapore introduced A41-WP/106 (presented by Singapore and co-sponsored by the Member States of the African Civil Aviation Commission¹, Australia, Bahamas, Bhutan, Brazil, Brunei Darussalam, Cambodia, Canada, Fiji, Finland, Japan, Guyana, Lao People's Democratic Republic, North Macedonia, Oman, Papua New Guinea, United Arab Emirates, United Kingdom, United States) putting forward a competency framework setting out the areas of responsibility, required legal knowledge, relevant context knowledge, and key legal skills competencies for civil aviation legal advisers. The competency framework, presented in the Appendix to the working paper, aims to assist civil aviation authorities in the recruitment, training, and professional development of civil aviation legal advisers, so as to enhance their competencies for supporting their organizations in carrying out regulatory and other functions, in particular in the areas of aviation safety and security oversight, the implementation of air law treaty obligations and the updating of national laws and regulations.

43.2 In thanking Singapore for the paper and the leadership of its delegate in ensuring the comprehensiveness of the framework, there was strong and universal support by delegations for the working paper and the competency framework. Many delegations noted that it would be particularly helpful in assisting civil aviation administrations in identifying the most beneficial training and professional development opportunities for their legal advisers, which was seen by those delegations as an essential factor for legal advisers to carry out their responsibilities and to meet challenges effectively. Some Delegations particularly noted the importance of the framework for some developing and smaller States. Others noted that the framework could be enhanced in terms of the specific knowledge requirements under different categories of competencies and adjusted to national and regional circumstances, and the human resources in this field had to be taken into account. With the universal support for the working paper, the Commission encouraged States to consider the framework in the recruitment, training and professional development of their civil aviation legal advisers.

43.3 The Commission reviewed A/41-WP/105, Presented by Singapore and co-sponsored by Argentina, Australia, Austria, Bahamas, Belize, Bhutan, Bolivia (Plurinational State of), Brazil, Brunei Darussalam, Cambodia, Canada, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Fiji, Finland, Gambia, Germany, Guatemala, Guyana, Honduras, Hungary, International Air Transport Association (IATA), Jamaica, Japan, Mexico, Netherlands, Nicaragua, Oman, Panama, Papua New Guinea, Paraguay, Peru, United Arab Emirates, United Kingdom, United States, Uruguay, Venezuela (Bolivarian Republic of) , which highlighted the contributions and important roles of the ICAO Legal Committee over the last 75 years with respect to the preparation of draft texts of international air law instruments in the fields of aviation safety and security, air carrier liability and aircraft finance, the interpretation of the Chicago Convention, and preparation of several studies on specific international air law issues. The paper proposed that the Assembly adopt a resolution that recognizes the contributions and importance of the Legal Committee and encourages States and other relevant stakeholders to continue collaborating through its work. The Commission also noted A41-WP/207, presented by

¹ Algeria, Angola, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Cabo Verde, Central African Republic, Chad, Comoros, Congo, Cote d'Ivoire, Democratic Republic of the Congo, Djibouti, Egypt, Equatorial Guinea, Eritrea, Eswatini, Ethiopia, Gabon, Gambia, Ghana, Guinea, Guinea-Bissau, Kenya, Lesotho, Liberia, Libya, Madagascar, Malawi, Mali, Mauritania, Mauritius, Morocco, Mozambique, Namibia, Niger, Nigeria, Rwanda, Sao Tome and Principe, Senegal, Seychelles, Sierra Leone, Somalia, South Africa, South Sudan, Sudan, Togo, Tunisia, Uganda, United Republic of Tanzania, Zambia and Zimbabwe.

54 Member States of the African Civil Aviation Commission², which also outlined the Legal Committee's significant contribution to the development, adoption and modernization of international air law treaties and highlighted the Committee's 75th anniversary and AFCAC's contribution. The Secretariat expressed appreciation for the working papers presented by Singapore and AFCAC and highlighted that the draft resolution contained in the Appendix of A41-WP/105 is a testament to the expertise and commitment of the Legal Committee.

43.4 All delegations and one observer that took the floor supported the draft resolution appended to A41-WP/105 and commended the Legal Committee for the outstanding contribution it has made since its inception to the development and codification of international air law. Several delegations expressed appreciation for the outstanding contribution and leadership and collaborative approach of Ms. S. Tan (Singapore) in developing various initiatives. Many delegations commended LEB for its crucial role in supporting the work of the Legal Committee, which the Commission acknowledged with a standing ovation and agreed to highlight in an amendment to paragraph 3 of the draft resolution. Some delegations also highlighted the importance for States to become party to international air law treaties so that their universal application could be achieved.

43.5 The Commission then agreed to recommend to the Plenary the adoption of the following resolution:

Resolution 43/1: 75th Anniversary of the ICAO Legal Committee

Whereas the year 2022 marks the 75th Anniversary of the establishment of the Legal Committee of the International Civil Aviation Organization (ICAO) by the First Session of the ICAO Assembly held in 1947; Recalling that the ICAO Legal Committee was established on the foundation of the Comité International Technique d'Experts Juridiques Aériens (CITEJA);

Noting that since its inception the ICAO Legal Committee has prepared draft instruments which led to the adoption of 24 international air law treaties in the areas of air carrier and aircraft liability, aircraft finance and aviation safety and security;

Noting also that the Legal Committee was involved in the preparation of studies on specific issues pertaining to international air law as well as in the development of guidance material benefiting ICAO Member States and International Organizations in their implementation of air law treaties and Standards and Recommended Practices (SARPs);

Recognizing the significant contribution that the ICAO Legal Committee has, with the strong support of the ICAO Secretariat, in particular, the Legal Affairs and External Relations Bureau (LEB), made to the development and codification of international air law;

² Algeria, Angola, Benin, Botswana, Burkina Faso, Burundi, Cabo Verde, Cameroon, Central African Republic, Chad, Comoros, Congo, Côte d'Ivoire, Democratic Republic of the Congo, Djibouti, Egypt, Equatorial Guinea, Eritrea, Eswatini, Ethiopia, Gabon, Gambia, Ghana, Guinea, Guinea-Bissau, Kenya, Lesotho, Liberia, Libya, Madagascar, Malawi, Mali, Mauritania, Mauritius, Morocco, Mozambique, Namibia, Niger, Nigeria, Rwanda, Sao Tome and Principe, Senegal, Seychelles, Sierra Leone, Somalia, South Africa, South Sudan, Sudan, Togo, Tunisia, Uganda, United Republic of Tanzania, Zambia and Zimbabwe.

Recognizing further that only a universal participation in the international air law treaties would secure and enhance the benefits of unification of the international rules which they embody; and

Determined to ensure that the ICAO Legal Committee will continue to play an important role in dealing with ongoing challenges that are of interest to the international air law community;

The Assembly, on the occasion of the 75th Anniversary of the establishment of the ICAO Legal Committee:

1. *Pays* tribute to the leadership and vision of CITEJA which drafted the first body of international air law treaties;

2. *Emphasizes* the essential role that the ICAO Legal Committee has played in the development and codification of international air law since its inception in 1947;

3. *Recognizes* the numerous contributors to the work of the Legal Committee including representatives of ICAO Member States who have served as its chairpersons and vice-chairpersons and in its sub-committees and working groups and the secretariat study groups and task forces as chairpersons, vice-chairpersons, Rapporteurs or members as well as representatives of international observer organisations accredited by the Legal Committee and the Legal Affairs and External Relations Bureau for its supporting role;

4. *Reiterates* the need for the ICAO Legal Committee to continue to take a leadership role to study new and emerging issues affecting air law and promote the development and codification of international air law, and thereby strengthen the legal framework governing international civil aviation;

5. *Urges* all Member States of ICAO to promote the universal participation in the international air law treaties and effective compliance with their provisions with a view to enhance the rule of law; and

6. *Invites* all stakeholders, including Member States and relevant organizations of the global civil aviation community, to continue working together through the ICAO Legal Committee with a view to contribute to the development and codification of international air law for the benefit of all nations and peoples of the world.
