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ASSEMBLY — 37TH SESSION

REPORT OF THE LEGAL COMMISSION ON THE GENERAL SECTION AND AGENDA ITEMS 55, 56, 57, 58, 59, 60, 61 AND 62

(Presented by the Chairman of the Legal Commission)

The attached report on the General Section, Agenda Items 55, 56, 57, 58, 59, 60, 61 and 62 has been approved by the Legal Commission. Resolutions 59/1, 60/1 and 61/1 are recommended for adoption by the Plenary.

Note.— After removal of this covering sheet, this paper should be inserted in the appropriate place in the report folder.

(23 pages)

REPORT OF THE LEGAL COMMISSION TO THE ASSEMBLY

General

1. The Legal Commission held three meetings between 28 September and 8 October 2010. Mr. L. Mabaso (South Africa) was elected by the Plenary as Chairman of the Commission.
2. At its first meeting, the Commission elected Mr. S. Eid (Lebanon) and Mr. S. Clegg (New Zealand) as its First and Second Vice-Chairmen respectively.
3. The three meetings of the Commission were held in open session.
4. Representatives from 105 Contracting States and 9 observer delegations attended one or more meetings of the Commission.
5. The Secretary of the Commission was Mr. D. Wibaux, Director of the Legal Affairs and External Relations Bureau. Mr. J. V. Augustin, Deputy Director, acted as his Deputy. The Assistant Secretaries were Mr. B. Verhaegen, Senior External Relations and Legal Officer, Messrs. J. Huang and A. Jakob, Legal Officers, and Ms. M. Weinstein, Legal Officer.

Agenda and Working Arrangements

6. Agenda items 55, 56, 57, 58, 59, 60, 61 and 62 referred to the Commission by the Plenary were considered, as follows:
 - Item 55: Annual Reports of the Council to the Assembly for 2007, 2008 and 2009
 - Item 56: Budgets for 2011, 2012 and 2013
 - Item 57: International interests in mobile equipment (aircraft equipment)
 - Item 58: Progress report on the item “Compensation for damage caused by aircraft to third parties arising from acts of unlawful interference or from general risks”
 - Item 59: Acts or offences of concern to the international aviation community and not covered by existing air law instruments
 - Item 60: Work Programme of the Organization in the legal field

Item 61: Consolidated statement of continuing ICAO policies in the legal field

Item 62: Other issues to be considered by the Legal Commission.

6.1 The documents and working papers considered by the Commission are listed by agenda items in the Appendix to the Report.

6.2 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 55: Annual Reports of the Council to the Assembly for 2007, 2008 and 2009

55.1 The Commission **noted** the Chapter on the Rule of Law of the Annual Reports of the Council to the Assembly for the years 2007 (Doc 9898), 2008 (Doc 9916) and 2009 (Doc 9921) as well as the Supplement for the first half of the year 2010 (Doc 9921 – Supplement), which had been referred to it by the Plenary.

Agenda Item 56: Budgets for 2011, 2012 and 2013

56.1 The Commission **noted** the Budget for the Legal services and External Relations services for 2011, 2012 and 2013 set out at page 96 of the Draft Budget of the Organization as proposed in A37-WP/43.

Agenda Item 57: International interests in mobile equipment (aircraft equipment)

57.1 This Item was considered on the basis of A37-WP/44 presented by the Council, which provided a progress report since the 36th Session of the Assembly on the work related to the Council's supervision, in its capacity as Supervisory Authority, of the International Registry. In particular, reference was made to the Council's issuance of two reports during 2008 and 2010 to the Parties to the Cape Town instruments concerning the discharge of its functions as Supervisory Authority, its appointment/reappointment of 12 members to the Commission of Experts of the Supervisory Authority of the International Registry (CESAIR) during 2009, its approval of innovations to the Registry as recommended by CESAIR during 2007, 2008 and 2009 and reflected as amendments to the *Regulations and Procedures for the International Registry*, and its decision to reappoint the Registrar for a second five-year term commencing March 2011. The Secretary provided an update to paragraph 2.4 of the working paper noting that, as of 1 September 2010, there were 33 Parties to the Cape Town instruments.

57.2 One delegation expressed its strong support for the Cape Town Convention and Protocol noting its government's active role in their development and its appreciation of the registration and search services offered by the International Registry. However, this delegation shared its concerns in respect of two matters. First, it considered it essential that the registration and search facilities of the Registry be made available in all official languages of ICAO in order to maximize its usefulness to participants. Second, it considered that the Registrar was still not able to meet the requirements of the Cape Town Convention and Protocol in terms of insurance coverage or financial guarantee although it had increased its coverage to U.S.\$ 70 Million. This delegation was of the view that it was still far from the Protocol level estimated at U.S.\$ 200 Million. This delegation, while hoping to ratify the Cape Town instruments soon, urged the Assembly to note its position on the insurance and language matters.

57.3 The Secretary informed that documents approved by the Council in its capacity as Supervisory Authority, such as the Regulations and Procedures, are produced in all official languages of ICAO; however the Registry continues to operate in English given the technical challenges involved. The Secretary also informed that the Secretariat is consulting with an Ad Hoc Group on the Registrar's contract renewal regarding insurance and other matters. This Ad Hoc Group is composed of some members of CESAIR.

57.4 Another delegation, whose expert participates as a member of CESAIR and the Ad Hoc Group, noted that insurance coverage was affected by the amount available in the insurance market. This delegation also noted that the Registrar could benefit from additional protection offered by a decreased insurance deductible given that there have been no claims against the Registrar since the Registry commenced operation.

57.5 In summarizing the discussion, the Chairman concluded that the Commission **noted** the updated information in A37-WP/44 together with the comments from the floor.

Agenda Item 58: Progress report on the item “Compensation for damage caused by aircraft to third parties arising from acts of unlawful interference or from general risks”

58.1 This item was considered on the basis of A37-WP/31 Revised, presented by the Council, and A37-WP/118, presented by Canada, Singapore, South Africa and the United Kingdom.

58.2 A37-WP 31 Revised provided the Assembly with a progress report on the work carried out on this item since the last session of the Assembly. In particular, information was provided regarding the adoption by a Diplomatic Conference in 2009 of the texts of two instruments, namely:

- a) the *Convention on Compensation for Damage to Third Parties, Resulting from Acts of Unlawful Interference Involving Aircraft* (commonly referred to as “the Unlawful Interference Compensation Convention”) (Doc No. 9920); and
- b) the *Convention on Compensation for Damage Caused by Aircraft to Third Parties* (commonly referred to as “the General Risks Convention”) (Doc No. 9919).

58.3 The paper highlighted in its Appendix the most important provisions of each Convention and mentioned that the instruments have to date been signed by 7 and 9 States, respectively. The paper also provided information regarding the ongoing work of the Preparatory Commission for the establishment of the International Fund, the latter having been established in accordance with Resolution No.2 adopted by the Diplomatic Conference. In addition to inviting the Assembly to note the information, the working paper urged States to ratify the two Conventions, pursuant to a decision of the Council taken during its 190th Session.

58.4 One delegation expressed its scepticism with regard to the invitation urging States to ratify the instruments. In the view of this delegation, the Unlawful Interference Compensation Convention in particular had considerable shortcomings. The delegation regarded the contemplated fund system as neither effective nor feasible and viewed the concept of the unbreakable cap as not enhancing the level of protection of victims. Given the low number of signatures to date and the high threshold required for the instruments to enter into force, it had doubts that the instruments would ever come into force and it saw itself consequently not in a position to endorse urging States to ratify the instruments. This sentiment was shared by another delegation.

58.5 A37-WP/118, presented by the Delegation of Canada on behalf of the other co-sponsors, provided the Assembly with information regarding the ongoing work of the Preparatory Commission for the establishment of the International Civil Aviation Compensation Fund. Expressing the sentiment that the views conveyed by the two delegations who spoke earlier represented a minority view, the delegation mentioned that it was highly committed to developing pragmatic solutions to difficult problems. The delegation stated that the spirit of forward thinking has been carried over into the Preparatory Commission which was tasked in effect to anticipate decisions that will have to be taken by the Conference of the Parties (COP) to the Unlawful Interference Compensation Convention. To this end, the Preparatory Commission had already devised Rules of Procedures for the COP and was actively engaged in addressing the more complex issues of the Regulations of the International Fund dealing,

inter alia, with the structure of the fund. Efforts are also ongoing in relation to the development of Guidelines for Compensation, the aspect of initial contributions to the Fund, Guidelines on Investment and financial governance arrangements as well as General Guidelines on Assistance in Case of Events in States non-Parties. The delegation further reported that an important note is being developed by the Preparatory Commission which outlines the principal legal options for rapidly putting into force the benefits of the Convention on an interim basis in the event of a crisis before the entry into force of the Convention. The delegation concluded by inviting interested States with experts enjoying the relevant expertise to join in the work of the Preparatory Commission as Observers.

58.6 The need to support the work of the Preparatory Commission was highlighted by several delegations. These delegations expressed their support for the proposed action items contained in both working papers. One of these delegations remarked that, while it appreciated the concerns raised by the delegation which had expressed scepticism, it should be recalled that the Unlawful Interference Compensation Convention and the Fund ought to be regarded as addressing the problem of strict and unlimited liability faced by airlines as well as the enormous amount of compensation needed which cannot be met by available insurance. The Convention and the Fund when established are aimed at achieving a balance between victims' and airlines' needs.

58.7 In summarizing the discussion, the Chairman concluded that the working papers did not introduce novel issues. Insofar as the expressed reservations by some States were concerned, the Chairman stated that it was necessary to move forward the process beyond the positions which had already been expressed during the Diplomatic Conference. The Commission was thus to note the progress which has been made and to urge States with experts enjoying the relevant expertise to join in the work of the Preparatory Commission and bring about the entry into force of the instruments.

Agenda Item 59: Acts or offences of concern to the international aviation community and not covered by existing air law instruments

59.1 The Secretary provided an oral report concerning the Diplomatic Conference on Aviation Security, which was held in Beijing, China, from 30 August to 10 September 2010. Seventy-six States and four international organizations participated in the Conference. The Conference adopted the *Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation* (Beijing Convention) and the *Protocol Supplementary to the Convention for the Suppression of Unlawful Seizure of Aircraft* (Beijing Protocol). These treaties criminalize, *inter alia*, the act of using civil aircraft as a weapon, and of using dangerous materials to attack aircraft or other targets on the ground. The unlawful transport of biological, chemical and nuclear weapons and their related material has been made punishable. Moreover, the criminal liability of directors and organizers of an offence under the treaties is specifically covered. Making a threat to commit an offence under the treaties may also trigger criminal liability, when the circumstances indicate that the threat is credible. Each of the two treaties requires 22 ratifications to bring it into force. As of 1 October 2010, the Convention had been signed by 20 States and the Protocol by 21 States.

59.2 A37-WP/290, presented by Argentina, Australia, Canada, China, Czech Republic, France, Mexico, Nigeria, South Africa, Uganda, United Kingdom and the United States of America, proposed in the Attachment a draft Assembly resolution to urge all ICAO Member States to sign and ratify the Beijing Convention and Protocol.

59.3 One delegation, supported by three others, while stressing the need to broaden and strengthen the legal framework for criminalizing unlawful acts against international civil aviation, deplored the fact that support for the Beijing treaties was not the result of consensus, but of a vote. In particular, the so-called “military exclusion clause” had generated a division among States, which may affect the acceptance of the instruments. It was emphasized that States should be allowed to make a reservation on this clause.

59.4 The majority of the delegations which took the floor expressed the view that the two new treaties broaden and strengthen the global civil aviation counter-terrorism framework. Their universal adoption would significantly advance cooperation in the prevention of unlawful acts relating to civil aviation.

59.5 One observer referred to its statement during the Diplomatic Conference to the effect that none of the criminal offences under the Beijing treaties were intended to cover legitimate conduct of airlines and their employees in the course of their normal business.

59.6 In summary, the Chairman underlined the broad consensus that the legal framework on aviation security needs to be strengthened in order to address the new and emerging threats. The new treaties did not prohibit States to make reservations on a particular clause when signing, ratifying or acceding. The Commission then **agreed** to recommend to the Plenary the adoption of the following resolution:

Resolution 59/1: Promotion of the Beijing Convention and the Beijing Protocol of 2010

Recalling its Resolution A36-26, Appendix C, relating to the ratification of instruments which have been developed and adopted under the auspices of the Organization;

Recognizing the importance of broadening and strengthening the global aviation security regime to meet new and emerging threats;

The Assembly:

1. *Urges* all States to support and encourage the universal adoption of the *Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation* (Beijing Convention of 2010) and the *Protocol Supplementary to the Convention for the Suppression of Unlawful Seizure of Aircraft* (Beijing Protocol of 2010);
2. *Urges* all States to sign and ratify the Beijing Convention and Beijing Protocol of 2010 as soon as possible; and
3. *Directs* the Secretary General to provide assistance, as appropriate, with the ratification process if so requested by a Member State.

Agenda Item 60: Work Programme of the Organization in the legal field

60.1 The Commission considered this item on the basis of A37-WP/33, presented by the Council, A37-WP/77, Addendum No. 1, Addendum No. 2 and Addendum No. 3 presented by Argentina, Brazil, Canada, Germany, Japan, Nigeria, Singapore, South Africa, Tanzania and the United States of America, A37-WP/80, presented by the United States of America, A37-WP/229, presented by Colombia, A37-WP/233, presented by the Republic of Korea, and A37-WP/281 Revised and Corrigendum No. 1, presented by the Air Crash Victims Families Group, the Flight Safety Foundation and La Asociación Latino Americana de Derecho Aeronáutico y Espacial (ALADA).

60.2 A37-WP/33 provided information to the Assembly regarding the ongoing work of the Secretariat in the legal field and an overview of the developments and relevant decisions taken by the Council since the previous session of the Assembly in relation to the items on the Work Programme of the Legal Committee, including the prioritization of items. One delegation and one observer welcomed the re-activation of the Secretariat Study Group on Unruly Passengers, mentioning in particular the need to address the jurisdictional issues involving the State of landing in relation to serious offences committed by unruly passengers.

60.3 A37-WP/77 contained a proposal for the adoption of a Resolution urging all States to ratify as soon as possible the Montreal Convention of 1999 and directing the Secretary General of ICAO to provide assistance, as appropriate, with the ratification process if so requested by a State. In its presentation, the Delegation of the United States of America recalled the benefits contained in the Convention for the travelling public and highlighted the need to strive for the universal acceptance of the Convention, given the confusing patchwork of co-existing legal regimes at present.

60.4 In its presentation, on behalf of the co-sponsors of A37-WP/281, the Air Crash Victims Families Group similarly highlighted the need to further promote the ratification of the Montreal Convention of 1999, remarking that it was unacceptable that in relation to the same accident the applicable rules regarding the compensation of victims could differ.

60.5 In the consideration of the two working papers, numerous delegations, among which one spoke on behalf of the European Union States and other ECAC Members, as well as one observer supported the idea of enhancing the efforts to urge States to ratify the Montreal Convention of 1999. Several delegations regarded it as timely to seek a universal application. Several delegations remarked that the current situation was unsatisfactory as it was difficult at times to determine which liability regime applied in a given case. In response to the observation by one delegation that there already existed a resolution addressing the Montreal Convention, one delegation remarked that the proposed resolution was slightly broader in scope insofar as it encouraged universal adoption. The Commission consequently **agreed** to invite the Assembly to adopt the proposed Resolution hereunder:

Resolution 60/1: Promotion of the Montreal Convention of 1999

Recalling its Resolution A36-26, Appendix C, relating to the ratification of instruments which have been developed and adopted under the auspices of the Organization;

Recognizing the importance of achieving a universal regime to govern airline liability to passengers and shippers on international flights;

Recognizing the desirability of an equitable, fair and convenient system that allows full compensation for losses;

The Assembly:

1. *Urges* all States to support and encourage the universal adoption of the *Convention for the Unification of Certain Rules for International Carriage by Air*, done at Montreal on 28 May 1999 (Montreal Convention of 1999);

1. *Urges* all States that have not done so to become Parties to the Montreal Convention of 1999 as soon as possible; and

2. *Directs* the Secretary General to provide assistance, as appropriate, with the ratification process if so requested by a State.

60.6 A37-WP/80 contained a proposal to add the topic “Consideration of Guidance on Conflicts of Interest” to the Work Programme of the Legal Committee. In elaborating on the proposal, the Delegation of the United States expressed the view that reasonably consistent rules across the sector to establish and preserve a clear separation between civil aviation authorities and the activities that they oversee were desirable. Providing the example that in one State it might be necessary for the Director General of Civil Aviation (DGCA) to completely divest himself or herself of any kind of financial interest in the industry whereas in another the DGCA may be able to retain the position as an airline pilot, the absence of guidance left these matters to be governed by widely diverging national laws. The delegation suggested considering the conflicts of interest situations in three distinct areas: 1) financial interests in regulated entities; 2) the movement from individuals from positions in government to industry and vice versa; and 3) the practice of designating or seconding personnel to carry out oversight functions on behalf of the Civil Aviation Authority. It was therefore appropriate for the Legal Committee to study this matter further and to develop recommendations, if necessary and appropriate, for ICAO to promulgate guidance material, if needed.

60.7 Two delegations regarded the existing ICAO guidance material as sufficient and saw no need for further action by the Legal Committee. One of these delegations referred the Commission to existing material contained in Part A of the Safety Oversight Audit Manual (Doc 9735). It was further noted that Part 3 of Doc 8335, *Manual of Procedures for Operations Inspection, Certification and Continued Surveillance*, also contained some guidance material. Another delegation, although not opposing to the objectives the proposal sought to achieve, suggested to have the matter first considered in the Air Navigation Commission. A large number of delegations which intervened on this matter saw merit in what had been proposed. Several of these delegations remarked that the study should be limited to the development of potential guidance material, as the matter was not susceptible to being addressed in the ICAO Standards and Recommended Practices (SARPs) or in a convention. One of these delegations proposed to send out a questionnaire to elicit the elements to be studied.

60.8 In concluding the discussion on this point, the Chairman noted the strong support for the conduct of a study which had been expressed. The Commission thereafter **agreed** to add the item “Consideration of Guidance on Conflicts of Interest” on the Work Programme of the Legal Committee.

60.9 A proposal for the development of a model legislation to assist States in the implementation of SARPs on safety and security to be added to the Work Programme was orally put forward by one delegation. One delegation supported this proposal and a few saw merit in it. One delegation suggested that it be considered under the broader framework of the study of legal issues associated with the implementation of the State Safety Programme. While appreciating that for some States the implementing legislation for SARPs remained a challenge, a number of delegations noted that the proposal had not been presented in advance and remarked that they were thus not in a position to consider the matter at this stage.

60.10 The Commission further considered A37-WP/229, presented by Colombia. The working paper contained a proposal to harmonize the criteria which governed the allocation of responsibilities between airport operators, aeronautical authorities and other parties in regard to damage caused by wildlife strikes. The majority of delegations who intervened on this matter saw no legal lacuna which needed to be addressed as both the Montreal Convention of 1999 and third-party liability instruments such as the 2009 General Risks Convention provided for the possibility of recourse actions. In addition, the insurance market provided adequate protection for such risks.

60.11 A37-WP/233, containing the offer by the Republic of Korea to host a Regional Legal Seminar in 2012 to address legal matters of interest in the Asia-Pacific Region was **noted** by the Commission with appreciation.

60.12 Subject to the addition of the new item dealing with conflicts of interest, the Commission **confirmed** the Work Programme of the Legal Committee as set out in paragraph 3.4 of A37-WP/33.

Agenda Item 61: Consolidated statement of continuing ICAO policies in the legal field

61.1 The Legal Commission considered this item on the basis of A37-WP/3 Revised, presented by the Council, and A37-WP/243, presented by the Bolivarian Republic of Venezuela.

61.2 A37-WP/3 Revised contained a proposal for an editorially updated resolution to replace the existing consolidated statement, found in Resolution A36-26. The Secretary of the Commission pointed out that the paper concerned itself only with editorial issues, and that no policy matters were to be addressed, in line with the principles governing this task. As pointed out by one delegation, it was understood that it would be necessary to insert in the 8th Clause of Appendix C which begins with “Urges all Contracting States” the short names of the recently adopted Beijing instruments on aviation security.

61.3 A37-WP/243 contained a proposal for an amendment to the Model Legislation on Certain Offences Committed on Board Civil Aircraft contained in Appendix E of the consolidated statement. The proposal called for the introduction of a Note in Sections 1, 2 and 3 of the model legislation to take into account the existing national legislation in Venezuela which distinguished between misdemeanours and offences. The proposal also called for additional text to be inserted in Section 4 dealing with jurisdiction. The Chairman remarked that the proposal was not supported but noted that Venezuela was free to pursue the matter in a different forum in accordance with the established procedures.

61.4 The Commission consequently **agreed** to recommend to the Plenary the adoption of the proposed Resolution hereunder:

Resolution 61/1 : 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 37th Session of the Assembly;
2. *Resolves* to continue to adopt at each ordinary session a consolidated statement of continuing ICAO policies in the legal field; and
3. *Declares* that this resolution supersedes Resolution A36-26.

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;

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

The Assembly:

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

APPENDIX B

Procedure for approval of draft conventions on international air law

The Assembly resolves:

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

1. Any draft convention which the Legal Committee considers as ready for presentation to the States as a final draft shall be transmitted to the Council, together with a report thereon.
2. The Council may take such action as it deems fit, including the circulation of the draft to the Contracting States and to such other States and International Organizations as it may determine.
3. In circulating the draft convention, the Council may add comments and afford States and organizations an opportunity to submit comments to the Organization within a period of not less than four months.
4. Such draft convention shall be considered, with a view to its approval, by a conference which may be convened in conjunction with a session of the Assembly. The opening date of the conference shall be not less than six months after the date of transmission of the draft as provided in paragraphs 2 and 3 above. The Council may invite to such a conference any non-Contracting State whose participation it considers desirable, and shall decide whether such participation carries the right to vote. The Council may also invite international organizations to be represented at the conference by observers.

APPENDIX C

Ratification of ICAO international instruments

The Assembly:

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

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

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

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

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

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

Urges all Contracting States which have not yet done so to ratify the Protocols introducing Articles 3 *bis* and 83 *bis* and amending Articles 50(a) (1990) and 56 (1989) of the Chicago Convention;

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

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

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

APPENDIX D

The teaching of air law

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

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

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

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

APPENDIX E

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

The Assembly:

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

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

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

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

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

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

Therefore:

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

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

Model Legislation on Certain Offences Committed on Board Civil Aircraft

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

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

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

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

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

Section 3: Other Offences Committed on Board a Civil Aircraft

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

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

Section 4: Jurisdiction

1. The jurisdiction of (*Name of State*) shall extend to any offence under Sections 1, 2, or 3 of this Act if the act constituting the offence took place on board:
 - 1) any civil aircraft registered in (*Name of State*); or
 - 2) any civil aircraft leased with or without crew to an operator whose principal place of business is in (*Name of State*) or, if the operator does not have a principal place of business, whose permanent residence is in (*Name of State*); or
 - 3) any civil aircraft on or over the territory of (*Name of State*); or
 - 4) any other civil aircraft in flight outside (*Name of State*), if
 - a) the next landing of the aircraft is in (*Name of State*); and
 - b) the aircraft commander has delivered the suspected offender to the competent authorities of (*Name of State*), with the request that the authorities prosecute the suspected offender and with the affirmation that no similar request has been or will be made by the commander or the operator to any other State.
2. The term “in flight” as used in this section means the period from the moment when power is applied for the purpose of takeoff until the moment when the landing run ends.

APPENDIX F

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

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

Whereas the existing legal framework for CNS/ATM systems, namely the Chicago Convention, its Annexes, Assembly Resolutions (especially including the Charter of GNSS Rights and Obligations), associated ICAO guidance (especially including the Statement of ICAO Policy on CNS/ATM Systems Implementation and Operation), regional navigation plans, and exchanges of letters between ICAO and

the States operating satellite navigation constellations has enabled the technical implementation achieved thus far;

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

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

The Assembly:

1. *Recognizes* the importance of Item No. 3 of the General Work Programme of the Legal Committee “Consideration, with regard to CNS/ATM systems including global navigation satellite systems (GNSS) and the regional multinational organisms, of the establishment of a legal framework”, and resolutions or decisions by the Assembly and the Council relating to it;
2. *Reaffirms* that there is no need to amend the Chicago Convention for the implementation of CNS/ATM systems;
3. *Invites* Contracting States to also consider using regional organizations to develop mechanisms necessary to address any legal or institutional issues that could inhibit the implementation of CNS/ATM in the region, while ensuring that such mechanisms will be consistent with the Chicago Convention, and public international law;
4. *Encourages* the facilitation of technical assistance in implementation of CNS/ATM systems by ICAO, regional organizations and industry;
5. *Invites* Contracting States, other multilateral agencies and private financiers to consider development of additional sources of funding for assistance to States and regional groups in implementation of CNS/ATM;
6. *Directs* the Secretary General to monitor and, where appropriate, assist in the development of contractual frameworks to which parties may accede, *inter alia*, on the basis of the structure and model proposed by the Members of the European Civil Aviation Conference and the other regional civil aviation commissions, and on international law;
7. *Invites* the Contracting States to transmit regional initiatives to the Council; and
8. *Directs* the Council to register such regional initiatives, to consider their value and to make them public as soon as possible (in accordance with Articles 54, 55 and 83 of the Chicago Convention).

Agenda Item 62: Other issues to be considered by the Legal Commission

62.1 The Commission **noted** A37-WP/95 (Information Paper).

— END —