



INTERNATIONAL CIVIL AVIATION ORGANIZATION

A35-WP/292

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ASSEMBLY — 35TH SESSION

LEGAL COMMISSION

**DRAFT TEXT FOR THE REPORT
ON
AGENDA ITEM 36**

The attached material on Agenda Item 36 is submitted for consideration by the Legal Commission.

**Agenda Item 36: Report on the establishment of a legal framework with regard to
CNS/ATM systems including GNSS**

36:1 Consideration of this item was based on WP/75 introduced by the Secretariat, WP/125 presented by the 41 Members of the European Civil Aviation Conference, WP/179 presented by the 21 Member States of the Latin American Civil Commission, WP/215 presented by the International Air Transport Association and WP/216 presented by the United States.

36:2 The Commission noted the divergent views expressed in the aforementioned working papers, which ranged from the proposal to consider an international convention, the proposal to adopt a contractual framework as a step toward the long-term objective of a global instrument of international law, to the proposal to suspend work towards a new “long-term legal framework” until the next regular session of the Assembly. Bearing in mind the importance of Item No. 1 of the General Work Programme of the Legal Committee, and with a view to achieving a consensus, the Chairman, after extensive consultation, proposed to the Commission the following draft resolution:

“DRAFT RESOLUTION A35/XXX

**A PRACTICAL WAY FORWARD ON LEGAL AND INSTITUTIONAL ASPECTS OF
COMMUNICATIONS, NAVIGATION, SURVEILLANCE/AIR TRAFFIC MANAGEMENT
(CNS/ATM)**

Whereas the global implementation of Communications, Navigation, Surveillance/Air Traffic Management (CNS/ATM) 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 1990 and received enthusiastic endorsement at the 11th Air Navigation Conference in 2003;

Whereas the existing legal framework for CNS/ATM, 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 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 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. *Reaffirms* the consensus that the implementation of CNS/ATM is fully consistent with the Chicago Convention, and that there is no need to amend the Chicago Convention for that reason;
2. *Invites* Contracting States to 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;
3. *Encourages* the facilitation of technical assistance in implementation of CNS/ATM by ICAO, regional organizations, and industry;
4. *Invites* Contracting States to consider development of additional sources of funding, both multilateral and third party, for assistance to States and regional groups in implementation of CNS/ATM;
5. *Directs* the Secretary General to monitor and, where appropriate, assist in the development of voluntary contractual frameworks, *inter alia*, on the basis of the structure and model proposed by the Members of the European Civil Aviation Conference;
6. *Invites* the Member States to transmit regional initiatives to the Council; and
7. *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)."

36:3 Most delegations welcomed the initiative of the Chairman and supported the substance of the draft resolution proposed by him.

36:4 Upon further discussions, the Chairman proposed to add the following as the first operative paragraph of the draft resolution: "*Recognizes* the importance of Item No. 1 of the General Work Programme of the Legal Committee 'Consideration, with regard to CNS/ATM systems including global navigation satellite systems (GNSS), of the establishment of a legal framework', and resolutions or decisions by the Assembly and the Council relating to it." It was stated that any regional initiatives should not replace the work of ICAO under Item No. 1 of the General Work Programme of the Legal Committee. This proposal was accepted by the Commission.

36:5 The Commission discussed whether the term "appropriate" should be added before the term "regional organizations" in paragraph 2. It was decided to add such a term. It was further decided to add "and public international law" at the end of paragraph 2 to indicate the possible application of space law instruments or other international legal instruments.

36:6 One delegation queried whether paragraph 4 of the draft resolution would give rise to an unintended interpretation that certain charges may be imposed on air carriers, which may in turn receive financial supports from Contracting States. This delegation suggested to include a clause that any charges should be levied in accordance with ICAO rules. It was explained by the Chairman that the applicability of ICAO rules had already been referred to in paragraph 2 of the draft. Upon further discussion, it was decided

to amend paragraph 4 to read as follows: “*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”.

36:7 With respect to paragraph 5, the Commission decided to delete the word “voluntary” and add after “contractual frameworks” the term “to which parties may accede”. Upon request by some regional organizations, the term “and other regional civil aviation commissions, and on international law” was added to the end of the paragraph.

36:8 A significant number of delegations expressed their support to the proposal contained in WP/179. While accepting the draft resolution proposed by the Chairman, these delegations continued to emphasize the need to develop a binding international instrument under the auspices of ICAO as a long-term approach.

36:9 The Commission decided to recommend the resolution below for adoption by the Assembly:

**RESOLUTION FRAMED BY THE LEGAL COMMISSION
AND RECOMMENDED FOR ADOPTION BY THE ASSEMBLY**

Resolution 36/1

**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 1990 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. 1 of the General Work Programme of the Legal Committee “Consideration, with regard to CNS/ATM systems including global navigation satellite systems (GNSS), 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 appropriate 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).