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25/9/07

ASSEMBLY — 36TH SESSION

REPORT OF THE LEGAL COMMISSION FOR THE GENERAL SECTION OF ITS REPORT AND ON AGENDA ITEMS 7, 8, 45, 46, 47 AND 48

(Presented by the Chairman of the Legal Commission)

The attached material on the General Section of its Report and Agenda Items 7, 8, 45, 46, 47 and 48 has been approved by the Plenary. Resolution 48/1 is 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.

(20 pages)

REPORT OF THE LEGAL COMMISSION

General

1. The Legal Commission held three meetings between 18 to 28 September 2007. Ms. S.H. Tan (Singapore) was elected by the Plenary as Chairperson of the Commission.
2. At its first meeting, the Commission elected Mr. S.M. Gaiya (Nigeria) and Mr. A.H. Mutti (Argentina) as its First and Second Vice-Chairmen respectively.
3. The three meetings of the Commission were held in open session. On the recommendation of the Executive Committee, the Assembly had agreed to the suspension of minutes for the meetings of the Legal Commission during A36.
4. Representatives from 79 Contracting States and 6 observer delegations attended one or more meetings of the Commission.
5. The Secretary of the Commission was Mr. D. Wibaux, Director of the Legal Bureau. Mr. S.A. Espínola, Principal Legal Officer, acted as his Deputy. The Assistant Secretaries were Mr. J.V. Augustin, Senior Legal Officer, Messrs. B. Verhaegen, J. Huang and A. Jakob, Legal Officers, and Mrs. M. Weinstein, Legal Adviser.

Agenda and Working Arrangements

6. Agenda items 7, 8, 45, 46, 47 and 48 referred to the Commission by the Plenary were considered, as follows:
 - Item 7: Annual Reports of the Council to the Assembly for 2004, 2005 and 2006
 - Item 8: Programme Budget for 2008, 2009 and 2010
 - Item 45: Progress report on compensation for damage caused by aircraft to third parties arising from acts of unlawful interference or from general risks
 - Item 46: Acts or offences of concern to the international aviation community and not covered by existing air law instruments
 - Item 47: Work Programme of the Organization in the legal field
 - Item 48: Assembly resolutions to be consolidated or to be declared no longer in force.
- 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 7: Annual Reports of the Council to the Assembly for 2004, 2005 and 2006

7.1 The Commission had for consideration Chapter 6 (Constitutional and Legal Questions) of the Annual Reports of the Council to the Assembly for the years 2004 (Doc 9851), 2005 (Doc 9862) and 2006 (Doc 9876), as well as the Supplement for the first half of the year 2007 (Doc 9876 – Supplement), which had been referred to it by the Plenary.

7.2 One delegation referred to the Supplement (Doc 9876) and expressed its support to the 2001 *Convention on International Interests in Mobile Equipment* and the Protocol thereto on Matters specific to Aircraft Equipment (in force on 1 March 2006). Its State had signed the Convention and the Protocol and is working with its Provinces to ensure the due implementation of those Cape Town instruments. The delegation noted with satisfaction that the ICAO Council assumed its role as Supervisory Authority of the International Registry, and was equally pleased that the Registrar was responding very positively to the need for a user-friendly system which indeed facilitated implementation efforts. It was further satisfied with the fact that the Regulations and Procedures for the Registry had been made available in all ICAO languages.

7.3 However, the same delegation wished to share its concerns in respect of two matters. Firstly, it considered essential that the afore-mentioned Regulations and Procedures extend the use of all ICAO languages to the Registry, which should facilitate accessibility thereto. Secondly, it considered that the Registrar was still not able to meet the requirements of the Cape Town Convention and Protocol in terms of neither insurance coverage nor financial guarantee, although it had increased its insurance coverage to U.S.\$ 35 Million. This delegation was of the view that it was still far from the Protocol level estimated at U.S.\$ 200 Million and that it was incumbent on all to conform with the Rule of Law. Accordingly, this delegation, while offering its unfailing support to the implementation of the Cape Town instruments, wished to see serious movements on both the language and insurance fronts.

7.4 Another delegation, which supported the previous delegation, further emphasized the need to assist developing States in facilitating their access to the Registry. It also enquired whether ICAO was involved in the development of additional protocols to the Cape Town Convention, i.e. for railway rolling stock and space assets. The Secretary explained that, while the Cape Town instruments had been developed and adopted under the joint auspices of ICAO and UNIDROIT, the said additional protocols were developed under the auspices of UNIDROIT, not involving ICAO. He also informed that another diplomatic conference had recently adopted the protocol on railway rolling stock.

7.5 In summarizing the discussion, the Chairperson concluded that the Commission had *noted* Chapter 6 of the Annual Reports for 2004, 2005 and 2006 (including the Supplement thereto) and that the above concerns should be conveyed in its report.

Agenda Item 8: Programme Budget for 2008, 2009 and 2010

8.1 The Commission had for consideration the Programme Budget – Rule of Law – for 2008, 2009 and 2010 as proposed in A36-WP/23. Recalling that the ICAO Council had agreed to act as the Supervisory Authority of the International Registry established under the Cape Town Convention and Protocol on a cost-recovery basis, one delegation enquired about the lack of an indication of ICAO's anticipated costs and revenues in this respect. The principle of transparency was invoked.

8.2 The Deputy Secretary explained that it was not customary to include this type of information in the Regular Budget but that an accounting is available separately and will be provided to the States that were Parties to the Cape Town instruments in the periodic reports of the Supervisory Authority. The delegation then expressed the view that ICAO Contracting States had an interest in such matters and, without calling for a change to the current draft budget, it would be useful if future budgets could account for these anticipated costs and revenues.

8.3 In summarizing the discussion, the Chairperson concluded that the Commission had **noted** the Programme Budget and that the above comments should be conveyed in its report.

Agenda Item 45: Progress report on compensation for damage caused by aircraft to third parties arising from acts of unlawful interference or from general risks

45.1 This Item was considered on the basis of A36-WP/11 presented by the Council, A36-WP/233 presented by Singapore and Sweden and A36-WP/74 presented by the International Air Transport Association (IATA).

45.2 A36-WP/11 provided for the information of the Assembly a progress report since its 35th Session on the work carried out on compensation for damage caused by aircraft to third parties arising from acts of unlawful interference or from general risks. It stated that the Special Group established by the Council in 2004 held six meetings and developed the texts of two draft conventions, namely:

- a) Convention on Compensation for Damage Caused by Aircraft to Third Parties, in case of Unlawful Interference (commonly referred to as “the Unlawful Interference Compensation Convention”); and
- b) Convention on Compensation for Damage Caused by Aircraft to Third Parties (commonly called “the General Risks Convention”).

45.3 The paper highlighted the most important provisions of each draft Convention and concluded by stating that, at the sixth meeting of the Special Group, there was broad agreement that it had completed its work, and it decided to recommend to the Council to convene a session of the Legal Committee to further develop the texts of the two draft conventions.

45.4 A36-WP/233 highlighted the significant developments in the work of the Council Special Group especially as regards the draft Unlawful Interference Compensation Convention. It emphasized that there had been a break away from the liability regime of the 1999 Montreal Convention, and that there would be no limits on individual claims but there would be a global limitation on air carrier liability. It provided information on a Supplementary Compensation Mechanism (SCM) to be established under the Convention and the fact that the Convention would provide for an integrated approach covering the whole air transport industry. It stated that these significant developments were supported by the broadest majority at the sixth meeting of the Special Group and that the same majority agreed that the text of the draft Convention was mature enough to be considered by the Legal Committee. It concluded by inviting the Assembly, *inter alia*, to request the Council to further advance the work on the draft Conventions on compensation to third parties, and in particular, in the case of unlawful interference, by placing it on the agenda of the next session of the Legal Committee and convening the next session as early as possible in 2008.

45.5 A36-WP/74 dealt with the draft Unlawful Interference Compensation Convention only. It advocated that the final text must contain an unbreakable cap of the operator’s liability and should also: exonerate and/or otherwise protect non-operators; provide that the capped liability in the treaty and recourse to the funds of the SCM are exclusive remedies, thus ensuring finality of claims; limit actions for compensation to the jurisdiction where physical damage occurs; limit damage payments from the

operators and the funds to annual aggregates; and address ground rules for operation of the funds of the SCM, including drop-down when insurance is unavailable or exhausted.

45.6 Many delegations and one observer supported the proposal in A35-WP/233 that a session of the Legal Committee should be convened to further advance the work of the Special Group on the draft conventions, noting that the texts were sufficiently mature; some references were made to the balance struck between protection of victims and that of the industry. A few of these delegations pointed out that some details in the draft texts were still unresolved, but felt confident that these would be settled upon further consideration. Some others considered that the current texts, especially that of the draft Unlawful Interference Compensation Convention, had improved significantly since it was considered by the last session of the Legal Committee.

45.7 Referring to the General Risks text, one observer spoke of the need to adjust the scope of the operator's liability, and to take a decision on the level of liability in the first tier. As regards the other draft Convention, the observer did not favour an unbreakable cap on liability; it stated that the limit should be exceeded or broken in the case of illicit acts.

45.8 One delegation expressed the opinion that the current draft of the Unlawful Interference Compensation Convention would be unratifiable for a large number of States. First, the protection of victims would change for the worse while the protection of airlines would become predominant. Second, the financing system was not feasible and the financing model was not fair and transparent as it would not establish a link between contributions and risk of damage; general aviation, business flights conducted by private companies and empty or test flights would not be included in the financing system although general aviation stood to benefit from the protections offered by the Convention. Further, the draft excessively exonerated airlines, in the case where they held a valid certificate on their security performance. The delegation also did not favour the exclusive remedy provision, by which claims would be channelled to the operator only except in the case of intentional commission of an act of unlawful interference. The delegation proposed to suspend the work regarding this draft Convention for the time being or to concentrate on the draft Convention concerning general risks in order to focus ICAO's efforts and resources on other tasks.

45.9 In relation to the draft Unlawful Interference Compensation text, one delegation referred to the need for a unified stance on the best way to calculate the level of compensation to achieve fairness in the context of regional groupings.

45.10 Another delegation stated that in the case of acts of unlawful interference, operators and airports should not be liable: States should be liable. In the case of General Risks text, a better definition of the term "General Risks" was necessary to distinguish between damage arising from faults of the operator as compared to that caused by natural phenomena, such as hurricanes.

45.11 A delegation believed that the future work should focus on the draft Unlawful Interference Compensation Convention, as it had reservations on the possibility to advance the work on the General Risks text, citing a lack of evidence of strong demand for the latter. It also suggested that States should be given flexibility to consent to only certain components of the Unlawful Interference Compensation Convention, by having that Convention in a modular form. Furthermore, at the Legal Committee, this text should be considered at the same session as the drafts to be considered in the Commission under Agenda Item 46: Acts or offences of concern to the international aviation community

and not covered by existing air law instruments. An appropriate venue should be considered for that session of the Committee so as to generate interest in the world community about ICAO's work in this area.

45.12 One delegation expressed concern about the difficulties in giving a value to human life, and consequently, to determining what would be an appropriate level to cap liability.

45.13 The continuing threat of terrorism was highlighted by one delegation, which stated that it was incumbent on States to use their efforts to create a good legal framework which would provide stability to the aviation industry and ensure fair compensation to their citizens at home and abroad. All victims, including airlines, should be protected. This delegation was yet to be convinced of the necessity or desirability of the General Risks text.

45.14 In summarizing the discussion on this Agenda Item, the Chairperson stated that, with one exception, all delegations who spoke agreed that the work of the Special Group had resulted in a good product, although it was recognized that some issues still remained to be settled. The majority agreed that this work was sufficiently mature to go to the Legal Committee; it was therefore concluded that this encompassed both draft Conventions. However, two delegations had reservations about the General Risks text and further indications on whether or not this text should also go to the Committee could be given when the Commission would consider Agenda Item 47: Work Programme of the Organization in the legal field.

Agenda Item 46: Acts or offences of concern to the international aviation community and not covered by existing air law instruments

46.1 This item was considered on the basis of A36-WP/12 presented by the Council, which provided a progress report on the work carried out to address the new and emerging threats to civil aviation. Through a survey conducted among the Member States and the work of the Secretariat, the Study Group and the Special Sub-Committee of the Legal Committee, it had been recognized that the existing aviation security conventions could be amended to cover certain new and emerging threats, such as the use of civil aircraft as a weapon, the use of civil aircraft to unlawfully spread biological, chemical and nuclear substances, and the attacks against civil aviation using such substances. It had also been considered necessary to incorporate certain common provisions in more recent UN conventions on counter-terrorism, such as the “military exclusion clause”, which expressly specifies that these conventions do not govern the activities of armed forces during an armed conflict, and the activities undertaken by military forces of a State in the exercise of their official duties. Two draft protocols were proposed by the Sub-Committee for these purposes. Some delegations had proposed at the meeting of the Sub-Committee in July this year to include provisions prohibiting the intentional and unlawful transport by air of particularly dangerous goods and fugitives. The Sub-Committee had decided to seek the guidance of the Council on this issue and on the need for an additional meeting.

46.2 While applauding the work so far accomplished, one delegation wished to reiterate its reservations in the Sub-Committee with regard to the military exclusion clause. This delegation could perhaps accept the exemption of armed forces activities during armed conflict, which would be in line with Article 89 of the Chicago Convention, but could not accept a total military exemption even during peacetime, since it viewed that such an exemption would constitute a violation of the principles set out in the preambles of The Hague and Montreal Conventions and also of the principles and provisions of the Chicago Convention, particularly Article 44. Moreover, it viewed that it would also constitute a violation of a number of UN and ICAO resolutions, particularly ICAO Resolution A35-9, which condemns all acts of unlawful interference against civil aviation wherever and by whomsoever and for whatever reason they are perpetrated. It was not yet convinced that the inclusion of such a military exclusion clause could be justified by the sole reason that the same clause already exists in other conventions. It was concerned that the result of this clause would be that armed officers guilty of unlawful seizure of civil aircraft or using an aircraft in the service of a third State as a weapon of mass destruction would be immune from criminal prosecution.

46.3 The same delegation referred to the difficulty which may be encountered in the integration of the rules of “international humanitarian law” with civil aviation regulations. As neither the consequences of such integration nor those of the military exclusion clause had been addressed by the Rapporteur to the Sub-Committee, it proposed that a study on the subject should be carried out by the Rapporteur or the ICAO Secretariat. It also suggested that the Legal Commission invite the Council to request the Sub-Committee or the Legal Committee to reconsider the military exclusion clause in the light of such a study.

46.4 Three delegations expressed support, but one delegation expressed opposition, to the reservations and proposal expressed at paragraphs 46.2 and 46.3. Two delegations emphasized the need for States to apply consistently the conventions and Assembly resolutions concerning acts of unlawful

interference against civil aviation in order to prosecute and condemn severely the persons who execute, are involved with or support criminal acts against civil aviation, including acts against aircraft, airport facilities and passengers.

46.5 In response to an inquiry by a delegation, the Vice-Chairman of the Sub-Committee clarified that the Sub-Committee recommended inclusion of the military exclusion clause on the clear understanding that military activities were governed by other international rules regarding State actions. The Sub-Committee had noted that other views on this issue would be reflected in its report, with the expectation that such views would be debated in future fora. The Vice-Chairman also clarified that, regarding the mere transport of certain prohibited material, it was considered by a number of delegations that this issue exceeded the Sub-Committee's mandate and it would therefore be necessary to seek further guidance from the Council. Another delegation, in supporting the Vice-Chairman's statement and the contents of A36-WP/12, encouraged the future work on amending the conventions without undue delay.

46.6 In summarizing the discussion, the Chairperson concluded that the Commission commended the work of the Secretariat, the Study Group and the Sub-Committee, and supported that the work should proceed to the next stage. It also noted the serious concerns expressed by certain delegations, in particular with regard to the military exclusion clause, which should be noted in this Report and referred to the Council for consideration when it convenes to consider the report of the Sub-Committee and determines whether to convene a further meeting of the Sub-Committee.

Agenda Item 47: Work Programme of the Organization in the legal field

47.1 The Commission considered this item on the basis of A36-WP/8 presented by the Council, A36-WP/134, presented by India, A36-WP/140, presented by the Members of the European Civil Aviation Conference, A36-WP/230, presented by Colombia, A36-WP/234, presented by Saudi Arabia, and A36-WP/256, presented by Republic of Korea.

47.2 A36-WP/8 outlined the work programme of the Legal Bureau, legal matters in the Council, the Work Programme of the Legal Committee and a plan of legal meetings for the period 2008-2010. The working paper listed the subjects on the Work Programme of the Legal Committee in their order of priority and provided information on the work status of individual items on the Work Programme.

47.3 A36-WP/134, presented by India, provided information in relation to various space-based augmentation systems and advised the Commission of the development of the GAGAN Satellite system in India which is expected to become operational in 2010. Based on Resolution A35-3, which directed the Secretary General to monitor and, where appropriate, assist in the development of contractual frameworks, the paper called for the development of guidelines for a regional legal framework.

47.4 EUROCONTROL, on behalf of the Members of ECAC, presented working paper A36-WP/140, with the aim of apprising the Assembly with respect to the progress made in implementing Resolution A35-3. The observer highlighted the importance of the contractual framework for addressing the legal and institutional issues of GNSS at the regional level and stated that the model developed at the European level would constitute a flexible and easily applied tool which would be able to accommodate the specific demands of the various regions. The Commission was informed that the ECAC contractual framework had received recognition within Europe and that it would soon be offered to ICAO for scrutiny or even validation. The crucial issue of liability would be addressed in the contractual framework, the observer stated.

47.5 A36-WP/230, presented by Colombia, proposed to include the element of regional multinational organisms in the future consideration of the legal framework for CNS/ATM systems, including GNSS, and to modify the wording of Item No. 3 on the Work Programme in this respect.

47.6 A36-WP/234, presented by Saudi Arabia, invited States who have not yet ratified the Cape Town Convention and the Protocol to do so for the benefit of both debtors and creditors.

47.7 A36-WP/256, presented by the Republic of Korea, contained a proposal by Korea to host an additional regional legal seminar in 2009, with the joint sponsorship of the Legal Bureau of ICAO. The proposed regional seminar would be aimed at States to which the ICAO Asia and Pacific Office is accredited.

47.8 In relation to Item No. 1 on the Work Programme (Compensation for damage caused by aircraft to third parties arising from acts of unlawful interference or from general risks), one delegation recalled the earlier deliberations which had taken place under Agenda Item 45 of the Commission, where two delegations had expressed the sentiment that the draft convention on general risks appeared to have

attracted less interest than the draft convention dealing with unlawful interference. The delegation queried whether it was necessary to consider this point in the context of the work programme, as the Commission had envisaged to refer the outcome of the entire work of the Special Group, i.e. both draft conventions, for further consideration to the Legal Committee. On this point, one delegation considered that there could be room for further reflection in case it was assessed that a priority between the two draft conventions was needed. In this context, another delegation remarked that due to the expected heavy workload for the Legal Committee and the desire for a successful outcome of its deliberations, it would be for the Council of ICAO to make a political decision as to which texts ought to be considered by the Legal Committee. In the ensuing discussion, a number of delegations expressed the view that both draft conventions ought to be referred to the Legal Committee on equal terms, and that both drafts should receive the same attention by the Legal Committee without conferring any priority of one text over the other. In summarizing the discussion on this point, the Chairperson noted that the majority of delegations supported the submission of both draft texts to the Legal Committee and stated that there appeared to be no complete consensus regarding the issue of priority. She suggested that the Council could carefully consider the allocation of items to be considered by the Legal Committee, in the light of the availability of time and resources.

47.9 In discussing Item No. 3 of the General Work Programme of the Legal Committee, several delegations supported the inclusion of the regional multinational organisms as suggested in A36-WP/230. These delegations considered it of utmost importance to devise clear rules and guiding principles regarding the involvement of regional bodies in the implementation of CNS/ATM systems. One delegation also underlined the need for a clear global framework. The Delegation of the United States reiterated that its government had renewed its offer to make the Global Positioning System (GPS) available for the use by civil aviation. The delegation further stated that its government had adopted a policy of not resorting to selective availability for different users, and that the new generation of the hardware did not even contain the feature of selective availability. Another delegation recalled paragraphs 4 and 5 of Resolution A35-3 and emphasized the importance of providing technical and financial assistance to developing countries.

47.10 The Commission **agreed** to modify Item No. 3 of the General Work Programme of the Legal Committee to include the regional multinational organisms in the consideration of a legal framework. The Commission noted its understanding that once a model of a regional legal framework is developed by the Members of the European Civil Aviation Conference, such model could be distributed through ICAO to its Member States, and interested States may use the information as guidance material to develop their own regional legal framework as appropriate.

47.11 In relation to Item No. 4, the Commission noted A36-WP/234.

47.12 Consequently, the Work Programme of the Legal Committee was established as follows:

- 1) Compensation for damage caused by aircraft to third parties arising from acts of unlawful interference or from general risks;
- 2) Acts or offences of concern to the international aviation community and not covered by existing air law instruments;

- 3) 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;
- 4) International interests in mobile equipment (aircraft equipment);
- 5) Review of the question of the ratification of international air law instruments; and
- 6) *United Nations Convention on the Law of the Sea* – Implications, if any, for the application of the Chicago Convention, its Annexes and other international air law instruments.

47.13
A36-WP/256.

The Commission also noted with appreciation the regional legal seminar proposed in

Agenda Item 48: Assembly resolutions to be consolidated or to be declared no longer in force

48.1 The Legal Commission considered this Item on the basis of A36-WP/6 and A36-WP/28. The Secretary reminded the Commission that the Plenary, in taking action on Agenda Item 9: Assembly resolutions to be consolidated or to be declared no longer in force and their reference to the Executive Committee and Commissions, referred Appendix D of A36-WP/28 to the Legal Commission, to be considered under Agenda Item 48. The objective of A36-WP/28 was to declare as no longer in force certain Assembly resolutions no longer valid. In Appendix D, it was recommended that none of the existing Resolutions in Part V – Legal Matters, of Document 9848 (Assembly Resolutions in Force) be declared no longer in force. An updated consolidated statement of continuing ICAO policies in the legal field was presented separately in A36-WP/6. In accordance with principles applied in the past by the Assembly, the consolidation was essentially of an editorial nature and did not involve a changing of the policies in the resolutions. It was recommended that three resolutions in Part V should maintain their separate identities and should not be included in the proposed Consolidated Statement, namely: Resolution A32-19: Charter on the Rights and Obligations of States Relating to GNSS Services; Resolution A32-20: Development and elaboration of an appropriate long-term framework to govern the implementation of GNSS; and Resolution A33-20: Coordinated approach in providing assistance in the field of aviation war risk insurance.

48.2 One delegation suggested that for practical reasons and for convenience of reference, the preamble of the Consolidated Statement should contain a cross-reference to these three resolutions which were not included. The Chairperson explained that the successor document to Document 9848 would have a separate Part dealing only with Legal Matters, and would contain the Consolidated Statement plus the resolutions in the legal field not incorporated in the Consolidated Statement. She therefore suggested that it was not necessary to include a reference to these resolutions in the Consolidated Statement.

48.3 The Commission consequently **agreed** that, as regards Appendix D of A36-WP/28, there were no resolutions in the legal field to be declared no longer in force. The Commission then **decided** to recommend to the Plenary the adoption of the proposed Resolution hereunder:

Resolution 48/1: 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 36th 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 Resolutions A7-6, A10-40, A16-36, A27-3, A31-15, A33-4 and A35-3.

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 A31-15, 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 introducing paragraphs relating to the Arabic and Chinese texts] 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 and the Cape Town instruments of 2001, 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).

— END —