



ASSEMBLY — 36TH SESSION

LEGAL COMMISSION

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

REPORT ON THE ESTABLISHMENT OF A LEGAL FRAMEWORK WITH REGARD TO CNS/ATM SYSTEMS INCLUDING GNSS

(Presented by the 42 Contracting States¹, Members of the European Civil Aviation Conference
This paper has been elaborated and co-ordinated by EUROCONTROL)

EXECUTIVE SUMMARY

A contractual framework to govern implementation of GNSS, an initiative of the ECAC States, was presented at the 35th ICAO Assembly². This paper was discussed at the Assembly and was addressed in Resolution A35-3³, adopted by the Assembly (see Appendix).

The Assembly recognised the importance of the establishment of a legal framework with regard to CNS/ATM systems including GNSS and directed the Secretary General to monitor and, where appropriate, assist in the development of contractual frameworks to which parties may accede. Further, Contracting States were invited to transmit regional initiatives to the Council.

This information paper appraises the General Assembly of the progress made in implementing Resolution A35-3.

<i>Strategic Objectives:</i>	Not Applicable
<i>Financial implications:</i>	Not Applicable
<i>References:</i>	

¹ Albania, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Moldova, Monaco, Netherlands, Norway, Poland, Portugal, Romania, Serbia and Montenegro, Slovakia, Slovenia, Spain, Sweden, Switzerland, The former Yugoslav Republic of Macedonia, Turkey, Ukraine, and the United Kingdom.

² Please see : A35-WP/125* LE/11 21/9/04 ASSEMBLY — 35TH SESSION LEGAL COMMISSION
Agenda Item 36: Report on the establishment of a legal framework with regard to CNS/ATM systems including GNSS
DEVELOPMENT OF A CONTRACTUAL FRAMEWORK LEADING TOWARDS A LONG-TERM LEGAL
FRAMEWORK TO GOVERN THE IMPLEMENTATION OF GNSS (Presented by the 41 Contracting States, Members of
the European Civil Aviation Conference)

³ A35-3 : A Practical Way Forward on Legal and Institutional Aspects of Communications, Navigation, Surveillance/Air Traffic
Management (CNS/ATM) Systems

1. INTRODUCTION

1.1 The development of a legal framework to govern the implementation of GNSS has been on the Work Programme of the Legal Committee since 1992. First of all, a committee of legal and technical experts (LTEP) was established by the ICAO Council in December 1995 which led to the adoption of a Charter on the Rights and obligations of States relating to GNSS Services at the 32nd Assembly in 1998. However, this alone was not considered adequate as several aspects related to certification, operating structures, administration, cost recovery and most importantly, liability were not addressed. The liability aspects in particular were found to merit further examination. On the basis of the recommendations made by the LTEP, the 32nd Assembly set up a new study group, the Secretariat Study Group or SSG which reported to the 33rd Assembly, which mandated the ICAO Secretariat Study Group to finalise a contractual framework, focusing predominantly on model clauses.

1.2 The main purpose of the contractual framework is to provide for a number of legal and institutional provisions that are deemed necessary for addressing GNSS at regional level. The Contractual Framework is based on a two-tier approach. On one level, it offers a regulatory agreement dealing with public law matters including certification, liability and jurisdictional matters. The other level consists of private contractual arrangements between the various stakeholders in which they would have a very large degree of autonomy subject to certain mandatory elements determined by the regulatory agreement.

1.3 While it includes binding elements, it also creates a flexible and readily available framework to cover all legal and institutional elements related to GNSS at the regional level and harmonises contractual relationships between the parties involved, providing clarity and legal certainty. It may, however, provide experience and know-how and represents a first step, which could evolve into a long-term focused and precise global instrument of international law under the aegis of ICAO.

1.4 This initiative of the ECAC States was embraced by the 35th ICAO Assembly which adopted Resolution A35-3.⁴ As can be seen, the contractual framework has figured on the Work Programme of the Legal Committee over several years and has consistently been recognised as being of high priority. Recent developments around the world indicate that work on this matter should continue as a priority on the work programme of the Legal Committee.

2. DEVELOPMENTS IN EUROPE

2.1 Since the ECAC states presented the Contractual framework for GNSS in 2004, many developments regarding ATM at European Level have occurred. The developments which have an impact on GNSS are resulting in further refinements of the Contractual framework model. Many of these developments serve to confirm the ongoing need for a legal framework for GNSS. Some of the recent European Developments in ATM which affect GNSS are outlined briefly hereunder.

2.2 A new scheme of Governance for Galileo and EGNOS has emerged. A GNSS Supervisory Authority has been established to ensure that essential public interests in this field are adequately defended and represented. The Authority is a European Community Agency and will be the owner of the EGNOS and Galileo infrastructure. This Authority could potentially fulfil the role as foreseen for the GNSS Entity in the Contractual Framework.

⁴ Please see : A35-WP/125* LE/11 21/9/04 ASSEMBLY — 35TH SESSION LEGAL COMMISSION
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2.3 EGNOS signals are now available and it is foreseen that the final system deployment activities, the qualification of the operator and the appointment of the EGNOS Service provider will be finalised in 2008 allowing the start of the certification process.

2.4 The European Commission has launched its single European sky (SES) initiative in late 1999 to reform air traffic management in Europe. The Single European Sky is being achieved and governed by means of a regulatory package. Further implementation measures are flowing from these foundation regulations, for example on a common charging scheme, common requirements for air navigation service providers, and airspace and interoperability measures. The EC Regulations on the SES (in particular the interoperability regulation) will necessitate the certification of GNSS related equipment and the certification of the GNSS service provider.

2.5 While the Single European Sky Regulations do not directly address military operations, they address civil-military cooperation to use airspace in a safe and efficient manner. In a general statement which is part of the SES package, Member States declare that they will facilitate co-operation between their armed forces in all matters of air traffic management.

2.6 The SES Initiative is complemented by the SESAR Programme (the Single European Sky ATM Research Programme). SESAR starts with a Definition Phase. By early 2008, a joint funded EUROCONTROL and European Community study, conducted primarily by Industry, will deliver a European ATM Master Plan based on future aviation requirements, and will identify the actions needed to achieve the objectives of SESAR. The Development Phase will run from 2008 to 2013. During this phase, the necessary research, development and validation work will be conducted and the regulatory measures will be prepared in order to implement the European ATM Master Plan. This phase will be managed by a SESAR Joint Undertaking, an entity set up by a EU Council regulation, which is a public-private partnership in which the European Community and Eurocontrol are founding members, and in which other stakeholders such as ANSPs or manufacturing industry, including from non European countries, can become members. The comprehensive inclusion of GNSS into ATM operational processes is foreseen in the SESAR programme, therefore the issues of global interoperability, liability and oversight mechanisms will assume ever increasing importance.

2.7 The issue of liability has been widely debated in the context of the Galileo and EGNOS programmes over the past three years. The most important topics have been Third party liability, Design risk, liability associated to the system operations and the Allocation of Liability. This illustrates the need for a framework as presented by the ECAC states in order to channel liability.

3. CONCLUSIONS

3.1 The contractual framework proposed by ECAC States has already been recognised by ICAO in Assembly Resolution A35-3 as a mechanism to create a flexible and readily available framework to cover all legal and institutional elements related to GNSS at the regional level and harmonises contractual relationships between the parties involved, providing clarity and legal certainty.

3.2 Developments in Europe with regard to EGNOS and Galileo confirm the need for such a contractual framework and highlight the need to align the said framework to take on board, the need for harmonisation of, inter alia, international standards, certification, interoperability, liability allocation in a multi-State environment, particularly in the context of the Single European Sky legislation.

3.3 The contractual framework will be refined in the light of these developments and presented as soon as possible to the ICAO Secretary General and Council, as foreseen in the Resolution. It is envisaged that the framework will satisfy the needs widely voiced in ICAO regarding GNSS and will assist in clarifying many of the difficult issues faced and serve as a useful basis for ongoing discussions in the Legal Commission.

3.4 The European initiative will be forthcoming in the near future and in line with Resolution A35-3, proposals will be submitted to the Secretary General in due course and the Council for subsequent validation as a model for global use.

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APPENDIX

**REPORT ON THE ESTABLISHMENT OF A LEGAL FRAMEWORK
WITH REGARD TO CNS/ATM SYSTEMS INCLUDING GNSS**

35TH ASSEMBLY RESOLUTION NO. A35-3

Assembly Resolution A35-3 highlighted the importance the establishment of a legal framework for GNSS and of regional solutions;

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;

Reaffirms that there is no need to amend the Chicago Convention for the implementation of CNS/ATM systems;

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;

Encourages the facilitation of technical assistance in implementation of CNS/ATM systems by ICAO, regional organizations and industry;

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;

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;

Invites the Contracting States to transmit regional initiatives to the Council; and

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.

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