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HIGH-LEVEL CONFERENCE ON COVID-19

Montréal, 12 to 22 October 2021

DRAFT REPORT OF THE FACILITATION STREAM ON AGENDA ITEM 10

The attached draft report on Agenda Item 10 is presented for approval by the Facilitation Stream for submission to the Plenary.

Agenda Item 10: Other issues to be considered by the Facilitation stream

1.1 The Conference considered WP/24 presented by the Secretariat that highlights that the assistance to aircraft accident victims and their families is of such importance that it requires national legislation, regulations and/or policies to ensure that the necessary resources and commitment at all levels of the State are available at a short notice. Assistance programmes, in support of aircraft accident victims and their families, also require cooperative planning and response by, inter alia, the air operator, airport operator and State of Occurrence, as well as, proper coordination to establish an effective short- and long-term response to the needs of accident victims and their families. ICAO is also currently considering the development of a training course on Doc 9998, *ICAO Policy on Assistance to Aircraft Accident Victims and their Families* and Doc 9973, *Manual on Assistance to Aircraft Accident Victims and their Families*. The Conference was invited to consider that States should: if they have not already done so, establish legislation, regulations and/or policies in support of assistance to aircraft accident victims and their families; ensure that each aircraft or airport operator, as appropriate, develop appropriate plans to provide timely assistance to aircraft accident victims and their families; recognize that a substantial streamlining of resources is required, both financial and human, to ensure increased and effective implementation of Annex 9 provisions by all ICAO Member States over the next triennia; ensure to report their compliance status in the Electronic Filing of Differences (EFOD) system; ensure that their replies to the survey are consistent with what has been reported in the EFOD system; and endorse establishing a day dedicated each year as an international day commemorating air crash victims and their families, and recommend a suitable day. The Conference was also invited to consider that ICAO should develop a Training course on Doc 9998 and Doc 9973. The Conference agreed with the recommendations, while urging ICAO to expedite the development of the training course on Doc 9998 and 9973, and to ensure the training is available to Member States. The Conference also noted the importance of establishing mechanisms to provide timely assistance to aircraft accident victims and their families.

1.2 The Conference considered WP/43 presented by Indonesia relating to assistance to aircraft accident victims and their families, highlighting that proper assistance to victims of aircraft accidents and their families requires national legislation, regulations and/or policies to ensure that the necessary resources and commitment are available at short notice. The Conference was invited to conclude that ICAO develop Protocol Questions for USOAP and USAP to ensure that the State oversight system monitor and report on the establishment of regulations; and programmes by Contracting States and their air operators to render support to aircraft accident victims and their families; consider to upgrade Annex 9 - *Facilitation* Recommended Practise 8.46 to a Standard. The Conference noted that regarding the upgrading of Annex 9 Recommended Practice 8.46 to a Standard, the 12th Meeting of the ICAO Facilitation Panel has unanimously recommended this upgrade. The Conference also encouraged States to establish relevant regulations and policies to assist aircraft accident victims and their families. The Conference did not support the development of additional protocol questions under the Universal Security Audit Programme Continuous Monitoring Approach (USAP-CMA) and the Universal Safety Oversight Audit Programme Continuous Monitoring Approach (USOAP-CMA) regarding assistance to aircraft accident victims and their families.

1.3 The Conference considered WP/77 presented by the International Air Transport Association (IATA), the International Federation of Airline Pilots Associations (IFALPA), and the International Transport Workers Federation (ITF) that highlighted concerns for the growing frequency and severity of unruly and disruptive passenger incidents, some have escalated to involve physical assault and led to flight diversions, which has serious potential consequences on public health and flight safety. It is essential that States have the necessary jurisdiction to be able to respond to such incidents upon landing in their territory, and robust civil and administrative enforcement options available to supplement prosecutions in the criminal justice system. The Conference was invited to recognize that the public health measures taken by airlines in response to the COVID-19 pandemic and particularly requiring face masks and limiting some activity in the aircraft have resulted in a marked increase in unruly and disruptive passenger offenses; and to strongly reinforce the guidance in the CART Report by

recommending that ICAO Member States implement in their national laws the mechanisms to enforce unruly and disruptive passenger offences in the light of the increase in these offences related to the COVID-19 pandemic and in line with Annex 17 and the security provisions of Annexes 6 and 9 and relevant ICAO publications. The Conference noted the information in the paper and acknowledged that disruptive and unruly passenger incidents, notably on board aircraft has serious potential consequences on the safety of passengers and flight. The Conference supported the recommendations of the paper, noting that States should take appropriate enforcement actions in accordance with law and process. It also encouraged States that have not ratified the Montréal Protocol 2014 to do so, and to consider the guidance in ICAO Doc 10117, *Manual on the Legal Aspects of Unruly and Disruptive Passengers*.

1.4 The Conference considered WP/106 presented by United Arab Emirates that highlights concern regarding the unprecedented impact of COVID-19 on international air transport and, in general, the absence of ICAO guidance material to assist States in mitigating crises. The UAE is of the view that ICAO should initiate the relevant process to amend the ICAO Template Air Services Agreements, Doc 9587, Policy and guidance material on the Economic Regulation of International Air Transport, Appendix I, to provide relevant policy and guidance material to Member States with respect to the measures to be taken in order to protect existing agreed bilateral air services arrangements, even where, based on the nature of the crisis, any mutually agreed interim measures are introduced. The Conference was invited to request ICAO to assign this task to the appropriate entity. The Conference noted the information in the paper and recognized that ICAO has continued to play a leadership role to guide Member States in their efforts to cope with the impact of the COVID-19 pandemic, supported the view that ICAO should consult the Air Transport Regulatory Panel to assess if it is necessary to amend the ICAO Template Air Services Agreements (ASAs). It also noted the need for mechanisms to address disruptions in international air services due to temporary crisis situations while maintaining existing bilateral/regional air services agreements, as well as, the need for the development of new guidance material to protect ASAs even where interim measures are introduced. The Conference also agreed on the need to enhance resilience to future crisis but noted this can be done within current ASAs, and States should fulfil obligations under ASAs as well as reach amicable resolution on differences.

1.5 The Conference considered WP/181 presented by Chile on the importance of freight liberalization in the context of the COVID-19 pandemic, that highlighted the experience of the Latin American region in the drafting of an agreement on the liberalization of air cargo services, to facilitate the transport and delivery of vaccines, medicines and medical supplies needed to deal with the COVID-19 pandemic, and demonstrated how important it is to conditions conducive to liberalization in this specific market as an indispensable tool for future health emergencies. The Conference supported the development of measures aimed at proposing multilateral agreements to facilitating air cargo transport, especially to be carried out in times of pandemics or major catastrophes in which the speed of air transport is essential for the effectiveness of aid or mitigation of the adverse effects of such circumstances. The Conference also noted the matters relating to multilateral instruments on air cargo liberalisation was discussed previously within the Air Transport Regulation Panel (ATRP), and the Panel agreed not to pursue a separate agreement on air cargo liberalization.

1.6 The Conference considered WP/188 presented by Colombia on recognizing the equivalence of security measures-one-stop security (OSS) and public health measures. Recognizing that commercial air transport has been a determining factor in the development and growth of the economies of States, fostering tourism and connectivity, it is important not to ignore the existing risks; for that reason, States have boosted the effectiveness of civil aviation security systems, ensuring that best practices and the application of common standards are used to respond to these challenges, ensuring mutual reliability and marking a further step towards validation. The post-pandemic reactivation of air transport by COVID-19 requires States to explore new options for the application of civil aviation security screening processes and procedures that reduce risks to public health of air transport users

and also of aviation workers, without compromising civil aviation security. The Conference noted that the complexity of adopting Memorandum of Understanding (MoUs) between States must be considered, and from a technical point of view, one-stop security can basically be implemented as long as the security level in the participating countries is comparable and mutual recognition takes place. The Conference also noted that OSS arrangements may be challenging given the need for multilateral agreements and cautioned against the use of OSS arrangements to achieve non-security related outcomes, as this has the potential to jeopardize the integrity of the global aviation security network if States are not first in full compliance with Annex 17 Standards.

1.7 Information Papers WP/178 presented by the Interstate Aviation Committee (IAC), WP/207 presented by LACAC, and WP/217 presented by ITF were noted. In consideration of the above, the Conference agreed on the following recommendations:

Recommendation 10/1 – Other issues to be considered by the Facilitation stream

That States:

- a) if they have not already done so, establish legislation, regulations and/or policies in support of assistance to aircraft accident victims and their families;
- b) ensure that each aircraft or airport operators, as appropriate, develop appropriate plans to provide timely assistance to aircraft accident victims and their families;
- c) recognize that a substantial streamlining of resources is required, both financial and human, to ensure increased and effective implementation of Annex 9 provisions by all ICAO Member States over the next triennia;
- d) ensure to report their compliance status in the EFOD system;
- e) ensure that their replies to the survey are consistent with what has been reported in the EFOD system; and
- f) strongly reinforce the guidance in the CART Report by recommending that ICAO Member States implement in their national laws the mechanisms to enforce unruly and disruptive passenger offences in light of the increase in these offences related to the COVID-19 pandemic.

That ICAO:

- a) expedite the development of the training course on Docs 9998 and 9973, and to ensure that such training is available to Member States; and
- b) should consult the ATRP regarding the possible amendment of the ICAO Template Air Services Agreements in order to provide relevant policy and guidance material to Member States, if it deems it necessary.

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