



## LEGAL COMMITTEE – 36TH SESSION

(Montréal, 30 November to 3 December 2015)

### Agenda Item 8: Any other business

#### COMMON GUIDELINES ON ARTICLE 12 OF CHICAGO CONVENTION ENFORCEMENT OF VIOLATIONS COMMITTED BY FOREIGN AIR CARRIERS

(Presented by Brazil)

#### 1. INTRODUCTION

1.1 The *Convention on International Civil Aviation* (Doc 7300, Chicago Convention) on its Article 12, states that:

*Each contracting State undertakes to adopt measures to insure that every aircraft flying over or maneuvering within its territory and that every aircraft carrying its nationality mark, wherever such aircraft may be, shall comply with the rules and regulations relating to the flight and maneuver of aircraft there in force. Each contracting State undertakes to keep its own regulations in these respects uniform, to the greatest possible extent, with those established from time to time under this Convention. Over the high seas, the rules in force shall be those established under this Convention. Each contracting State undertakes to insure the prosecution of all persons violating the regulations applicable.*

1.2 Notwithstanding the final part of the abovementioned article, Brazil understands that States might face some difficulties in promoting such prosecution. Although States keep an almost uniform definition for violations, when it comes to rules of procedure on how to promote prosecution of these acts no guidelines are set under the Convention and States tend to adopt dissimilar rules.

#### 2. DISCUSSION

2.1 Most of the aforementioned difficulties are due to lack of a common ground in terms of procedural legislation among States. Article 12 of the Convention does not provide guidelines on how States shall proceed to the administrative prosecution, what leads them to rely mainly on domestic law. As a consequence, a single State would have to be acquainted to all the other States' rule of procedure in order to provide proper information for an effective enforcement case.

2.2 Likewise, the absence of mechanisms of cooperation prevents the report of violation of a State from being efficiently enforced in the State of Operation. It is noteworthy that when it comes to court decisions, their execution on different States count on legal instruments of international cooperation what ensures their enforcement; nonetheless, administrative decisions have not the same treatment.

2.3 The current practice for transmitting the notice of a violation, in most cases, involves States acting through costly and not so expedite diplomatic channels as so well pointed by United States at RAAC/14-WP14. Thus, minor violations tend to be ignored or bypassed by States, what may represent a negative impact on safety standards especially regarding resolution of safety concerns.

2.4 The absence of harmonization in how States comply with the final part of Article 12 of Convention, as well the lack of mechanisms of cooperation can be considered as obstacles to the duty of prosecution abovementioned. In a nutshell, when a rule cannot be enforced its command becomes nothing but a recommendation, what, ultimately may jeopardize safety in Civil Aviation.

### 3. **RECOMMENDED ACTIONS**

3.1 Regarding the command of Article 12, and the difficulties some States might face in order to fully comply with it, and regarding the negative impact for civil aviation safety it might represent, the Legal Committee is invited to draw its attention to this challenge and to take any action it deems necessary.

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