International Civil Aviation Organization

**WORKING PAPER**

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**Agenda Item 3: Review of the General Work Programme of the Legal Committee**

# DATA AND ARTIFICIAL INTELLIGENCE GOVERNANCE IN CIVIL AVIATION

(Presented by the Dominican Republic)

## 1. INTRODUCTION

1.1 Earlier discussions on Advance Passenger Information (API), Passenger Name Record (PNR), biometrics and digital travel credentials helped identify obligations relating to passenger data, including the lawfulness of their processing, the purposes for which they may be used, and their security, retention and transfer. The expansion of Artificial Intelligence (AI) now requires a shift from protecting specific categories of data to the legal governance of the systems that use those data and the effects they produce.

1.2 This shift does not replace or reduce the protection of personal data; rather, it complements it. A system may process lawfully obtained data and still raise legal issues due to opacity, undocumented changes, excessive automation, lack of auditability, or dependence on a provider that limits access by the appropriate authority.

1.3 The issue is particularly urgent in international aviation. Data may originate in one State, be processed in another, hosted by a third State, and incorporated into a product or service used in multiple jurisdictions. A response at the national level is not sufficient to resolve conflicts of law, regulatory access, evidence preservation and the allocation of responsibilities.

1.4 From a legal perspective, AI is a tool whose use does not relieve States, operators or providers of their obligations. The common framework should identify the responsible party at each stage, require diligence and accountability, and ensure that the delegation of functions to an automated system does not prevent verification of legal compliance or the effective exercise of oversight authority.

## 2. CURRENT NEEDS AND LEGAL GAP

2.1 The incorporation of AI into different aviation areas has different legal consequences depending on the system's function and the impact of its outputs. Therefore, the regulatory response should be technologically neutral, proportionate to the risk and compatible with the mandates of the relevant technical bodies.

2.2 In considering A42-WP/467, the Technical Commission of the 42nd Assembly did not agree to establish the proposed study group. It pointed out that AI should be first analyzed in the forums where its use is considered; those common elements, such as governance and ethics, should be coordinated;

[1] Spanish version provided by the Dominican Republic

and that ICAO should strengthen its internal and external coordination, including with relevant United Nations efforts.

2.3 Existing rules apply in layers: personal data protection, cybersecurity, contracting, intellectual property, liability and aviation regulations. The legal gap arises when this body of rules does not ensure that the appropriate authority can identify the version of the system used, access the necessary documentation, reconstruct how an output was generated and preserve sufficient evidence to determine liability.

2.4 The common framework should distinguish between personal and non-personal data and calibrate obligations according to the legal risk associated with each use. It must cover, at a minimum, the purpose and legitimate origin of the data; documentation and traceability; appropriate human oversight; access by the relevant authority and evidence preservation; contracting and subcontracting; and the allocation of responsibilities throughout the supply chain.

2.5 Urgency does not require the immediate adoption of a single treaty or the use of the same regulatory approach for all uses. Rather, it requires agreeing on minimum legal outcomes and common terminology, a gap analysis of existing Annexes and documents, and a risk-based roadmap that takes into account the cross-border nature of each application.

2.6 The gap analysis should cover the data life cycle and determine, for each stage, the legal basis for the processing, the responsible person or entity, the rules governing access and retention, and the required level of human oversight. Such oversight should not be formulated as an absolute and uniform obligation for all uses, but as a safeguard proportionate to the risk and legal effects of the AI-supported decision.

2.7 The capacity of States to implement these safeguards is uneven. ICAO's *No Country Left Behind* initiative provides institutional guidance for supporting the implementation of common obligations through cooperation and technical assistance. However, the initiative should not be characterized as an obligation under Article 44 (f) of the *Convention on International Civil Aviation* (Chicago, 1944 – the "Chicago Convention"), which safeguards the rights of Contracting States and their fair opportunity to operate international air services.

## 3. CONSISTENCY WITH THE DOMINICAN LEGAL SYSTEM

3.1 The proposal is compatible with Article 44 of the Constitution of the Dominican Republic and Act No. 172–13, which protect privacy and regulate the processing of personal data, including automated processing. These provisions constitute an applicable legal basis, but do not in themselves address the traceability, oversight and responsibility issues specific to the use of AI in aviation.

3.2 Act No. 53–07 protects the integrity, availability and confidentiality of systems and data against unlawful acts, while Act No. 491–06 defines national responsibilities in civil aviation and provides for harmonization with the Chicago Convention. The proposed international framework would supplement those provisions without altering the domestic allocation of authority or expanding the mandate of the Legal Committee to include technical assessments.

## 4. LEGAL RISKS OF A DELAYED GLOBAL RESPONSE

4.1 ***Fragmentation and regulatory conflict.*** The coexistence of incompatible rules on transfers, retention, regulatory access, intellectual property or trade secrets can subject operators and authorities to simultaneous obligations that are difficult to reconcile.

4.2 ***Liability and evidence.*** A lack of documentation, records, and traceability can hinder the reconstruction of a decision, the preservation of evidence and the determination of the liability of the State, operator, manufacturer, provider, or user, as appropriate.

4.3 ***Effective regulatory capacity.*** Contracts or the technology architecture should not prevent the appropriate authority from accessing the necessary information, auditing compliance with applicable obligations and exercising its oversight authority.

4.4 ***Rights and safeguards.*** AI use for biometrics, profiling, or risk assignment can affect privacy, equality, due process, and the ability to challenge a decision. The framework should ensure sufficient information, effective review and complaint mechanisms.

4.5 ***Technological dependence.*** The contracting of cross-border services should not be generally prohibited; it should be subject to safeguards relating to auditability, portability, continuity, cooperation and provider substitution to preserve the State's effective oversight capacity.

4.6 Delays in harmonizing these safeguards increase legal uncertainty and allow incompatible contractual or national solutions to become established before a common framework is in place.

## 5. ACTION BY THE COMMITTEE

5.1 The Legal Committee is invited to:

a) note of the outcome of the 42nd Assembly regarding A42-WP/467 and its call to strengthen ICAO's internal and external coordination on AI;

b) recognize that the protection of passenger data constitutes a necessary basis, but does not address all legal issues in the life cycle of AI systems used in aviation;

c) support a coordinated gap analysis covering jurisdiction, regulatory access, traceability, human oversight, evidence, liability, contracting, and cross-border cooperation;

d) recommend that each application be examined by the appropriate technical body, with the Legal Committee addressing the common legal elements;

e) promote minimum legal principles that are proportionate to the risk and technologically neutral and that preserve the rights, regulatory interoperability and effective oversight capacity of States;

f) request that the appropriate legal form of any resulting measures be determined only after completion of the gap analysis, without prejudging whether guidance, Standards and Recommended Practices, procedures or other instruments may be required;

g) recognize that the use of AI does not relieve the relevant entities of their responsibilities and that human oversight should be proportionate to the risk and legal effects of each application; and

h) request that the gap analysis take into account the different capacities of States and identify cooperation and technical assistance mechanisms consistent with ICAO's goals and policies.

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