



ASSEMBLY — 40TH SESSION

LEGAL COMMISSION

Agenda Item 39 : Consolidated statement of continuing ICAO policies in the legal field

CONSOLIDATED STATEMENT OF CONTINUING ICAO POLICIES
IN THE LEGAL FIELD

(Presented by the Council of ICAO)

EXECUTIVE SUMMARY

This paper proposes to amend Assembly Resolution A39-11 in order to reflect the work completed by the Task Force on Legal Aspects of Unruly Passengers to update Circular 288, including a review of the contents of the Model Legislation on Certain Offences Committed on Board Civil Aircraft contained in Appendix E of said Resolution. The updated guidance material is published in Doc 10117, *Manual On the Legal Aspects of Unruly And Disruptive Passengers*. The paper also reports on progress made on ratification of the Protocols introducing Articles 3 *bis* and 83 *bis* of the *Convention on International Civil Aviation* and developments concerning the teaching of air law.

Action: The Assembly is invited to adopt the amended resolution in the **Attachment**.

<i>Strategic Objectives:</i>	Supporting Implementation Strategies – Programme Support – Legal and External Relations Services.
<i>Financial implications:</i>	As provided by the Regular Budget.
<i>References:</i>	Doc 10075, <i>Assembly Resolutions in Force</i> (as of 6 October 2016) Doc 10034, <i>Protocol to Amend the Convention on Offences and Certain Other Acts Committed on Board Aircraft</i> , done at Montréal on 4 April 2014 Final Act of the International Conference on Air Law to Consider Amending the <i>Convention on Offences and Certain Other Acts Committed on Board Aircraft</i> (Tokyo, 1963) held under the auspices of the International Civil Aviation Organization at Montréal, 26 March to 4 April 2014 Circular 288, <i>Guidance Material on the Legal Aspects of Unruly/Disruptive Passengers</i> Doc 10117, <i>Manual On the Legal Aspects of Unruly And Disruptive Passengers</i>

1. BACKGROUND

1.1 On 4 April 2014, a Diplomatic Conference convened under the auspices of ICAO adopted the *Protocol to Amend the Convention on Offences and Certain Other Acts Committed on Board Aircraft* (the Montréal Protocol of 2014). It also adopted a resolution urging the Council to request the Secretary General to update Circular 288: *Guidance Material on the Legal Aspects of Unruly/Disruptive Passengers*. The Council, at the second meeting of its 202nd Session in June 2014, instructed the Secretary General to update the Circular to include a more detailed list of offences and other acts, as well as to make consequential changes arising from the adoption of the Montréal Protocol of 2014. For this purpose, the Task Force on Legal Aspects of Unruly Passengers was established on 15 July 2015 (the Task Force).

1.2 The Assembly in its Resolution A39-11 requested that the Task Force be encouraged to continue its work and report to the 37th Session of the Legal Committee. The Assembly further decided to review Appendix E of the said Resolution at its next ordinary session, on the basis of the outcome of this work.

1.3 As of 15 May 2019, the Montréal Protocol of 2014 had 32 signatures, 8 ratifications and 11 accessions. It is recalled that the Protocol requires twenty-two ratifications, acceptances, approvals or accessions to enter into force. The Assembly in Resolution A39-11 urges all States which so far have not done so to ratify the Montréal Protocol of 2014, as soon as possible.

2. UPDATING OF THE GUIDANCE MATERIAL ON UNRULY AND DISRUPTIVE PASSENGERS

2.1 The Task Force reported the completion of its work to the 37th Session of the Legal Committee held in September 2018. The Council at the fifth meeting of its 215th Session on 7 November 2018, accepted the recommendation of the Task Force that the updated guidance material be published in the form of a manual.

2.2 Doc 10117, *Manual on the Legal Aspects of Unruly and Disruptive Passengers*, which incorporates changes consequential to the adoption of the Montréal Protocol of 2014 and contains an updated list of offences and acts most likely to be committed on board aircraft by unruly and disruptive passengers, has now been published.

3. STATUS OF RATIFICATION OF THE PROTOCOLS OF AMENDMENT INTRODUCING ARTICLES 3 BIS AND 83 BIS OF THE CHICAGO CONVENTION

3.1 While good progress has been made on the ratification of the Protocols introducing Articles 3 *bis* and 83 *bis*, with the former having 156 parties and the latter 176 parties as of 15 May 2019, the need for further adherence remains. Recent activities have contributed to the number of ratifications of the Article 83 *bis* Protocol. Individual State Letters to the Contracting States not party to the Protocol issued from the Secretary General, and a repository of responses has been established in the Treaty Collection pages of the ICAO website. The *Manual on the implementation of Article 83 bis of the Convention on International Civil Aviation* (Doc 10059), published in 2017, has as one of its aims to assist Contracting States with the proper application of Article 83 *bis*, which it is anticipated will have a positive effect on future ratifications, leading to the global acceptability of Article 83 *bis* agreements and application in the airspace of all ICAO Contracting States.

4. **INTERNATIONAL AIR LAW COURSE**

4.1 The ICAO International Air Law Course was launched in 2017 with the objective to enable personnel of Civil Aviation Administrations, airports and air navigation service providers of Member States with or without legal knowledge, as well as government officials with responsibilities for civil aviation policy, legislation and enforcement, to support their organization in the implementation of international air law. Since its launch, the course has been delivered in the ICAO regions and attended by more than 180 participants. The course is lauded for its great value in providing information to participants on various aspects of international air law, including international air law treaties.

5. **GENERAL WORK PROGRAMME OF THE LEGAL COMMITTEE**

5.1 With respect to Item No. 8 of the General Work programme of the Legal Committee, “Study of international legal issues relating to global navigation satellite systems (GNSS)”, the Council at the third meeting of its 216th Session on 22 February 2019 asked that further consideration be given to the suggestion to broaden the scope of the legal study beyond GNSS to other air navigation systems with global coverage. The outcomes of the 13th Air Navigation Conference as considered by the 40th Assembly would need to be taken into account in that regard.

6. **CONCLUSION**

6.1 Following the completion of the work of the Task Force and the publication of Doc 10117, *Manual on the Legal Aspects of Unruly and Disruptive Passengers*, and progress made with regard to the ratification of certain ICAO international instruments and teaching of air law, it is proposed to amend Assembly Resolution A39-11 as shown in the **Attachment**.

ATTACHMENT

~~A39-11~~ A40-xx: 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 ~~39th~~ 40th 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 Resolution ~~A37-22~~ A39-11.

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; and

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 ~~A37-22~~A39-11, 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,~~ those amending Articles 50 (a) and 56 adopted in 2016, and the final paragraphs (relating to the Arabic and Chinese texts);

Also noting that while a substantial number of States are party to the Protocols introducing Articles 3 bis and 83 bis of the Chicago Convention, there is still a need to further progress the ratification of those Protocols;

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~~ those 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 amending the final paragraph to add Arabic and Chinese to the authentic texts of the Convention, and those amendments to Articles 50 (a) and 56 adopted in 2016, 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* 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 Montréal Convention of 1999, the Cape Town Convention and Aircraft Protocol of 2001, the two Montréal Conventions of 2 May 2009, the Beijing Convention and the Beijing Protocol of 2010, ~~and the Montréal Protocol of 2014,~~ and the Protocols on the Authentic Quinquelingual Text (1995) and the Authentic Six-Language Text (1998) of the Chicago Convention, 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~~ *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; ~~and~~

Welcoming the introduction in 2017 of the ICAO international air law course with the objective to enable representatives of Civil Aviation Administrations, airports and air navigation service providers to support their organizations in the implementation of air law;

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 and 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 and ~~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 and ~~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 and ~~or~~ disruptive behaviour on board aircraft registered in other States;

Noting that States at the International Conference on Air Law held in Montréal adopted on 4 April 2014 a *Protocol to Amend the Convention on Offences and Certain Other Acts Committed on Board Aircraft* and that the Conference decided not to include a list of offences and other acts within the Protocol but recommended that ICAO Circular 288 – *Guidance Material on the Legal Aspects of Unruly/Disruptive Passengers* published in 2002 be updated; and

Noting further the publication of ICAO Doc 10117 - *Manual on the Legal Aspects of Unruly and Disruptive Passengers*, which incorporates changes consequential to the adoption of the Montréal Protocol of 2014 and contains a list of offences and acts most likely to be committed on board aircraft by unruly and disruptive passengers;

Therefore:

Urges all Contracting States to enact as soon as possible national law and regulations to deal effectively with the problem of unruly ~~or~~ and disruptive passengers, taking into account the guidance in the *ICAO Manual on the Legal Aspects of Unruly and Disruptive Passengers* (Doc 10117) and incorporating so far as practical the provisions in the *Model Legislation* set out below;

Calls on all Contracting States to submit to their competent authorities, for consideration of prosecution or application of administrative or any other forms of legal proceedings, all persons whom

they have a reasonable ground to consider as having committed any of the offences and acts set out in the national laws and regulations so enacted, and for which they have jurisdiction in accordance with these laws and regulations; and

~~Requests the Council to encourage the Task Force on Legal Aspects of Unruly Passengers to continue its work, including the review of the contents of the Model Legislation on Certain Offences Committed on Board Civil Aircraft found in this Appendix and to report to the 37th Session of the Legal Committee;~~

~~Decides to review this Appendix at its next ordinary session on the basis of the outcome of the work of the said Task Force.~~

Encourages States which have not yet done so to consider introducing civil and administrative sanctions to deal with less serious acts or offences relating to unruly and disruptive behaviour on board aircraft in an expeditious and effective manner.

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~~ an Aircraft

Any person who commits on board ~~a civil~~ an aircraft any of the following acts thereby commits an offence:

- (1) physical assault or threat to commit such assault against a crew member;
- (2) ~~assault, verbal~~ 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;
- (3) 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~~ (a) protecting the safety of the aircraft or of ~~any persons~~ or property ~~on board~~ therein; or ~~for the purpose of~~
 - (b) 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~~ an Aircraft

- (1) Any person who commits on board ~~a civil~~ an 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~~ an 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~~ an 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~~ when such act is prohibited;
- (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;

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; and

Whereas the 13th Air Navigation Conference in 2018 reviewed the status of existing and future technologies enabling the global air navigation system:

The Assembly:

1. *Recognizes* the importance of Item No. 4 8 of the General Work Programme of the Legal Committee “~~Consideration, with regard to CNS/ATM systems including~~ Study of international legal issues relating to 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 —