



WORKING PAPER

ASSEMBLY — 40TH SESSION

LEGAL COMMISSION

Agenda Item 40 : Other issues to be considered by the Legal Commission

ARTICLE 12 OF THE CHICAGO CONVENTION: COMMUNICATION MECHANISM AND GUIDELINES TO SUPPORT ITS IMPLEMENTATION

(Presented by Brazil and the United States)

EXECUTIVE SUMMARY

Article 12 of the Chicago Convention sets the basis for States to cooperate in order to promote compliance with the rules and regulations related to the flight and maneuver of aircraft. Brazil and the United States acknowledge that cooperation in civil aviation, specifically with regard to implementation of Article 12, will enhance flight safety. In particular, with regard to enforcement of aviation rules, prompt notification and communication of alleged violations between Aviation Authorities is necessary. Therefore, to enhance safety and promote greater adherence to the Rules of the Air, ICAO should establish a legal and technical working group to evaluate challenges concerning notification and communication of alleged violations, and to develop and recommend an appropriate mechanism for the timely and efficient notification of such violations. The working group should also establish recommended common procedures and best practices regarding the preparation of investigations and enforcement cases, including appropriate evidence and documentation.

Action: The Assembly is invited to:

- a) acknowledge that aviation safety is at the core of ICAO's objectives and the implementation of Article 12 is essential for achieving that objective;
- b) acknowledge that safety issues that do not result in accidents or incidents are still important as they may identify a risk to aviation safety;
- c) request the Council to create a legal and technical working group, within the Legal Committee, to study the mechanisms to support the implementation of Article 12;
- d) conclude that the working group should develop an effective process to use between the involved Aviation Authorities for the timely and efficient notification and communication of alleged violations, and recommend that process to ICAO and Member States; and establish recommended common procedures and best practices regarding the preparation of investigations and enforcement cases, including appropriate evidence and documentation.

<i>Strategic Objectives:</i>	This working paper relates to Aviation Safety and Supporting Implementation Strategies – Legal and External Relations Services
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<i>Financial implications:</i>	Not Applicable
<i>References:</i>	Doc 8335, <i>Manual of Procedures for Operations Inspection, Certification and Continued Surveillance</i> Doc 7300, <i>Convention on International Civil Aviation</i> Annex 2 - <i>Rules of the Air</i>

1. INTRODUCTION

1.1 Article 12 of the *Convention on International Civil Aviation* (Doc 7300, Chicago Convention) states:

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 Article 12 requires States to insure that air carriers and other persons operating aircraft of their nationality abroad comply with the operating rules of the host State. Therefore, keeping each State's rules and regulations on this issue harmonized with standards established under the Chicago Convention can significantly contribute to the compliance with those rules. Considering that it is not always possible to fully harmonize national rules and regulations, ICAO plays an important role keeping the Member States informed on regulatory differences that may affect flight safety.

1.3 Moreover, the implementation of Article 12, while fundamental for ensuring flight safety, is not always effective. One of the reasons is the lack of efficient and timely communication mechanisms between Aviation Authorities, which may contribute to cases not being brought. Among other issues, the current practice for transmitting and receiving the notice of an alleged violation varies among States, and can be inefficient. Minor violations may be ignored or overlooked by both the State of Occurrence and the State that is notified, with a negative impact on aviation safety.

2. DISCUSSION

2.1 This paper outlines the challenges States face in ensuring airmen's and air operators' compliance with national operating rules in an expeditious manner. Regulators in enforcement investigations and cases involving foreign airmen and air operators often coordinate with partner Aviation Authorities using inefficient delivery methods, which are not conducive to resolving safety issues in a timely and efficient manner.

2.2 Hence, a contributing cause of inconsistent enforcement is the cumbersome means by which the State of the Operator is typically notified of the alleged violation. The State of the Operator depends on the Aviation Authority in the State of Occurrence to provide a report of the investigation, supplemented by appropriate evidence. Transmission of a report of the investigation to the State of the Operator may be time-consuming, frequently involving multiple agencies. Routing the reports through

diplomatic channels for routine cases, for example, may create a disincentive to share information on relatively minor violations and discrepancies.

2.3 The promotion of aviation safety worldwide requires cooperation and unimpeded and agile communication among States, particularly their Aviation Authorities, regarding alleged violations. A common system for reporting and receiving information on such violations, with common procedural rules on communication, would greatly contribute to this shared goal. Automated communication channels could be established among Aviation Authorities so that notices of alleged violations of applicable rules in the territory of one State by airmen or operators of another State can be promptly and properly reported and acted upon as soon as possible after the alleged violation.

2.4 Considering these challenges, the Assembly should request the Council to create a legal and technical working group within the Legal Committee to assess, and endeavor to improve the process for notification and communication between States, with the support of ICAO's Secretariat. The working group should take into account the formality and content of the documents related to all phases of an investigation.

2.5 The issues that the working group should address, in its review of the procedures for implementing Article 12, are the following:

- i) Timely notification to the State of the airman or operator regarding the alleged violation;
- ii) Development of a process to forward documents of the report of the investigation to the appropriate Aviation Authority, along with information concerning applicable legislation;
- iii) Development of a portal hosted within ICAO to notify Aviation Authorities of the alleged violations and facilitate communication;
- iv) A procedure to provide feedback to the Aviation Authority where the alleged violation occurred regarding the processing of the procedures abroad;
- v) Establishment of focal points in Member States responsible for the notifications and communications related to alleged violations. The list would be kept updated by ICAO's Secretariat and help improve communication among Aviation Authorities;
- vi) A mechanism for Aviation Authorities to provide clarification or further evidence of the alleged violation if needed;
- vii) Recommended common procedures and best practices regarding the preparation of investigations and enforcement cases including appropriate evidence and documentation.

2.6 At the conclusion of its work, the working group should report back to the Council, providing a compilation of recommended common procedures and best practices, and making recommendations for the other issues listed above.

3. CONCLUSION

3.1 Considering what is presented in this working paper, it is understood that the lack of common and clear procedures on implementation of Article 12 of the Chicago Convention might represent a risk for aviation safety. It is important that the Assembly address this issue by requesting ICAO to develop a recommended approach that enhances the communication between Member States, and consequently, the compliance with safety rules.

3.2 The establishment of a legal and technical working group to identify best practices in the implementation of Article 12, and to create a more timely notification and communication process will result in the enhancement of global aviation safety.

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