



大会 — 第 41 届会议

法律委员会

议程项目 43: 拟由法律委员会审议的其他问题

民航法律顾问的能力框架

(由新加坡提交, 并由非洲民航委员会 (AFCAC) 成员国¹、澳大利亚、巴哈马、巴西、芬兰、圭亚那、北马其顿、阿曼联署)

执行摘要

能力框架旨在协助民航当局及其同等机构对民航法律顾问进行招聘、培训并提供专业发展, 以加强和提高其能力、实力和水平, 支持其组织和国家履行监管和其他职能, 尤其是在航空安全和安保监督、航空环境保护、履行航空法条约义务和更新国家法律规章等领域。

行动: 请大会:

- a) 注意到本文件介绍的载于附录中的能力框架;
- b) 鼓励各国考虑附录所载的民航法律顾问及其同等人员的招聘、培训和专业发展的能力框架。

战略目标:	辅助实施战略 — 方案支助 — 法律和对外关系事务
财务影响:	无。
参考文件:	Doc 10132 号文件: 《大会第 40 届会议全体会议记录, 2019 年 9 月 24 日至 10 月 4 日, 蒙特利尔》 Doc 10140 号文件: 《大会有效决议》(截至 2019 年 10 月 4 日) (A40-28 号决议: 国际民航组织关于法律领域持续政策的综合声明 (附录 G))

¹ 阿尔及利亚、安哥拉、贝宁、博茨瓦纳、布基纳法索、布隆迪、喀麦隆、佛得角、中非共和国、乍得、科摩罗、刚果、科特迪瓦、刚果民主共和国、吉布提、埃及、赤道几内亚、厄立特里亚、斯威士兰、埃塞俄比亚、加蓬、冈比亚、加纳、几内亚、几内亚比绍、肯尼亚、莱索托、利比里亚、利比亚、马达加斯加、马拉维、马里、毛里塔尼亚、毛里求斯、摩洛哥、莫桑比克、纳米比亚、尼日尔、尼日利亚、卢旺达、圣多美和普林西比、塞内加尔、塞舌尔、塞拉利昂、索马里、南非、南苏丹、苏丹、多哥、突尼斯、乌干达、坦桑尼亚联合共和国、赞比亚和津巴布韦

1. 背景

1.1 在国际民航组织大会第 40 届会议（2019 年 9 月 24 日至 10 月 4 日，蒙特利尔）上，大会通过了关于“提高各国实施航空法条约更新国家法律法规的能力和效力”的决议。

1.2 大会在这一决议中：

- a) 回顾法律（特别是航空法）对于国际民航组织实现其宗旨和目标以及国际民航组织、成员国和航空业有效应对国际民用航空发展面临的新的和正在出现的机遇、挑战和威胁的重要作用；
- b) 认识到成员国必须确保制定适当的立法和规章以执行《芝加哥公约》、相关航空法文书和国际民航组织的规定并根据《芝加哥公约》、相关航空法文书和国际民航组织的规定进行适用；
- c) 申明民航法律顾问和航空法从业人员在支持其国家和组织执行航空法条约以及制定和更新国家法律法规以落实国家政策和监管要求并促进遵守法治方面发挥的重要作用；
- d) 考虑到法律顾问必须不断更新和加强其能力、实力和水平以有效履行其职责；和
- e) 请秘书长协助成员国实现和保持民航法律顾问的适当能力，包括为此制定一个加强其作用的能力框架。

1.3 自大会第 40 届会议以来，各成员国的民航法律顾问被要求并优先考虑和致力于支持其国家和组织制定和实施政策和措施，以应对 COVID-19 大流行病，保护机组人员、机场工作人员/工人、旅客和航空界的健康和安全。其中许多法律顾问通过非正式的民航法律顾问虚拟交流会（CALEx）分享和交流了关于形势发展、相关问题及其面临的挑战的信息。

1.4 2022 年，其中一些法律顾问举行了非正式会议，分享和制定了能力框架，以提高其能力、实力和水平，有效履行其支持国家和组织的职责。

2. 能力框架

2.1. 在制定能力框架时，法律顾问考虑了各种因素，包括以下因素：

- a) 民航局及其同等机构较为常见的职能和责任，如航空安全和安保监督和监管、航空运输谈判和航权分配、制定和更新国家法律和规章以落实国际民航组织标准和措施（SARP）以及国家政策和监管要求、监管执法、执行航空法条约，代表各自国家和/或组织并参加国际民航组织法律委员会和/或其分组委员会、工作组以及国际、地区或国家一级关于法律领域工作的其他小组和其他论坛；
- b) 一些民航局及其同等机构的额外职能和责任，如航空公司和机场的经济监管（包括起降时刻表和竞争监管），机场发展、管理和运营，空中航行服务的提供，与航空有关的环境保护监管，航空器事故和事故征候安全调查，消费者保护和民航培训；

- c) 为了能够支持其国家和组织执行航空法条约，制定和更新国家法律和规章，支持监管监督活动，并促进遵守法治，每个法律顾问都必须是一个合格的律师。拥有法律学位（不必是航空法学位）或同等的专业资格，并获得航空法和其他相关法律的相关且充分的知识和能力，包括通过在职培训、研究和工作以及参加国际民航组织研讨会和讲习班、国际民航组织国际航空法课程、民航法律顾问论坛（CALAF）和其他类似活动和课程来做到这一点；和
- d) 法律顾问不仅要了解相关的法律和条约和/或能够获得这些知识和相关经验，而且要了解各种航空监管和运行领域和背景，这一点至关重要。

2.2. 迄今为止讨论的拟议能力框架载于附录。这项提案为合作提高民航法律顾问的能力、实力和水平提供了一个切实可行的起点，使他们能够更有效地支持其国家和组织执行航空法条约，制定和更新国家法律和规章，以落实国家政策和监管及合规要求，并促进遵守法治（如上所述）。将继续收集各国在查明、制定和/或实施能力要求方面的最佳做法。可在适当时刻（通过 CALAF 相关版本或国际民航组织法律委员会会议）对该框架进行审查和更新，以便通过可由国际民航组织法律委员会主席和副主席领导的工作，在国际民航组织法律事务和对外关系局可能提供的支持下，使这一框架保持相关性和最新性。

3. 结论

3.1. 这一能力框架旨在协助民航局及其同等机构招聘、培训和从专业上发展民航法律顾问，以加强和提高他们支持其组织和国家履行监管和其他职能的能力、实力和水平，尤其是其在航空安全和安保监督、执行航空法条约义务和更新国家法律规章方面的能力。为此，请大会鼓励各国考虑附录中提出的能力框架。

APPENDIX

**COMPETENCY FRAMEWORK
 For Civil Aviation Legal Advisers**

Objective	To assist civil aviation authorities and their equivalents in the recruitment, training and professional development of civil aviation legal advisers so as to strengthen and enhance their competencies, capabilities and capacities for supporting their organizations and States in carrying out regulatory and other functions, in particular, in the areas of aviation safety and security oversight, aviation environmental protection, the implementation of air law treaty obligations and the updating of national laws and regulations.
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Part I

KNOWLEDGE COMPETENCIES IN MORE COMMON CAA AREAS OF RESPONSIBILITY		
AREAS OF RESPONSIBILITY	LEGAL KNOWLEDGE	CONTEXT KNOWLEDGE (NOT SPECIFICALLY LEGAL)
Aviation Safety Oversight and Regulation	Chicago Convention (CC) All CC Annexes (except Annexes 9 and 17) National/State safety oversight legislation	ICAO Safety Oversight System ICAO Universal Safety Oversight Audit Programme (USOAP) and Continuous Monitoring Approach (CMA) ICAO State Safety Programme Implementation Assessment (SSPIA) State Safety Programme (SSP) Accident & Incident Investigation
Aviation Security Oversight and Regulation	Chicago Convention (CC) CC Annexes 9 and 17 Aviation Security Treaties National aviation security oversight legislation	ICAO Security Oversight System ICAO Universal Security Audit Programme (USAP) and Continuous Monitoring Approach (CMA) ICAO Facilitation Guidance
Air Services Negotiations and Air Traffic Rights Allocation	Chicago Convention (CC) International Air Services Transit Agreement International Air Transport Agreement Air Services Agreements National legislation (on air traffic rights and slots allocations etc)	ICAO Policy on the Economic Regulation of International Air Transport National Policies on Air Traffic Rights and Airport Slots Allocations

<p>Aviation Economic Regulatory Responsibility</p>	<p>Chicago Convention (CC) ICAO Compendium on Competition Laws and Regulations National & other relevant legislation</p>	<p>ICAO Policy on the Economic Regulation of International Air Transport</p>
<p>Aviation Environmental Regulatory Responsibility</p>	<p>Chicago Convention (CC) CC Annex16</p>	<p>ICAO Policies on Climate Change and Aviation Emissions, CORSIA, Aircraft Noise, Local Air Quality</p>
<p>National Legislation to give effect to ICAO Standards and Recommended Practices (SARPs) and National Regulatory Requirements</p>	<p>Chicago Convention (CC) All CC Annexes National Constitution and Other Laws National Law-Making Norms and Processes</p>	<p>National Legislation-Making Processes National Constitutional Processes (as relevant)</p>
<p>Regulatory Enforcement, including criminal enforcement and administrative sanction processes (as appropriate)</p>	<p>Regulatory and Criminal Investigation Enforcement Legislation and Processes</p>	<p>Administrative Law Process Criminal Process Appeal Process</p>
<p>Air Law Treaties, including - Treaty-Making - Implementation</p>	<p>All ICAO Treaties Vienna Convention on the Law of Treaties ICAO Legal Committee ICAO Treaty-Making Process Accession / Ratification Process National Constitution and Other Laws</p>	<p>ICAO's Organisational Set-Up ICAO's Treaty Depository Processes National Accession / Ratification processes</p>
<p>Representing State and CAA - at ICAO, including Legal Committee - at other International, Regional or National Level Forum</p>	<p>Chicago Convention ICAO Treaties Regional and National Treaty-Making Process ICAO Assembly Rules of Procedure ICAO Legal Committee Constitution & Rules of Procedure</p>	<p>ICAO's Organisational Set-Up at HQ and Regional Office (as relevant) Relevant Regional & National Bodies' Structures and Functions</p>
<p>Civil Aviation Authority (CAA) Internal Governance & Legal Compliance</p>	<p>Delegation of Statutory Powers Conflict of Interest Management</p>	<p>Relevant CAA Guidance / Standard Operating Procedures CAA's Mission, Vision and Values</p>

Part II

KNOWLEDGE COMPETENCIES IN SOME ADDITIONAL AREAS OF RESPONSIBILITY		
AREAS OF RESPONSIBILITY	LEGAL KNOWLEDGE	CONTEXT (<i>NOT SPECIFICALLY LEGAL</i>) KNOWLEDGE
Aerodrome Operation (Service Provider)	Chicago Convention (CC) CC Annexes 9, 14 and 17 National legislation Aerodrome Certification	Aerodrome Manual Aerodrome Operations Aerodrome Safety Facilitation Airport Security
Air Navigation Services (ANS) Provision (Service Provider)	Chicago Convention (CC) CC Annexes 1, 3, 4, 10, 11, 12 and 15	ICAO PANS-ATM, PANS-AO and Regional Supplementary Procedures ANS Infrastructure, Systems, Operations and Management, and related Procurement and Maintenance Flight Information Region(s) Relevant Manuals
Search and Rescue (SAR) Coordination	Chicago Convention (CC) CC Annexes 9 and 12 National legislation	IAMSAR Manuals ICAO SAR Region(s)
Aircraft Accident & Incident Investigation	Chicago Convention (CC) CC Annex 13 National legislation	ICAO Guidance
Competition Regulation	National Competition Laws Applicable Regional Competition Regulations	ICAO Compendium on Competition Laws and Regulations

Part III

KEY LEGAL SKILLS COMPETENCIES	
CATEGORY / TYPE	EXAMPLES
Legal Drafting	<ul style="list-style-type: none"> • Drafting opinions / advice and other legal documents for carrying out the CAA’s responsibilities which include — <ul style="list-style-type: none"> ▪ Legislation or regulations ▪ Regulatory instruments such as licences and directives ▪ Multilateral/Bilateral treaties, agreements or MOUs ▪ Documentation for hearings, trials or other regulatory proceedings
Legal Research and Analysis	<ul style="list-style-type: none"> • Identifying legal issues and/or decision(s) • Applying laws and/or treaties (and/or case law / precedent decisions) • Statutory and/or treaty interpretation and application • Identifying and analysing legal solutions and options • Factoring in legal risks and compliance requirements (where relevant)
Treaty Negotiation	<ul style="list-style-type: none"> • Advocacy and Negotiation • Diplomacy and Engagement • Application of Rules of Procedure of relevant forum (where relevant)
Advocacy (in hearings, trials or other regulatory proceedings)	<ul style="list-style-type: none"> • Assembling evidence and relevant documentation • Witness preparation • Preparing submissions & experts • Presenting of case in court / before a tribunal
Dispute Resolution	<ul style="list-style-type: none"> • Assessing dispute resolution options • Dispute negotiation • Dispute settlement • Related public communications (where relevant)