



ASSEMBLY — 41ST SESSION

LEGAL COMMISSION

Agenda Item 43: Other issues to be considered by the Legal Commission

**PROPOSED AMENDMENT TO THE CONVENTION ON INTERNATIONAL CIVIL AVIATION TO ADDRESS AVIATION-RELATED ENVIRONMENTAL ISSUES**

(Presented by Argentina and supported by 15 Member States of the Latin American Civil Aviation Commission (LACAC) : Aruba (Kingdom of the Netherlands), Belize, Bolivia (Plurinational State of), Colombia, Cuba, Ecuador, El Salvador, Guatemala, Honduras, Jamaica, Nicaragua, Panama, Paraguay, Dominican Republic and Uruguay)

**EXECUTIVE SUMMARY**

**Action:** The Assembly is invited to:

- a) endorse an amendment to the *Convention on International Civil Aviation*, which would consist of inserting a new article that could be numbered “14 bis” in the Convention, and which would be designed to urge ICAO Member States to optimize efforts to mitigate the environmental consequences of aviation;
- b) demonstrate to the international community ICAO’s strong commitment to addressing environmental issues and climate change; and
- c) approve a basic legal framework within which the Organization’s various SARPs on the subject will be framed and developed.

<i>Strategic Objectives:</i>	Strengthen ICAO’s strategic policies for collaboration in world efforts to reduce the environmental impact of transport
<i>Financial implications:</i>	
<i>References:</i>	<i>Carbon Offsetting and Reduction Scheme for International Aviation (CORSA)</i> <i>Convention on International Civil Aviation Article 49, subparagraph j)</i>

<sup>1</sup> Spanish version provided by Argentina.

## 1. INTRODUCTION

1.1 The important legal precedents for this working paper include the Vienna Convention for the Protection of the Ozone Layer (1985) and the Montreal Protocol thereto (1987), the United Nations Framework Convention on Climate Change (1992), the Kyoto Protocol (1997) and the Paris Agreement (2016).

1.2 Under the Vienna Convention for the Protection of the Ozone Layer (1985), the potentially harmful impact on human health and the environment through modification of the ozone layer was recognized, and the States Parties therefore undertook, among other issues, to adopt appropriate legislative and administrative measures and cooperate in harmonizing appropriate policies to control, limit, reduce or prevent human activities under their jurisdiction or control should it be found that these activities have or are likely to have adverse effects resulting from modification or likely modification of the ozone layer (Article 2 of the Convention).

1.3 Under the Montreal Protocol (1987) to the Vienna Convention for the Protection of the Ozone Layer (1985), States Parties agreed to adopt effective measures to limit the marketing and use of substances that can adversely affect the ozone layer, including chlorofluorocarbons (CFC), halons and other halocarbons (for further details, see Annex A to the Protocol).

1.4 Under the United Nations Framework Convention on Climate Change (1992), the States Signatories undertook, among other commitments, to promote and cooperate in the development, application and diffusion, including transfer, of technologies, practices and processes that control, reduce or prevent anthropogenic emissions of greenhouse gases not controlled by the Montreal Protocol in all relevant sectors, including the energy, transport, industry, agriculture and forestry sectors (Article 4 of the Convention).

1.5 Similarly, in the Kyoto Protocol (1997), the States Signatories undertook, among other obligations, gradually to reduce the use of substances with a greenhouse effect that are listed in Annex A thereto, in particular carbon dioxide, on account of its highly polluting effect on the environment (Article 3 of the Protocol and Annex B thereto) and to increase the use of new and renewable forms of energy.

1.6 Subsequently, the Paris Agreement was signed in 2016 and its purposes were to reduce greenhouse gas emissions significantly and thus limit the rise in global temperature in this century to 2°C while striving to limit that rise even more to merely 1.5°C, to review commitments on greenhouse gas emissions every five years, and to offer funding to developing countries in order to mitigate climate change, strengthen resilience and improve their capacity to adapt to the impacts of climate change.

1.7 In sum, various global efforts have conducted to the above-mentioned Conventions and agreements in order to slow down the pace of climate change and limit the gradual rise in world temperature that is currently destroying ecosystems and causing an unacceptable level of pollution, hence the vital need to take steps to offset its harmful effects on the environment and for ICAO to adopt policies in support of Conventions and agreements signed on environmental issues.

## 2. ICAO'S ENVIRONMENTAL PROGRAMMES

2.1 With regard to environmental issues, it is appropriate to highlight ICAO's efforts, which formally began with the adoption of Annex 16 to the *Convention on International Civil Aviation*

(Chicago, 1944), which was followed by the Council's approval of standards and recommended practices on aircraft noise on 2 April 1971, pursuant to Article 37 of the *Convention on International Civil Aviation* (Chicago, 1944).

2.2 Volume I of Annex 16 to the *Convention on International Civil Aviation* (Chicago, 1944) covers the issue of aircraft noise, whereas the Annex's Volume II, approved in 1981, deals with aircraft engine emissions.

2.3 It is noteworthy that in 1983, ICAO delegated the task of studying air navigation-related environmental problems to the Committee on Aviation Environmental Protection (CAEP), which was the single committee formed when the Committee on Aircraft Noise (CAN), established in 1969, and the Committee on Aircraft Engine Emissions (CAEE), established in 1977, were merged into one to centralize activities relating to the study of environmental issues in aviation.

2.4 Furthermore, in 2010, at the 37th Session of the ICAO Assembly, two major objectives were set for climate change and aviation:

- a) improve carbon efficiency by two per cent per year until 2050, thus 80 per cent in aggregate for the entire 2010-2050 period; and
- b) achieve carbon-neutral growth from 2020. Member States were invited at that session to present their Action Plans on CO<sub>2</sub> Emissions Reduction in Aviation (APER). In that connection, it also agreed to roll out a global scheme of market-based measures (MBM).

2.5 Subsequently, at the 38th Session of the ICAO Assembly in 2013, the commitment of Member States to work on carbon emission was maintained and it was proposed that APERs be updated every three years.

2.6 At the 39th Session of the ICAO Assembly, held in 2016, a historic agreement was achieved among Member States when they approved the new Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA) and Volume III of Annex 16 to the *Convention on International Civil Aviation* (Chicago, 1944), relating to CO<sub>2</sub> emissions.

2.7 Moreover, on 27 June 2018, the Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA) was approved as Volume IV to Annex 16 to the *Convention on International Civil Aviation* (Chicago, 1944).

2.8 While the development of these SARPs is encouraging in handling the climate crisis, it is considered that ICAO must demonstrate strong commitment to tackling environmental problems and climate change to the international community by making an amendment to the *Convention on International Civil Aviation*, expressly reaffirming the intention of States Parties to make best efforts to address environmental issues and implement ICAO's SARPs on environmental matters.

### 3. **PROPOSED AMENDMENT TO THE CONVENTION ON INTERNATIONAL CIVIL AVIATION TO ADDRESS ENVIRONMENTAL ISSUES IN AVIATION INTRODUCTION**

3.1 In view of the foregoing and the need for the Organization to make a strong commitment to the environment in order to act in consonance with the Paris Agreement (2016), it is considered that its position must be enshrined in a special article of the *Convention on International Civil Aviation* with the designation *bis*, following the example of Article 3 *bis* and Article 83 *bis* which have been inserted into this Convention.

3.2 Accordingly, it is proposed that “Article 14 *bis*” be inserted into the Convention and that it read as follows: “*Protection of the environment. The contracting States undertake to make best efforts to adopt measures to mitigate the impact of aviation activity on the environment, including but not limited to activities carried out to reduce greenhouse gas emissions from aircraft, from facilities located within the airport infrastructure and from surface vehicles used in airport environments, promotion of the adoption of new fuels and/or alternative sources of energy, encouragement of activities designed to lower the level of environmental pollution in aerodromes and adjacent areas and avoidance of unwarranted effects on ecosystems within the sphere of influence of aerodromes.*”

3.3 This broadly framed article contains five important features of States Parties’ environmental obligations under the Convention: 1) it would expressly include States’ commitment to adopt environmental measures in the Convention as a legal obligation that would serve as the legal basis for the Organization’s various SARPs; 2) it establishes an obligation of means (“best efforts”) in adopting measures to mitigate the adverse effects of aviation activity on the environment, on the basis of the international law principle of good faith; 3) it provides generally for commitment by the States Parties to attenuating the impact of aviation activity on the environment and gives specific points for greenhouse gas emission reductions which it does not confine to carbon only; 4) it provides for a series of illustrative environmental obligations (by using the expression “including but not limited to”), so that future SARPs may develop in several directions; and 5) it promotes the use of new fuels as well as alternative “sources of energy”, in reference to future technologies that will make aviation less dependent on fossil fuels or even biofuel, and more inclined to use green hydrogen and electric engines, among other possible advances.

3.4 Lastly, the proposal is one of many possible forms of expressing States Parties’ obligations to adopt those measures to mitigate the impact of aviation on the environment and it is therefore perfectible, but the Organization’s will to insert into its basic operational instrument (the Convention) express provisions that demonstrate its political and legal commitment to resolving various environmental issues that involve aviation and directly affect climate change must be unrenounceable.

### 4. **CONCLUSION**

4.1 In view of the foregoing, the Assembly is urged, within the powers conferred under Article 49 j) of the Convention, to decide on the requisite means of amending the Convention to incorporate a new article that may well be designated as “Article 14 *bis*”, following the precedent insertions of Article 3 *bis* and Article 83 *bis* of the Convention, textually determining the commitment of States Parties to adopt measures designed to mitigate the impact of aviation on the environment, as well as entering into various commitments in respect of matters such as promoting the use of fuel and sources of energy.