



WORKING PAPER

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 AIR TRANSPORT ACCESS FOR PERSONS WITH REDUCED MOBILITY AND/OR DISABILITIES

(Presented by Argentina with the support of 17 Member States of the Latin American Civil Aviation Commission (LACAC) : Aruba (Kingdom of the Netherlands), Belize, Bolivia (Plurinational State of), Brazil, Chile, 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 the insertion of a new article in the treaty and which could be numbered as “Article 15 *bis*” within the Convention and would, as its purpose, urge ICAO Member States to promote efforts to facilitate access to aircraft and airport infrastructure by persons with reduced mobility and/or disabilities; and
- b) approve a basic legal framework within which ICAO’s various SARPs and documents on the subject will be framed and developed.

<i>Strategic Objectives:</i>	Address the issues of access to aircraft and the airport environment by persons with reduced mobility and/or disabilities, for air transport
<i>Financial implications:</i>	
<i>References:</i>	<i>Annex 9 – Facilitation to the Convention on International Civil Aviation Doc 9984 – Manual on Access to Air Transport by Persons with Disabilities Article 49 j), Convention on International Civil Aviation</i>

¹ Spanish version provided by Argentina.

1. INTRODUCTION

1.1 Important background documents on this subject include the Convention on the Rights of Persons with Disabilities, which entered into force in 2008 and has to date been ratified by more than 160 States.

1.2 Most notably, Article 1 of the Convention on the Rights of Persons with Disabilities provides that: “The purpose of the present Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity. Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.”

1.3 On the other hand, the Convention lays down in Article 3 the principles that govern the rights of persons with disabilities, including non-discrimination, equality of opportunity, full and effective participation and inclusion in society, respect for difference and acceptance of persons with disabilities as part of human diversity and humanity, and accessibility, among other guiding principles.

1.4 In that connection, under “Accessibility”, Article 9 of the same Convention states: “1 To enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas.”

1.5 With regard to aviation, pride of place may be given to Annex 9 – *Facilitation* to the Convention on International Civil Aviation, which, in Chapter 8, Section H, “Facilitation of the transport of persons with disabilities”, provides as a recommended practice that “when travelling, persons with disabilities should be provided with special assistance in order to ensure that they receive services customarily available to the general public. Assistance should be provided in a manner that respects the dignity of the individual”. The section also provides as a recommended practice that “Contracting States should cooperate with a view to taking the necessary measures to make accessible to persons with disabilities all the elements of the chain of the person’s journey, from arrival at the airport of departure to leaving the airport of destination”.

1.6 Furthermore, the Annex stipulates, not as a recommended practice but as a standard, that “Contracting States shall take the necessary steps to ensure that airport facilities and services are adapted to the needs of persons with disabilities” (paragraph 8.27 of the above-mentioned Annex) that “Contracting States shall take the necessary steps to ensure that persons with disabilities have equivalent access to air services” (paragraph 8.34 of the above-mentioned Annex).

1.7 Lastly, ICAO has issued Doc 9984 – *Manual on Access to Air Transport by Persons with Disabilities*, establishing several standards on accessibility and guiding principles, including seamless assistance for persons with disabilities, prohibition of refusal to transport persons on the ground of disability and refusal to accept special charges for assistance to persons with disabilities.

2. **CHALLENGES FACED BY AVIATION IN ADDRESSING ACCESSIBILITY FOR PERSONS WITH REDUCED MOBILITY AND/OR DISABILITIES**

2.1 At present, the number of persons with reduced mobility and/or disabilities using air transport is rising, as World Health Organization has determined that approximately 15 per cent of the world population has some form of disability.

2.2 Nevertheless, there is evidence of certain circumstances that, in the context of the twenty-first century when the Convention on the Rights of Persons with Disabilities is in force, should not exist, and they include refusing to allow persons with disabilities and/or reduced mobility to board, on generic grounds of “safety”, leaving on the ground those persons, their assistive devices and their companion animals, thus failing to comply for superfluous reasons with the above-mentioned Convention and with Doc 9984 – *Manual on Access to Air Transport by Persons with Disabilities*.

2.3 In that connection, it is noted that, with rare exceptions, world-class airport infrastructure is inconsistent with “universal design”, defined in the Convention on the Rights of Persons with Disabilities, and in many cases do not feature any “reasonable adjustments” in the means of entering and leaving aircraft in order to ensure universal access to this means of transport.

2.4 Moreover, specific training on the subject has clearly not been provided to crew members, in particular those tasked with handling assistance devices for persons with disabilities, leading to damage and loss of considerable value for users.

2.5 It is therefore necessary to formulate strategies that reaffirm ICAO’s institutional commitment to persons with disabilities and/or reduced mobility in order to promote the universal accessibility of aircraft and airport facilities for persons with reduced mobility and/or disabilities in accordance with this Organization’s standards and recommended practices and its proposed best practices.

2.6 For these reasons, it is proposed that an amendment be made to the Convention on International Civil Aviation expressly stating the intention of States Parties to make best efforts to promote universal accessibility of aircraft and airport facilities for persons with reduced mobility and/or disabilities.

3. **PROPOSED AMENDMENT TO THE CONVENTION ON INTERNATIONAL CIVIL AVIATION TO ADDRESS AIR TRANSPORT ACCESSIBILITY FOR PERSONS WITH REDUCED MOBILITY AND/OR DISABILITIES**

3.1 Considering the matters raised in the foregoing paragraphs and in view of the need for the Organization to act in consonance with the assertions of the international community in the Convention on the Rights of Persons with Disabilities, it is considered appropriate for that position to be enshrined in a special article in the Convention on International Civil Aviation, and be designated as *bis*, in the same way as Article 3 *bis* and Article 83 *bis* when they were incorporated into the Convention.

3.2 Accordingly, it is proposed that Article 15 *bis* be incorporated into the Convention and that it might be worded as follows: “*Accessibility for persons with reduced mobility and/or disabilities – Contracting States undertake to make best efforts to adopt measures designed to promote universal accessibility to aircraft and airport facilities for persons with reduced mobility and/or disabilities, in accordance with this Organization’s standards and recommended practices and its proposed best*

practices, using the necessary instruments, tools and devices to ensure that aircraft and airport facilities are understandable, usable and practicable for all persons, in accordance with universal design guidelines, in conditions of safety and comfort and in a manner that respects autonomy and dignity of persons with reduced mobility and/or disabilities.

3.3 This proposal has the following advantages: 1) it will expressly incorporate into the Convention, as a legal obligation, the commitment of States to adopt measures relating to accessibility for persons with reduced mobility and/or disabilities; 2) it establishes an obligation of the means (best efforts) of adopting measures on the basis of the international law principle of good faith; 3) this obligation will serve as a basis for SARPs and other documents issued by ICAO; and 4) it provides for measures to be taken to ensure “*that aircraft and airport facilities are understandable, usable and practicable for all persons, in accordance with universal design guidelines, in conditions of safety and comfort and in a manner that respects autonomy and dignity of persons with reduced mobility and/or disabilities*”; it is to be noted that the wording is consistent with Articles 1, 2, 3 and 9 of the Convention on the Rights of Persons with Disabilities.

3.4 Lastly, it is noted that the draft article calls on States Parties to decide on the measures that are necessary to ensure universal accessibility to aircraft and airport facilities, which is basically derived from the civil-aviation application of the Convention on the Rights of Persons with Disabilities, which entered into force in 2008 and has been ratified to date by 160 States.

4. CONCLUSION

4.1 In view of the foregoing, the Assembly is urged to decide, under the powers conferred by Article 49 j) of the Convention, on the means required to amend the Convention by inserting a new article which might be designated as “Article 15 *bis*”, following the precedents of the insertion of Article 3 *bis* and Article 83 *bis* in the Convention, and which textually determines States Parties’ commitment to the adoption of measures to promote universal accessibility to aircraft and airport facilities for persons with reduced mobility and/or disabilities.

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