



A41-WP/608
LE/21
30/9/22

ASSEMBLY — 41ST SESSION

LEGAL COMMISSION

**DRAFT TEXT FOR THE REPORT
ON
AGENDA ITEMS 42 AND 43**

The attached material on Agenda Items 42 and 43 is submitted for consideration by the Legal Commission.

Agenda Item 42: Consolidated Statement of Continuing ICAO Policies in the Legal Field

42.1 Before commencing consideration of Agenda Item 42, the Commission took note that 30 September 2022 was International Translation Day, and paid tribute to the work of language professionals who provide translation, interpretation, terminology, editing, and support services in ICAO's six official languages to facilitate dialogue, understanding, and cooperation amongst Member States in advancing the work of ICAO in global aviation, and to upholding ICAO's full commitment to multilingualism.

42.2 The delegation of Canada then brought to the attention of the Commission that 30 September was the annual National Day for Truth and Reconciliation during which Canadians reflect on the history of First Nations, Métis, and Inuit Peoples in Canada, and called on all Canadians to work together to advance reconciliation and implement the United Nations Declaration on the Rights of Indigenous Peoples.

42.3 The Commission considered Item 42 on the basis of A41-WP/52, presented by the Council and A41-WP/115, presented by China. The Commission noted Information Paper A41-WP/401, presented by Oman, in which it proposes to host the second edition of the Civil Aviation Legal Advisers Forum.

42.4 With respect to WP/52, the Secretariat highlighted the proposed editorial amendments to Assembly Resolution A40-28, *Consolidated statement of continuing ICAO policies in the legal field*, and more particularly, its Appendix C on the ratification of ICAO international instruments (the addition of the adoption dates of the Protocols of Amendment to the Chicago Convention relating to the Arabic and Chinese texts), Appendix D on the teaching of air law (a broadening of the scope relating to the teaching of air law to provide for the promotion of teaching and dissemination of knowledge of the subject around the world), and Appendix F, to reflect the current title and priority of the item "Study of international legal issues relating to global satellite systems and services supporting international air navigation services" on the General Work Programme of the Legal Committee.

42.5 There was widespread support for the working paper and for the amendments to Assembly Resolution A40-28. In response to a query from one delegation, the Secretariat clarified that the text in the preamble to Appendix A of the Resolution mirrored the wording of the preamble to the Chicago Convention. Another delegation queried the proposed amendment to Appendix D which it felt would be a substantive change given that the directive is addressed to "ICAO", rather than any of its constituent bodies or titular heads, and that this may be inconsistent with the wording of other Consolidated statements adopted by the Assembly which addressed its directives to "the Organization", "the Secretary General" or the "Council". The Secretariat clarified that this change had been discussed at length in the Council during its 226th Session with the intention of ensuring consistency in terminology among Assembly resolutions, and to allow for flexibility for respective organs of the Organization to take responsibility in their respective competencies

42.6 The Commission then agreed to recommend to the Plenary the adoption of the following resolution, taking into account the need for consistency on directive terminology with other resolutions recommended for adoption at this Assembly Session:

~~A40-28~~ **A41-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 ~~40th~~ 41st 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 ~~A39-11~~ **A40-28**.

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 ~~A39-11~~A40-28, 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 amending Articles 50 (a) and 56 adopted in 2016, and the final paragraphs (relating to the Arabic and Chinese texts, adopted, respectively, in 1995 and 1998);

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 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 adopted, respectively, in 1995 and 1998, 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, 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 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*~~ *Directs* [the Council and the Secretary General] [ICAO] to take all possible action to promote the teaching and the dissemination of knowledge of air law in those States where it is not yet available around the world;

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 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 disruptive passengers on board 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 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 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 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

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 Aircraft

Section 1: Assault and Other Acts of Interference against a Crew Member on Board an Aircraft

Any person who commits on board 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) verbal intimidation or threat 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 or on behalf of the aircraft commander for the purpose of:
 - (a) protecting the safety of the aircraft or of persons or property therein; or
 - (b) maintaining good order and discipline on board.

Section 2: Assault and Other Acts Endangering Safety or Jeopardizing Good Order and Discipline on Board an Aircraft

- (1) Any person who commits on board 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 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 an Aircraft

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

- (1) smoking in a lavatory, or smoking elsewhere 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.

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. 8 6 of the General Work Programme of the Legal Committee “Study of international legal issues relating to global navigation satellite systems (GNSS) and services supporting international air navigation services”, 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).

APPENDIX G

Enhancing the capacity and effectiveness of States to implement air law treaties and update national laws and regulations

1. *The Assembly:*

Recalling the important role of law (especially air law) for the achievement by ICAO of its aims and objectives and for ICAO, Member States and the aviation industry to respond effectively to new and emerging opportunities, challenges and threats to the development of international civil aviation;

Recognizing that Member States must ensure that appropriate legislation and regulations are formulated to implement, and are applied in accordance with, the Chicago Convention, relevant air law instruments and ICAO provisions;

Affirming the important role that civil aviation legal advisers and air law practitioners play in supporting their States and Organizations to implement air law treaties, to formulate and update national laws and regulations to give effect to national policies and regulatory requirements, and to contribute to adherence to the rule of law;

Considering that legal advisers must continuously update and enhance their competencies, capabilities and capacities to effectively carry out their responsibilities; and

Welcoming the first Civil Aviation Legal Advisers Forum initiative organized by ICAO and hosted in Singapore in May 2019, which enabled legal advisers, particularly those serving in Organizations that regulate civil aviation, to share and exchange views on current issues of interest to the international aviation community and on strengthening their support for their Organizations and States:

2. *The Assembly:*

1. *Encourages* Member States that have not already done so to establish positions of dedicated in-house legal advisers for their civil aviation administrations;

2. *Encourages* Member States to make use of ICAO seminars and workshops, the International Air Law Course and other similar events for the continuous training and development of their legal advisers and to consider hosting from time to time such events in their States and regions;

3. *Invites* Member States to support the Civil Aviation Legal Advisers Forum initiative and to consider hosting subsequent editions of the Forum as well as encourage and facilitate their legal advisers to participate in and to contribute to the Forum;

4. *Requests* the Secretary General to assist Member States in achieving and maintaining the appropriate competency of civil aviation legal advisers including through developing a competency framework for strengthening their role; and

5. *Urges* Member States to support ICAO's work in the legal field by encouraging the active participation of their legal advisers in the work of the Legal Committee, subcommittees and task forces, panels, working groups, and similar bodies established to examine air law issues and develop legal solutions.

42.7 China presented A41-WP/115, which outlines the effectiveness of legal instruments regarding international civil aviation developed or amended under the auspices of ICAO over the past two decades, explains the ratification procedures in China, and informs on the instruments it has ratified. There was broad support for China's call on Member States that have not ratified legal instruments regarding international civil aviation to do so, highlighting the importance of ratification for the achievement of the aims, objectives and principles of the Chicago Convention to safeguard the sound, orderly and efficient development of international civil aviation. Several delegations emphasized the importance of ratifying, as soon as possible, the 2016 Protocols Amending Articles 50(a) and 56 of the Chicago Convention. One delegation, supported by others, emphasized the difficulties that developing States face in ratifying certain international air law instruments, mentioning a lack of human and financial resources and called for additional support in this respect. Other delegations also pointed to the limited resources in smaller States. The Secretariat drew attention to the information it had given during the Commission's consideration of A41-WP/53 under Agenda Item 41 on the various actions taken to increase ratification of air law instruments. One delegation highlighted the text in the various administrative packages which ICAO has developed and posted on its Treaty Collection website to assist States with ratification. Some delegations mentioned the importance of the continued action by the Secretariat to promote the ratification of these legal instruments.

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

43.1 Singapore introduced WP/106 (co-sponsored by 72 States including the Member States of the African Civil Aviation Commission) putting forward a competency framework setting out the areas of responsibility, required legal knowledge, relevant context knowledge, and key legal skills competencies for civil aviation legal advisers. The competency framework, presented in the Appendix to the working paper, aims to assist civil aviation authorities in the recruitment, training, and professional development of civil aviation legal advisers, so as to enhance their competencies for supporting their organizations in carrying out regulatory and other functions, in particular in the areas of aviation safety and security oversight, the implementation of air law treaty obligations and the updating of national laws and regulations.

43.2 In thanking Singapore for the paper and the leadership of its delegate in ensuring the comprehensiveness of the framework, there was strong and universal support by delegations for the working paper and the competency framework. Many delegations noted that it would be particularly helpful in assisting civil aviation administrations in identifying the most beneficial training and professional development opportunities for their legal advisers, which was seen by those delegations as an essential factor for legal advisers to carry out their responsibilities and to meet challenges effectively. Some Delegations particularly noted the importance of the framework for developing some States. Others noted that the framework could be adjusted to national and regional circumstances. With the universal support for the working paper, the Commission encouraged States to consider the framework in the recruitment, training and professional development of their civil aviation legal advisers.

43.3 The Commission reviewed A/41-WP/105, presented by Singapore and co-sponsored by 42 States, which highlighted the contributions and important roles of the ICAO Legal Committee over the last 75 years with respect to the preparation of draft texts of international air law instruments in the fields of aviation safety and security, air carrier liability and aircraft finance, the interpretation of the Chicago Convention, and preparation of several studies on specific international air law issues. The paper proposed that the Assembly adopt a resolution that recognizes the contributions and importance of the Legal Committee and encourages States and other relevant stakeholders to continue collaborating through its work. The Commission also noted A41-WP/207, presented by 54 Member States of AFCAC, which also outlined the Legal Committee's significant contribution to the development, adoption and modernization of international air law treaties and highlighted the Committee's 75th anniversary and AFCAC's contribution. The Secretariat expressed appreciation for the working papers presented by Singapore and AFCAC and highlighted that the draft resolution contained in the Appendix of A41-WP/105 is a testament to the expertise and commitment of the Legal Committee.

43.4 All delegations and one observer that took the floor supported the draft resolution appended to A/41-WP/105 and commended the Legal Committee for the outstanding contribution it has made since its inception to the development and codification of international air law. Several delegations expressed appreciation for the outstanding contribution and leadership and collaborative approach of Ms. S. Tan (Singapore) in developing various initiatives. Many delegations commended LEB for its crucial role in supporting the work of the Legal Committee, which the Commission acknowledged with a standing ovation and agreed to highlight in an amendment to paragraph 3 of the draft resolution. Some delegations also highlighted the importance for States to become party to international air law treaties so that their universal application could be achieved.

43.5 The Commission then agreed to recommend to the Plenary the adoption of the following resolution:

Resolution A41-xx: 75th Anniversary of the ICAO Legal Committee

Whereas the year 2022 marks the 75th Anniversary of the establishment of the Legal Committee of the International Civil Aviation Organization (ICAO) by the First Session of the ICAO Assembly held in 1947; Recalling that the ICAO Legal Committee was established on the foundation of the Comité International Technique d'Experts Juridiques Aériens (CITEJA);

Noting that since its inception the ICAO Legal Committee has prepared draft instruments which led to the adoption of 24 international air law treaties in the areas of air carrier and aircraft liability, aircraft finance and aviation safety and security;

Noting also that the Legal Committee was involved in the preparation of studies on specific issues pertaining to international air law as well as in the development of guidance material benefiting ICAO Member States and International Organizations in their implementation of air law treaties and Standards and Recommended Practices (SARPs);

Recognizing the significant contribution that the ICAO Legal Committee has, with the strong support of the ICAO Secretariat, in particular, the Legal Affairs and External Relations Bureau (LEB), made to the development and codification of international air law; Recognizing further that only a universal participation in the international air law treaties would secure and enhance the benefits of unification of the international rules which they embody; and

Determined to ensure that the ICAO Legal Committee will continue to play an important role in dealing with ongoing challenges that are of interest to the international air law community;

The Assembly, on the occasion of the 75th Anniversary of the establishment of the ICAO Legal Committee:

1. *Pays* tribute to the leadership and vision of CITEJA which drafted the first body of international air law treaties;
2. *Emphasizes* the essential role that the ICAO Legal Committee has played in the development and codification of international air law since its inception in 1947;
3. *Recognizes* the numerous contributors to the work of the Legal Committee including representatives of ICAO Member States who have served as its chairpersons and vice-chairpersons and in its sub-committees and working groups and the secretariat study groups and task forces as chairpersons, vice-chairpersons, Rapporteurs or members as well as representatives of international observer organisations accredited by the Legal Committee and the Legal Affairs and External Relations Bureau for its supporting role;
4. *Reiterates* the need for the ICAO Legal Committee to continue to take a leadership role to study new and emerging issues affecting air law and promote the development and codification of international air law, and thereby strengthen the legal framework governing international civil aviation;

5. *Urges* all Member States of ICAO to promote the universal participation in the international air law treaties and effective compliance with their provisions with a view to enhance the rule of law; and

6. *Invites* all stakeholders, including Member States and relevant organizations of the global civil aviation community, to continue working together through the ICAO Legal Committee with a view to contribute to the development and codification of international air law for the benefit of all nations and peoples of the world.
