

# **THE ROAD TO UNIVERSAL ACCEPTANCE AND IMPLEMENTATION OF AIR LAW TREATIES**

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# INTRODUCTION

- The Chicago Convention & Vienna Convention
- Obligations of States
- Recent Air Law treaties
- Modes of Domestication – The Ghana example
- Challenges faced in the Implementation of Air Law Treaties
- Role of the CAA Counsel
- The Way forward for Universal Acceptance

# THE CHICAGO CONVENTION & VIENNA CONVENTION

- Primary Objective – the development of civil aviation in a safe and orderly manner.
- Article 1 – Sovereignty
- Article 2 – Territory
- **VIENNA CONVENTION ON THE LAW OF TREATIES**
- Purpose: “*a treaty is defined as an international agreement concluded between states in written form and governed by international law whether embodied in single instrument or in two or more related instruments and whatever its particular designation.*” Article 2(1)(a)

# OBLIGATIONS OF STATES

- Implementation of air law treaties.
- States becoming parties through:
  - Signature of international treaties
  - Ratification;
  - Accession;
  - Adherence;
  - Approval.
- Domestication.

# RECENT AIR LAW TREATIES

- Resolution **A39-11**, Appendix C - the Assembly urged all States that have not done so to ratify international air law instruments.
- **A39-9** - Convention for the Unification of Certain Rules for International Carriage by Air (Montreal, 28th May, 1999) - **Passenger Rights**
- Convention on International Interests in Mobile Equipment (Cape Town, 16th November, 2001) – **Aircraft Financing**
- Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment (Cape Town, 16<sup>th</sup> November, 2001) - **Aircraft Financing**

# RECENT AIR LAW TREATIES

- Compensation for Damage to Third Parties Resulting from Acts of Unlawful Interference Involving Aircraft (Montreal, 2<sup>nd</sup> May, 2009) – **General**
- Convention on Compensation for Damage Caused by Aircraft to Third Parties (Montréal, Canada, 2<sup>nd</sup> May, 2009) – **General**
- **A39-10** - Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation (Beijing, 10th September, 2010) – **Security**
- **A39-10** - Protocol Supplementary to the Convention for the Suppression of Unlawful Seizure of Aircraft (Beijing, 2010) – **Security**

# RECENT AIR LAW TREATIES

- Protocol to Amend the Convention on Offences and Certain Other Acts Committed on Board Aircraft (Montréal, 4<sup>th</sup> April, 2014) - **Security**
- **A39-5** - Protocol Relating to an Amendment to the Convention on International Civil Aviation [Article 50(a)] (Montréal, 6<sup>th</sup> October 2016)– **Increase of Council to 40 members**
- **A39-7** - Protocol Relating to an Amendment to the Convention on International Civil Aviation [Article 56] (Montréal, 6<sup>th</sup> October 2016)– **Increase of ANC to 21 Members**

# STATUS OF STATES WITH RESPECT TO IMPLEMENTATION

CONVENTION	IN FORCE?	NO. OF STATES RATIFIED/ACCESSIONS	NO. OF STATES REQUIRED
ART. 50(A)	NO	40	128
ART 56	NO	40	128
MC 99	YES (04/11/03)	136	-
MONTREAL 2009 (GENERAL RISK)	NO	12	35
MONTREAL 2009 (UNLAWFUL INTERFERENCE)	NO	9	35
BEIJING CONVENTION 2010	YES (01/07/18)	28	-



# STATUS OF STATES WITH RESPECT TO IMPLEMENTATION

CONVENTION	IN FORCE?	NO. OF STATES RATIFIED/ACCESSIONS	NO. OF STATES REQUIRED
BEIJING PROTOCOL 2010	YES (01/10/18)	31	22
CAPE TOWN CONVENTION 2001	YES (01/03/06)	79	-
CAPE TOWN PROTOCOL 2001	YES (01/03/06)	76	-
MONTREAL PROTOCOL 2014	NO	19	22

# MODES OF DOMESTICATION – THE GHANA EXAMPLE

- Monism v. Dualism
- Ghana follows dualist approach – Article **75** of Ghana Constitution

*“A treaty, agreement or convention executed by or under the Authority of the President shall be subject to ratification by*

*(a) Act of Parliament; or*

*(b) A resolution of Parliament supported by the votes of more than one-half of all the members of Parliament.”*

# MODES OF DOMESTICATION – THE GHANA EXAMPLE

- Ghana has currently ratified 36 international Air Law Treaties
- Recently ratified 9 air law treaties in late 2015 which were added as schedules to the Ghana Civil Aviation Act, but instruments were deposited in 2018 (CHALLENGES FACED)
- Security conventions have been domesticated by Ghana's Criminal and Other Offences Act eg. acts against aircraft endangering life and property, Hijacking, etc

# MODES OF DOMESTICATION – THE GHANAIAN EXAMPLE

- Reservations to treaties – made by State when signing, ratifying, accepting, approving or acceding to a treaty refusing to accept or be bound by a certain provision of the treaty.
- To be distinguished with declarations or mere political statements
- Entry into Force of treaties – Treaties usually specify a date or in the case of multilateral treaties, entry into force is upon ratification by a fixed number of states.

# MODES OF DOMESTICATION – THE GHANA EXAMPLE

- **DECLARATIONS**

1. MONTREAL CONVENTION 1999 - Applicable to domestic Flights
  2. CAPE TOWN CONVENTION & CAPE TOWN PROTOCOL
- ✓ **STAKEHOLDER CONSULTATIONS**
  - ✓ **Treaty raises issues of application of domestic law**

ARTICLE 39(1) – Categories of non-consensual rights  
prioritization in accordance with domestic law (unpaid charges to the GCAA etc, taxes owed to Government, liens of workers for payments, etc.)

ARTICLE 53 – High Court as Court of competent jurisdiction  
(issues of enforcement / interpretation / aviation knowledge)

ARTICLE 54(2) – Remedies under the convention which can be exercised without the leave of court

# MODES OF DOMESTICATION – THE GHANA EXAMPLE

- ARTICLE 60(1) – Convention is applicable to pre-existing rights subject to GCAA's first priority charge.
- ARTICLE XI - Alternative A and waiting period of 30 days
- ARTICLE XII – Shall be applied by Ghana
- ARTICLE XIII – shall not be applied
- **OECD FUNDING (DISCOUNT)**

# CHALLENGES FACED BY STATES IN IMPLEMENTATION OF AIR LAW TREATIES

- Understanding the treaty
- Implementation of the process of domestication
- Requisite consultation with the Executive and Legislative branch
- Education – cross consultation with Attorney-General's Department and Ministry of Foreign Affairs and Regional Integration – resulting in delay of deposit of instruments
- Coordination with other government agencies
- Broad Stakeholder consultation (Airlines/Pax/etc)

# ROLE OF THE CAA COUNSEL

- Ghana Civil Aviation Act – section 3
- Carrying out any Treaty or Agreement in the field of Civil Aviation to which Ghana is a party;
- Duty to obtain stakeholders and technical personnel's input prior to submission to Parliament;
- Obtain Cabinet Approval;
- Coordination with Parliament, Attorney-General's Department and Ministry of Foreign Affairs and Regional Integration;
- Dissemination of information regarding the coming into force of provisions of adopted air law treaties.



# THE WAY FORWARD FOR UNIVERSAL ACCEPTANCE

- Model legislation by ICAO
- Guidelines by ICAO for national legislation
- Collaborative support among CAA Legal Advisors
- Attendance at ICAO diplomatic conferences by CAA Legal counsels/AG/ Legislature
- Regional ICAO Legal seminars
- Participation in:
  - ✓ Legal Task Forces/Working Groups/Panel discussions
  - ✓ Legal Committee Meetings
  - ✓ Legal Commission of the Assembly

# THANK YOU

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