



ICAO

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North American, Central American and Caribbean Office

WORKING PAPER

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**Fifth North American, Central American and Caribbean Directors of Civil Aviation Meeting
(NACC/DCA/5)**

Port-of-Spain, Trinidad and Tobago, 28 to 30 April 2014

Agenda Item 5:

Air Navigation

**5.6 Ratification of Article 3 *Bis* of the Chicago Convention on
International Civil Aviation**

**RATIFICATION OF ARTICLE 3 *BIS* OF THE CHICAGO CONVENTION ON
INTERNATIONAL CIVIL AVIATION**

(Presented by the Secretariat)

EXECUTIVE SUMMARY	
This working paper presents the need to ratify Article 3 <i>bis</i> of the Chicago Convention on International Civil Aviation as a result of ICAO Universal Safety Oversight Audit Programme Continuous Monitoring Approach (USOAP-CMA) activities.	
Action:	As described in Section 3
Strategic Objectives:	<ul style="list-style-type: none">• Safety• Air Navigation Capacity and Efficiency• Economic Development of Air Transport• Environmental Protection
References:	<ul style="list-style-type: none">• Doc 7300 - <i>Convention on International Civil Aviation</i>• Annex 19 - <i>Safety Management</i>• Doc 9734 - <i>Safety Oversight Manual Part A —The Establishment and Management of a State's Safety Oversight System</i>• Doc 9735 - <i>Universal Safety Oversight Audit Programme Continuous Monitoring Manual</i>

1. Introduction

1.1 Each State establishes the scope of its own law and establishes methodologies and supplementary procedures for the application of provisions contained in law and aviation regulations. In many cases, laws are approved by the national congress or parliament through mechanisms that are established by the State. Civil Aviation Authorities (CAAs) can propose amendments to the law according to the administrative competencies given to them.

1.2 Under conclusions DCA/CAP/97/3 and C/CAR/DCA/13/3, Bahamas, Costa Rica, Dominican Republic, Haiti, Honduras, Nicaragua, and United States committed to take actions during 2013 for the ratification of the protocol related to Article 3 *bis* of the Chicago Convention on International Civil Aviation. Furthermore, in the Eastern Caribbean, the States of Grenada, Saint Lucia, Saint Vincent and the Grenadines, and Trinidad and Tobago have not confirmed commencement on this article.

2. Discussion

2.1 The Chicago Convention is the global framework that serves as the basis for functions, obligations and activities of a State that take place within the jurisdiction of another State. In some cases, multiple State signatures would be required in the multilateral agreements.

2.2 Most Chicago Convention articles establish the privileges and obligations of all contracting States and promote international ICAO Standards and Recommended Practices (SARPs) adoption that regulate international air transport. These articles establish contracted State obligations in relation to safety oversight.

2.3 Article 37 of the Chicago Convention requires that each contracting State commit to collaborate in order to achieve the highest level of uniformity in regulations, standards, procedures and organizations related to aircraft, personnel, airlines and auxiliary services. Uniformity and consistent application of this Article harmonizes air navigation facilitation and improvement. The incorporation of SARPs into contracting States national regulations is what guarantees the safety and consistency of global aircraft operations.

2.4 Therefore, it is expected that States take into practice and comply with SARPs that are contained in the Annexes to the Convention through national standards. Article 12 of the Chicago Convention is very clear in this respect:

Each contracting State undertakes to adopt measures to insure that every aircraft flying over or maneuvering within its territory and that every aircraft carrying its nationality mark, wherever such aircraft may be, shall comply with the rules and regulations relating to the flight and maneuver of aircraft there in force. Each contracting State undertakes to keep its own regulations in these respects uniform, to the greatest possible extent, with those established from time to time under this Convention. Over the high seas, the rules in force shall be those established under this Convention. Each contracting State undertakes to insure the prosecution of all persons violating the regulations applicable.

2.5 In Annex 19, Appendix 1, the primary aviation legislation requirement is established under the following statements:

- 1.1 *The State shall promulgate a comprehensive and effective aviation law, consistent with the size and complexity of the State's aviation activity and with the requirements contained in the Convention on International Civil Aviation, that enables the State to regulate civil aviation and enforce regulations through the relevant authorities or agencies established for that purpose.*
- 1.2 *The aviation law shall provide personnel performing safety oversight functions access to the aircraft, operations, facilities, personnel and associated records, as applicable, of service providers.*

2.6 Over the last years it has been noted that several States have established areas for the identification of aircraft prior to entering their area of jurisdiction for defense purposes. Therefore, it is necessary that contracting States ratify the Protocol of Article 3 *bis* of the Chicago Convention, which came into force on 1 October 1998. Information on States that have ratified this Protocol can be found in **Appendix A** to this working paper.

2.7 For the ratification of Article 3 *bis* of the Chicago Convention, the Protocol clearly specifies:

- a) the obligation of States to refrain from resorting to the use of weapons against civil aircraft in flight;
- b) the obligation, in case of interception, not to endanger the lives of persons on board and the safety of aircraft; and
- c) the right of States to require a civil aircraft flying above its territory to land at a designated airport without authorization or, if there are reasonable grounds, to conclude that it is being used for any purpose inconsistent with the aims of the Convention.

2.8 The lack of ratification of international treaties and conventions can also affect some civil aviation activities between States. It is highly recommended that States promote the signature of related agreements in order to ensure that they are within the framework of functions and obligations between States as established in the ICAO Chicago Convention on International Civil Aviation (Doc 7300).

2.9 **Appendix B** contains the Administrative Package for Ratification of the Protocol on Article 3 *bis* and Model Instrument of Ratification.

2.10 In accordance with Article 83 of the Chicago Convention on International Civil Aviation, contracting States should also register the acquired agreements with other States. However, not all States comply with this requirement.

3. Suggested Action

3.1 The Meeting is invited to:

- a) take note of the information in this working paper;
- b) promote States compliance with the ratification of Article 3 *bis* of the Chicago Convention on International Civil Aviation;
- c) provide ICAO with relevant information on actions carried out regarding acquired agreements with other States;
- d) notify the ICAO NACC Regional Office if assistance is required, in order to ensure compliance with the Chicago Convention on International Civil Aviation; and
- e) recommend other actions as necessary.

**PROTOCOL RELATING TO AN AMENDMENT TO THE
CONVENTION ON INTERNATIONAL CIVIL AVIATION**

ARTICLE 3 bis, SIGNED AT MONTREAL ON 10 MAY 1984

Entry into force:	The Protocol entered into force on 1 October 1998.
Status:	143 parties.

State	Date of deposit of instrument of ratification
Algeria	28 May 2001
Andorra (4)	25 February 2001
Angola	4 February 2008
Antigua and Barbuda	17 October 1988
Argentina	1 December 1986
Armenia	8 December 1999
Australia	10 September 1986
Austria	11 January 1985
Azerbaijan	23 March 2000
Bahrain	7 February 1990
Bangladesh	3 June 1986
Barbados	23 November 1984
Belarus	24 July 1996
Belgium	20 September 1985
Belize	24 September 1997
Benin	30 March 2004
Bhutan	26 August 2005
Bolivia (Plurinational State of)	9 July 1998
Bosnia and Herzegovina	9 May 1997
Botswana	28 March 2001
Brazil	21 January 1987
Brunei Darussalam	16 July 2008
Bulgaria	6 April 1998
Burkina Faso	8 December 1998
Burundi	10 October 1991
Cameroon	28 January 1988
Canada	23 September 1986
Cape Verde	26 October 2009
Chile	26 November 1984
China (2)	23 July 1997
Colombia	10 March 1989
Congo	19 December 2011
Cook Islands	29 August 2005
Côte d'Ivoire	5 June 1987
Croatia	6 May 1994
Cuba	28 September 1998
Cyprus	5 July 1989
Czech Republic	15 April 1993
Denmark	16 October 1985
Ecuador	22 April 1988
Egypt	1 August 1985
El Salvador	8 April 1998
Eritrea	27 May 1994
Estonia	21 August 1992
Ethiopia	22 May 1985
Fiji	21 September 1992
Finland	18 December 1991
France	19 August 1985
Gabon	1 November 1988

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State	Date of deposit of instrument of ratification
Gambia	20 June 2000
Georgia	16 September 2005
Germany	2 July 1996
Ghana	15 July 1997
Greece	16 October 1987
Guatemala	18 September 1987
Guinea	1 October 1998
Guyana	2 May 1988
Hungary	24 May 1990
Iceland	18 October 2004
Iran (Islamic Republic of)	17 June 1994
Iraq	20 March 1998
Ireland	19 September 1990
Israel	30 September 1997
Italy	12 June 1986
Jamaica	25 May 1998
Japan	26 June 1998
Jordan	8 October 1986
Kazakhstan	10 September 2002
Kenya	5 October 1995
Kuwait	18 July 1986
Kyrgyzstan	28 February 2000
Latvia	17 August 1999
Lebanon	14 December 1994
Lesotho	17 March 1988
Libya	28 October 1996
Lithuania	4 March 2004
Luxembourg	10 May 1985
Madagascar	10 September 1986
Malawi	13 December 1990
Maldives	8 April 1997
Mali	4 March 1987
Malta	25 March 1994
Mauritius	7 November 1989
Mexico	20 June 1990
Monaco	27 January 1993
Mongolia	22 September 1999
Montenegro (7)	12 February 2007
Morocco	19 July 1990
Mozambique	27 January 2012
Namibia	19 December 2005
Nepal	26 October 1987
Netherlands (9)	18 December 1986
New Zealand	1 December 1999
Niger	8 April 1988
Nigeria	8 July 1985
Norway	16 October 1985
Oman	21 February 1985
Pakistan	10 June 1985
Panama	22 May 1987
Papua New Guinea	5 October 1992
Paraguay	29 March 2001
Poland	18 October 1999
Portugal (1)	17 June 1991

State	Date of deposit of instrument of ratification
Qatar	23 October 1990
Republic of Korea	27 February 1985
Republic of Moldova	20 June 1997
Romania	27 July 1998
Russian Federation	24 August 1990
Saint Kitts and Nevis (5)	20 June 2002
Samoa	9 July 1998
San Marino	3 February 1995
Saudi Arabia	21 July 1986
Senegal	2 May 1985
Serbia (3)	13 January 2001
Seychelles	8 August 1985
Slovakia	20 March 1995
Slovenia	8 March 2000
South Africa	28 June 1985
South Sudan (8)	11 October 2011
Spain	24 October 1985
Suriname	27 March 2003
Sweden	16 October 1985
Switzerland	24 February 1986
Syrian Arab Republic	20 March 2003
Tajikistan	9 April 1999
Thailand	12 July 1985
The former Yugoslav Republic of Macedonia	23 March 1998
Timor-Leste (6)	4 August 2005
Togo	5 July 1985
Tonga	5 February 2002
Tunisia	29 April 1985
Turkey	20 April 1998
Turkmenistan	14 April 1993
Uganda	7 July 1995
Ukraine	21 January 2003
United Arab Emirates	18 February 1987
United Kingdom	21 August 1987
United Republic of Tanzania	9 March 2004
Uruguay	11 September 1987
Uzbekistan	24 February 1994
Vanuatu	9 November 2005
Viet Nam	3 February 1999
Yemen	25 July 2008

- (1) By a Note dated 24 November 1999, the Government of Portugal advised the International Civil Aviation Organization as follows:
 "In accordance with the Joint Declaration of the Government of the Portuguese Republic and the Government of the People's Republic of China on the Question of Macao signed on 13 April 1987, the Portuguese Republic will continue to have international responsibility for Macao until 19 December 1999 and from that date onwards the People's Republic of China will resume the exercise of sovereignty over Macao with effect from 20 December 1999.
 From 20 December 1999 onwards the Portuguese Republic will cease to be responsible for the international rights and obligations arising from the application of the Convention [Protocol] to Macao.
- (2) By a Note dated 6 December 1999, the Government of the People's Republic of China advised the International Civil Aviation Organization that this Protocol shall apply to the Macao Special Administrative Region with effect from 20 December 1999.
- (3) Yugoslavia (F.R. of), by virtue of its adherence on 14 December 2000 to the *Convention on International Civil Aviation* (Chicago, 1944), became party to all Protocols of amendment of the Convention in force at the

time of adherence, effective 13 January 2001, the date of entry into force of the Convention with respect to Yugoslavia (F.R. of).

On 4 February 2003, the name of the State of the Federal Republic of Yugoslavia was changed to Serbia and Montenegro.

Following the Declaration of Independence adopted by the National Assembly of Montenegro on 3 June 2006, Serbia advised ICAO by a note dated 7 June 2006 that the membership of the state union of Serbia and Montenegro in ICAO is continued by the Republic of Serbia. Serbia subsequently advised ICAO by a note dated 13 July 2006 that the Republic of Serbia continues to exercise its rights and honour its commitments deriving from international treaties concluded by Serbia and Montenegro and requests that the Republic of Serbia be considered a party to all international agreements in force, instead of Serbia and Montenegro.

- (4) Andorra, by virtue of its adherence on 26 January 2001 to the *Convention on International Civil Aviation* (Chicago, 1944), became party to all Protocols of amendment of the Convention in force at the time of adherence, effective 25 February 2001, the date of entry into force of the Convention with respect to Andorra.
- (5) Saint Kitts and Nevis, by virtue of its adherence on 21 May 2002 to the *Convention on International Civil Aviation* (Chicago, 1944), became party to all Protocols of amendment of the Convention in force at the time of adherence, effective 20 June 2002, the date of entry into force of the Convention with respect to Saint Kitts and Nevis.
- (6) Timor-Leste, by virtue of its adherence on 4 August 2005 to the *Convention on International Civil Aviation* (Chicago, 1944), became party to all Protocols of amendment of the Convention in force at the time of adherence, effective 3 September 2005, the date of entry into force of the Convention with respect to Timor-Leste.
- (7) Montenegro, by virtue of its adherence on 12 February 2007 to the *Convention on International Civil Aviation* (Chicago, 1944), became party to all Protocols of amendment of the Convention in force at the time of adherence, effective 14 March 2007, the date of entry into force of the Convention with respect to Montenegro.
- (8) South Sudan, by virtue of its adherence on 11 October 2011 to the *Convention on International Civil Aviation* (Chicago, 1944), became party to all Protocols of amendment of the Convention in force at the time of adherence, effective 10 November 2011, the date of entry into force of the Convention with respect to South Sudan.
- (9) By a note dated 31 August 2011, deposited on 9 September 2011, the Netherlands advised ICAO that, following a modification in the structure of the Kingdom of the Netherlands effective from 10 October 2010, this Protocol applies from 10 October 2010 to the Caribbean part of the Netherlands (the islands of Bonaire, Sint Eustatius and Saba), Curaçao and Sint Maarten. It applies to the European part of the Netherlands and to Aruba from 1 October 1998.

ADMINISTRATIVE PACKAGE FOR RATIFICATION OF THE PROTOCOL ON ARTICLE 3 BIS**1. Full Name of Instrument:**

Protocol relating to an amendment to the Convention on International Civil Aviation [Article 3 bis], signed at Montreal on 10 May 1984. (Doc 9436)

2. History:

Assembly - 25th Session (Extraordinary), Montreal, 24 April to 11 May 1984.

3. Summary:

This Protocol was adopted by consensus on 10 May 1984. It deals with the problems of interception of and other enforcement measures with respect to a civil aircraft in flight. The drafting history of this Article supports the conclusion that Article 3 *bis* is declaratory of the existing general international law with respect to the following elements:

- a) the obligation of States to refrain from resorting to the use of weapons against civil aircraft in flight;
- b) the obligation, in case of interception, not to endanger the lives of persons on board and the safety of aircraft;
- c) the right of States to require landing at a designated airport of a civil aircraft flying above its territory without authority or if there are reasonable grounds to conclude that it is being used for any purpose inconsistent with the aims of the Convention.

4. Main reasons for ratification:

The use of weapons against civil aircraft in flight is incompatible with elementary considerations of humanity and the norms governing international behaviour. Article 3 *bis* embodies fundamental principles essential for the safe development of international civil aviation.

5. Entry into force:

The Protocol entered into force on 1 October 1998.

6. Depositary:

The Secretary General
Attention: Legal Bureau
International Civil Aviation Organization
999 University Street
Montreal, Canada
H3C 5H7

Attachment: Model Instrument of Ratification

**MODEL
INSTRUMENT OF RATIFICATION
BY THE
(NAME OF STATE)**

WHEREAS the (name of State) is a party to the Convention on International Civil Aviation, signed at Chicago on 7 December 1944 (hereinafter “the Convention”), having adhered thereto on (date of adherence);

WHEREAS the aforesaid Convention has been amended by the Protocol hereinunder mentioned:

Protocol relating to an amendment to the Convention on International Civil Aviation [Article 3 *bis*], signed at Montreal on 10 May 1984;

AND CONSIDERING it desirable that the (name of State) should become party to this Protocol of Amendment to the Convention on International Civil Aviation;

NOW THEREFORE, the (name of State), having examined the said Protocol of Amendment, hereby *RATIFIES* the same, and confirms that the (name of State) shall abide by all of the provisions therein contained.

IN WITNESS THEREOF, I have signed this Instrument of Ratification and affixed hereunto the Seal of the (name of State).

Date

(Signature by Head of State,
Head of Government or
Minister for External Affairs)

Seal