

**58th CONFERENCE OF
DIRECTORS GENERAL OF CIVIL AVIATION
ASIA AND PACIFIC REGIONS**

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AGENDA ITEM 9A: UPDATES

RATIFICATION OF INTERNATIONAL AIR LAW TREATIES

(Presented by the International Civil Aviation Organization)

SUMMARY

This discussion paper presents the benefits of certain international air law treaties and urges those States in the Asia and Pacific (APAC) region that have not yet ratified these treaties, to do so. To that end, summaries of the provisions and benefits of six international air law instruments are provided, as well as information pertaining to the ratification process and an overview of the resources available for States to assist them with ratification.

RATIFICATION OF INTERNATIONAL AIR LAW TREATIES

1. INTRODUCTION

1.1 During its 41st Session, the Assembly of the International Civil Aviation Organization (ICAO) adopted Resolutions A41-4, Appendix C, A41-18, Appendix B and A41-19, concerning the ratification of ICAO international air law instruments. These Resolutions reflect the Assembly's recognition of the need to accelerate the ratification and entry into force of international air law treaties, including the various Protocols of Amendment to the *Convention on International Civil Aviation* (Chicago, 1944 – “Chicago Convention”), developed and adopted under the auspices of the Organization. Moreover, the Assembly recognizes that only universal participation by ICAO Member States in international air law instruments would secure and enhance the benefits of unification of the international rules which they embody. The Assembly urges States to ratify international air law treaties to which they are not party.

1.2 This discussion paper provides information on the ratification status of international air law treaties as well as their benefits and invites States of the Asia and Pacific (APAC) regions to become party to international air law instruments that they have not yet ratified. This discussion paper also provides a summary of the main features and benefits of selected international air law treaties, information pertaining to the ratification process of treaties, as well as an overview of the resources available for States to assist in the ratification process.

2. DISCUSSION

Provisions and Benefits of Various Treaties

2.1 This section provides an overview of the main features of six international air law treaties for which ICAO acts as depositary. These treaties are aimed at, respectively, increasing the representation of States on the Council and the Air Navigation Commission (ANC); modernizing the compensation rules for liability arising in the international carriage of passengers, baggage, and cargo; dealing with new and emerging threats against civil aviation; and responding to the escalation of the frequency and severity of unruly and disruptive behaviour on board aircraft. The ratification status of each State of the APAC regions with respect to these international air law treaties is set out in **Appendix A**.

2.2 ***Protocol Relating to an Amendment to the Convention on International Civil Aviation [Article 50 (a)] (Doc 10077) and Protocol Relating to an Amendment to the Convention on International Civil Aviation [Article 56] (Doc 10076) (Montréal, 2016)***: The Protocol of Amendment to Article 50 (a) provides for an increase in the size of the Council from thirty-six members to forty, while the Protocol of Amendment to Article 56 provides for an increase in the membership of the ANC from nineteen to twenty-one. In view of the growth in ICAO membership and the expansion and rising importance of international air transport for the national economies in many countries, an enlarged membership of the Council will provide for a better balance in the representation of Contracting States, while an enlarged membership of the ANC will ensure that the Commission can draw on the expertise and experience of more Commissioners having diverse operational skills and technical knowledge. By Resolutions A39-5 and A39-7, respectively, the Assembly recommends to all States to ratify most urgently these Protocols. Moreover, Action Item 57/61 of the 57th APAC DGCA Conference (Incheon, Republic of Korea, 4 – 8 July 2022) urges States/Administrations in the APAC regions to ratify these Protocols, while Action item 57/62 urges ratification of the Article 50(a) Protocol as a matter of priority. As of 1 October 2023, 86 States have ratified these Protocols, including 11 APAC States. These Protocols each require 128 ratifications in order to come into force.

2.3 ***Convention for the Unification of Certain Rules for International Carriage by Air (Doc 9740) (Montreal, 1999)***: This treaty modernizes and consolidates the international legal regime established pursuant to the Warsaw Convention of 1929 and its amending instruments (the so-called “Warsaw System”), and provides, within a consolidated and uniform framework, the rules relating to the international carriage of passengers, baggage and cargo performed by aircraft for reward. These rules govern the liability of air carriers in the case of death, injury or delay for passengers and damage, and delay or loss of baggage and cargo. The universal adoption of this Convention by States will ensure that compensation under modernized rules is more efficiently and uniformly applied wherever in the world a claim arises. By Resolutions A39-9 and A41-4, Appendix C, the Assembly urges all States that have not done so to become party to this Convention. As of 1 October 2023, this Convention has 139 States Parties, including 23 APAC States.

2.4 ***Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation (Doc 9960) and the Protocol Supplementary to the Convention for the Suppression of Unlawful Seizure of Aircraft (Doc 9959) (Beijing, 2010)***: These treaties are the result of collective efforts of the international community to modernize the legal framework for aviation security. By criminalizing a number of acts constituting new and emerging threats against civil aviation, including certain preparatory acts for the offences, they strengthen the capacity of States to prevent the commission of these offences, and to prosecute and punish those who commit such offences. The Convention and the Protocol also contribute to the implementation of the United Nations Global Counter Terrorism Strategy adopted on 8 September 2006 by enhancing the global treaty regime on counterterrorism. By Resolutions A39-10, A41-4, Appendix C, A41-18, Appendix B and A41-19, the Assembly urges all States to ratify these two instruments. The United Nations Security Council (UNSC), in Resolution 2309 (2016), reaffirms its call on States to become party to these treaties. As of 1 October 2023, the Beijing Convention has 47 States Parties and the Beijing Protocol has 46 States Parties, including 3 APAC States for both treaties.

2.5 ***Protocol to Amend the Convention on Offences and Certain Other Acts Committed on Board Aircraft (Doc 10034) (Montréal, 2014)***: This Protocol addresses the issue of rising incidents of unruly and disruptive behaviour on board aircraft by significantly improving the ability of States to expand jurisdiction over relevant offences and acts to the State of landing and the State of the operator. In order to support application of the treaty provisions, Assembly Resolution A41-4, Appendix E and the ICAO *Manual on the Legal Aspects of Unruly and Disruptive Passengers* (Doc 10117) contain provisions and guidance on legislation covering acts and offences, as well as elements of an administrative sanctions regime, which will assist States in implementing the appropriate legal measures to prevent and deal with unruly and disruptive passenger incidents. By Resolutions A41-4, Appendix C and A41-18, Appendix B, the Assembly urges all States that have not done so to ratify this Protocol. By Resolution 2309 (2016), the UNSC reaffirms its call on States to become party to this instrument. Moreover, Action Item 57/59 of the 57th APAC DGCA Conference urges States/Administrations in the APAC regions to ratify this Protocol to remove any jurisdictional gaps and to implement a civil and administrative penalties regime as outlined in Doc 10117. As of 1 October 2023, this Protocol has 45 States Parties, including 3 APAC States.

2.6 More information on the above [list of six international air law treaties](#) can be found on the ICAO Treaty Collection Website. This list is not intended to be exhaustive and States may wish to consider ratifying other international air law instruments that they are not yet party to. A comprehensive list of international air law instruments is also available on the ICAO Treaty Collection Website at www.icao.int/treaty.

Ratification Process of International Air Law Treaties

2.7 The process of ratification of a treaty usually involves two phases. In many jurisdictions the first phase is the national procedure, where the State concerned must attend to its constitutional provisions by sending the text of the instrument it has signed through its legislature or other governmental authority responsible for approving ratification. Once the treaty has been approved for

ratification, the State has to proceed with an international procedure consisting of depositing an instrument of ratification/accession with the depositary.

2.8 In order to ratify or accede to a treaty, a State must deposit an original instrument of ratification or accession (i.e., bearing an original signature, not a digital/electronic signature of the Head of State, Head of Government or Minister for Foreign Affairs) in compliance with the relevant provisions of the treaty concerned. The Secretary General of ICAO follows the depositary practice of the United Nations. In accordance with the practice of the Secretary-General of the United Nations as depositary of multilateral treaties, the instrument of ratification/accession must include the following:

- i. Title, date and place of conclusion of the treaty concerned;
- ii. Full name and title of the person signing the instrument, i.e., the Head of State, Head of Government or Minister for Foreign Affairs or any other person acting in such a position for the time being or with full powers for that purpose issued by one of the above authorities;
- iii. An unambiguous expression of the intent of the Government, on behalf of the State, to consider itself bound by the treaty and to undertake faithfully to observe and implement its provisions;
- iv. Date and place where the instrument was issued; and
- v. Original signature of the Head of State, Head of Government or Minister for Foreign Affairs (the official seal only and/or a digital/electronic signature are not adequate) or any other person acting in such a position for the time being or with full powers for that purpose issued by one of the above authorities.

2.9 States may deposit an instrument of ratification or accession with ICAO by sending the original instrument by courier to the Secretary General or by scheduling a live deposit ceremony, where a State will present the original instrument in person. In either case, the State will be provided with a formal communication acknowledging the deposit. The date of receipt by ICAO of an instrument of ratification/accession is considered to be the date of deposit. Such date will subsequently be used for the determination of the entry into force of the treaty for the State concerned. For instance, some treaties provide that their entry into force could be 30 or 60 days after the date of deposit of an instrument of ratification/accession. An instrument of ratification may include declarations or they can be provided in a separate document – in such a case, they must also be signed by one of the three abovementioned authorities.

Resources Available for States to Assist Them in the Ratification of International Air law Instruments

2.10 The ICAO Treaty Collection Website (www.icao.int/treaty) provides resources for States to assist them with the ratification of international air law treaties. The Treaty Collection contains administrative packages providing guidelines for the ratification of, or accession to, international air law instruments in order to assist States in the ratification process. These administrative packages contain information on the historical background of the treaty, a summary of the main provisions of the treaty, and the main reasons and benefits for ratification. These packages also contain model instruments of ratification and accession.

2.11 The Treaty Collection Website also contains documents such as [lists of Parties](#) to all international air law instruments as well as [forms](#) indicating the current status of individual ICAO Member States with respect to international air law instruments. A [composite table](#) indicating the status of all ICAO Member States with respect to international air law treaties is also made available on the Website.

2.12 With a view to promoting the ratification of international air law instruments and to assist Member States in their implementation, the Organization facilitates the delivery of ICAO legal seminars and workshops, the ICAO International Air Law Course as well as other similar events, which include segments on ratification. Meetings of the Civil Aviation Legal Advisers Forum (CALAF) could

also include ratification of air law instruments in its agenda. In this connection, States of the APAC region are encouraged to make use of these events for the continuous training and development of their legal advisers and to consider hosting such events in their States and regions. Furthermore, enhancing the capacity and role of civil aviation legal advisers as highlighted in Assembly Resolution A41-4, Appendix G will assist States in ratification and implementation of air law treaties.

2.13 Moreover, in the margins of Assembly Sessions, the Organization hosts a Treaty Event which provides special facilities for Member States to deposit instruments of ratification to international air law treaties for which ICAO acts as depositary. ICAO's Legal Affairs and External Relations Bureau when requested, provides assistance to States encountering difficulties in the process of ratification of international air law instruments. It can be contacted by e-mail at **treaty@icao.int** or **officeleb@icao.int**.

Progress Towards Ratification

2.14 Directors General of Civil Aviation (DGCAs) can play an important role in promoting ratification of international air law treaties by acting as subject matter experts and advising on the importance of ratification before the competent authorities (government agencies) within their State, by coordinating with the competent authorities to follow the progress of ratification, and by facilitating consultations on ratification with industry and other stakeholders (e.g., the general public). Moreover, in order for ICAO to better assess the needs of States and regions with respect to ratification of international air law instruments, **Appendix B** to this working paper contains a tracking matrix that DGCAs are invited to use to periodically inform the Organization of their State's progress towards ratification of the six international air law treaties highlighted in this working paper, or any other international air law treaties. It is intended that the tracking matrix can be filled whenever a State is reaching an important milestone in the ratification process, such as when the ratification proposal is presented or receives executive and/or legislative approval, and when the ratifying legislation is published or gazetted, as applicable.

3. ACTION BY THE CONFERENCE

3.1 The Conference is invited to:

- a) Encourage those APAC States that have not already done so, to become parties to the international air law treaties highlighted in this working paper and to any other international air law treaties that they have not yet ratified;
- b) Encourage APAC States to make use of ICAO legal seminars and workshops, the Civil Aviation Legal Advisers Forum (CALAF), the ICAO International Air Law Course as well as other similar events for the continuous training and development of their legal advisers with regard to ratification and implementation of international air law instruments and to consider hosting from time to time such events in their States and regions; and
- c) Request APAC States to initially inform ICAO before 1 March 2024 of their progress towards the ratification of international air law treaties by using the tracking matrix set out in Appendix B to this working paper, as well as provide the name, title and email address of a focal point within their Administrations to coordinate on matters related to ratification.

APPENDIX A

**STATUS OF STATES IN THE APAC REGIONS WITH RESPECT
TO SELECTED INTERNATIONAL AIR LAW TREATIES**

(as of 1 October 2023)

	Article 50 (a) (2016) (86 Parties)	Article 56 (2016) (86 Parties)	Mtl Convention (1999) (139 Parties)	Beijing Convention (2010) (47 Parties)	Beijing Prot (2010) (46 Parties)	Mtl Prot (2014) (45 Parties)
Afghanistan						
Australia			X			X
Bangladesh	X	X	X			
Bhutan						
Brunei Darussalam			X			
Cambodia	X	X				
China			X	X		
Cook Islands			X			
Democratic People's Republic of Korea						
Fiji			X			
India			X		X	

Indonesia	X	X	X			
Japan			X			
Kiribati						
Lao People's Democratic Republic						
Malaysia	X	X	X			X
Maldives			X			
Marshall Islands						
Micronesia (Federated States of)						
Mongolia	X	X	X			
Myanmar				X	X	
Nauru						
Nepal			X			
New Zealand	X	X	X			
Pakistan	X	X	X			
Palau						
Papua New Guinea						

Philippines			X			
Republic of Korea	X	X	X			
Samoa						
Singapore	X	X	X	X	X	X
Solomon Islands						
Sri Lanka			X			
Thailand	X	X	X			
Timor-Leste						
Tonga			X			
Tuvalu						
Vanuatu			X			
Viet Nam	X	X	X			

APPENDIX B
RATIFICATION TRACKING MATRIX

[NAME OF THE MEMBER STATE]					
	TREATY PROPOSED BY DGCA TO COMPETENT AUTHORITY FOR RATIFICATION	TREATY SUBMITTED FOR APPROVAL TO LEGISLATURE OR OTHER COMPETENT AUTHORITY	AWAITING SUBMISSION OF THE INSTRUMENT OF RATIFICATION TO THE DEPOSITARY (E.G., ICAO)	TREATY NOT CONSIDERED FOR RATIFICATION	COMMENTS
[NAME OF TREATY]					
[NAME OF TREATY]					
[NAME OF TREATY]					
[...]					