



International Civil Aviation Organization

## WORKING PAPER

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### ASSEMBLY — 36TH SESSION

#### EXECUTIVE COMMITTEE

#### Agenda Item 23: Increasing the effectiveness of ICAO

#### PROPOSAL FOR A STUDY OF POLICY AND PROGRAMME WITH RESPECT TO EXAMINING THE INTERNATIONAL GOVERNANCE OF CIVIL AVIATION

(Presented by Canada, India and the United Kingdom)

#### EXECUTIVE SUMMARY

1) The current governance structures have served international civil aviation well for over sixty years. But the changed conditions of the 21<sup>st</sup> century have led to the agreement of strategic objectives for ICAO very different from those envisaged over 60 years ago. In order to ensure effective delivery of these objectives by the international community, therefore, these governance structures - which include the annexes, guidance material and potentially the Chicago Convention itself, including its legal and regulatory framework - should be examined to identify those areas which continue to be fit for the purpose for which they were agreed in 1944, and those which may need modernisation.

2) Resolution A4-3 (adopted in 1950) effectively prevents such a strategic review and prevents the Council from proposing amendments to the Convention unless they are deemed to be urgent. The above-mentioned States propose that Resolution A4-3 paragraph 7 be suspended by the attached draft resolution and that the Assembly request Council to invite national experts to study the governance framework of civil aviation without addressing any proposal for specific amendments at this early stage, and to report to the next regular session of the Assembly in 2010 on ways in which it could be improved to ensure more efficient and effective delivery of the critical emerging strategic needs of international civil aviation.

**Action:** The Assembly is requested to approve the attached resolution.

<i>Strategic Objectives:</i>	This action is intended to improve the legal framework of the work of the organisation and addresses all objectives.
<i>Financial implications:</i>	Meetings of national experts (approximately 20 participants) at ICAO/HQ: \$6000 CAD.
<i>References:</i>	Chicago Convention, Resolution A 4-3, Draft resolution attached.

## INTRODUCTION

### REVIEW OF THE GOVERNANCE FRAMEWORK OF CIVIL AVIATION

- 1.1. The Chicago Convention was drafted in geopolitical, economic and technological circumstances that significantly differ from today. Growing congestion, environmental challenges, violent criminal acts against civil aviation, or the misuse of civil aircraft for acts of terrorism could not be anticipated when the Convention was written. The ICAO strategic objectives for 2005-2010 represent an important consensus at the international level about the priorities for work over the next 5 years. Of these, safety and efficiency relate back to the Convention itself, but environment and security do not and rely on annexes and resolutions to underpin their work.
- 1.2. One reason for this is that during its period in force the Chicago Convention has undergone a series of only relatively minor amendments:
  - 1.2.1. “Institutional” amendments: Article 50(a) dealing with the composition of the ICAO Council; Article 45 concerning the seat of the ICAO Headquarters and the majority required for its move; Articles 48(a), 48(e) and 61 changing the annual cycle of ICAO Assemblies and budget into a triennial cycle; Article 56 increasing the membership in the Air Navigation Commission; the Final Clause of the Convention providing a constitutional basis of the Russian text of the Convention; Article 93*bis* for an expulsion of a State or suspension of membership rights.
  - 1.2.2. “Substantive” amendments: Article 83*bis* enabling transfer of certain functions with respect to an aircraft from the State of Registry to the State of the actual operator of the aircraft; Article 3*bis* restating the rule of customary international law concerning the prohibition of the use of weapons against civil aircraft in flight.
- 1.3 Thus, few items of fundamental importance have been amended in the Convention over the last seven decades, partly due to inherent limitations imposed by the Assembly on the Council in 1950 (see Resolution A4-3 paragraph 7). This contrasts sharply with the very rapid and spectacular changes in the aviation technology, economy and geopolitical conditions over the same period. The organisation has had to resort to temporary arrangements to deal with these changed conditions, which has led to a situation where some of the most significant issues facing civil aviation today, including security and the environment, are not mentioned in the main Convention.
- 1.4 This situation is in need of review, with the aim of more closely aligning the governance framework and the strategic objectives. As a starting point it is essential that work be done to examine the Convention from a fresh perspective. It can be expected that much of the Convention will be found to be robust and fit for the purpose for which it was drafted. However, if it appears that this is not the case, it will be important that the Assembly should be given the opportunity to consider the case for change.

## **ALIGNING THE GOVERNANCE FRAMEWORK WITH THE STRATEGIC PRIORITIES**

- 1.5 The governance framework has developed on an ad-hoc basis over the years as priorities and issues have changed. The ICAO strategic objectives for 2005-2010 represent an important consensus at the international level about the priorities for work over the next 5 years. While some of these – such as safety and efficiency – relate back to the Convention itself, others such as environment and security do not, and rely on temporary arrangements to underpin their work.
- 1.6 The above mentioned states believe that it is important to review these arrangements and to consider possible ways of more closely aligning the governance framework and the strategic objectives. This way, we can be sure that ICAO gives the strongest legal foundation and strategic direction to all six of the objectives we have agreed as critical to the future success of international civil aviation.

## **PROCEDURES FOR AMENDMENT AND REVIEW**

- 1.7 Resolution A4-3 reflected the specific situation of 1950 when the Assembly sought to stabilise the Convention. Paragraph 7 limits the ability of Council to initiate or consider modifications to the Convention. (See attached Resolution A4-3)
- 1.8 Resolution A4-3 paragraph 4 also directs that “*Article 94 of the Convention should be maintained in its present form*” thus preserving the outdated provisions of the League of Nations process requiring concealed unanimity, rather than the process for amendment subsequently adopted by the United Nations and the UN specialised bodies. (See attached Resolution A4-3).
- 1.9 The consequence of Article 94 is that an amendment ratified by two-thirds of all ICAO member States (currently 127 States) does not apply to all States but only with respect to those who have ratified it. This provision is not in line with UN general practice, and leads to the situation whereby the Chicago Convention is fragmented into different provisions applicable to some States but not to others. We believe it is time to examine whether this situation remains appropriate.

## **A WAY FORWARD**

- 2.1 In order to address these concerns we propose that a Study Group of State experts should be created to prepare – in a thorough dialogue with Contracting States – conclusions on the need and extent of an updating of the governance framework and make proposals accordingly.
- 2.2 The task of the Study Group of State experts should be taken in two parts:
- (a) an examination of the major issues facing international civil aviation today, and a consideration of whether the current governance framework (including the Convention, annexes and associated processes) is sufficient for the purpose of addressing these;
  - (b) an examination of ways in which the institutional operation of ICAO and the Convention could be improved, including how it could be amended to provide for full application of all amendments in a timely manner, consistent with Article 108 of the UN Charter and the practice of other specialized agencies.

2.3 It is important to ensure that ICAO maintains its reputation as a forward-thinking international body, capable of delivering solutions to today's problems. To do this, we believe the international community needs to show leadership and commitment to a process of review and decision. This would then allow the next triennial Assembly in 2010 to consider what, if any, changes it would like to make. Decisions on further steps would emerge from the sovereign decision of the Assembly in 2010.

## **REVIEW OF THE INTERNATIONAL GOVERNANCE OF CIVIL AVIATION**

*The Assembly,*

*Recognizing* that international civil aviation has grown and the conditions under which it operates have evolved very significantly since the Chicago Convention was adopted in 1944;

*Recognizing* also that it would be beneficial for an analysis to study whether the governance framework for international civil aviation, including the Chicago Convention and its amendments as they have been applied and interpreted through customary law and practice should be updated, and if so, how;

*Considering* that any proposal for amendment of the Convention should be based on a thorough study;

*Noting* that Assembly Resolution A4-3, paragraph 7, should be suspended for the limited purpose of enabling the Council to undertake the study;

*Therefore,*

*Requests* the Council to establish a Study Group of State experts to undertake a study of the present structure of the international governance framework for civil aviation, including the Chicago Convention and the customary law and practice surrounding it. This group should focus its study on the following points:

- the scope of the Convention, namely the legal basis for the competencies of the organisation, including the means to strengthen them in the fields where the organisation has developed its action only in a de facto and customary way,
- the conditions of adoption of amendments to the Convention and the possible modification of Article 94 in order to put the convention more in line with the doctrine and practice of the United Nations and to introduce a greater consistency in the commitments of contracting States, and
- a general review of the regime of the annexes and the status of the standards.

*Requests* Council to provide the necessary resources to establish and support the Study Group of State experts;

*Requests* the Council to transmit the report of the Study Group of State experts to the next regular session of the Assembly in 2010;

*Declares* that this Resolution suspends paragraph 7 of Resolution A4-.3 only to the extent necessary to allow the work of this Study group.