



WORKING PAPER

ASSEMBLY — 38TH SESSION

LEGAL COMMISSION

Agenda Item 46: Acts or offences of concern to the international aviation community and not covered by existing air law instruments

**PROPOSAL FOR IMPLEMENTATION OF SANCTION CRITERIA INTO
NATIONAL CRIMINAL LEGISLATION FOR THE ACTS OF UNLAWFUL INTERFERENCE
DESCRIBED IN THE BEIJING CONVENTION AND PROTOCOL**

(Presented by the Dominican Republic)

EXECUTIVE SUMMARY

The security measures against acts of unlawful interference described in Annex 17 – *Security*, the provisions related to aviation security contained in Annex 9 – *Facilitation*, and the related ICAO guidance material cannot be fully effective if, when faced with the commission of such acts, it is not possible to punish the offender by imposing severe penalties in accordance with the guidelines contained in, or referred to, in the main international legal instruments dealing with criminal matters. These instruments include: The *Convention on Offences and Certain Other Acts Committed on Board Aircraft* (Tokyo, 1963), the *Convention for the Suppression of Unlawful Seizure of Aircraft* (The Hague, 1970), the *Convention on the Marking of Plastic Explosives for the Purpose of Detection* (Montreal, 1991), the *Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation* (Beijing, 2010), and the *Protocol Supplementary to the Convention for the Suppression of Unlawful Seizure of Aircraft* (Beijing, 2010).

This paper presents a proposal to be considered by the ICAO Member States to make progress on the establishment of certain acts as a criminal offence, with the accompanying sanctions, under their state legislation, before ratifying or acceding to the Beijing Convention and Protocol.

Action: The Assembly is invited to:

- Analyze the contents of this working paper;
- Urge Member States to weigh up the viability of including the criminal law sanctions contained in the Beijing Convention and Protocol in their domestic legislation; and
- Urge Member States to sign and ratify the Beijing Convention and the Beijing Protocol.

<i>Strategic Objectives:</i>	This working paper relates to Strategic Objective B – <i>Aviation Security</i> ; and to Supporting Implementation Strategies – Programme Support – Legal Services and External Relations.
<i>Financial implications:</i>	No additional resources required.
<i>References:</i>	Doc 9958, Assembly Resolutions in Force (as of 8 October 2010) (A33-1, A37-17 and A37-23)

1. INTRODUCTION

1.1 In Resolution A33-1, the Assembly directs the Council and the Secretary General to act urgently to address the new and emerging threats to civil aviation, and in particular, to review the adequacy of the existing ICAO aviation security conventions. In fulfilment of this resolution, this subject appears as item number 2 in the Legal Committee's general Programme of Work: "Acts or offences of concern to the international aviation community and not covered by existing air law instruments". As a result of the extensive work deployed in this regard, it was possible to prepare draft amendments to the *Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation* (Montreal Convention) and the *Convention for the Suppression of Unlawful Seizure of Aircraft* (The Hague Convention), which were discussed and agreed upon at the Beijing Diplomatic Conference in September 2010. The final result thereof remains enshrined in the Beijing Convention and Protocol.

2. ANALYSIS

2.1 These two new legal instruments, together with the Declaration on Aviation Security, which was unanimously passed by the ICAO Assembly during its 37th Session in 2010, marked the end of an extraordinarily positive year for the Organization as regards its role in safeguarding international civil aviation against new and emerging acts of unlawful interference. These acts were unleashed as of 11 September 2001 with the terrorist attacks against the World Trade Center in New York using aircraft and then the attempted sabotage of Northwest Airlines flight 253 on 25 December 2009, when a passenger tried to detonate an explosive device on a flight from Amsterdam to Detroit, amongst other acts.

2.2 Establishing as a criminal offence those criminal acts committed or attempted using civil aircraft as weapons for the purpose of causing death, injury, or damage; the transport or use of biological, chemical or nuclear weapons or related material for these purposes; assisting or collaborating with an offender to evade investigation, prosecution or punishment; the establishment of jurisdiction and the prosecution of the accused in cases where he/she is not extradited; the criminal liability of the intellectual authors or sponsors and the exclusion of the military are amongst the important categories and principles, which establish these instruments as an integral legal framework for international civil aviation.

2.3 Notwithstanding the novel nature of these new forms of criminalization of acts inserted into the aforementioned instruments, this conceptualization of the offence, principles and rules generally finds its corollary in earlier international instruments against terrorism sponsored by the United Nations such as: the 1988 Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation and its SUA Protocol from 2005; the 1988 Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf; the 1998 International Convention for the Suppression of Terrorist Bombings; the 1999 International Convention for the Suppression of the Financing of Terrorism and the 2005 International Convention for the Suppression of Acts of Nuclear Terrorism.

3. SUMMARY OF IMPLEMENTATION BY THE DOMINICAN REPUBLIC

3.1 In keeping with the commitments undertaken by the international community within the United Nations through the ratification of, or accession to, the main international legal instruments related to the suppression of acts of terrorism in its various forms and other transnational criminal activities, the Dominican Republic has criminalized the various categories and institutes contained in these instruments as grave offences, with the accompanying sanctions, under its national criminal legislation. Thus, Law No. 267-08 on Terrorism was enacted in 2008, which entailed the inclusion of innovative categories and procedures, such as establishing the precedence of this law over the national criminal code.

3.2 The Dominican Republic have ratified both instruments, namely, the Beijing Convention and Protocol. Moreover, prior to the ratification of these instruments in November 2012 (Appendix to this working paper), and taking advantage of the debate underway in the national legislative chambers on a civil aviation security bill, the necessary consensus was reached amongst the aviation sector and industry representatives to manage to insert the main categories and institutes contained in the aforementioned instruments, thus resulting in the consequent enactment of Law No. 188-11 on Airport and Civil Aviation Security in July 2011.

4. CONCLUSION

4.1 Given that as things stood in August 2013, almost 3 years after the opening for signature, ratification or accession to these international instruments, we can see that the Beijing Convention had been signed by 28 States, with five ratifications and three accessions; and the Beijing Protocol had been signed by 30 States, with five ratifications and two accessions. This implies that if we continue at this rate of ratification, then we will have to wait several years before reaching the twenty-second instrument of ratification, acceptance, approval or accession, which is required for its entry into force. Therefore, ICAO Member States that are in a position to do so should include the main legal categories contained in these instruments in their national legislation and proceed accordingly.

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APPENDIX

**PROPOSAL FOR IMPLEMENTATION OF SANCTION CRITERIA INTO
NATIONAL CRIMINAL LEGISLATION FOR THE ACTS OF UNLAWFUL INTERFERENCE
DESCRIBED IN THE BEIJING CONVENTION AND PROTOCOL**

Daniilo Medina
Presidente de la República Dominicana

A todos los que las presentes vieren, Sabed!

Por Cuanto: La República Dominicana suscribió el Convenio para la Represión de Actos Ilícitos Relacionados con la Aviación Civil Internacional, hecho en Beijing el 10 de septiembre de 2010.

Por Cuanto: El Congreso Nacional aprobó el texto del Convenio para la Represión de Actos Ilícitos Relacionados con la Aviación Civil Internacional, del 10 de septiembre de 2010, mediante Resolución No. 278-12, dada en la Sala de Sesiones del Senado en fecha 25 de julio de 2012, en la Sala de Sesiones de la Cámara de Diputados en fecha 24 de octubre de 2012, y Promulgada por el Poder Ejecutivo en fecha 19 de noviembre de 2012.

Por Tanto: Apruebo la Ratificación por la República Dominicana del Convenio para la Represión de Actos Ilícitos Relacionados con la Aviación Civil Internacional, del 10 de septiembre de 2010,

Expido y firmo el presente Instrumento de Ratificación en Santo Domingo de Guzmán, Distrito Nacional, Capital de la República Dominicana, Sellado con el Gran Sello de la Nación, a los veintitrés (23) días del mes de noviembre del año dos mil doce (2012), año 169 de la Independencia y 150 de la Restauración.



Danilo Medina
Presidente de la República Dominicana

A todos los que las presentes vieren, Sabed!

Por Cuanto: La República Dominicana suscribió el Protocolo Complementario del Convenio para la Represión del Apoderamiento Ilícito de Aeronaves de 1970, hecho en Beijing el 10 de septiembre de 2010.

Por Cuanto: El Congreso Nacional aprobó el Texto del Protocolo Complementario del Convenio para la Represión del Apoderamiento Ilícito de Aeronaves de 1970, hecho en Beijing el 10 de septiembre de 2010, mediante Resolución No. 278-12, dada en la Sala de Sesiones del Senado en fecha 25 de julio de 2012, en la Sala de Sesiones de la Cámara de Diputados en fecha 24 de octubre de 2012, y Promulgada por el Poder Ejecutivo en fecha 19 de noviembre de 2012.

Por Tanto: Apruebo la Ratificación por la República Dominicana del Protocolo Complementario del Convenio para la Represión del Apoderamiento Ilícito de Aeronaves de 1970, hecho en Beijing el 10 de septiembre de 2010,

Expidió y firmo el presente Instrumento de Ratificación en Santo Domingo de Guzmán, Distrito Nacional, Capital de la República Dominicana, Sellado con el Gran Sello de la Nación, a los veintitrés (23) días del mes de noviembre del año dos mil doce (2012), año 169 de la Independencia y 150 de la Restauración.

