



A38-WP/380
LE/11
27/9/13

ASSEMBLY — 38TH SESSION
LEGAL COMMISSION

DRAFT TEXT FOR THE REPORT
ON
AGENDA ITEMS 45 AND 46

The attached material on Agenda Items 45 and 46 is submitted for consideration by the Legal Commission.

Agenda Item 45: Annual Reports of the Council to the Assembly for 2010, 2011 and 2012

45.1 The Commission **noted** the chapters of the Annual Reports of the Council to the Assembly for the years 2010 (Doc 9952), 2011 (Doc 9975) and 2012 (Doc 10001) as well as the Supplement for the first half of the year 2013 (Doc 10001 Supplement) which had been referred to it by the Plenary.

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

46.1 The Commission considered this item on the basis of A38-WP/49, presented by the Council, A38-WP/109, presented by the United States and the Air Crash Victims Families Group (ACVFG), and A38-WP/154 presented by the Dominican Republic. A38-WP/49 provided a progress report on the work relating to unruly passengers and on the implementation of the *Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation* (the Beijing Convention) and the *Protocol Supplementary to the Convention for the Suppression of Unlawful Seizure of Aircraft* (the Beijing Protocol). With respect to the work relating to unruly passengers, the Legal Committee had presented a draft text for the protocol to amend the *Convention on Offences and Certain Other Acts Committed on Board Aircraft* (the Tokyo Convention). The text was considered sufficiently mature and ready for transmittal to the Council as a final draft for presentation to States and, ultimately, to a Diplomatic Conference. Based on the results of the work of the Legal Committee, the Council decided to convene a Diplomatic Conference to amend the Tokyo Convention in Montréal from 26 March to 4 April 2014.

46.2 All delegations who took the floor underlined the importance of modernizing the Tokyo Convention. As one of the most successful conventions which have adopted under the auspices of ICAO, the Tokyo Convention had stood the test of time, but changes had occurred during the last 50 years. In particular, the vast expansion of air transport and the corresponding increase of unruly incidents on board, had given rise to the need to update this instrument. These delegations commended the initiative of ICAO in this respect, with particular reference to the work of the Rapporteur, the Chairperson of the Sub-Committee, and the Chairman of the Legal Committee. It was pointed out that the Assembly should encourage as many States as possible to participate in the Diplomatic Conference. The higher number of State participation, the wider the interest of the international community which would be represented.

46.3 One delegation, supported by several others, referred to certain issues upon which consensus had yet to be built, particularly the status and functions of In-flight Security Officers. It was recalled that the Council requested the Air Navigation Bureau of the Secretariat to provide a view on this matter. This delegation urged that such a view should be communicated to States well in advance of the Diplomatic Conference, in order to facilitate States being well-informed and suitably prepared. In this connection, one delegation mentioned that its State was in the process of organizing a pre-conference seminar for African States with a view to disseminating the relevant information. Another delegation also mentioned a plan to host a seminar in the Asia-Pacific region.

46.4 One delegation elaborated the key issues which had been discussed by the Legal Committee. The importance for the establishment of the jurisdiction of the State of landing and the State of the operator was emphasized. The Tokyo Convention, while establishing the jurisdiction of the State of registration, does not contain any provision to address this issue. Other delegations echoed this statement by underlining the need to prosecute unruly behaviour wherever it takes place. With respect to the issue of In-flight Security Officers, their existence was a reality in today's life but not every Member State of ICAO have these officers. Accordingly, it was suggested that those States who have the practice of deploying In-flight Security Officers would provide as much information as possible to facilitate the discussion of this topic in the Diplomatic Conference. It was hoped that the Diplomatic Conference could achieve consensus on this matter and produce an instrument which is widely acceptable.

46.5 The Commission unanimously recommend that the Plenary call upon Member States to participate in the Diplomatic Conference to amend the Tokyo Convention.

46.6 With respect to the implementation of the Beijing Convention and the Beijing Protocol, the Secretariat reported that as of 25 September 2013, the Beijing Convention had been signed by 29 States, ratified or acceded to by 8 States, and the Beijing Protocol had been signed by 31 States, ratified or acceded by 7 States. WP/109 reiterated that these two instruments broaden and strengthen the global civil aviation counter-terrorism framework and therefore encouraged all Member States to sign and ratify these instruments. WP/154 further encouraged Member States to include in their respective criminal laws or legislation sanctions against the offences listed in the two instruments.

46.7 Several delegations mentioned that their respective States had not only participated in the Diplomatic Conference in Beijing, but also had taken prompt action to ratify the two instruments. More delegations informed the Commission that their respective States had started the ratification process and would sign and ratify the instruments in the near future. One delegation mentioned that the two instruments respectively require 22 ratifications to bring them into force, which was considered as a high threshold. Accordingly, more efforts were needed to reach this threshold. Another delegation, supported by others, emphasized the need for ICAO to organize workshops and seminars to promote these two instruments. It was suggested that the matter of ratification be mentioned in every ICAO conference.

46.8 The Chairperson summarized that the Legal Commission had the full support from the delegations to promote the Beijing Convention and the Beijing Protocol. The Commission then **agreed** to recommend to the Plenary the adoption of the following resolution:

Resolution 46/1: Promotion of the Beijing Convention and the Beijing Protocol of 2010

Recalling its Resolution A37-23 entitled: *Promotion of the Beijing Convention and the Beijing Protocol of 2010*;

Recalling further its Resolution A37-22, Appendix C, relating to the ratification of instruments which have been developed and adopted under the auspices of the Organization; and

Recognizing the importance of broadening and strengthening the global aviation security regime to meet new and emerging threats;

The Assembly:

1. *Urges* all States to support and encourage the universal adoption of the *Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation* (Beijing Convention of 2010) and the *Protocol Supplementary to the Convention for the Suppression of Unlawful Seizure of Aircraft* (Beijing Protocol of 2010);
2. *Urges* all States to sign and ratify the Beijing Convention and Beijing Protocol of 2010 as soon as possible;
3. *Directs* the Secretary General to provide assistance, as appropriate, with the ratification process if so requested by a State; and
4. *Declares* that this Resolution supersedes Resolution A37-23.