



Agenda Item 4: Aviation Safety Matters
**4.1 Universal Safety Oversight Audit Programme (USOAP) –
Continuous Monitoring Approach (CMA)**

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

(Presented by the Secretariat)

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| SUMMARY | |
| This Working Paper presents the need to ratify Art. 3 <i>bis</i> of the Convention on International Civil Aviation as a result of ICAO Universal Safety Oversight Audit Programme Continuous Monitoring Approach (USOAP-CMA) | |
| References: | |
| <ul style="list-style-type: none">• Doc 7300 - <i>Convention on International Civil Aviation.</i>• Doc 9958 - <i>Assembly Resolutions in Force (as of 8 October 2010).</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> | |
| Strategic Objectives | <i>This working paper is related to Strategic Objectives: A. Safety – Enhance global civil aviation safety B. Security – Enhance global civil aviation security C. Environmental Protection and Sustainable Development of Air Transport</i> |

1. Introduction

1.1 Each State establishes the scope of their own Law and establishes methodologies and supplementary procedures for the application of the provisions contained in the Law and Aviation regulations. In many cases, laws are approved by the National Congress or Parliament through mechanisms that are established by the State. The Civil Aviation Authorities (CAA) can propose amendments to the Law according to the administrative competencies given to them.

2. Discussion

2.1 Within the USOAP/CMA framework, the Critical Element (CE) 1 evaluates the basic aviation legislation, under the following premise:

“The provision of a comprehensive and effective aviation law consistent with the environment and complexity of the State’s aviation activity and compliant with the requirements contained in the Convention on International Civil Aviation”

2.2 The activities related to international civil aviation between the States should be in accordance with the established international treaties and conventions undersigned and ratified by the State. The Chicago Convention is the framework that globally serves as the base for the acknowledgement of functions, obligations and activities of a State in particular that take place in the jurisdiction of another State. In some cases, several States are party in the signature of multilateral agreements.

2.3 One of the subjects that impact the relations and agreements between signatory States is the ratification of the Protocol regarding Article 3 *bis* of the Chicago Convention which came into effect on 1 October 1998. The information of the 143 States that have ratified this Protocol can be found in **Appendix A** to this Working Paper.

2.4 As a result of the USOAP-CMA activities, it has been noted that Bahamas, Dominican Republic, Haiti and United States have not ratified Article 3 *bis*, which impacts the percentage of Lack of Effective Implementation (LEI).

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

2.6 **Appendix B** contains the Administrative package for Ratification of the Protocol on Article 3 *bis*, with the Model Instrument of Ratification on behalf of the State.

2.7 Likewise, in accordance with Article 83 of the Convention on International Civil Aviation, Contracting States should also register the acquired agreements with other States, yet, this requirement is not always complied with.

3. Suggested Action

3.1 The Meeting is invited to:

- a) take note of the information in this Working Paper;
- b) promote States, that have not yet done so, the ratification of Article 3*bis* of the Convention on International Civil Aviation;

- c) provide ICAO relevant information regarding the agreements with other States;
- d) notify the ICAO NACC Regional Office of assistance required for the compliance of the Convention on International Civil Aviation; and
- e) recommend other actions as deemed necessary.

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

ARTICLE 3 bis, SIGNED AT MONTREAL ON 10 MAY 1984

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|--------------------------|--|
| 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 |

Article 3 bis
10 May 1984

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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.

APPENDIX B

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

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**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