



AFRICAN CIVIL AVIATION COMMISSION
30th AFCAC PLENARY SESSION
(LIVINGSTONE, ZAMBIA, 4 – 5 DECEMBER 2018)

Agenda Item 12: Status of Signature and Ratification of AFCAC Constitution and the Amending Instrument.

REQUEST FOR SIGNATURE AND RATIFICATION OF PRIORITISED INTERNATIONAL AIR LAW INSTRUMENTS

(Presented by the Secretariat)

SUMMARY

This Paper presents information on the status of signature and ratification of the certain prioritised international Air Law Instruments which will enhance aviation safety, security and regularity of air transport on the continent, as well as guarantee the number of seats currently occupied by African states at the Council of ICAO and the Air Navigation Commission.

The Plenary is invited to:

- a) Note the contents of this Working Paper.
- b) Urge Member States to sensitize their relevant Authorities on these matters.
- c) Urge Member States to expedite the signing and ratification of the instruments in line with the ICAO Assembly Resolutions
- d) Seek assistance from ICAO and or AFCAC Secretariat where necessary.

1. INTRODUCTION

The following instruments prioritized for ratification are of paramount importance to the development of the African Civil Aviation, and by ratifying them, African States would enhance safety, security and regularity of the air transport as well as contribute to the integration of the continent through aviation. It will also enhance participation of African States on the Council of ICAO and the Air Navigation Commission.

2. DISCUSSION

a) FIFTH Amendment to Articles 50 (a) and Third amendment to Article 56

In ICAO State Letters LE 3/1.2, LE 3/1.21-17/2 dated 20 January 2017, the Secretary General of ICAO drew particular attention of Governments of Contracting States to implement as necessary the Assembly Resolutions A39-5, and A32-7, in which Contracting States have been urged to most urgently ratify the two Protocols amending the Convention on the International Civil Aviation, respectively.

The Fifth Amendment to Article 50 (a) of the *Convention on International Civil Aviation* provides for an increase in the size of the Council from thirty-six members to forty; the Protocol relating to an amendment of Article 56 of the Convention also calls for an increase in the membership of the Air Navigation Commission from nineteen (19) to twenty-one (21).

The original Convention called for a Council composed of twenty-one (21) members. This was subsequently amended, in 1961, to provide for twenty-seven (27) members, in 1971, for thirty (30) members, in 1974, for thirty-three members (33), and in 1990, for thirty-six (36) members.

The Third amendment to Article 56 calls for an increase in the membership of the Air Navigation Commission from nineteen members to twenty-one (21) members. The original Convention called for an Air Navigation Commission composed of twelve (12) members. This was subsequently amended, in 1971, to provide for fifteen (15) members, and in 1989, for nineteen (19) members.

Main reasons for ratification of Article 50 (a):

In view of the increase in the membership of the International Civil Aviation Organization (ICAO) and the expansion and increasing importance of international air transport for the national economies in many countries, an enlarged membership of the Council ensures a better balance by means of an increased representation of Contracting States.

Main reason for ratification of Article 56

In view of the increase in the membership of the International Civil Aviation Organization (ICAO), an enlarged membership of the Air Navigation Commission ensures that the Commission can draw on the expertise and experience from diverse operational skills and knowledge from the Contracting States.

With regard to the African region, only three (3) Contracting States have so far signed the two amendments.

b) *Montreal Convention of 1999*

Furthermore by the ICAO State letter LE 3/38.1.17/25 dated 2 March 2017, the Secretary General called on Contracting States to implement Assembly Resolution A 39-9 by ratifying the Montreal Convention of 1999, if not yet done.

In its Resolution A38-20, the ICAO Assembly urged all States to support and encourage the universal adoption of the Montreal Convention of 1999, and urged all States that have not done so to become Parties to the Instrument as soon as possible.

It is recalled that the Instrument, which came into force in November 2003, is envisaged as a consolidated, uniform, fair and effective regime aimed to replace the patchwork of different instruments that have been developed since the Warsaw Convention of 1929. As of 11 September 2018, the Montreal Convention has been ratified by thirty-four (34) African States.

Status list is attached hereto (ANNEXE WP/08/B) .

c) *Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation (Beijing Convention) and the Protocol Supplementary to the Convention for the Suppression of Unlawful Seizure of Aircraft (Beijing Protocol) , both done at Beijing on 10 September 2010.*

By another ICAO State letters LE 3/44, LE 3/45-17/26 dated 2 March 2017 the Secretary General also called on Contracting States to implement Assembly Resolution A39-10 by ratifying the Beijing Convention and the Beijing Protocol.

It is recalled that these instruments are envisaged as broadening and strengthening the global aviation security regime to address new and emerging threats.

In its Resolution A38-19, the ICAO Assembly urged all States to support and encourage the Universal adoption of the Beijing Convention and the Beijing Protocol, and to sign and ratify them as soon as possible.

d) Protocol to Amend the Convention on Offences and Certain Other Acts Committed on Board Aircraft, done at Montréal on 4 April 2014

The Montréal Protocol amends the Convention on Offences and Certain Other Acts Committed on Board Aircraft, done in Tokyo on 14 September 1963 (Tokyo Convention, 1963). The Protocol expands the grounds of jurisdiction by recognizing, under certain conditions, the competence of the State of landing and the State of the operator to exercise jurisdiction over offences and acts on board aircraft. The establishment of such jurisdiction over offences is mandatory if the criteria set out in the Protocol are met.

By expanding the scope of jurisdiction on a mandatory basis, it will strengthen the capacity of States to curb the escalation of the severity and frequency of unruly behavior on board aircraft.

The Protocol extends legal recognition and certain protections to in-flight security officers. It also contains provisions addressing such issues as coordination among States, due process and fair treatment, and the right to seek recovery under national law.

e) The Convention on International Interests in Mobile Equipment and the Protocol to the convention on Matters Specific to Aircraft Equipment – Cape Town, November 2001 (the Cape Town Instruments)

The main thrust of the Instruments is to provide very easy and expeditious means for a lessor or mortgagor of an aircraft or object realizing his security in the event of default by the lessee or mortgagee. By means of this Convention/Protocol, the aircraft equipment can itself be used as security for the finance of its acquisition. The Instruments present the prospects of immense reduction in the financing costs of aircraft and when it is domesticated would prove invaluable for the purpose of fleet renewal by African Airlines.

An International Registry under the auspices of ICAO has been established based in Dublin Ireland. The Registry is electronic based, real time 24 hours a day and it keeps a register, which prioritizes interests. Any country may have its national entry point.

3. CONCLUSION

It is observed that more involvement of national Experts is needed in order to sensitize their respective concerned authorities on the signing and ratification of above-discussed International Air Law Instruments. Therefore, it is recommended that the Experts of AFCAC Member States here take specific action in explaining to their authorities the value and benefits of ratification of the above and other International Air Law Instruments with a view to ensuring their early ratifications.

The status of ratification of the International air law instruments by African States is attached to this Working Paper as Attachment (**ANNEXE WP/08/C**).

4. ACTION REQUIRED BY PLENARY

The Plenary is invited to:

- a) Note the information provided above;
- b) Urge AFCAC Member States to sign, ratify/accede, and domesticate the above-discussed International Air Law Instruments into their national Laws.



ATTACHMENTS WP/08/A

DRAFT RESOLUTION

The Plenary,

Takes Note of the Report on the status of ratification by the African States' Party to the Convention on the International Civil Aviation of the following prioritized International Air Law Instruments:

- a) Protocols Amending Articles 50 (a) and 56 of The *Convention on International Civil Aviation*, signed at Montréal on 6 October 2016
- b) *Convention for the Unification of Certain Rules for International Carriage by Air, done at Montréal on 28 May 1999* (Montréal Convention of 1999)
- c) *Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation* (Beijing Convention) and *Protocol Supplementary to the Convention for the Suppression of Unlawful Seizure of Aircraft* (Beijing Protocol)
- d) *Protocol to Amend the Convention on Offences and Certain other Acts Committed on Board Aircraft done at Montreal on 4 April 2014* (Montreal Protocol)
- e) *The Convention on International Interests in Mobile Equipment and the Protocol to the convention on Matters Specific to Aircraft Equipment – Cape Town, November 2001* (the Cape Town Instruments)

Acknowledges that it is highly desirable that the afore-mentioned Conventions and Protocols when ratified by AFCAC Member States will enhance safety, security, regularity of air transport on the continent, as well as the participation of African States in the work of the Council of ICAO and the Air Navigation Commission,

Urges AFCAC Member States to urgently ratify/accede to the aforementioned Conventions and Protocols in compliance with the relevant ICAO Assembly Resolutions and domesticate same in their national Legislation;

Recommends Member States to seek assistance from ICAO and AFCAC Secretariat as necessary;

Instructs the AFCAC Secretariat to continue to sensitize Member States on the need to ratify/accede to the above Conventions and Protocols as well as all the other ICAO Conventions and Protocols.

**STATUS OF AFRICAN STATES WITH REGARD
TO CERTAIN INTERNATIONAL AIR LAW INSTRUMENTS**
(as at 11 September 2018)

	Montreal Convention 1999 (132 Parties)	Cape Town Convention 2001 (74 Parties)	Aircraft Protocol 2001 (74 Parties)	Beijing Convention 2010 (26 Parties)	Beijing Protocol 2010 (27 Parties)	Montréal Protocol 2014 ¹ (14 Parties)	Protocols 50(a) and 56 2016 ² (24 Parties)
Algeria							
Angola		X	X	X			
Benin	X			X	X		
Botswana	X						
Burkina Faso	X	X	X				
Burundi							
Cabo Verde	X	X	X				
Cameroon	X	X	X				
Central African Republic							
Chad	X						
Comoros							
Congo	X	X	X		X	X	X
Côte d'Ivoire	X	X	X	X	X	X	
Democratic Republic of the Congo	X	X	X				
Djibouti							
Egypt	X	X	X			X	X
Equatorial	X						

	Montreal Convention 1999 (132 Parties)	Cape Town Convention 2001 (74 Parties)	Aircraft Protocol 2001 (74 Parties)	Beijing Convention 2010 (26 Parties)	Beijing Protocol 2010 (27 Parties)	Montréal Protocol 2014 ¹ (14 Parties)	Protocols 50(a) and 56 2016 ² (24 Parties)
Guinea							
Eritrea							
Eswatini	X	X	X	X	X		
Ethiopia	X	X	X				
Gabon	X	X	X			X	
Gambia	X				X		
Ghana	X			X	X	X	
Guinea							
Guinea-Bissau							
Kenya	X	X	X				
Lesotho							
Liberia							
Libya							
Madagascar	X	X	X				
Malawi		X	X				
Mali	X			X	X		
Mauritania							
Mauritius	X						
Morocco	X						
Mozambique	X	X	X	X	X	X	X
Namibia	X	X	X				
Niger	X						
Nigeria	X	X	X				
Rwanda	X	X	X				

	Montreal Convention 1999 (132 Parties)	Cape Town Convention 2001 (74 Parties)	Aircraft Protocol 2001 (74 Parties)	Beijing Convention 2010 (26 Parties)	Beijing Protocol 2010 (27 Parties)	Montréal Protocol 2014 ¹ (14 Parties)	Protocols 50(a) and 56 2016 ² (24 Parties)
Sao Tome and Principe							
Senegal	X	X	X			X	
Seychelles	X	-- ³					
Sierra Leone	X	X	X	X	X		
Somalia							
South Africa	X	X	X				
South Sudan							
Sudan	X						
Togo	X	X	X				
Tunisia							
Uganda	X			X	X	X	
United Republic of Tanzania	X	X	X				
Zambia							
Zimbabwe		-- ³					
Total	34	23	23	9	10	8	3

¹ Not in force. To enter into force, the Montréal Protocol 2014 requires 22 ratifications.

² Both protocols not in force. To enter into force, the 2016 Protocols amending Articles 50 (a) and 56 of the Chicago Convention each require 128 ratifications.

³ The Convention shall enter into force for this State as applied to aircraft equipment when it accedes to the Aircraft Protocol.