

WINTER 2024

# ECACNEWS

European Civil Aviation Conference Magazine

#82

The legal landscape

Legal perspective  
on aviation issues

International legal affairs

ECAC Spotlight  
State Assistance  
to Air Accident Victims  
Task Group

## NAVIGATING THE SKIES: emerging legal issues in the aviation sector

CONVENTION  
ON INTERNATIONAL CIVIL AVIATION

Signed at Chicago, on 7 December 1944

CONVENTION  
RELATIVE À L'AVIATION CIVILE INTERNATIONALE

Signée à Chicago, le 7 décembre 1944

CONVENIO  
DE AVIACIÓN CIVIL INTERNACIONAL

Firmado en Chicago, el 7 de diciembre de 1944

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## ECACNEWS

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
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Welcome to this winter 2024 edition of ECAC News, dedicated to examining the intricate legal landscape of civil aviation. As we mark the 80<sup>th</sup> anniversary of the Chicago Convention — the cornerstone of international air law — this edition reflects on how legal frameworks continue to shape the global aviation sector.

Legal issues in civil aviation extend far beyond regulatory compliance. They address safety, foster cooperation, and provide mechanisms for resolving disputes in a sector that is constantly changing. In the following articles, we examine key legal challenges, from managing unruly passengers and addressing airspace disputes to advancing regulatory harmonisation.

This edition highlights recent work of the ECAC Legal Task Force and explores key outcomes of the ICAO Legal Committee's 39<sup>th</sup> Session. It also explores practical developments, such as the role of data sharing in improving regulatory consistency and the revision of dispute resolution mechanisms under Article 84 of the Chicago Convention.

The contributors offer a variety of perspectives, demonstrating how States, organisations, and stakeholders address legal challenges and adapt to new realities. Their articles underscore the importance of effective legal systems in maintaining aviation as a safe and sustainable global transport system.

I extend my gratitude to all contributors for their invaluable expertise, which enrich this edition. Their work emphasises the importance of collaboration and innovation in addressing the complex legal challenges of civil aviation today.

As you explore this issue, I hope it inspires thought-provoking conversations and continued cooperation among all aviation stakeholders in addressing the legal complexities of civil aviation. By working together, we can ensure the legal frameworks guiding aviation remain clear, reliable, and suited to the needs of the future. ●



President of ECAC

“

Legal issues in civil aviation extend far beyond regulatory compliance. They address safety, foster cooperation, and provide mechanisms for resolving disputes in a sector that is constantly changing.”

A handwritten signature in black ink, which reads "Alessio Quaranta".



## The legal landscape



© sthman

# The Chicago system: A steadfast legal blueprint for world civil aviation?

## 1944 – 2024

Eighty years ago, while war raged on in Europe, Japan and the South Pacific, there was a fresh breeze of hope in Chicago, “the windy city”. The Conference on International Civil Aviation delivered the Convention on International Civil Aviation (“Chicago Convention”). Signed by 52 States on 7 December 1944, today the Chicago Convention boasts 193 signatories. As the legal blueprint of civil aviation, it covers the world.

The Chicago legal system that has developed around the Convention has generally managed to balance the competing interests of sovereign States with the need for global interoperability. The Chicago system, at its core, relies on multilateral agreements, mutual respect for legal norms and diplomatic dispute resolution.

Actors in the Chicago system have accepted the international law custom of “peaceful transit for peaceful planes in peaceful commerce”, though States’ acceptance has wavered between high and low points. The world experienced far too many downings of civil aircraft during the Cold War, and in response the Chicago Convention was amended by the international community of States through inclusion of a carefully worded Article 3 *bis*.

But the geopolitical environment is shifting, making the enforcement of multilateral agreements in-

creasingly precarious. Disputes over airspace violations, sanctions affecting airline operations, and emerging security concerns have led to a breakdown in, or even blatant disregard for, some of these legal norms. And to boot, new forms of warfare, particularly cyber attacks and the use of drones, are testing the limits of an air law system designed in an earlier era.

World civil aviation, long a bastion of cooperation and technical advancements, now finds itself in a highly disputatious condition, increasingly mired in the crosswinds of tense geopolitics, territorial disputes and breaches of international legal norms. As geopolitical tensions escalate, the Chicago system – built on the principles of sovereignty, freedom of navigation and global cooperation – is being tested like never before. In ICAO’s 80-year history, 12 disputes were brought before the ICAO Council, half of which came before the millennium, and the other half thereafter.

One of the most glaring examples of how tense geopolitics impacts international air law can be seen in the ongoing Russian war in Ukraine. Since Russia’s annexation of Crimea in 2014 and the subsequent war, the international aviation community has faced numerous challenges. Russia’s annexation led to disputes over the control of Crimean airspace, with Russia asserting its control while Ukraine and the international community largely



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parts and services, and faced with asset freezes that undermine their ability to operate in some places. While in other parts of the world, a blind eye has been turned to stolen aircraft, as they were permitted – unhindered – to fly under their re-registration, though inconsistent with the Chicago Convention. On the one hand, sanctions are often implemented as a tool of foreign policy, and their impact on aviation challenges the principles of free movement and open skies, which for decades have been cornerstones of international air law. On the other hand, the Chicago system is about uniform law, legal norms and customary practice, rather than rules that apply arbitrarily or when States deem convenient.

Breaches of international legal norms extend beyond the European continent though. In the Asia-Pacific region, tensions over the South China Sea have led to increasing confrontations over airspace. China's establishment of an air defence identification zone (ADIZ) over parts of the East China Sea, which overlaps with territories claimed by its neighbours, notably Japan, has escalated regional disputes. While ADIZs are not illegal under international law, their use for political or military coercion complicates the situation, as it becomes difficult to distinguish between defensive posturing and aggression. Such geopolitical dynamics introduce legal uncertainties, as international air law seems to struggle to keep pace with evolving territorial claims and modern air defence tactics.

The challenges posed by these disputes raise fundamental questions about the future of international air law. The Chicago Convention, and the system of international air law that flows from it, was built on the assumption that States would act in good faith and that disputes could be resolved through diplomatic channels, or by the ICAO Council, or the International Court of Justice, on appeal. Yet, as States increasingly flout international norms or use the aviation sector as a battleground for political conflict, these assumptions – and the legal blueprint for world civil aviation – are being tested to an extreme not seen before.

#### What can be done?

First, the role of the ICAO Council as a neutral arbiter of disputes must be strengthened. ICAO's capacity to mediate disputes and enforce compliance with international agreements and standards must be expanded. It could, for instance, play a more proactive role in investigating airspace violations and ensuring that sanctions' regimes are implemented in a way that complies with international law, but it will need legal advice throughout. At present, the ICAO Council settles disputes more than it adjudicates them, and as such is not well equipped to handle decisions of a legal nature. Work is already underway to provide just that via the Civil Aviation Legal Advisers Forum (CALAF) and the Competency Framework for Civil Aviation Legal Advisers.

“  
In ICAO's 80-year history, 12 disputes were brought before the ICAO Council, half of which came before the millennium, and the other half thereafter.”

rejected these claims. The downing of Malaysia Airlines Flight MH17 in 2014 by a missile launched from territory held by Russian-backed separatists exacerbated these tensions and underscored the unfortunate and unacceptable vulnerability of civilian aviation to geopolitical conflicts. The legal proceedings surrounding this incident remain a focal point for international air law, involving complex issues around State responsibility, airspace sovereignty and international criminal accountability.

The ICAO Council President was called, without precedent, to brief the UN Security Council on the Ryanair Flight FR 4978, informing the Security Council of the Assembly Resolution number 1 adopted at the 41<sup>st</sup> ICAO Assembly in 2022, “condemning the actions of the government of the Republic of Belarus in committing an act of unlawful interference that deliberately endangered the safety and security of Ryanair Flight FR 4978 and the lives of those on board”.

Now, while it is understandable that European and a small handful of Asian airlines are affected financially by circumventing (Bela)Russian airspace – and there may be a strong desire to reopen the airspace as soon as possible, for economic reasons – such a move must be balanced with wider issues around safety and security, and respect for the rule of (international) law.

Certainly, the imposition of sanctions against airlines or entire countries is another area where geopolitics intersects with air law. The sanctions imposed by the United States and the European Union on Iran and Russia, for example, have led to disruptions in the operations of airlines from these countries. As a result, airlines are restricted from flying certain routes, denied access to genuine

Second, there must be a renewed emphasis on multilateralism in air law. In an age of rising nationalism, it is tempting for States to retreat into unilateral action. But the interconnected nature of global aviation demands cooperation. Countries must work together to progress with modernising the legal frameworks governing airspace and dispute resolution to address new challenges like cyber warfare, drone use and hybrid warfare tactics.

Third, aviation industry stakeholders must play a more stringent role in advocating for the rules-based Chicago system. They have vested interest in the stability and predictability of the legal landscape and can serve as a counterbalance to the politicisation of international air law. By pushing for adherence to international norms, private stakeholders can help to ensure that aviation remains a safe and reliable means of global transport, even in today's fractious world.

Without a doubt, the international air law landscape is at a crossroads. Geopolitical tensions, territorial disputes as well as new forms of conflict – regrettably – are testing the legal blueprint that has governed our skies for decades. As these challenges multiply, the need for strong, enforceable and adaptable legal systems becomes most urgent. Upholding these frameworks will require a combination of multilateral diplomacy, stronger international institutions and the engagement of the industry stakeholders. If the global community can rise to this challenge, civil aviation can continue in its mission to be a force for connectivity and cooperation in an otherwise – every day almost increasingly – divided world. However, if States allow international legal norms to continue to be eroded, the consequences for the aviation sector – and for global peace and security – could be dire.



The Chicago system is about uniform law, legal norms and customary practice, rather than rules that apply arbitrarily or when States deem convenient.

### Tolerated or excluded

The importance of holding States responsible for their acts or omissions was brought into focus already at the very first ICAO Assembly held in May 1947. At that time, the Convention was amended by way of Resolution 3, adding Article 93 *bis* to the Chicago Convention in light of the recommendation by the UN General Assembly that the then-Franco government of Spain be debarred from membership of specialised agencies established by or brought into relationship with the UN. The recommendation also called for Spain to be excluded from participation in conferences or other activities arranged by such agencies until a new and acceptable government was formed in Spain.

Article 93 *bis* provides that “A State whose government the General Assembly of the United Nations has recommended be debarred from membership in international agencies established by or brought into relationship with the United Nations shall automatically cease to be a member of the International Civil Aviation Organization...,” with the possibility “after approval by the General Assembly of the United Nations, [to] be readmitted to the International Civil Aviation Organization upon application and upon approval by a majority of the Council”.

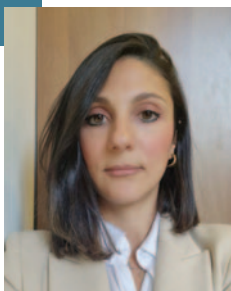
Art 93 *bis* has not yet been invoked.

### Conclusion

In ICAO depository libraries like the International Institute of Air and Space Law at Leiden University in the Netherlands, one may find *A Blueprint for World Aviation*, published by the United States Department of State in 1945 as a reflection by American delegates on the Chicago conference. As the legal blueprint for world civil aviation, the Chicago system is under an unprecedented, heavy burden. International air law and legal norms must be respected to keep this special legal blueprint steadfast for the next 80 years and beyond. After all, the forefathers of the Chicago Convention recognised that international civil aviation had the potential to “create and preserve friendship and understanding among the nations and peoples of the world, yet its abuse can become a threat to the general security”. The Chicago system must remain a steadfast legal blueprint to foster the benefits of world civil aviation and reproach any abuses. ●

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# Data sharing in databases: a driver for the harmonisation of air navigation and civil aviation law



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Civil aviation law is a complex, ever-evolving discipline, influenced by technological advancements, economic pressures, international regulations, and safety imperatives. As the sector faces new challenges, harmonising legal standards becomes crucial, especially given the field's reliance on consistent application across different jurisdictions. Legal databases play a pivotal role in this context, serving as indispensable resources for industry professionals, governments, and regulatory bodies alike. These databases offer critical access to information necessary for coherent legal interpretation, supporting predictable decision-making and minimising legal uncertainties.

In common law systems, the principle of “stare decisis” ensures that lower courts adhere to the precedents set by higher courts, promoting consistency in legal decisions. This principle is central to the function of legal databases, which compile authoritative rulings that guide courts and ensure predictability. For stakeholders in civil aviation — including airlines, passengers and regulators — a stable legal framework is essential. Such a framework enables stakeholders to make informed decisions, anticipate legal risks, and uphold compliance, thereby enhancing overall confidence in the system.

A robust legal database serves as a “lighthouse” within this intricate regulatory landscape, informed by international treaties, guidance from main authorities, and national compliance standards. Precedents stored in these databases prevent legal fragmentation across jurisdictions by offering a unified framework that courts can reference, promoting a harmonised interpretation of laws in a globally connected industry. This is particularly vital in civil aviation, where cross-border operations are the norm and where inconsistencies in regulation could lead to legal conflicts.

Civil aviation law's multi-tiered structure includes international, national, and regional regulations. The 1999 Montreal Convention, governing airline liability for passenger injuries and cargo losses, exemplifies the importance of precedent in interpreting complex legal texts. Legal precedents offer guidance on applying such frameworks, as shown in notable rulings like the European Court of Justice's decision in “Sturgeon v. Condor”, which established compensation rights for passengers delayed over three hours. This landmark case expanded EU Regulation 261/2004 to include delayed flights, significantly enhancing passenger rights within the EU.

Similarly, in the United States Supreme Court case “Air France v. Saks” (1985), the Court clarified the definition of an “accident” under Article 17 of the Warsaw Convention, ruling that it refers to an “unexpected or unusual event” external to the passenger. This decision was instrumental in resolving ambiguity in passenger injury claims, setting a precedent that later guided courts in interpreting what constitutes an “accident.” The flexible interpretation offered in “Saks” allowed for broader application in future cases, such as “Olympic Airways v. Husain” (2004), where the Court held that a flight attendant's refusal to assist a passenger with a severe allergy constituted an “accident” under Article 17, thus holding the airline liable<sup>(1)</sup>. The evolution of the “accident” definition illustrates how precedents allow courts to apply legal concepts consistently while adapting to new contexts.

Legal precedents are equally critical as new technologies, such as drones, present novel legal challenges. Courts can build upon established rulings to address these issues, offering continuity in decision making. Additionally, aviation liability is often complex, involving various parties such as airlines, manufacturers, and airports. The legal principle of liability for defective products, established in “Donoghue v. Stevenson”, provides a basis for evaluating responsibility across these entities.

The European Civil Aviation Conference's (ECAC) Legal Task Force (LEGTF) is a prominent example of a cross-border initiative to streamline legal collaboration. ECAC's development of an innovative legal database has significantly enhanced the ability of professionals to access and apply relevant case law. By providing a centralised resource of legal

(1) Sant'Anna Legal Studies STALS Research Paper n. 2/2009 Luis Castellví Laukamp Carrier liability in case of death or injury of passengers



precedents, the Legal Task Force's database enables systematic, efficient handling of aviation law challenges. This initiative supports legal cooperation across jurisdictions, allowing task force members to approach cases with a more comprehensive understanding of applicable laws. Moreover, the database aids in harmonising legal interpretations across nations, fostering greater coherence in the application of civil aviation law.

Legal databases, by making past decisions readily accessible, serve as a foundation for developing new arguments and ensuring that similar cases are treated consistently. Foreign precedents can also offer valuable insights, as legal professionals examine how other jurisdictions approach comparable issues. This comparative legal analysis is invaluable in aviation law, where shared issues often emerge across borders, necessitating a nuanced understanding of various legal frameworks. Thus, international precedents act as useful references, assisting jurists from different systems in identifying solutions that are informed by global legal experience. This cross-jurisdictional analysis fosters the evolution and harmonisation of civil aviation law, an outcome facilitated by ECAC's database. By supporting information sharing across borders, the database enhances regulatory consistency and international cooperation within the aviation industry.

Access to comprehensive, up-to-date information is essential in the rapidly changing field of civil aviation law. Legal databases provide legal professionals with swift access to statutes, regulations, and case law, enabling them to efficiently search for relevant precedents. This functionality is especially vital in civil aviation, where issues are often highly technical and specialised. Moreover, legal databases help professionals remain abreast of regulatory changes, which are frequent in aviation due

to shifts in national legislation, international treaties, and industry standards. Real-time access to the latest developments ensures that stakeholders are always equipped with the most current legal information, a critical factor in compliance and risk management.

Comparative analysis is another key benefit of legal databases, allowing for the examination of how different jurisdictions handle similar issues. This is particularly relevant in civil aviation, where operations frequently span multiple countries. By comparing legal approaches across nations, professionals gain strategic insights that can inform their arguments and decision-making processes.

Beyond aiding in case preparation, databases contribute to regulatory harmonisation within the aviation sector. As data sharing among States, authorities and industry stakeholders becomes more integrated, these resources foster improved regulation and greater international cooperation. A comprehensive data-sharing framework can enhance aviation safety, improve operational efficiency, and support environmental sustainability. However, with the expansion of data-sharing practices comes a need for robust data protection and security measures to safeguard privacy and ensure aviation security.

The global nature of civil aviation underscores the importance of international cooperation for uniform regulations and safety standards. Bodies like the International Civil Aviation Organization (ICAO) and the International Air Transport Association (IATA) set international norms that interact with national laws, creating a multi-layered regulatory environment. Increased use of databases and information sharing is critical for resolving complex legal issues, such as air accident investigations, regulatory non-compliance, and passenger rights disputes.

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Legal databases  
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The internationalisation of civil aviation, however, presents challenges. Legal systems differ widely, which can complicate regulatory uniformity. Collaboration between national supreme courts and supranational institutions, like the European Court of Justice, is crucial for creating frameworks that protect passengers and hold airlines accountable while promoting air safety on a global scale.

Databases also enhance transparency within the aviation sector. By providing access to data on accidents, regulatory violations, and operator blacklists, these platforms enable more informed decision making, particularly in crisis situations. The cross-border nature of aviation necessitates cooperation between legal systems to ensure industry safety, efficiency and sustainability.

In conclusion, the interaction between different legal systems in civil aviation represents both a challenge and an opportunity to improve global regulation. Legal databases are crucial for promoting transparency, safety, and regulatory harmonisation. The principle of precedent, alongside the power of information sharing, forms the backbone of legal stability and uniformity in a complex, rapidly evolving industry. As civil aviation continues to grow in an increasingly interconnected world, coordinated efforts between jurisdictions will be key to ensuring that legal frameworks evolve to meet the demands of the future while maintaining the highest standards of safety and fairness for all stakeholders involved. In this framework, the ECAC legal database aims to be a place for dialogue and growth, for the implementation and improvement of the system with a view towards greater harmonisation. ●

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While at university, Chiara joined the Erasmus Programme at the University of Law in Granada, Spain, where she conducted research comparing Italian and Spanish legal systems, with a focus on same-sex couples' rights. She graduated in law in 2017 and completed an 18-month internship with a civil law judge, followed by a legal apprenticeship at a civil law firm. In 2019, Chiara became a lawyer. In 2020, she joined the Italian Civil Aviation Authority (ENAC), collaborating with the director general. She has been a member of the ECAC Legs Group and Legal Task Force since 2021. She is currently the head of ENAC's International Entities Coordination Department.

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With a law degree obtained in 2013 and bar admission in 2015, Claudia has built a distinguished legal career. Following an internship at the prosecutor general's office of the Court of Cassation, she published articles on labour law and co-authored a book on precautionary seizures. Since joining the Italian Civil Aviation Authority (ENAC) in 2020, Claudia has progressed from airport safety inspector to roles in the General Directorate and International Relations Coordination Department. Since 2021, she has contributed to the ECAC Legs Group and Legal Task Force.

**Gabriele Lo Forti.**  
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## Legal perspective on aviation issues



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# Schiphol Airport policy: balancing between a rock and a hard place

## Introduction

Schiphol is a major international airport that provides the Netherlands with strong global connectivity, offering both economic and social benefits. At the same time, it is located in a densely populated area, which means the airport has a significant impact on a large group of people and on matters such as space for housing development. The Schiphol policy is focused on finding the right balance between the advantages and disadvantages of the airport.

In the last two years, the Schiphol policy has been widely discussed internationally. The government's decision in June 2022 to reduce noise pollution, including by lowering the maximum number of flights, caused a stir. This article outlines the situation, discusses the next steps, and highlights some key lessons. Without understanding the history, it is difficult to grasp the current complex situation surrounding Schiphol's policies. Therefore, we will first delve into the background.

## Background

The policy on Schiphol Airport has a long history of trying to balance the economic benefits of aviation with the negative effects on the surrounding environment. Since 2008, the foundation has been an agreement reached between representatives of the aviation sector, local residents, social organisa-

tions, and governments. This is known as the Alders Agreement, named after the independent chairman of the consultation between all stakeholders. The Alders Agreement included provisions for Schiphol's growth to 500 000 aircraft movements per year, combined with noise-reduction measures and new regulations to protect the surrounding environment. Initially, these new regulations were experimented with, and in 2015 it was decided to implement them in anticipation of formal adoption. The existing regulations were no longer enforced. To this day, the new rules have not been officially established. More on this later.

The agreements were set to run until 2020, after which new agreements were needed for Schiphol's future. Unfortunately, it was not possible to reach new agreements, as the stakeholders did not find sufficient common ground. This was largely because the noise-reduction measures did not have the expected effect. In January 2019, the chairman concluded: "One key issue is that the noise reduction achieved by the aviation sector, through increasingly quieter aircraft, is barely noticeable, especially in the inner region where aircraft pass overhead. Each individual aircraft still produces an extremely high noise volume for local residents. While this reduction matters for the collective noise calculation in the equivalence system, leading to further volume growth (even halved by the 50-50 rule), it paradoxically results in a substantial increase



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Head of Unit for the Schiphol Airport Environmental Program at the Ministry of Infrastructure and Water Management

in flight volume and corresponding noise pollution in the inner area, without residents noticing any noise reduction. On the contrary, their living environment is severely impacted<sup>(1)</sup>.”

Due to the lack of new agreements between stakeholders, the government had to take control. In July 2019, the cabinet indicated that aviation growth could only occur if it was earned through demonstrable noise reduction. A new noise-reduction programme was introduced, led by Schiphol and Air Traffic Control Netherlands. Meanwhile, in November 2020, the long-term aviation policy was established by the government. The premise is that growth in aviation is no longer guaranteed, and public interests such as safety, connectivity, environmental quality, and sustainability take priority. The future perspective is a balance of these four interests.

After the composition of the new noise-reduction programme, it was evaluated in terms of its development process and level of ambition. It was concluded that few additional measures were feasible, and those that were considered would not be sufficiently effective.

In the meantime, the agreements from 2008 have yet to be formalised in regulations, primarily due to the absence of a nature permit in recent years. The lack of a nature permit, and the ongoing situation in which regulations are not enforced, present legal risks. This prompted the Dutch Human Environment and Transport Inspectorate to sound the alarm in autumn 2021, stating that the situation was no longer sustainable.

### Government decision of June 2022

Against this background, the government decided in June 2022 to end the practice of non-enforcing established rules in anticipation of new rules (known as “anticipatory non-enforcement”) and a reduction of the nuisance caused by the air traffic to and from Schiphol Airport. Given the inability to achieve sufficient noise reduction through operational measures, this means a reduction in the number of flights. The chosen approach was to ensure adequate connectivity between the Netherlands and the rest of the world; this is possible with a maximum of 440 000 flights per year<sup>(2)</sup>. Following this decision, the Balanced Approach procedure was initiated based on a noise objective that aligns with the noise reduction the government seeks to achieve.

“ The noise reduction achieved by the aviation sector, through increasingly quieter aircraft, is barely noticeable, especially in the inner region where aircraft pass overhead. Each individual aircraft still produces an extremely high noise volume for local residents.”

### RBV case

Despite the government’s decision, local residents, represented by the Foundation for the Right to Protection from Aircraft Noise (RBV), filed a lawsuit against the State due to the noise disturbance they continue to experience. The case revolves primarily around whether there is a violation of privacy rights and whether this infringement is justified under the European Convention on Human Rights (ECHR).

In March 2024, the court ruled that the State was acting unlawfully. The legal framework governing noise pollution around Schiphol has not been adequately enforced since 2010. Additionally, there is a lack of clear and enforceable noise standards for those affected by Schiphol. As a result, citizens are still uncertain about the standards under which they are entitled to legal protection. The court further ruled that the State did not properly conduct the balancing of interests required by the ECHR. The State placed too much emphasis on the aviation sector’s interests and failed to weigh the interests of local residents equally. The court ordered the State to enforce the relevant laws and regulations within 12 months. This means that anticipatory enforcement must be terminated within this period. Moreover, the court emphasised that a structural balancing of interests between local residents and Schiphol’s economic significance for the Netherlands must take place. Additionally, the court ruled that the legal position of residents, including those living farther from Schiphol, should be improved in the revised Airport Traffic Decision (LVB).

### Supreme Court ruling

In its June 2022 decision, the government decided to end anticipatory enforcement and apply existing regulations again. To mitigate the impact (for example, on the aviation sector) of strictly applying outdated regulations, additional temporary regu-



(1) blg-871681.pdf (officielebekendmakingen.nl)

(2) Courtesy translation Schiphol outline letter – Annex E  
| Brief | Luchtvaart in de toekomst



### Jelle van Oosterom

is head of unit for the Schiphol Airport Environmental Program at the Ministry of Infrastructure and Water Management in the Netherlands. He has worked on the Schiphol Airport Policy for over four years. The Schiphol Airport Environmental Program is working on a solid legal basis for Schiphol Airport, restoring the balance between the different interests involved. Jelle's teams focus on topics like the environmental regulation, non-CO<sub>2</sub> emissions, ground handling, communication and stakeholder engagement.

lations were introduced. If the existing regulations were applied without mitigation, the number of flights would decrease within the available environmental space, reducing the limit from 500 000 flights under the Alders Agreement to 465 000 flights per year. This was expected to be implemented by November 2023.

In response, airlines launched an urgent legal procedure. The key issue in this procedure was whether the reapplication of existing regulations could be considered a noise-related operating restriction, which would require the Balanced Approach process to be followed. After different rulings by lower courts, the Dutch Supreme Court ruled on 12 July 2024 that it does indeed involve a noise-related operating restriction, and the Balanced Approach must be adhered to.

### What happens next?

As a result, the government is facing an even more complex situation. Nationally, there is noise pollution and legal uncertainty for local residents, which calls for prompt action to address these issues. Internationally, various legal obligations must be met, stemming from the Noise Directive, the Slot Regulation, and aviation treaties. Great importance is attached to careful procedures and gradual implementation. However, this gradual approach is difficult to reconcile with the need for swift action. Additionally, the rulings in the RBV case and by the Supreme Court are not fully compatible.

The government has concluded that the only and fastest way to comply with the RBV ruling is to build on the foundation of the already initiated Balanced Approach procedure. An appeal has been lodged against the RBV ruling, not because of its substance, but mainly due to the imposed deadline, which is unfeasible, and the contradictions between the various court rulings<sup>(3)</sup>.

On 4 September 2024, the government decided on the strategy for the continuation of the Balanced Approach procedure. Based on various consultation rounds, questions from the European Commission, and additional calculations, an adjusted package of measures has been developed. The restriction on the maximum number of flights, as a last resort, has been narrowed to an estimated range of 475 000 to 485 000 flights. The aim is to implement the package of measures by November 2025.

### Lessons

The situation around Schiphol is unique, with issues such as the absence of a nature permit, the non-enforcement of existing rules for many years, and the breakdown of stakeholder negotiations. Nevertheless, there are perhaps two lessons that could have broader relevance.

First, it concerns how the impact of air traffic is calculated and standardised. The international standard is to calculate based on an average noise level (dB(A) Lden). While this still seems to be the best available measure, in practice, it has been shown that this is not a good indicator of the disturbance people experience around Schiphol. This makes it difficult to predict, based on calculations on paper, what will work to improve people's perception of noise disturbance, ultimately leading to distrust among residents regarding the reality of these calculations and standards. It seems important to search for (additional) noise indicators that better reflect the actual disturbance people experience.

A second lesson relates to the discrepancy that the Dutch court seems to have exposed between the ECHR and international aviation regulations. The ECHR requires a fair balance, where the interests of local residents are weighed equally against those of aviation. However, the rules around the Balanced Approach and slots seem more focused on protecting the aviation sector's existing interests, with only consideration for what remains possible for the local residents. Shouldn't international aviation rules be reviewed? Could a more equitable balancing of interests help maintain or restore public support for aviation?

### Conclusion

In recent years, it has become clear that Schiphol's policy has been influenced by various unpredictable factors. As long as the current Balanced Approach procedure is incomplete and new regulations are not established, Schiphol's policy remains surrounded by uncertainty. Regardless, it will continue to be challenging to find a proper balance between the various interests, given the history and the different legal frameworks. Striking the right balance is the only way forward, so the search must continue for the time being. ●

(3) pdf (overheid.nl)



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# Unruly passengers: a common problem for airlines, or a challenge for States?

Aviation in the 21<sup>st</sup> century faces a range of challenges, positioning commercial air transport as a highly regulated global economic industry subject to several layers of regulation and commitments, particularly when it comes to environmental sustainability. Forecasts point to the growth of commercial aviation and, in this regard, regulators, airlines and the industry have made significant efforts and investments to prioritise safety and the environmental responsibility. While the future will impose a natural shift in the sector's social and economic landscape, one issue has been receiving particular attention as a result of the increasing number of passengers: the rise in reports of unruly passengers on board.

It is possible to identify the most common cases of incidents on board, such as excessive alcohol consumption, smoking, disagreements between passengers or crew, fear of flying, restricted space, and/or cultural or social habits with socialisation patterns. Notably, excessive alcohol consumption is a key contributor to the escalation of conflicts on board.

International conventions and consequently national laws provide the pilot-in-command, the crews and authorities with powers to take immediate action to immobilise unruly passengers. While the individuals may not endanger the flight, their disruptive behaviour creates a sense of insecurity among other passengers. The presence of unruly passengers on board raises security and safety concerns and generates stress for both crew and passengers due to the potential for disruption in an enclosed space and in the air.

Despite the mechanisms in place for immediate response, the procedural framework for punishment

has proven to be largely ineffective. This is primarily due to the fact that many of the passengers are tourists, whose stay in the country where the incident was reported is either temporary or in transit, preventing a swift procedural outcome. This creates significant challenges for national authorities, starting with the process of notifying the passenger of the administrative offence proceeding (guaranteeing their right to defend themselves) to enforcing the penalty imposed on the passenger, with the difficulty of imposing it on passengers from other States. While the prosecuting authorities can often count on cooperation from the authorities in the passenger's State of residence for notifications, issues such as voluntary non-payment of fines and coercive payment fall into a disturbing void. This generates a sense of impunity that jeopardises the effectiveness of sanctioning regimes in place in each State.

Considering a standard procedural regime could be the solution, despite the challenges faced due to the different constitutional and legal approaches in force across States. Nevertheless, while it makes



**PEDRO PISCO DOS SANTOS**

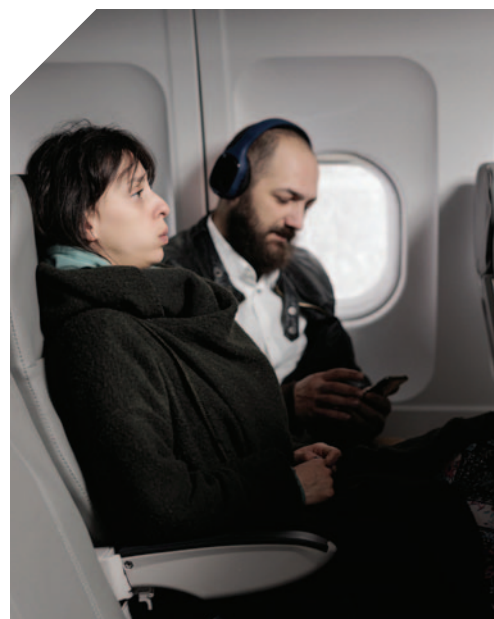
Legal Director, Portuguese Civil  
Aviation Authority  
(ANAC - *Autoridade Nacional  
da Aviação Civil*)

While it makes sense to have an effective penalty system or a mechanism for sharing information between air carriers and the authorities, it is important to look at the root cause and identify the reasons behind the phenomenon of unruly passengers.

**Pedro Pisco dos Santos** graduated in law from the Portuguese Catholic University and is a member of the Portuguese Bar Association. He has been working at ANAC since 2005, first in the human capital area, and for the past 12 years in the Legal Directorate. He is a member of ECAC's Legal Task Force.

sense to have an effective penalty system or a mechanism for sharing information between air carriers and the authorities, it is important to look at the root cause – a term used in aviation – and identify the reasons behind the phenomenon of unruly passengers. And in this regard, the causes are diverse and stem from multiple factors, ranging from social, cultural, mental health, behavioural (fear of flying) and criminal.

While there is no perfect legal or operational solution, there are certainly various approaches to reducing the number of incidents on board that pose a risk to crew and passengers. One potential strategy is the implementation of an effective sanctioning system, standard across States, combined with the establishment of a blacklist and the provision of information to passengers. Such measures could enhance safety and contribute to a reduction in incidents. ●



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## International legal affairs

# The ECAC Legal Task Force and the 39<sup>th</sup> Session of the ICAO Legal Committee

In 2024, a substantial part of the work of the ECAC Legal Task Force was devoted to the 39<sup>th</sup> edition of the Legal Committee of the International Civil Aviation Organization (ICAO). The biennial meeting was held in Montreal from 25 to 28 June 2024. In more than 77 years, the Legal Committee has played a crucial role in the design and elaboration of the legal tasks and aims of ICAO. It helps set a framework and provide direction for the activities of aviation legal advisors worldwide.

Contributions to ICAO meetings such as the Legal Committee and its sub-groups are part of the work programme of the ECAC Legal Task Force, and time and effort is invested in preparing for and attending the Legal Committee meetings.

## Preparations

In order to facilitate participation in the 39<sup>th</sup> edition of the ICAO Legal Committee, the May 2024 meeting of the Legal Task Force mainly focused on preparing for the Legal Committee. During the in-person meeting, grateful use was made of the presence in Paris of one of the legal officers of the ICAO Legal Affairs and External Relations Bureau, Andrew Opolot, who had delivered an ICAO/EURNAT course on the ratification of ICAO treaties some days before the Legal Task Force meeting. Mr Opolot presented the Legal Task Force members with an overview of ICAO's work in the legal field, highlighting the importance of its legal framework as a core element of the organisation's overall activities. The presentation was important for informing participants who have been less involved in the work of the Legal Committee, as well as for refreshing the knowledge of others.

An essential part of the preparations was the compilation of the key briefing document (KBD), in which Member States expressed their views on the various working papers submitted for the 39<sup>th</sup> Legal Committee meeting.

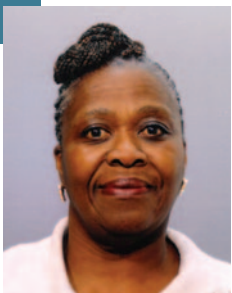
The 27 meeting documents (including draft reports and two information papers) related not only to topics in the existing General Work Programme of the Legal Committee but also to topics that were brought to the attention of the Legal Committee by Member States or non-governmental organisations in an attempt to have them included on the Legal Committee agenda in due course.

## The meeting

The four-day meeting started with opening addresses from the President of the ICAO Council, Salvatore Sciacchitano, the Secretary of the Legal Committee, Michael Gill, (ICAO Director of Legal Affairs and External Relations Bureau (LEB)), and the chairperson of the Legal Committee, Siew Huay Tan (Singapore), followed by confirmation of the agenda.

The meeting then continued with a substantive assessment of the General Work Programme of the Legal Committee, discussing the following items under agenda item 2:

- Review of the ICAO *Rules for the Settlement of Differences*;
- International legal aspects of unmanned (pilot-less) aircraft operations and integration into civil aviation;
- Processes and procedures for States to fulfil their obligations under Article 12 (Rules of the air) of the Chicago Convention;
- Acts or offences of concern to the international aviation community, including cyber threats, that may not be adequately covered by existing air law instruments;
- Promotion of the ratification of international air law instruments;
- Study of international legal issues relating to global satellite systems and services supporting international air navigation services;
- Consideration of guidance on conflicts of interest; and
- Implementation of Article 21 (exchange of reports on aircraft registration) of the Chicago Convention.



**MACHTELD CAMBRIDGE**

Legal Advisor, Dutch Ministry of Infrastructure and Water Management, Chair of the ECAC Legal Task Force

“  
The Legal Committee helps set a framework and provide direction for the activities of aviation legal advisors worldwide.”



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The meeting spent time reviewing working documents from the ICAO Secretariat on the state of affairs of the various topics on the Legal Committee Work Programme. In addition, there was an opportunity to discuss working papers in which Member States gave their views on the implementation of the items in the work programme and made proposals on how to take them further.

Subsequently, under agenda item 3, the meeting reviewed the General Work Programme of the Legal Committee and discussed the priority of the items, adding a new item: "Review of the role of the International Explosives Technical Commission (IETC) regarding legal issues related to unmarked plastic explosives and the issue of detection of such materials" to the provisional programme.

Furthermore, the Committee discussed removing the topics "Consideration of guidance on conflicts of interest" and "Implementation of Article 21 of the Chicago Convention" from the programme, considering that further substantive work was no longer necessary for these items.

Agenda item 6 (Any other business) also involved considering topics that could be relevant for the adjustment of the General Work Programme. Discussions under this agenda item led to the provisional inclusion in the new work programme of the item on legal inconsistencies caused by interactions between international carriage by air and data protection laws.

Subject to the approval of the Council, responsible for formalising the Committee's General Work Programme, the following new prioritisation for the years to come was discussed by the Legal Committee:

- 1 | Processes and procedures for States to fulfil their obligations under Article 12 of the Chicago Convention.
- 2 | Review of the role of the International Explosives Technical Commission (IETC) regarding legal issues related to unmarked plastic explosives and the issue of detection of such materials.
- 3 | International legal aspects of unmanned (pilotless) aircraft operations and integration into civil aviation.
- 4 | Promotion of the ratification of international air law instruments.
- 5 | Acts or offences of concern to the international aviation community, including cyber threats, that may not be adequately covered by existing air law instruments.
- 6 | Study of international legal issues relating to global satellite systems and services supporting international air navigation services.
- 7 | International carriage by air and data protection laws.
- 8 | Review of the ICAO *Rules for the Settlement of Differences*.

Agenda item 4 concerned the election of the chairperson and vice-chairs of the Legal Committee. In accordance with the procedural rules of the Committee, a new chairperson had to be elected since Siew Huay Tan had completed two terms in this role. A change of position and ranking was also necessary for the vice-chairs. After a widely supported election, the meeting welcomed Alice Serpa Braga Della Nina of Brazil as the new chairperson. Subsequently, Susanna Metsälampi of Finland was elected as first vice-chair, Mohammed Al-Ruqaishi

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This major event  
of the Legal  
Committee is not  
only intellectually  
stimulating  
but also socially  
inspiring,  
undoubtedly  
fostering meaning-  
ful connections  
amongst all  
involved.”

# AVIATION LAW

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## Machteld Cambridge

is a legal advisor coordinating at the aviation section of the Legal Department at the Dutch Ministry of Infrastructure and Water Management. Since 1987, she has worked in the Dutch transport and infrastructure administration, in legal management, expertise and coordination positions. For the past 20 years, she has focused on legislative and advisory aspects of national and international aviation matters. Machteld has represented the Netherlands in the ECAC Legal Task Force since 2013, becoming deputy chair in 2019 and chair in May 2022. She has extensive experience in complex legal matters, and participates in international aviation forums at the European Union, ECAC, and ICAO levels.

of Oman as second vice-chair, Jae Woon Lee of South Korea as third vice-chair, and Maria Makalla-Memba of Tanzania as fourth vice-chair of the Legal Committee.

Agenda items 5 and 7 involved the date and place of the next Legal Committee meeting, and considered the report of the 39<sup>th</sup> Session.

## Coordination

During the 39<sup>th</sup> Legal Committee meeting, the coordination between the 21 ECAC Member States present was secured by daily meetings in which the ECAC members' strategy with regard to the agenda items was discussed and coordinated, with the excellent support of Mark Rodmell of the ECAC Secretariat. In early morning sessions, careful attention was paid to the positions on the various agenda items, of which the Review of the ICAO *Rules for the Settlement of Differences* was by far the most important item on the agenda. In addition, preliminary consultation was also necessary on, for example, organisational aspects, such as the above-mentioned elections of the chairperson and vice-chairs of the Committee. The Legal Task Force was proud to have its member, Susanna Metsälampi (Finland), elected as first vice-chair. Her presence on the board of the Legal Committee has already been of great importance in the past years in gathering relevant information about the Committee and influencing its work. This undoubtedly contributes to safeguarding European interests in the legal work of the organisation. In this respect, the work of Terry Olson should also be mentioned. His efforts as chair of the working group for the Review of the ICAO *Rules for the Settlement of Differences* has also been of eminent importance.

From a more personal perspective, I would like to highlight that for Contracting Parties like the Kingdom of the Netherlands, preparing for the Legal Committee presents an additional challenge. Not only must we consider the interests of the European part of the Kingdom, but we must also take into account the perspectives of the Caribbean territories that are part of the Kingdom. This means that, alongside ECAC interests, we must also coordinate with the concerns of these overseas territories, which understandably are also focused on the Caribbean and South American regions. It is both an interesting and a challenging exercise!

Finally, I would note that this major event of the Legal Committee, with participants from such a wide range of countries, is not only intellectually stimulating but also socially inspiring, undoubtedly fostering meaningful connections amongst all involved. ●

# The revision of the ICAO *Rules for the Settlement of Differences* – Article 84 of the Chicago Convention

Article 84 of the 1944 Chicago Convention is the cornerstone of a mechanism for settling differences between ICAO Member States when two or more States are involved in a dispute relating to the interpretation or the application of the Convention or of a few other international air law instruments. The procedure for handling such cases before the ICAO Council is outlined in a document known as the *Rules for the Settlement of Differences* (the “Rules”). This document needed to be reviewed by the ICAO Legal Committee and presented to the ICAO Council for approval.

The Legal Committee addressed the revision of these Rules during its 37<sup>th</sup> Session, held from 4 to 7 September 2018. It was noted that the current version of the Rules, adopted in 1957, had only been amended once – in 1975 – when Russian was added as a working language. The 2018 discussions concluded that the Rules required updating. As a result, the Legal Committee added this item to its work programme, which was later endorsed by the ICAO Council.

The Legal Committee quickly established a working group for the review of the ICAO *Rules for the Settlement of Differences* (WG-RRSD). The group’s first and second meetings were held in Montreal in May and November 2019. The world pandemic that broke out early in 2020 slowed down the group’s activities, and ICAO’s activities as a whole. Six other meetings were held, either virtual or in person, the eighth and last one taking place in September 2023. The result of the work undertaken within the group was presented before the Legal Committee at its 39<sup>th</sup> Session, held in June 2024 and chaired by Siew-Huay Tan from Singapore.

Regarding membership of the working group, the ICAO Legal Bureau – as is customary – made efforts to ensure balanced representation from the different regions and legal systems. Some of the Member States initially selected when the Group began gradually left and had to be replaced by others. Ultimately, experts from 23 ICAO Member States participated in one or more of the meetings. The African Civil Aviation Commission, a regional organisation, also participated. Five ECAC countries were members of the group: Finland, France, Greece, the Netherlands and the United Kingdom.

WG-RRSD appointed its officers according to the procedure followed within these groups. I was honoured to be appointed as chair, assisted by vice-chairpersons Ambassador Jailani from Indonesia first, and later John Thatcher from Canada. David Low from Singapore, who became the group’s Rap-

porteur, did a great job. The support of the ICAO Legal Bureau was outstanding.

The following brief summary seeks to answer three main questions:

- I. What changed in the legal context as the working group was undertaking its task?
- II. Which amendments to the Rules reached a consensus within the group?
- III. What were the more difficult issues reported to the 39<sup>th</sup> Session, and what did the Legal Committee decide?

**I. Between 2018 and 2023, as the group was undertaking its work, the legal context experienced two major changes.**

The first highlighted the very nature of the ICAO Council’s role when exercising its settlement of disputes functions. The discrepancy between the legal nature of the differences brought before the Council under Article 84 of the Chicago Convention, and the political nature of this multilateral body, must be addressed.

## **Article 84: A jurisdictional procedure aimed at settling a legal dispute, in the hands of a multilateral body**

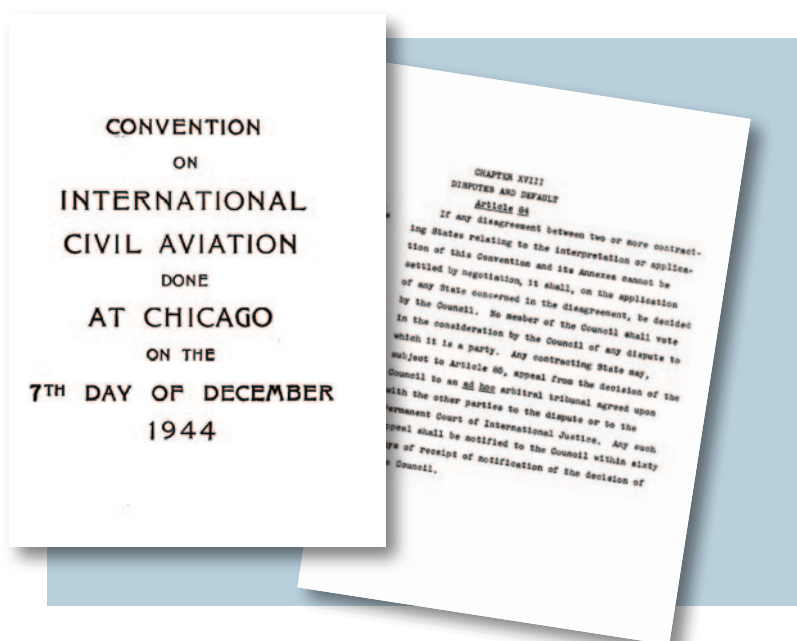
It is clear, just by reading Article 84, that this mechanism deals with the application or interpretation of the Chicago Convention or other international air law treaties. Therefore, such disputes are of a legal nature. Usually, when they can’t be settled by negotiation, the disputes are submitted to a standing international court, such as the International Court of Justice (ICJ) in The Hague or another court dealing with one specific field on international litigation. Such a dispute may also be brought before an ad hoc international arbitration tribunal. The people sitting on the bench of these international courts or tribunals are all lawyers, judges, attorneys or academics in their respective countries. But the way



**TERRY OLSON**

Legal Advisor, Civil Aviation  
Directorate of France

“  
Amendments to the Rules were made to make them more efficient and to reflect modern working methods in today’s world.”



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Article 84 works is somewhat different, insofar as most of the delegates holding the seats of ICAO Council Member States, though highly skilled individuals, are not professional lawyers but mainly diplomats or civil aviation experts.

This is why there was always some form of controversy over the nature of the Article 84 procedure for the settlement of disputes. Most ICAO Member States focus on the nature of the matters dealt with under Article 84 and conclude that it is a jurisdictional procedure. Whereas other Member States – probably a minority but nevertheless major countries such as China, Russia and the United States – focus on the composition of the Council and conclude that such a political body may only conduct a settlement procedure of a political nature. One may think that such a discussion has something to do with the dispute on the sex of angels in old Byzantium, but this isn't the case. It raises practical issues.

On 14 July 2020, the International Court of Justice ruled that a decision made by the ICAO Council under Article 84 should show explicitly its reasons, both in fact and in law. That was a way for the ICJ to regard the settlement mechanism under this Article as a jurisdictional procedure. This was the rationale behind the Court's judgement on the *Appeal relating to the Jurisdiction of the ICAO Council under Article 84 of the Convention on International Civil Aviation (Bahrain, Egypt, Saudi Arabia and United Arab Emirates v. Qatar)* – Judgment ICJ Reports 2020 p. 81). The position adopted by the ICJ was an important contribution to the debate.

The second key factor between 2018 and 2023 was the sharp increase in the number of procedures engaged before the ICAO Council under Article 84. Until the Middle East dispute, there were very few cases sent to the ICAO Council – one or two per decade. The increasing litigation resulting from the disputes in the Middle East, various terrorist attacks, the war in Ukraine and the increasing tensions between Russia on the one hand, and EU and NATO States on the other hand, increased the number of cases submitted to the ICAO Council. The procedure under Article 84, which was initially very seldom implemented, had become frequently used by ICAO Member States.

These two factors changed the legal context of Article 84 to an important extent.

**II. Among the amendments to the rules of procedure of Article 84 submitted by the working group to the Legal Committee, many gained consensus.**

### Updating and clarifying the rules of procedure governing the settlement of disputes

Certain amendments to the Rules were made to make them more efficient and to reflect modern working methods in today's world. For example, new provisions reflect the fact that most written pleadings are now distributed by email. The agent of one of the parties should therefore provide an electronic address (Article 2-1 b). Accordingly, the working group decided that written pleadings and their supporting documents should be sent in both paper and electronic formats (Article 2-2). In the same spirit, a provision enables the Council to hold virtual proceedings, but only after consulting the parties to the dispute. However, a virtual meeting shall remain an exceptional measure “for public health, security and other compelling reasons” (Article 35).

The working group also clarified some of the existing rules: for instance, the obligation to certify that a dispute brought before the Council cannot be settled by negotiation (Article 2 g). Another clarification was introduced in order to specify that admissibility is one of the grounds for preliminary objections (Article 5-1). Along the same lines, the group decided that the applicant may file a written pleading in response to the respondent's statement on preliminary objection, but that should be the end of written exchanges in relation to preliminary objections (Article 5-3).

The working group redrafted Article 29 of the Rules in order to deliver a clearer roadmap on the issue of translation. First, the wording of the Rules was aligned with the legal status of all of the current six official languages of ICAO, making it also possible to add more official languages in the future. The principle is that all written and oral submissions should be made in one of the official languages, and then translated and/or interpreted into each of the other five official languages by the ICAO Secretariat. On the other hand, it was decided that – unless otherwise decided by the Secretary General – supporting documents appended to written pleadings should not be translated. This scheme aims at defining a balanced solution, both for technical and financial reasons.

Another important step was taken under Article 35, as the Rules will enable the Council to issue practice directions or guidelines for procedural matters. These practice directions will not have the same status as the Rules themselves, and they will be much easier to amend in the future. The working group adopted a non-exhaustive list of topics that could be dealt with in the practice directions, such as the format of the documents, the page limits, guidance on how to make the pleadings and other relevant documents concise...

III. The working group also devoted extensive discussions to more controversial issues, without reaching a consensus amongst its members at the end of the day. Such issues were reported to the 39<sup>th</sup> Session of the Legal Committee.

### A favourable but cautious approach from the Legal Committee

Two main issues were at stake.

The first issue dealt with provisional measures. The principle was that the Council would have been in a position to order provisional measures, aimed at safeguarding peace, safety and security while the case brought under Article 84 was pending. The inclusion of a provision dealing with such measures was discussed during several meetings of the working group. However, no formal proposal on this matter was made in the group's final report. The Legal Committee took a similar line and did not incorporate this possibility in the draft of the new Rules.



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Another – very sensitive – issue is the meaning of the word “majority” when the ICAO Council votes. On the one hand, according to Article 52 of the Chicago Convention, Council decisions require approval by a majority of its members i.e. an “absolute majority”. Since 36 States presently belong to the ICAO Council, this means that any decision under Article 84 needs approval by 19 Council members. On the other hand, a State which is party to a dispute under Article 84 cannot participate in the Council vote. This can potentially lead to a deadlock, the Council being unable to make any decision at all if several Council members are involved in a given dispute. Considering how complex and sensitive this issue is, the Legal Committee did not express a preference for either the “absolute majority” or “qualified majority” solutions.

On both issues, the status quo prevailed.

The ICAO Council examined the outcome of the 39<sup>th</sup> Session of the Legal Committee on 4 November 2024 and adopted the new Rules.

The new Rules will apply only to Article 84 cases filed after the date of approval. However, parties to a pending case when the new Rules came into force may choose to follow the new provisions for settling their dispute, provided all parties agree to do so. ●

After serving as an officer in the French Navy for 12 years, **Terry Olson** was appointed to the *Conseil d'État* (French Supreme Administrative Court) in 1993. Since 2002, he has also been working as a legal consultant with the Civil Aviation Directorate of France. This work mainly focuses on the legal activities going on within ICAO instances. In 2010, he was chair of the Diplomatic Conference that adopted the Beijing Convention and Protocol. From 2013 to 2018, he chaired the ICAO Legal Committee. He has also been a member of the ECAC Legal Task Force for many years.

<sup>(1)</sup> EDITOR'S NOTE

This article discusses an event that has already taken place. We hope the highlights shared in this piece will encourage readers to reflect on the event's significance and impact. You are invited to visit the event website for further information:

<https://www.icao.int/Meetings/CALAF3/Pages/default.aspx> – Or:

<https://web.cvent.com/event/1665e912-0c27-449f-80a7-8a239089414a/websitePage:0409ff3b-bda8-4007-a2af-0cf77fa58817?RefId=ICAOWEBSITE>



# Third Civil Aviation Legal Advisers Forum – “Wingspan”: Extending legal horizons in civil aviation

This year, the International Civil Aviation Organization (ICAO) marks its 80<sup>th</sup> anniversary of the signing of the Chicago Convention.



**DAVID STOPLÁR**

Special Counsel International  
Aviation, United Kingdom Civil  
Aviation Authority

**T**his fundamental development in international law has served as the foundation for the development of our aviation system.

In a few weeks' time <sup>(1)</sup>, we at the United Kingdom Civil Aviation Authority will proudly host over a hundred lawyers at the next ICAO-sponsored Civil Aviation Legal Advisers Forum (CALAF) from 26-28 November 2024.

The event brings together lawyers from around the world to discuss topical issues of legal interest, to exchange information and best practice, and to network with colleagues.

This will be the third occasion of such an event, which first took place in Singapore in 2019, and had its second outing in Oman in 2023. This year, it will take place at the Royal Aeronautical Society in London.

We will welcome ICAO's Secretary General, Juan Carlos Salazar, who will join us as we celebrate 80 years of the signing of the Chicago Convention.

The conference will hold a commemorative panel to mark this legal milestone, with insights on how the Convention has shaped aviation and adapted to the challenges and opportunities in increased air travel, technology changes, safety, security and environmental concerns.

Separate panel discussions will consider sustainability and innovation (including artificial intelligence), enforcing air navigation regulations, cooperative mechanisms for aviation safety, the use of safety information in judicial proceedings, the Cape Town instruments and their relationship to national law, and facilitation.

We have worked closely with the ICAO Legal Bureau to develop the programme, and they will be sending their own team, led by the director of the Legal Affairs and External Relations Bureau, Michael Gill.

Delegates are also drawn principally from civil aviation authorities across the globe and government ministries. The event will play host to chief executives, legal practitioners, industry representatives and academics in our field, including several members of the European Civil Aviation Conference's (ECAC) Legal Task Force.

Hosted by



With the 42<sup>nd</sup> ICAO Assembly coming up in September 2025, the conference is also an opportunity to consider the outcomes of the 39<sup>th</sup> Legal Committee, and legal priorities and activities of concern to our industry and its regulators in the run up to the Assembly.

A recurring theme of all CALAFs has been enhancing the capacity and effectiveness of civil aviation legal advisers. In a session led by the Legal Committee's new chairperson, Alice Serpa Braga Della Nina, we will look at progress made by States in this area, including development of a competency framework.

Delegates will be invited to consider what more can be done to support the rule of law, share experiences to promote the governance of civil aviation bodies, and examine options for effective domestication of Standards and Recommended Practices (SARPs), especially in the legal Critical Elements 1 and 2.

Delegates can also participate in a “cultural day” tour of the Royal Courts of Justice in London: Lincoln's Inn and Gray's Inn – two of the four Inns of Court, which are the professional associations of barristers and judges.

We're proud to play host this year and look forward to welcoming colleagues from across the globe. ●

**David Stoplar** is a United Kingdom barrister who has worked in the UK Civil Aviation Authority for more than 30 years. He has been special counsel for international aviation since 2020. He has been involved in all aspects of international work, and led the legal work for the UK's Universal Safety Oversight Audit Programme (USOAP) and State Safety Programme Integrated Assessment (SSPIA) in 2022. His principal role is supporting CAA International Ltd in capacity-building projects, SSP development and legal advice and training in other States. He is a member of the ICAO Article 12 Task Force and the ECAC Legal Task Force.

The event was a resounding success, drawing praise for its engaging programme and high-quality speakers. Delegates were particularly captivated by the historical and cultural significance of the venues, which added to the overall appeal of the event. At the heart of its success, however, was the rich content of the sessions and the expertise of the speakers, making it both an enriching and enjoyable occasion.

We were honoured to welcome ICAO Secretary General, Juan Carlos Salazar, who joined us for the first day of the event. In his feedback, he highlighted the importance of the gathering, stating that it was a significant contribution to advancing the global goal of upholding the rule of law in international civil aviation.





## News from ECAC and JAA TO:

- ECAC Spotlight
- ECAC in brief
- JAA TO

# State Assistance to Air Accident Victims Task Group

Though air transport is the safest modal transport, an aviation accident is still a catastrophic event that has a high impact on society. All States have a moral and legal obligation to ensure that victims and their families receive sufficient assistance. This is in line with a State's moral duty to protect and support people in times of crisis, and it is regulated in international aviation legislation. The ICAO and European Union regulations stipulate that States have to ensure that legislation or policies are in place to support victims of aircraft accidents and their families.

**T**he ECAC State Assistance to Air Accident Victims Task Group (SAAV-TG) was established by the ECAC Directors General in December 2023. Early on, they had recognised the importance of a uniform and comprehensive system to support accident victims and their families. A support system requires cooperative planning and a coordinated response by the air operator, airport operator, involved States, non-governmental organisations and specialised humanitarian or commercial companies. With so many involved parties, a well-established assistance plan is absolutely essential. The Directors General gave the task group a primary mandate to help ECAC Member States establish such a system and plan. The main objective is to establish a template for a model assistance plan to implement the international regulations, and a checklist to assess existing legislation. Furthermore, the group aims to support ECAC Member States in strengthening their preparedness and response capabilities by promoting the sharing of experiences and best practices.

## IF AIR TRANSPORT IS SAFE AND AN ACCIDENT IS UNLIKELY, WHY SHOULD STATES INVEST IN AN ASSISTANCE PLAN?

Aviation accidents – though unlikely – have a huge impact. Next to the already mentioned moral and legal obligation of a State, adequate assistance plans also have the following effects in case of a major accident:

### 1 | Maintaining public trust and the international reputation of the State

Developing a robust system to assist aircraft accident victims and their families strengthens the State's overall emergency preparedness, making it better equipped to handle various types of disaster. A responsible and prepared response helps to prevent the decrease of public trust in the aeronautical or transport system after an accident. Next to that, States are bound by international aviation regulations and conventions to provide appropriate

support to victims and their families. A well-organised response to aircraft accidents confirms a State's international status as a committed and responsible actor on the global stage.

### 2 | Mitigating the negative human and economic impact of an aircraft accident

Effective assistance helps mitigate the immediate trauma and long-term psychological impact on victims and their families. Investing in immediate assistance helps to manage medical and psychological needs, thereby reducing associated costs, as well as the subsequent economic consequences that may arise from a mismanaged response. Adequate assistance also helps to ensure confidence in the State's aviation sector, which is crucial to managing economic impacts, for example in tourism.

### 3 | Improved assistance and communication to victims and their families

Family assistance brings a sense of order to a chaotic environment by establishing mechanisms to provide timely factual information from authoritative sources to victims and family members. Effective family assistance clearly communicates to victims and families what type of support is available, how the process works and what timeframes can be expected, allowing for consistent messaging, and mitigating misunderstandings. Family assistance offers those affected the opportunity to have their concerns heard and addressed in a safe and secure environment to ensure there is not extra hardship during the process.

## WHY IS ECAC'S WORK NEEDED ON THIS TOPIC – AND WHY NOW?

The ICAO Standards in Annex 9 for providing assistance to aircraft accident victims and their families are relatively new and the implementation rates worldwide are still low. These Standards are now

## interview with



**DIANTHA RAADGERS**

Policy Advisor, Ministry of Infrastructure and Water Management, Directorate-General for Transport and Aviation, Unit Aviation Safety & Security, Netherlands



Explore the insights and discussions on these topics from the ICAO Symposium on Assistance to Aircraft Accident Victims and their Families, held in Haarlem, Netherlands, from 26-28 November 2024.

<https://www.icao.int/Meetings/AAAVF2024/Pages/default.aspx>



Members of the State Assistance to Air Accident Victims Task Group met in Haarlem on 27 November 2024 during the ICAO Symposium on Assistance to Aircraft Accident Victims and their Families (Haarlem, 26-28 November 2024).

audited under ICAO's Universal Safety Oversight Audit Programme (USOAP) thus affecting the State's safety rating. The increasing frequency of international air travel and the significant human impact of aircraft accidents underscore the overall need for coordinated efforts in victim support. Specifically, the results of the latest survey issued by the ECAC Secretariat indicated room for improvement among ECAC Member States in their family assistance response systems. These results, and the requests from ECAC Member States to be assisted in the establishment of a comprehensive national system, emphasise the need for collaboration via ECAC's structures. By facilitating cooperation between experts from various domains, such as safety, communications, and legal affairs, the task group aims to improve both the national policies and the overall response framework. ECAC is committed to assisting its Member States in complying with the new ICAO Annex 9 Standards, which were adopted under Amendment 29 to ICAO Annex 9. Furthermore, the task group raises awareness about the importance of not just immediate response but also long-term support for the victims and families, covering legal, psychological, and logistical aspects.

### WHAT HAS THE GROUP BEEN WORKING ON, AND HOW IS THIS PROGRESSING?

Since its formation, the task group has made significant progress in reviewing the current practices and regulations in place across ECAC Member States. An analysis of the national family assistance systems has been conducted to identify gaps and areas for improvement. Driven by these findings, a plan of action was presented to the task group. The plan of action outlines the primary goals, action items, deliverables, and results for the upcoming year. It was concluded that ECAC Member States can be grouped into two categories: those equipped with national policy, regulation, and/or legislation to provide victim support, and those in the process of developing comprehensive support systems.

To provide value to both categories, the task group agreed to develop two key deliverables: the Family Assistance Plan Template is designed to guide ECAC Member States in developing and implementing effective support systems for air accident victims and their families. This template covers essential areas, such as the legal framework, confirming involvement, providing immediate information, handling immigration and customs formalities, and ensuring the privacy and security of victims and families. The second deliverable, the Family Assistance Plan Checklist, serves as a self-assessment tool for experienced ECAC Member States to verify whether their existing systems are adequate. The task group will report on the progress of these deliverables at the Directors General meeting in December 2024.

### WHAT MAIN CHALLENGES DO YOU SEE ARISING FOR THIS TOPIC GLOBALLY AND/OR FOR ECAC?

One of the primary challenges is consistent implementation of the new ICAO Annex 9 Standards across all ECAC Member States. Drafting national family assistance plans requires capacity, political will and commitment from all involved States and entities. Developing such policies and establishing the necessary regulations and/or legislation to support these policies, takes time. Victim assistance requires a comprehensive framework that involves collaboration between national departments, private companies and stakeholders such as family organisations, and a legal adjustment, which can be a lengthy process.

### SOME FINAL WORDS AND THOUGHTS TO LEAVE US WITH

The efforts of ECAC in bringing together experts from across ECAC Member States and various domains to enhance the assistance provided to victims and their families are well appreciated. The commitment from the Directors General highlights the importance of continuously improving victim and family assistance across ECAC Member States. The task group will continue working towards strengthening the region's ability to respond effectively and respectfully to these tragedies. ●

**Diantha Raadgers** has more than 28 years of experience in aviation law and operations. She is responsible for the Dutch Facilitation Programme and represents the Netherlands in ECAC, ICAO and other UN institutions. She co-wrote the ECAC Model Facilitation Programme, later adopted as the ICAO Standard. Diantha initiated a variety of other adopted ICAO Standards and Recommended Practices. She has chaired the ECAC Immigration Sub-Group and several ICAO working groups. She holds a master's in international law and business information and is a certified ICAO trainer for facilitation-related courses.

More than 90 participants from 36 Member States and observer organisations gathered in Maastricht for the annual Special meeting of Directors General of Civil Aviation.



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### Directors General attend annual Special meeting in Maastricht

MAASTRICHT, 5-7 SEPTEMBER 2024

More than 90 participants from 36 Member States and observer organisations gathered in Maastricht for the annual Special meeting of Directors General of Civil Aviation. Hosted jointly by Belgium, Netherlands and Luxembourg, the event was opened by Frans Weekers, Secretary General of the Benelux Union, along with the Directors General of Civil Aviation from all three host countries.

A highlight of the first day was a session on “How was summer 2024 for you?”, opened by Raúl Medina, Director General of EUROCONTROL. Mr Medina gave a frank account of the air navigation challenges faced in Europe over the summer. He emphasised the operational challenges, notably due to extreme weather disruptions, and the need for action from all parties to address the situation. Several ECAC Member States also shared their experiences, with air traffic control delays, labour disputes and weather-related disruptions all featuring to differing degrees across Europe during the summer season.

On the second day, a closed session was held, focusing on European priorities for the 42<sup>nd</sup> ICAO Assembly in 2025. Directors General engaged in a broad discussion aimed at guiding ECAC’s groups in developing proposals to advance these priorities.

Other key topics included the proposed future participation of the United States in the ECAC Common Evaluation Process (CEP) of security equipment,



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From the left: Frans Weekers, Pierre Jaeger, Koen Milis, Henri Van Faassen, Alessio Quaranta, Patricia Reverdy.

and a decision in principle on changes to the funding model. Finally, updates were provided on European participation in the ICAO Committee on Aviation and Environmental Protection, whose 13<sup>th</sup> cycle will reach its conclusion in February 2025. The meeting also addressed the growing conversation around aviation’s non-CO<sub>2</sub> impacts on climate change.

The meeting concluded extending thanks to the hosts for their warm hospitality. ●

## First ECAC assessment of assistance to persons with disabilities and persons with reduced mobility in Ireland

DUBLIN, 16-19 SEPTEMBER 2024



**T**he first assessment under the ECAC Assessment Programme on the Assistance to Persons with Disabilities and Persons with Reduced Mobility (PRMs) took place in Ireland from 16 to 19 September 2024. This marks a significant milestone following the programme's launch in 2024, and successive pilot phases between 2018 and 2023.

The primary objective of the programme is to assist ECAC Member States in effectively monitoring the activities of all operators providing an assistance service for persons with disabilities and persons with reduced mobility, to ensure that it is of sufficient quality. The assessment is based on ECAC's policy document for facilitation, Doc 30, Part I.

The assessment team, comprising experts from Italy, North Macedonia and the ECAC Secretariat, was supported by the Irish Department of Transport and the Irish Aviation Authority. Throughout the four-day assessment, the team received crucial cooperation from industry stakeholders: Dublin Airport Authority, OCS, Aer Lingus and Ryanair. This collaborative effort was instrumental in evaluating and enhancing the overall quality of assistance services provided to PRMs. ●

### ECAC Member State appointments



**Teun Müller**  
(Netherlands)  
as co-chair of the  
European  
Coordination  
Group on Cyber  
Security (ECG-CS)



**Luís Moço**  
(Portugal)  
as chair of the  
Threat Response  
Group (TRG)



**Valentine Sarnau**  
(Switzerland)  
as deputy chair  
of the Common  
Evaluation Process  
of security equip-  
ment Management  
Group (CEP-MG)



**Lydia Price**  
(United Kingdom)  
as deputy chair  
of the Network of  
Diversity and  
Inclusion (NETD&I)



**Emma Jeppsson**  
(Sweden)  
as chair of the  
ECAC Medium-  
Term Objectives  
Task Force (EMTO)



**Ana Maria Finca**  
(Romania)  
as chair of the  
Training Task  
Force (TrTF)



**Para Paranthaman**  
(Norway)  
as deputy chair  
of the Technical  
Task Force (TTF)

## News from the ECAC Secretariat



**LARS CHRISTENSEN** joined the ECAC Secretariat on 2 September as policy coordinator, covering accident investigations, legal issues and climate change and adaptation. Before this, Lars was an advisor at the Norwegian Ministry of Transport, where he worked in the civil aviation and postal services sectors. One of his key responsibilities was supporting the Norwegian government's strategy to accelerate the integration of low- and zero-emission aircraft, collaborating closely with aviation stakeholders across Europe. Lars is looking forward to working at the international level, where he will continue to contribute to a broad range of civil aviation policy issues.



On 2 September, **IRENE MANCINI** joined the ECAC Secretariat as business operations manager. Prior to this role, Irene served as assistant manager for the Global Office at IATA, where she managed the Global Office portfolio, and as project management officer at SITA, ensuring regulatory compliance for in-flight communications. Both positions were based in Geneva, Switzerland. Irene also previously held roles at the United Nations Office in Geneva and the Italian Embassy in Cameroon. Irene's career encompasses expertise in project management, stakeholder engagement, regulatory compliance and procurement. She is passionate about aviation, particularly on advancing sustainability within the sector.

## Events to come

### JANUARY

- 9** | 19<sup>th</sup> meeting of the European Coordination Group on Facilitation matters (ECG-FAL/19), videoconference
- 13-14** | 4<sup>th</sup> meeting of the civil aviation regional organisations (REG-ORG/4), Guatemala City
- 17** | 43<sup>rd</sup> meeting of the Security Programme Management Group (SPMG/43), videoconference
- 21-23** | 44<sup>th</sup> meeting of the Explosive Detection Dogs Study Group (EDD/44), videoconference
- 30** | 51<sup>st</sup> meeting of the Study Group on Cyber Security in Civil Aviation (CYBER/51), videoconference

### FEBRUARY

- 4-5** | 90<sup>th</sup> meeting of the Technical Task Force (TTF/90), videoconference
- 12-13** | 40<sup>th</sup> meeting of the Behaviour Detection Study Group (BDSG/40), videoconference
- 26-27** | 63<sup>rd</sup> meeting of the Guidance Material Task Force (GMTF/63)

### MARCH

- 4-5** | 64<sup>th</sup> meeting of the Common Evaluation Process of security equipment Management Group (CEP-MG/64), Madrid
- 6** | CEP Workshop, Madrid
- 13-14** | 58<sup>th</sup> meeting of the Training Task Force (TrTF/58)



calendar

## News from the JAA Training Organisation (JAA TO)



**PAULA V. DE ALMEIDA**  
JAA TO CEO

Dear readers of ECAC News,

As aviation professionals navigate the complexities of an evolving global landscape, it is crucial that we remain vigilant about the legal frameworks shaping our industry. European aviation regulatory law stands at the forefront of international best practices, offering a robust model for harmonised governance, thanks to the collaborative efforts within the European Union at large, and more specifically in the European Civil Aviation Conference (ECAC). The current legal environment emphasises safety, sustainability and security, all anchored by strong regulatory oversight and innovation in policy frameworks.

To maintain this strength, harmonised training is essential. It empowers professionals across the ECAC Member States to study and make informed recommendations on issues concerning public international air law. JAA TO, with its long-standing expertise, is uniquely positioned to support these training needs, fostering a deeper understanding of the legal frameworks and bolstering the capacity of our authorities to implement strategic, future-proof solutions. ●

### Annual High-Level Training (HLT) workshop series – new dates for 2025

Following the success of the 5<sup>th</sup> edition in April 2024, JAA TO is planning the **next High-Level Training (HLT/6) workshop, scheduled for 3-4 April 2025** at the JAA TO HQ. This invitation-only event gathers Directors General of Civil Aviation and deputies, as well as heads of training departments from the European Civil Aviation Conference (ECAC)

Member States. It is designed to offer unique insights and foster collaboration on trending aviation training issues. As ECAC associated body, JAA TO's objective of providing various platforms and training activities in support of aviation leaders across the ECAC network remains vital. Delegates can register via the link enclosed in the invitation letter. ●



## CEO recaps ICAO GISS 2024 – JAA TO receives two awards



This summer, JAA TO attended the ICAO Global Implementation Support Symposium (GISS) 2024, which brought together over 900 delegates from civil aviation authorities, industry, and international organisations to collaborate on critical implementation initiatives. During GISS, ICAO TRAINING and the TRAINAIR PLUS Steering Committee (TPSC) members met for TPSC/15 to discuss the global harmonisation of ICAO training products and implementation activities across the TRAINAIR PLUS PROGRAMME (TPP) network. As duly elected TPSC chair on her second consecutive term, JAA TO CEO Paula V. de Almeida summarises the meeting: “TPSC/15 yielded productive discussions around effective training harmonisation across the globe, and promising signals for the future of aviation training were brought forward. This Committee remained fully committed to training excellence with more efficient mechanisms that benefitted and advanced the entire TPP network.”



JAA TO was honoured with two ICAO awards for its activity in the TPP. Over the previous year, JAA TO achieved the “Highest Number of ICAO Training Miles” globally, and enrolled the “Most Trainees in an ICAO Online Training Package”. These accolades underscore the organisation’s commitment to digitalisation and a sustainable aviation ecosystem. ●

## JAA TO joins ECAC Triennial Plenary Session (ECAC/42), and sponsored lunch during ECAC Special DGCA/73



**JAA TO** joined the engaging panel discussions alongside ECAC's regional and bilateral partners, addressing the future of air transport and the critical role of innovation, green development, and economic growth. As the European regulatory training and knowledge centre for aviation professionals, JAA TO underscored its role in building the necessary capacity to support these pillars and fostering strong like-minded networks.

Presenting on recent training activities at the 73<sup>rd</sup> Special meeting of ECAC Directors General of Civil Aviation (DGCA/73(SP)), JAA TO also hosted a lunch for ECAC Directors General and representatives, including JAA TO's team, which facilitated numerous productive discussions evolving around the critical need for continuous skill development to ensure the sector remains resilient and prepared for future challenges. ●

## JAA TO launches new ICAO M-ITP course – a foundation for aspiring aviation instructors



**B**ridging the gap of organisational challenges and personnel competency, JAA TO's new self-paced, online course *ICAO-M-ITP Fundamentals of Instructional Competencies (FIC)* equips trainees with the skills, knowledge, and attitudes (K-S-A) needed to deliver high-quality, competency-based

training. Aligning with ICAO guidelines and using the most efficient instructional strategies, this course ensures that both experienced and new instructors can provide effective training that meets the highest standards.

The **FIC** course is designed to provide aviation professionals and training departments with the essential knowledge and skills needed to excel in instructional roles, logistics, set-up and organisation of competency-based training and assessment (CBTA) content delivery. As a replacement for the previously available joint M-ITP Instructional Competencies, this new course introduces concepts that serve as a foundation to the recommended follow-up course: ICAO TRAINAIR PLUS – Training Instructors Course (TIC) – the benchmark training in ICAO's Instructor Qualification Programme and its Adapted Instructor Competency Model. ●



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