

MINISTRY OF TRANSPORT, INFRASTRUCTURE, HOUSING, URBAN DEVELOPMENT AND PUBLIC WORKS

EXPLANATORY MEMORANDUM ON THE RATIFICATION OF AMENDMENT TO ARTICLES 50(A) AND 56 OF THE CONVENTION ON INTERNATIONAL CIVIL AVIATION, 1944 (CHICAGO CONVENTION)

(a) The objects and subject matters of the Chicago Convention, 1944

The International Civil Aviation Organization (ICAO) is a specialized agency of the United Nations created with the signing in Chicago, on 7 December 1944, of the *Convention on International Civil Aviation* (Chicago, 1944). ICAO is responsible for the administration of the principles laid out in the Convention.

The aims and objectives of ICAO; as contained in Article 44 of the Chicago Convention; are to develop the principles and techniques of international air navigation and to foster the planning and development of international air transport so as to insure the safe and orderly growth of international civil aviation throughout the world.

ICAO has a sovereign body, the Assembly, and a governing body, the Council. The Assembly meets once every three years and is convened by the Council. Each Contracting State is entitled to one vote, and decisions of the Assembly are taken by a majority of the votes cast except when otherwise provided for in the Convention. At these sessions, the complete work of the Organization in the technical, economic, legal and technical cooperation fields is reviewed in detail, and guidance is given to the other bodies of ICAO for their future work.

The Council is a permanent body responsible to the Assembly and is currently composed of representatives from 36 Contracting States elected by the Assembly for a three-year term. Election to the Council is divided into three parts:

Part I – Eleven States: States of chief importance in air transport;

Australia, Brazil, Canada, China, France, Germany, Italy, Japan, Russian Federation, United Kingdom and the United States.

Part II – Twelve States: States not already elected in the first part but which make the largest contribution to the provision of facilities for international civil air navigation; and

Argentina, Colombia, Egypt, Finland, India, Mexico, Netherlands, Nigeria, Saudi Arabia, Singapore, South Africa, and Spain.

Part III – Thirteen States: States not elected in either in the first or the second part, and whether or not they were candidates in either of those parts, and whose designation will ensure that all the major geographical areas of the world are represented on the Council.

Costa Rica, Côte d'Ivoire, Dominican Republic, Equatorial Guinea, Greece, Malaysia, Paraguay, Peru, Republic of Korea, Sudan, Tunisia, United Arab Emirates, Zambia.

In view of the growing traffic in certain regions of the world and the emergence of new sub-regions that are not represented in the Council, ICAO has passed Resolution A39-4 signed at Montreal on 6th October, 2016 that Amends Article 50 (a) of the Chicago Convention by increasing the number of ICAO Council Members from 36 to 40.

The Air Navigation Commission considers and recommends Standards and Recommended Practices (SARPs) and Procedures for Air Navigation Services (PANS) for adoption or approval by the ICAO Council.

The Commission is composed of representatives from 19 Contracting States. Although ANC Commissioners are nominated by specific ICAO Member States, and appointed by the Council, they do not represent the interest of any particular State or Region. Rather they act independently and utilize their expertise in the interest of the entire international civil aviation community.

Similarly, ICAO through Resolution A39-4 signed at Montreal on 6th October, 2016 has Amended Article 56 of the Chicago Convention by increasing the number of Air Navigation Commission composition from 19 to 21.

(b) Summary of Amendments

1. The ICAO Council composition

The original text of the Chicago Convention provided for 21 members of the ICAO Council. The text was subsequently amended by the 13th (Extraordinary) Session of the Assembly on 21 June 1961; this amendment entered into force on 17 July 1962 and provided for 27 members of the Council.

A second amendment was adopted by the 17th (A) (Extraordinary) Session of the Assembly on 12 March 1971; the amendment entered into force on 16 January 1973 bringing the number of members of the Council to 30.

A third amendment was adopted by the 21st Session of the Assembly on 16 October 1974; this amendment entered into force on 15 February 1980 and provided for 33 members of the Council.

The 28th Session (Extraordinary) of the Assembly, on 25 October 1990, adopted Resolution A28-1, increasing the membership of the Council from 33 to 36; this amendment came into force on 28 November 2002.

The 39th Session of the Assembly, on 1st October, 2016 adopted Resolution A39-6, increasing the membership of the Council from 36 to 40: this amendment is awaiting for ratification by 128 Contracting States for it to come into force.

2. ICAO Air Navigation Commission Composition

The original text of the Chicago Convention provided for 12 members of the ANC. The text was subsequently amended by the 18th Session of the Assembly on 7th July, 1971 signed in Vienna; this amendment entered into force on 19th December, 1974 and provided for 15 members of the ANC.

A second amendment was adopted by the 27th Session of the Assembly on 6th October, 1989; the amendment entered into force on 18th April, 2005 bringing the number of members of the ANC to 19.

The third amendment was adopted by the 39th Session of the Assembly on 1st October, 2016; this amendment is awaiting ratification by 128 Contracting States for it to enter into force. The amendment seeks to increase membership of ANC from 19 to 21.

3. The Objects and Subject Matter of the Amendment:

ICAO has always been active in keeping abreast with the new developments in the field of international civil aviation, including the emergence of new regional and sub-regional groups in the world, the increasing number of Contracting States joining ICAO, and the growth of international air traffic movement and air navigation services requirements.

ICAO has responded in many ways, including the expansion of its activities to cover more parts of the world and opening the door for more States to represent their Regions on the ICAO Council.

In view of the growing traffic in certain regions of the world and the emergence of new sub-regions that are not represented in the Council, ICAO resolved (ICA0 (A39-4) to increase the number of the members of the Council from 36 to 40 and ANC from 19 to 21.

4. Any Constitutional implications including –

(i) Any proposed amendment to the Constitution;

There is no proposed amendment to the Constitution.

(ii) That the Amendment to the Convention is consistent with the Constitution and promotes constitutional values and objectives;

The amendments to Articles 50(a) and 56 of the Chicago Convention is consistent with the Constitution and promotes constitutional values and objectives.

5. The National Interests which may be affected by the Amendment of the Convention;

Kenya was elected to the Council as a Part III Member on 4th October, 2013 for a term of three (3) years from 2013 to 2016. Subsequently, Kenya was re-elected to the Council for the second term from 7th October, 2016 to 6th October, 2019.

The Amendment proposed is for the 4 additional seats under Part II Members (Permanent Council Members).

It is therefore in the interest of the Country that it ratifies the Amendment to the Convention to increase the Council Membership from Thirty Six (36) to Forty (40). This will create an opportunity for Kenya to campaign for Membership under Part II.

It is also in the interest of the Country to ratify the Amendment to the Convention on the ANC to increase the number of Commissioners from 19 to 21 to ensure increased representation of Countries at ICAO.

6. Obligations imposed on Kenya by the Amendment of the Convention;

There is no additional obligation that will be imposed on Kenya by the amendment to the Convention. However, Kenya will lobby to secure nomination to one of the Permanent Seats that will be created after the amendment enters into force.

7. Requirements for implementation of the Amendment to the Convention;

The instruments of ratification of the Amendment shall be deposited with ICAO which will thereafter notify all Contracting States of the coming into force of the amendment.

8. Financial implications;

The ratification of the amendment to the Convention will be incorporated into existing institutional frameworks that Kenya Civil Aviation Authority has made provision for.

There are no budgetary changes envisaged in terms of financial implications if Kenya does not secure one of the additional Council Seats proposed.

9. Ministerial responsibility;

The Cabinet Secretary exercises powers conferred by Section 52 (e) of the Civil Aviation Act (No. 21 of 2013).

10. Implications on matters relating to Counties;

There are no implications on matters relating to Counties.

11. The date of signature;

The Protocol relating to the Amendment to Article 50 (a) and 56 was signed on 1st October, 2016 and will be effective upon Ratification by 128 ICAO Contracting States.

12. The number of States that are party to the Convention;

The Chicago Convention has 193 Contracting States including Kenya.

13. The views of the public on the ratification of the Amendment to the Convention;

The views of the public have not been sought regarding the ratification of the amendment to the Convention.

14. Whether the Convention sought to be ratified permits reservations and any recommendations on reservations and declarations;

The Convention allow for reservations and recommendations. There are no reservations and recommendations for the amendment.

15. The proposed text of any reservations that should be entered when ratifying the Convention in order to protect or advance national interests or ensure conformity with the Constitution; and

The amendment does not require any Reservation.

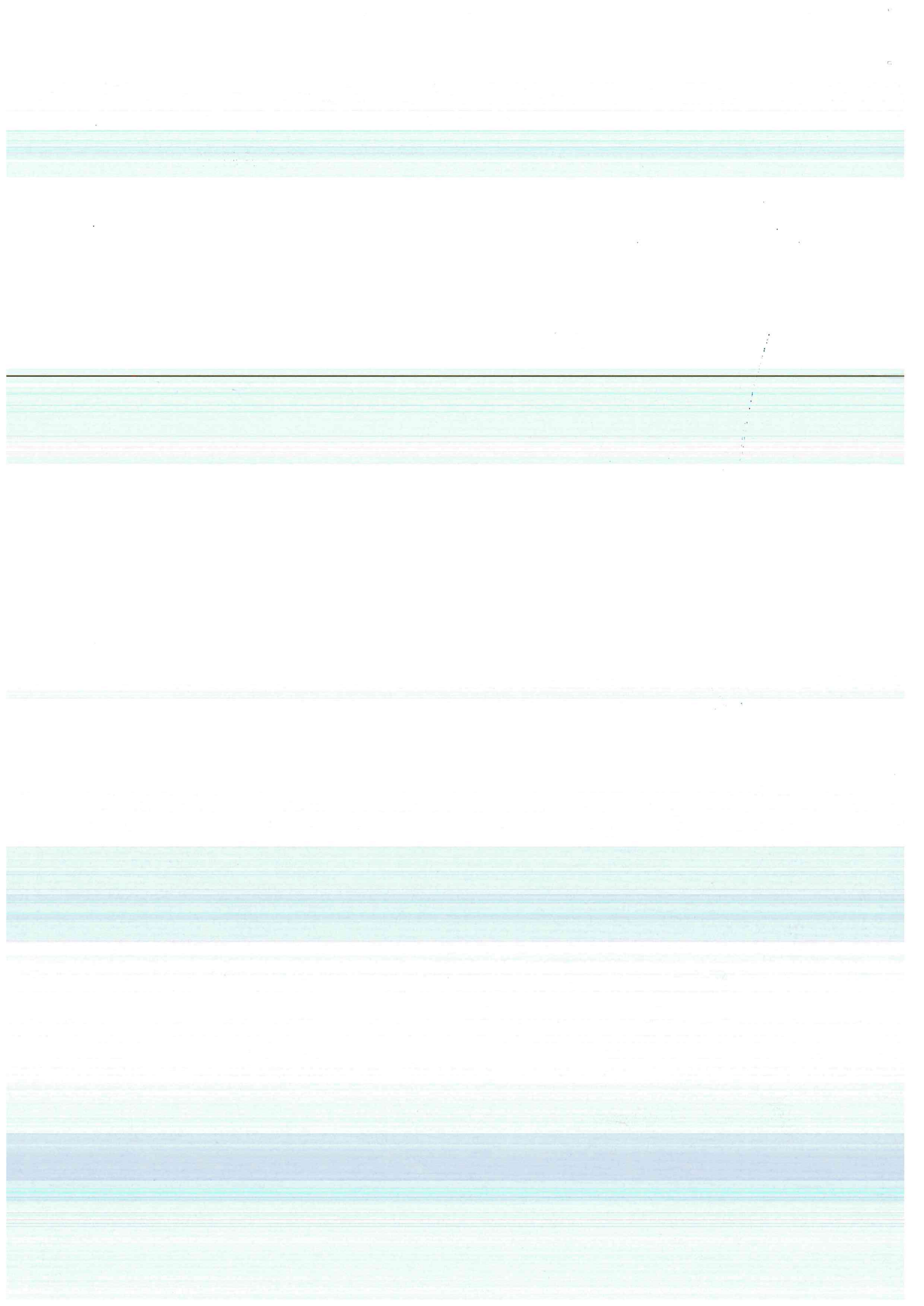
16. Whether expenditure of public funds will be incurred in implementing the Amendment to the Convention and an estimate, where possible, of the expenditure.

The amendment to the Convention has no implication on Public funds



James W. Macharia, EGH
CABINET SECRETARY

Date *26.05.2022*



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

[Article 50(a)]

Signed at Montréal on 6 October 2016

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PROTOCOL

RELATING TO AN AMENDMENT TO ARTICLE 50(a) OF THE CONVENTION ON INTERNATIONAL CIVIL AVIATION

Signed at Montréal on 6 October 2016

THE ASSEMBLY OF THE INTERNATIONAL CIVIL AVIATION ORGANIZATION

HAVING MET in its Thirty-ninth Session at Montréal on 1 October 2016,

HAVING NOTED that it is the desire of a large number of Contracting States to enlarge the membership of the Council in order to ensure better balance by means of an increased representation of Contracting States,

HAVING CONSIDERED it appropriate to increase the membership of that body from thirty-six to forty,

HAVING CONSIDERED it necessary to amend, for the purpose aforesaid, the Convention on International Civil Aviation done at Chicago on the seventh day of December 1944,

1. APPROVES, in accordance with the provisions of Article 94(a) of the Convention aforesaid, the following proposed amendment to the said Convention:

“In Article 50(a) of the Convention the second sentence shall be amended by replacing ‘thirty-six’ by ‘forty’.”;

2. SPECIFIES, pursuant to the provisions of the said Article 94(a) of the said Convention, one hundred and twenty-eight as the number of Contracting States upon whose ratification the proposed amendment aforesaid shall come into force;
3. RESOLVES that the Secretary General of the International Civil Aviation Organization draw up a Protocol, in the English, Arabic, Chinese, French, Russian and Spanish languages, each of which shall be of equal authenticity, embodying the amendment above-mentioned and the matter hereinafter appearing:
 - a) The Protocol shall be signed by the President of the Assembly and its Secretary General.
 - b) The Protocol shall be open to ratification by any State which has ratified or adhered to the said Convention on International Civil Aviation.

- c) The instruments of ratification shall be deposited with the International Civil Aviation Organization.
- d) The Protocol shall come into force in respect of the States which have ratified it on the date on which the one hundred and twenty-eighth instrument of ratification is so deposited.
- ~~e) The Secretary General shall immediately notify all Contracting States of the date of deposit of each ratification of the Protocol.~~
- f) The Secretary General shall immediately notify all Contracting States to the said Convention of the date on which the Protocol comes into force.
- g) With respect to any Contracting State ratifying the Protocol after the date aforesaid, the Protocol shall come into force upon deposit of its instrument of ratification with the International Civil Aviation Organization.

CONSEQUENTLY, pursuant to the aforesaid action of the Assembly,

This Protocol has been drawn up by the Secretary General of the Organization.

IN WITNESS WHEREOF, the President and the Secretary General of the aforesaid Thirty-ninth Session of the Assembly of the International Civil Aviation Organization, being authorized thereto by the Assembly, sign this Protocol.

DONE at Montréal on the sixth day of October of the year two thousand and sixteen, in a single document in the English, Arabic, Chinese, French, Russian and Spanish languages, each text being equally authentic. This Protocol shall remain deposited in the archives of the International Civil Aviation Organization, and certified copies thereof shall be transmitted by the Secretary General of the Organization to all Contracting States to the Convention on International Civil Aviation done at Chicago on the seventh day of December 1944.

A. Abdul Rahman
*President of the Thirty-ninth Session
of the Assembly*

F. Liu
Secretary General

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

[Article 56]

Signed at Montréal on 6 October 2016

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PROTOCOL

RELATING TO AN AMENDMENT TO ARTICLE 56 OF THE CONVENTION ON INTERNATIONAL CIVIL AVIATION

Signed at Montréal on 6 October 2016

THE ASSEMBLY OF THE INTERNATIONAL CIVIL AVIATION ORGANIZATION

HAVING MET in its Thirty-ninth Session at Montréal on 1 October 2016,

HAVING NOTED that it is the general desire of Contracting States to enlarge the membership of the Air Navigation Commission,

HAVING CONSIDERED it proper to increase the membership of that body from nineteen to twenty-one, and

HAVING CONSIDERED it necessary to amend, for the purpose aforesaid, the Convention on International Civil Aviation done at Chicago on the seventh day of December 1944,

1. APPROVES, in accordance with the provisions of Article 94(a) of the Convention aforesaid, the following proposed amendment to the said Convention:

“In Article 56 of the Convention the expression ‘nineteen members’ shall be replaced by ‘twenty-one members’.”;

2. SPECIFIES, pursuant to the provisions of the said Article 94(a) of the said Convention, one hundred and twenty-eight as the number of Contracting States upon whose ratification the aforesaid amendment shall come into force; and
3. RESOLVES that the Secretary General of the International Civil Aviation Organization shall draw up a Protocol, in the English, Arabic, Chinese, French, Russian and Spanish languages, each of which shall be of equal authenticity, embodying the amendment above-mentioned and the matters hereinafter appearing:
 - a) The Protocol shall be signed by the President of the Assembly and its Secretary General.
 - b) The Protocol shall be open to ratification by any State which has ratified or adhered to the said Convention on International Civil Aviation.
 - c) The instruments of ratification shall be deposited with the International Civil Aviation Organization.

- d) The Protocol shall come into force in respect of the States that have ratified it on the date on which the one hundred and twenty-eighth instrument of ratification is so deposited.
 - e) The Secretary General shall immediately notify all Contracting States of the date of deposit of each ratification of the Protocol.
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- f) The Secretary General shall immediately notify all Contracting States to the said Convention of the date on which the Protocol comes into force.
 - g) With respect to any Contracting State ratifying the Protocol after the date aforesaid, the Protocol shall come into force upon deposit of its instrument of ratification with the International Civil Aviation Organization.

CONSEQUENTLY, pursuant to the aforesaid action of the Assembly,

This Protocol has been drawn up by the Secretary General of the Organization.

IN WITNESS WHEREOF, the President and the Secretary General of the aforesaid Thirty-ninth Session of the Assembly of the International Civil Aviation Organization, being authorized thereto by the Assembly, sign this Protocol.

DONE at Montréal on the sixth day of October of the year two thousand and sixteen, in a single document in the English, Arabic, Chinese, French, Russian and Spanish languages, each text being equally authentic. This Protocol shall remain deposited in the archives of the International Civil Aviation Organization, and certified copies thereof shall be transmitted by the Secretary General of the Organization to all Contracting States to the Convention on International Civil Aviation done at Chicago on the seventh day of December 1944.

A. Abdul Rahman
*President of the Thirty-ninth Session
of the Assembly*

F. Liu
Secretary General