

**IN THE THIRD SESSION OF THE SIXTH
PARLIAMENT OF THE FOURTH
REPUBLIC OF GHANA**



**REPORT OF THE COMMITTEE ON
ROADS AND TRANSPORT**

ON

**INTERNATIONAL CONVENTIONS
AND PROTOCOLS ON CIVIL AVIATION**

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**REPORT OF THE COMMITTEE ON ROADS AND TRANSPORT ON THE INTERNATIONAL
CONVENTIONS AND PROTOCOLS ON CIVIL AVIATION**

1.0 INTRODUCTION

1.1 On Tuesday 10th, Friday 13th and Tuesday the 24th of November, 2015, a total of eleven (11) International Conventions and Protocols on Civil Aviation were laid in Parliament by the Hon. Minister for Transport, Mrs Dzifa Attivor and Hon. Deputy Minister, Mrs Joyce Bawah Mogtari on behalf of the sector Minister for ratification in accordance with Article 75 (2) (b) of the 1992 Constitution. The International Conventions and Protocols were subsequently referred to the Committee on Roads and Transport for consideration and report pursuant to Order 189 of the Standing Orders of Parliament of Ghana.

1.2 The International Conventions and Protocols referred to the Committee for consideration and report were:

- i) Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface (Rome, 7th October, 1952),
- ii) Convention on Compensation for Damage Caused by Aircraft to Third Parties (Montréal, Canada, 2nd May, 2009),
- iii) Convention for the Suppression of Unlawful Seizure of Aircraft (Hague, 16th December, 1970),
- iv) Convention for the Unification of Certain Rules for International Carriage by Air (Montréal, 28th May, 1999),
- v) Convention on International Interests in Mobile Equipment (Cape Town, 16th November, 2001),

- vi) Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation (Beijing, 10th September, 2010),
- vii) Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment (Cape Town, 16th November, 2001),
- viii) Protocol to Amend the Convention on Offences and Certain Other Acts Committed on Board Aircraft (Montréal, 4th April, 2014),
- ix) Protocol Supplementary to the Convention for the Suppression of Unlawful Seizure of Aircraft (Beijing, 2010),
- x) Modifications to the Convention for the Unification of Certain Rules Relating to International Carriage by Air; and
- xi) Convention on Compensation for Damage to Third Parties Resulting from Acts of Unlawful Interference Involving Aircraft (Montréal, Canada, 2nd May 2009).

1.3 The Committee held two meetings to consider the International Conventions and Protocols in reference. The Hon. Deputy Minister for Transport, Mrs Joyce Bawah Mogtari, and some key officials of the sector Ministry and the Ghana Civil Aviation Authority (GCAA) were in attendance at the meetings convened to consider the referrals. Their presence was beneficial to the Committee as they readily provided explanations to the Committee on aspects of the referrals that needed further elucidation. The Committee notes with gratitude, their assistance.

1.4 As indicated in Paragraph 1.1, eleven (11) International Conventions and Protocols were laid in the House and referred to the Committee for consideration. However, the Committee noted during the consideration that:

- i) The Convention for the Suppression of Unlawful Seizure of Aircraft (Hague, 16th December, 1970) had already been ratified by Ghana on 12th December, 1973.
- ii) The Modifications to the Convention for the Unification of Certain Rules Relating to International Carriage by Air is a compilation by the Legislative Drafting Section of the Ministry of Justice and Office of the Attorney-General for the domestication of the Convention for the Unification of Certain Rules for International Carriage by Air (Montréal, 28th May, 1999).

1.5 In view of the aforementioned observations, the Committee's report will not cover the two referrals at issue.

2.0 REFERENCE DOCUMENTS

2.1 References were made to the following documents during the consideration of the referrals:

- i) The 1992 Constitution of Ghana,
- ii) The Ghana Civil Aviation Act, 2006, Act 678,
- iii) The Criminal and Other Offences Act, 1960, Act 29; and
- iv) The Standing Orders of Parliament of Ghana.

3.0 BACKGROUND INFORMATION

3.1 In today's fast-moving world, the international convention, just like its domestic counterpart, must be kept up to date to deal with emerging issues that were not anticipated at the time of ratification. The International Civil Aviation Organization (ICAO), of which Ghana is a member, has noted the need to expand the scope and principles of the six (6) International Conventions and three (3) Protocols under consideration to cure the defects in the existing rules and also make the new rules more responsive to current needs of the Civil Aviation Industry worldwide.

3.2 The focal points of the International Conventions and Protocols under review could be grouped into four (4) thematic areas:

a) Security

- i) Convention on Compensation for Damage to Third Parties resulting from Acts of Unlawful Interference Involving Aircraft (Montréal, Canada, 2nd May, 2009),
- ii) Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation (Beijing, 10th September, 2010),
- iii) Protocol to Amend the Convention on Offences and Certain Other Acts Committed on Board Aircraft (Montréal, 4th April, 2014); and
- iv) Protocol Supplementary to the Convention for the Suppression of Unlawful Seizure of Aircraft (Beijing, 2010).

b) General

- i) Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface (Rome, 7th October, 1952); and
- ii) Convention on Compensation for Damage to Third Parties resulting from Acts of Unlawful Interference Involving Aircraft (Montreal, Canada, 2nd May, 2009 – General Risk).

c) Airlines

- i) Convention on International Interests in Mobile Equipment (Cape Town, 16th November, 2001); and
- ii) Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment (Cape Town, 16th November, 2001).

d) **Passengers**

- i) Convention for the Unification of Certain Rules for International Carriage by Air (Montréal, 28th May, 1999).

4.0 OBJECTIVE OF THE INTERNATIONAL CONVENTIONS AND PROTOCOLS

- 4.1 The main objective of these International Conventions and Protocols is to protect the interests of stakeholders in the Civil Aviation or the Civil Air Transport Industry.

5.0 JUSTIFICATION

5.1 Convention on Compensation for Damage to Third Parties Resulting from Acts of Unlawful Interference Involving Aircraft (Montréal, Canada, 2nd May, 2009)

- 5.1.1 The Convention applies to damage to third parties which occurs in the territory of a State Party caused by an aircraft on an international flight as a result of an act of unlawful interference. The Convention also ensures that damage in any State Party will be compensated whether the operator is from a State Party or not. Indeed, the Convention seeks to protect the interests of victims and the air transport industry as a whole by ensuring that, in most cases, the fullest compensation for victims are paid. There is no need for claimants to prove the existence of fault on the part of the carrier or any other person.
- 5.1.2 All third-party claims will be accepted to the full extent of proven damages regardless of the availability of insurance to cover them. With the adoption of the concept of channelling to the carrier, all liability to compensate victims will have a single identifiable point namely, the carrier, against whom to pursue claims.
- 5.1.3 Carriers are protected through the mechanism of global caps on liability per event, based on the weight of the aircraft. This should result in a stable long-term environment for Civil Aviation as regards war, risk and insurance, by ensuring that operating costs are predictable and that the industry is free from uninsurable catastrophic losses beyond its control.

5.1.4 GCAA intends to apply the provisions of the Convention to the operations of the domestic airlines when the Convention is ratified.

5.2 Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation (Beijing, 10th September, 2010)

5.2.1 The Convention seeks to address unlawful acts against civil aviation that jeopardize the safety and security of persons and property, acts that seriously affect the operation of air services, airports and air navigation equipment and also acts that undermine the confidence of people in the safety and orderly conduct of civil aviation.

5.2.2 The Convention in essence, seeks to better address threats to civil aviation by strengthening the legal framework for international cooperation in preventing and suppressing unlawful acts against civil aviation.

5.3 Protocol to Amend the Convention on Offences and Certain Other Acts Committed on Board Aircraft (Montréal, 4th April, 2014)

5.3.1 The upsurge and severity of unruly behaviour on board a civil aircraft that may affect the safety of the aircraft or persons or property therein or affect good order and discipline on board the aircraft, is what informed ICAO to amend the old Convention with the new Protocol.

5.3.2 The Protocol significantly improves the ability of ICAO member states to expand jurisdiction over related offences in the operation of a civil aircraft in flight and on landing. The agreed changes give greater clarity to the definition of unruly behavior (such as the threat of or actual physical assault, or refusal to follow safety-related instructions on board a civil aircraft).

5.4 Protocol Supplementary to the Convention for the Suppression of Unlawful Seizure of Aircraft (Beijing, 2010)

5.4.1 The Protocol supplements the Convention for the Suppression of Unlawful Seizure of Aircraft (Hague, 16th December, 1970). The Protocol expands the scope of the Convention to cover different forms of aircraft hijackings including preparatory acts for the offence through modern technological means.

5.4.2 It provides for the criminal liability of directors and organizers of the offence, as well as the liability of those who knowingly assist the offender to evade investigation, prosecution or punishment. The Protocol also expands the grounds of jurisdiction by requiring each State Party to establish jurisdiction when the offence is committed by its national. Indeed, the Protocol is the result of collective efforts by the international community to modernize the legal framework for aviation security.

5.4.3 The Protocol when ratified, would strengthen the capacity of Ghana to prevent the commission of these offences and also prosecute the offenders.

5.5 Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface, (Rome, 7th October, 1952)

5.5.1 The Convention seeks to ensure compensation for persons who suffer damage caused on the surface by foreign aircraft. The Convention further seeks to unify to the greatest extent possible, the rules applied in the various countries of the world to the liabilities incurred for such damage.

5.5.2 It must be noted that compensation for the damage suffered would be paid to a victim upon proof that the damage was a direct result of the aircraft in flight. The Convention therefore imposes strict liability on the operator of the aircraft without regard to fault.

5.5.3 The Committee was informed by GCAA that Ghana does not have a law covering the payment of compensation for damage to third parties caused by a foreign aircraft on the surface. The ratification of the Convention would therefore benefit Ghana as the Country could domesticate the law.

5.6 Convention on Compensation for Damage to Third Parties Resulting From Acts of Unlawful Interference Involving Aircraft (Adopted in Montréal, Canada, 2nd May 2009)

5.6.1 This Convention applies to damage to third parties which occurs in the territory of a State Party caused by an aircraft in flight on international flight other than the result of an act of unlawful interference.

5.6.2 The Convention is the result of corroborative efforts of the international community to harmonize and codify rules governing the compensation of third parties who suffer damage resulting directly from aircraft in flight.

5.6.3 The Convention modernizes the Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface which was signed in Rome on 7th October 1952.

5.7 Convention on International Interests in Mobile Equipment (Cape Town, 16th November, 2001) and Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment (Cape Town, 16th November, 2001)

5.7.1 The Convention and the Protocol are designed principally to reduce the cost of raising finance for large and high value mobile assets (civil aircrafts, helicopters and related accessories).

5.7.2 The Convention and Protocol aim to reduce the cost of financing large and high value mobile assets in two ways:

- i) Providing for the creation and registration of an international interest (such as mortgage or lease); and
- ii) Stating remedies available to a Creditor should there be a default by an airline or other business.

5.7.3 Both the Convention and Protocol would now make it easier for operators of airlines to access funding to procure new equipment for their fleets. The ratification of the Convention and Protocol would greatly inure to the benefit of Ghana's domestic airlines as some of the challenges they currently face in the procurement of aircrafts, engines and other accessories would be done away with.

5.8 Convention for the Unification of Certain Rules for International Carriage by Air (Montréal, 28th May, 1999)

5.8.1 The Convention seeks to establish a modern, fair and effective regime to govern airline liability to passengers and shippers on international flights. One of the advantages of the Convention is that it replaces the arbitrarily low liability caps for death or injury under the previous Warsaw Convention and Warsaw/Hague liability regimes. By this Convention, airline passengers are entitled to claim damages up to 113,110 Special Drawing Rights (approximately US\$174,000) without proof of negligence or fault. However, if the damages claimed are in excess of the 113,110 Special Drawing Rights, then the burden of proof lies on the airline to show that it was not negligent.

5.8.2 For Shippers, the Convention promotes the use by airlines of electronic records including waybills. The significance being that the Convention aims at eradicating paper documentation from the air cargo supply.

5.8.3 Universal acceptance of the Convention would unify claims and also eliminate the complex handling processes for easy, fast and efficient air cargo connectivity and delivery.

6.0 OBSERVATIONS

- 6.1 As earlier indicated in the report, the Committee observed that two of the referrals which were not supposed to have been laid, were inadvertently laid. **The Convention for the Suppression of Unlawful Seizure of Aircraft (Hague, 16th December, 1970)** was found to have been ratified by Ghana on 12th December, 1973.
- 6.2 The document entitled, **“The Modifications to the Convention for the Unification of Certain Rules Relating to International Carriage by Air”** was found to be a compilation by the Legislative Drafting Section of the Ministry of Justice and the Office of the Attorney-General for the domestication of the **Convention for the Unification of Certain Rules for International Carriage by Air (Montreal, 28th May, 1999)** and ought not have been laid.
- 6.3 With the exception of the two documents which the Committee was unable to consider due to the reasons adduced, the Committee found the provisions in the six (6) Conventions and three (3) Protocols acceptable. Indeed, the ratification of the Conventions is consistent with the provision of Article 40(c) of the 1992 Constitution which enjoins Ghana to promote respect for international law and treaty obligations.
- 6.4 Ratifying the Conventions and Protocols would among many other benefits, strengthen the capacity of Ghana to prevent the commission of many offences that jeopardize civil aviation, facilitate the domestic airline operators with the ease of access to funding to modernise and upgrade their fleets, purchase engines and related accessories which may otherwise be difficult to procure, and to generally boost the confidence of lots of Ghanaians in patronizing air transportation which would in turn impact positively on the economy.

7.0 RECOMMENDATION AND CONCLUSION

7.1 GCAA's existence and role in ensuring safe, secure and world-class aviation services to the public requires that it meets all International Standards required by ICAO. The Conventions and Protocols under review are to facilitate the responsiveness of major facets of civil aviation to current developments. While urging the House to stand down the two referrals indicated in Paragraph 1.2, Sub-Paragraphs (iii) and (x) on Pages 1 and 2 of the report, the Committee unanimously recommends to the House to approve its report and ratify all the nine (9) International Conventions and Protocols.

Respectfully submitted.



**M. ABREFA TAWIAH
CLERK,
COMMITTEE ON ROADS AND
TRANSPORT**



**HON. THEOPHILUS TETTEH CHAIE
CHAIRMAN
COMMITTEE ON ROADS AND
TRANSPORT**

1st December, 2015