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A BOOK CHAPTERS

AVIATION LAWS AND REGULATIONS APPLICABLE IN INDONESIA

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PUBLIC AND PRIVATE
INTERNATIONAL AIR LAW
APPLICABLE IN INDONESIA:
A CRITICAL EVALUATION¹

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I. Introduction

Taking into consideration that Indonesia is a signatory to the Chicago Convention of 1944 (the CC of 1944),⁴ Indonesia is committed to comply with the public as well as private international air laws and regulations adopted by Resolution of the International Civil Aviation Organization (ICAO) General Assembly,⁵ and Standard and Recommended Practices (SARP) adopted by ICAO. This article explains the important principles contained in the international convention regarding aviation from security and operational objectives, and financing aircraft objects. Indonesia as a member of ICAO has voiced its intention to join the international community and as a sign of good will should ratify these conventions

⁴Indonesia adhered the Chicago Convention of 1944 on 27 April 1950, see Paul Stephen Dempsey Ed., *Annals of Air and Space Law*, 2005 Volume XXX-Part I. Toronto: The Carswell Company Ltd, p.52 [hereinafter Chicago Convention of 1944].

⁵ICAO Doc.10022, Assembly Resolutions in Force (as of 4 October 2013)

into the national law in order to provide assurance for the public and business community regarding the sustainability of the Indonesian aviation industry.

II. Civil Aviation Act of 2009

For the purpose of implementing the ICAO recommendations, the Republic of Indonesia (ROI) issued the Civil Aviation Act of 2009 (CAA). It came into force on 1 January 2009, and aims to promote the development of Indonesian air transportation.⁶ It regulates a host of matters related to aviation, from sovereignty in airspace, aircraft production, operation and airworthiness of aircraft, to aviation security and safety, aircraft procurement, aviation insurance, the independence of aircraft accident investigation, and the licensing of aviation professionals.

The CAA also regulates scheduled as well as non-scheduled air transportation, airline capital, the ownership of aircraft, aircraft leasing, fares, the liability of air carriers, air navigation facilities, airport authorities and services, and law enforcement related to air transportation. The Act of 2009 aimed at supporting the development of national and international air transportation in Indonesia, including provisions regarding the creation of a public services institute to further those goals.⁷ The CAA thus adopted almost all the provisions of the CC of 1944. Thus, Indonesia has fully complied with the CC of 1944. This legislation aligns with the 38th ICAO General Assembly Res.A38-4 which urges all member states to continue to examine the existing legislation and adjust as necessary or enact laws and regulations to protect all the relevant safety data to the greatest extent possible, on the legal and other guidance developed by ICAO.⁸

III. Chicago Convention of 1944

With regard to the Civil Aviation Constitution of international air law, Indonesia has adhered the CC of 1944,⁹ and amendments such as the Protocol Relating to an Amendment to the Chicago Convention on International Civil Aviation (Article 93 bis),¹⁰ Protocol to an Amendment to the Convention on International Civil Aviation (Article 45) signed at Montreal on 14 June 1954,¹¹ Protocol Relating to an Amendment to the Convention on International Civil Aviation [Article 48(a)] signed at Montreal on 15 September 1962,¹²

⁶Act concerning Civil Aviation, Act No.1 of 2009 [Civil Aviation Act], Ministry of Transportation Republic of Indonesia, online: Directorate General of Civil Aviation <http://hubud.dephub.go.id/?en/uu>

⁷Martono and Amad Sudiro, *Current Air Transport Regulations In Indonesia*, published in Volume XXXVIII *Annals of Air and Space Law* 55-9 (2013). [Martono & Amad Sudiro in Current]

⁸See 38th ICAO General Assembly Resolution, Montreal, 24 September – 4 October 2013 A38-4.

⁹Chicago Convention of 1944, *supra* note 4 p.52

¹⁰Indonesia ratified on 17 July 1961, *Ibid.*, *supra* note 4 page 84.

¹¹Indonesia ratified on 24 November 1959, *Ibid.*, *supra* note 4 page 92.

¹²Indonesia ratified on 19 February 1963, *Ibid.*, *supra* note 4 page 100.

Protocol Relating to an Amendment to the International Civil Aviation (Final Clause-Russian Text) signed at Montreal, on 30 September 1977,¹³ Protocol Relating to an Amendment to the convention on International Civil Aviation (Article 83 bis) signed at Montreal on 6 October 1980,¹⁴ Protocol Relating to an Amendment to the Convention on International Civil Aviation (Article 56),¹⁵ Protocol Relating to an Amendment to the Convention on International Civil Aviation [Article 50(a)] signed at Montreal on 26 October 1990.¹⁶

IV. Instruments of Criminal Aviation Law

With regard to public international air law instruments, Indonesia has ratified the Tokyo Convention of 1963, signed at Tokyo on 14 September 1963, The Hague Convention of 1970 signed at The Hague on 16 December 1970, and the Montreal Convention of 1971, signed at Montreal on 23 September 1971.¹⁷ It is worthwhile to note here with regard to the Hague Convention of 1970, Indonesia made a reservation to paragraph 1 of Article 12 of the Convention.

From 26 March to 4 April 2014, a conference was held in Montreal to consider amending the Tokyo Convention of 1963. This conference was attended by a total of 422 participants, including Indonesia, from 100 ICAO Member States and nine international organization and institutions. It was the culmination of a four-year effort to modernize the Tokyo Convention instrument; the new Protocol addressed what had become recognized in recent years as a troubling escalation in the frequency of incidents involving disruptive and unruly passengers on scheduled commercial air transport. In this event, the Director General of Air Communications (DGAC), the MOT, Mr Herry Bakti, signed a final Act of the Proposed Draft Text of the Protocol to the Tokyo Convention of 1963 at the Headquarters of the ICAO, in Montreal, Canada.¹⁸

A. Tokyo Convention of 1963

The Committee International Technique d'Experts Juridiques Aeriens (CITEJA) had already discussed terrorism and aviation security as early as 1926. During its 9th Session from 25 August to 12 September 1953, the ICAO Legal Committee had officially established

¹³Indonesia ratified on 20 November 1990, *ibid.*, *supra* note 4 page 118

¹⁴Indonesia ratified on 5 August 1994. *Ibid.*, *supra* note 4 page 136.

¹⁵Indonesia ratified on 6 November 1995, *ibid.*, *supra* note 4 page 154

¹⁶Indonesia ratified on 6 November 1995, *ibid.*, *supra* note 4 page 162

¹⁷*Convention on Offences and Certain Other Acts Committed on Board Aircraft*, signed at Tokyo 1963, *Convention for the Suppression of Unlawful Seizure of Aircraft*, signed at the Hague on 16 December 1970 and *Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation*, signed at Montreal on 23 September 1971 has been ratified Indonesia on 27 August 1976 by *Act concerning Ratification of Tokyo Convention of 1963, The Hague Convention of 1970 and Montreal Convention of 1971*, Act. Number 2 of 1976.

¹⁸The Postal History of ICAO :Legal Instruments Related to Aviation Security. See http://www.icao.int/secretariat/postalhistory/legal_instrument_related_to_aviation_security.htm

a Sub Committee on The Legal Status of Aircraft, to study the problems associated with crimes on aircraft. At first, ICAO drafted the Convention on Offences and Other Acts Occurring on Board Aircraft. A final draft Convention on Offences and Certain Other Acts Committed on Board Aircraft was prepared in 1962 for consideration, finalization, and adoption by the Diplomatic Conference convened at Tokyo by the ICAO Council from 20 August to 14 September 1963. The Tokyo Convention entered into force on 4 December 1969, bringing closure to ICAO's efforts on the subject since 1950s.¹⁹

1. The Main Content of the Tokyo Convention of 1963

The Tokyo Convention of 1963 shall apply in respect of (a) offences against penal law; (b) acts which, whether or not they are offences, may or do jeopardize the safety of the aircraft or of persons or property therein, or which jeopardize good order and discipline on board. In addition, the Tokyo Convention of 1963 applies in respect of offences committed or acts done by a person on board any aircraft registered in a contracting State, while the aircraft is in flight or on the surface of the high seas or of any other area outside the territory of any state, however, the Tokyo Convention of 1963 shall not apply to offences against penal laws of a political nature or based on racial or religious discrimination;²⁰ to aircraft used in military, customs and police services in line with Article 3 Paragraph (b) of the Chicago Convention of 1944.²¹

2. Jurisdiction

The state of registration of the aircraft is competent to exercise jurisdiction over offences and acts committed on board the aircraft. Each member State of the Tokyo Convention of 1963 shall take such measures as may be necessary to establish its jurisdiction as the state of registration over offences committed on board aircraft registered in that state. The Tokyo Convention of 1963 does not exclude any criminal jurisdiction exercised in accordance with national law.²²

A contracting state which is not the state of registration may not interfere with an aircraft in flight in order to exercise its criminal jurisdiction over an offence committed on board, unless the offence (a) has an effect on the territory of that state; (b) has been committed by or against a national or permanent resident of that State; (c) is against the security of that state; (d) consist of a breach of any rules or regulations relating to the flight or maneuver of aircraft in force in that state; (e) the exercise of jurisdiction is necessary to ensure the observance of any obligation of that state under a multilateral international agreement.

¹⁹*Ibid.*

²⁰Art. 2 of the Tokyo Convention of 1963

²¹Art 3 Para. (b) provides aircraft used in military, customs and police services shall be deemed to be state aircraft.

²²Art 3

3. Power of the Aircraft Commander

The aircraft commander may, when he has reasonable grounds to believe that a person has committed, or is about to commit, on board the aircraft, an offence or act, impose upon such person reasonable measures including restraints which are necessary (a) to protect the safety of the aircraft, or of persons or property therein; or (b) to maintain good order and discipline on board; or (c) to enable him to deliver that person to competent authorities or to disembark him in accordance with the provision of the Tokyo Convention of 1963.²³

The aircraft commander may require or authorize the assistance of other crew members and may request or authorize, but not require, the assistance of passengers to restrain any person whom he is entitled to restrain. Any crew member or passenger may also take reasonable preventive measures without such authorization when he has reasonable grounds to believe that such action is immediately necessary to protect the safety of the aircraft, or of persons or property therein.²⁴

4. Duties of States

The member states of the Tokyo Convention of 1963, when any person has been disembarked, or delivered, or has been disembarked after committing an act, and when that person cannot or does not desire to continue his journey and the State of landing refuses to admit him, that State may, if the person in question is not a national or permanent resident of that State, return him to the territory of the State of which he is a national or permanent resident or to the territory of the state in which he began his journey by air. Neither disembarkation, nor delivery, nor the taking of custody or other measures, nor return of the person concerned, shall be considered as admission to the territory of the contracting state concerned, for the purpose of its law relating to entry or admission of persons, and nothing in the Tokyo Convention of 1963 shall affect the law of a contracting state relating to the expulsion of persons from its territory.²⁵

B. The Hague Convention of 1970

The Tokyo Convention of 1963 was ICAO's first step in what would become a major international effort to combat the spread of aviation terrorism. The 16th Session of the ICAO Assembly, held in Buenos Aires from 3 to 26 September 1968, adopted Resolution A-16-36 on the Participation of States in International Conventions on Air Law, and Resolution A16-37 on the Unlawful Seizure of Aircraft, which called on the ICAO Council and the Member States to cope at the earliest possible date with the problems of unlawful seizure.

²³Art 6 para. (1)

²⁴Art 6 para. (2)

²⁵Art 14

Further to that, the ICAO Council directed the Air Transport Committee and their Air Navigation Commission to initiate their own studies on the technical aspects related to the problems of airports and aircraft security; a new committee on Unlawful Interference of Aircraft was created on 10 April 1969. The other major area for the ICAO-Council's action was, through the Legal Committee, to create a new Sub-Legal Committee either to amend the Tokyo Convention of 1963 or create a wholly new convention.

As the number of hijackings rose through 1969 and 1970,²⁶ an Extraordinary 17th ICAO General Assembly was held in Montreal from 16 to 30 June 1970, specifically on the subject of aviation security; it produced a series of resolutions dealing with a wide range of security measures, eventually leading to the adoption of a completely new annex. The primary objective of each contracting state is safeguarding its passengers, ground personnel, and crew, as well as the general public, against any acts of unlawful interference.

In addition, during its 24th Session in December 1969, the United Nations General Assembly adopted Resolution 2551 (XXIV) in which the General Assembly stated its deep concern over acts of unlawful interference with international civil aviation. On 9 September 1970, the UN Security Council adopted Resolution 286, calling upon States to take all possible legal steps to prevent further hijacking or any other interference with international civil air travel. On 25 November 1970, the UN General Assembly adopted Resolution 2645 (XXV) which condemned without exception whatsoever all aerial hijacking or other interference with civil air travel caused through threat or use of force. The international community thus condemned terrorism against air transport by giving official recognition to such condemnation, and called upon all states to contribute to the eradication of the offence by taking effective preventive and deterrence measures. Since that time, the UN General Assembly adopted other resolutions calling for international cooperation dealing with acts of international terrorism.²⁷

In the atmosphere of crisis and on the legal side, two new Conventions were prepared. From 1 to 16 December 1970, 77 states and 12 international organizations met in The Hague for a diplomatic conference ending with the signing of the Hague Convention for the Suppression of Unlawful Seizure of Aircraft, which came into force on 14 October 1971. This Convention provided for effective legal measures being taken to deter acts of unlawful seizure of aircraft through the cooperation of nations throughout the world. Action taken by ICAO and its member states resulted in a considerable reduction of hijacking during 1971.²⁸

²⁶*Ibid.*, Within 1969-1970 occurred 118 incidents of unlawful seizure of civil aircraft and 14 incidents of sabotage and armed attacked against civil aviation occurred.

²⁷*Ibid.*

²⁸*Ibid.*

1. Scope of Application

The Hague Convention of 1970 does not apply to customs, law enforcement or military aircraft, thus it applies exclusively to civilian aircraft. The Hague Convention of 1970 criminalizes the behavior of any person who on board an aircraft in flight unlawfully by force or threat thereof, or by any other form of intimidation, seizes, or exercises control of, that aircraft, or attempts to perform any such act, or an accomplice of a person who performs or attempts to perform any such act commits an offence. Each contracting state undertakes to make the offence punishable by severe penalties.

2. Jurisdiction Provisions

With regard to jurisdiction, the Hague Convention of 1970 provides that each contracting state shall take such measures as may be necessary to establish its jurisdiction over the offence and any other act of violence against passengers or crew committed by the alleged offender in connection with the offence in the case when (a) the offence is committed on board an aircraft registered in that state; (b) the aircraft on board which the offence is committed lands in its territory with the alleged offender still on board; (c) is committed on board an aircraft leased without crew to a lessee who has his principal place of business or, if the lessee has no such place of business, his permanent residence, in that state. Each contracting state shall likewise take such measures as may be necessary to establish its jurisdiction over the offence in the case where the alleged offender is present in its territory and it does not extradite him to any other state.²⁹

The contracting state in the territory of which the alleged offender is found shall, if it does not extradite him, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case to its competent authorities for the purpose of prosecution. With regard to extradition, Article 8 of the Hague Convention of 1970 provides that the offence, for the purpose of extradition, shall be deemed as an extraditable offence.

In the years since 1968, the number of aircraft hijackings rose to very serious proportions. The total was further enlarged by politically motivated acts of sabotage against aircraft and passengers, both in the air and on the ground. It is worth remembering that on 24 November 1968, a Boeing 707, Pan Am Flight 281, was scheduled from JFK International Airport to San Juan Puerto Rico; it was hijacked by 4 men from JFK Airport to Havana, Cuba; and on 6 September 1970, two men hijacked Pan Am flight 93, a Boeing 747-121 (which departed Brussels) en route from Amsterdam to New York, as part of the Downson's Field hijackings; the flight diverted to Beirut International Airport to take on board seven other gang members for the next leg to Cairo International Airport, where the hijackers ordered the aircraft evacuated and destroyed it with explosives. Note that

²⁹Art. 4 of the Hague Convention of 1970

the aircraft flew to Cairo instead of Downson's Field (a remote desert airstrip in Jordan, formerly a British Royal Air Force base), because the Jordan airfield was considered too small to accommodate a 747.

C. Montreal Convention of 1971

Prior to the Montreal Conference, the 18th Session of the ICAO General Assembly, in Resolution A18-9 (held in Vienna, from 15 June to 7 July 1971), called for speedy adoption and ratification of what was to become the Montreal Convention of 1971. From 8 to 23 September 1971, a full diplomatic conference (attended by Delegates from 60 member states and the UN, as well as by observers from one state and six international organizations) was held in Montreal, and the Montreal Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation was opened for signature; it came into force on 26 January 1973. The Protocol for the Suppression of Unlawful Acts Violence at Airports Serving the Safety of Civil Aviation was signed at Montreal on 23 September 1971 (adopted on 24 February 1988).

The Montreal Convention of 1971 does not apply to customs, law enforcement or military aircraft, thus it applies exclusively to civilian aircraft. The Montreal Convention of 1971 criminalizes the behavior of (a) committing an act of violence against as person on board an aircraft in flight if it is likely to endanger the safety of the aircraft; (b) destroying an aircraft being serviced or damaging such an aircraft in such a way that renders it incapable of flight or which is likely to endanger its safety in flight; (c) placing or causing to be placed on an aircraft a device or substance which is likely to destroy or cause damage to an aircraft; (d) destroying or damaging air navigation facilities or interfering with their operation if it likely to endanger the safety of the aircraft; (e) communicating information which is known to be false, thereby endangering the safety of an aircraft in flight. The Montreal Convention of 1971 also applies for attempting of (a) (b) (c) (d) and (e). In addition, the Montreal Convention of 1971 applies for being an accomplice to any of (a) (b) (c) (d) (e) and attempting the same. The Montreal Convention of 1971 set out the principle that a party to the Montreal Convention of 1971 must either (a) prosecute a person who commits one of the offences or send the individual to another state that requests his or her extradition for prosecution of the same crime.³⁰

³⁰Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, See http://en.wikipedia.org/wiki/Convention_for_the_Suppression_of_Unlawful_Acts-against_the_Safety_of-Civil_Aviation. Accessed 11/17/2015 [Montreal Convention of 1971]; See also P.S. Dempsey Ed., *Annals of Air and Space Law Vol. XXX-Part I-2005*. Toronto: The Carswell Company Ltd, pp.217-223.

D. Montreal Protocol of 1988

The ICAO's activities include air navigation legal matters, air transport, and technical assistance and secretariat activities.³¹ With regard to legal matters relating to the Montreal Protocol of 1988, the Sub Legal Committee met at Montreal from 20-30 January 1987, to study the development of unlawful acts of violence at airports serving international civil aviation. The Sub Legal Committee prepared a draft text for consideration and found a decision by the Legal Committee at the twenty-sixth session (Montreal, 28 – 13 May). Since the ICAO-Council accorded the items the highest priority, the Legal Committee agreed not to address any other items until work on the instrument had been completed; consequently, it did not review, *inter alia*, its general work program. Based on the Sub Legal Committee's report, the Legal Committee prepared the text of a draft instrument.

In June, the ICAO-Council instructed the Secretary General to circulate the draft to member states and international organizations concerned for comments. They also decided to convene at Montreal from 9 February to 24 February 1988, in an international conference on air laws, to consider, with a view to approving the text prepared by the Legal Committee for inclusion in a draft instrument for the suppression of unlawful acts of violence at airports serving international civil aviation.³²

The Montreal Protocol of 1988³³ adds to the definition of "offence," given in the Montreal Convention of 1971, unlawful and international acts of violence against persons at an airport serving international civil aviation which cause or are likely to cause serious injury or death, and such acts which destroy or seriously damage the facilities of such an airport or aircraft not in service located thereon or disrupt the services of the airport; the qualifying element of these offences is the fact that such an act endangers or is likely to endanger safety at the airport. These offences are punishable by severe penalties, and contracting states are obliged to establish jurisdiction over the offences not only in the case where the offence was committed in their territory, but also in the case where the alleged offender is present in their territory and they do not extradite him to the state where the offence took place.³⁴ The Montreal Protocol makes it an offence to commit similarly violent, dangerous or damaging acts in airports that serve civil aviation.³⁵

³¹Years book of the United Nations 1987, Vol.41 Department of Public Information United Nations. New York: Martinus Nijhoff Publishers Dordrecht/Boston/London, p.1259

³²*Ibid.*

³³Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Supplementary to the Convention for Suppression of Unlawful Acts Against the Safety of Civil Aviation, done at Montreal, on 23 September 1971, signed at Montreal on 24 February 1988 [Montreal Protocol 1988]. For the text See Paul Steven Dempsey *supra* note 30, page 217-223.

³⁴Administrative Package for Ratification or accession : The Montreal Supplementary Protocol of 1988. For the text see United Nations, Treaty Series, Vol.974, p.177

³⁵Montreal Convention of 1971, *supra* note 30.

V. Hijackings

On 28 March 1981, Garuda Indonesia Flight Number 206, a domestic flight from Soekarno-Hatta International Airport, Jakarta, to Polonia International Airport, Medan (with stopover at Talang Betutu Airport, Palembang), was hijacked by an Islamist extremist group called Komando Jihad. They hijacked the DC-9 name "Woyla" en route from Palembang to Medan, ordering the pilot to fly them to Colombo, Sri Lanka. Since the plane did not have enough fuel to reach Colombo, it refueled in Penang, Malaysia, then flew instead to Don Muang Airport in Bangkok, Thailand. The hijackers demanded the release of 80 Komando Jihad members imprisoned in Indonesia, US\$ 1.5 million in cash, and the plane to take the released prisoners to an unspecified destination.³⁶

On 29 March 1981, a group of Indonesian Army Kopassandha (Now Kopassus) commandos led by Lieutenant Colonel Sintong Panjaitan and Lieutenant General Leonardus Benjamin Moerdani were flown into Bangkok with a chartered Garuda DC-10 which was disguised as a Garuda flight from Europe, due to speculation that the hijackers intended to fly the plane into Libya. The team stormed the plane two days later. The recapture of the plane was a joint operation between the Royal Thai Air Force commandos and Indonesia's Kopassandha commandos. The Kopassus commandos who took part in the rescue trained for only three days with new weapons. One commando was shot by the hijackers, as was the pilot, Captain Herman Rante; they both died several days later in Bhumibol Adulyadej Hospital in Bangkok. Two hijackers were killed in the resulting shootout. The rest of the hostages were released unharmed. Two of the hijackers surrendered, but one was shot and killed by the commandos. The leader was subsequently wounded after throwing a grenade that failed to explode due to safety pin that had not fully removed, and was detained by the commandos. The rest of the crew members and all passengers survived. The terrorist leader, Imran bin Muhammad Zein, was sentenced to death by the Central Jakarta Regional Court a few weeks later.³⁷

³⁶Garuda Indonesia Flight 206 - ...Wikipedia.org/.../Garuda_Indonesia-Fl...

³⁷*Ibid.*



F-GBEC, the aircraft involved in the hijacking, at London Heathrow Airport | 1982

Similarly, hijacking occurred to Air France Flight 8969. The plane was hijacked on 24 December 1994, by the Armed Islamic Group (AIG) at Houari Boumendienne Airport, Algiers, Algeria, where the terrorists murdered three passengers, with the intention to blow up the plane over the Eiffel Tower in Paris. When the aircraft reached Marseille, the GIGN, a counter-terror unit of the French National Gendarmerie, stormed the plane and killed all four hijackers.³⁸

VI. Cape Town Convention of 2001

With regard to private air law instruments, Indonesia has ratified the Cape Town Convention of 2001 (CTC of 2001) and adhered the Warsaw Convention of 1929. The CTC of 2001 creates a uniform international legal framework to protect investors in aircraft objects. It provides an International Registration for creditors and debtors to register their security interests (similar to the land titles system for real property), and creates a set of basic remedies in the event of debtor default. The protocol complements the CTC of 2001 and adapts its provisions to meet the particular requirements of financing mobile equipment such as aircraft. For example, it provides additional remedies for creditors, such as the ability to request deregistration and export of an aircraft object. These measures increase the security of creditors and reduce their risks, which may lead to reduced cost and more accessible financing of aircraft objects for those countries that are party to the CTC of 2001.³⁹

³⁸Air France Flight 8969-Wikipedia, the f... See ...Wikipedia.org/.../Air_France_Flight_89...

³⁹Regulation Impact Statement "Implementation of the Cape Town Convention, paper unpublished.

A. The Main Content of the Cape Town Convention of 2001

It consists of fourteen (14) Chapters and sixty-two (62) Articles. Chapter I outlines the sphere of application and general provisions; Chapter II mandates a constitution of international interest; Chapter III offers default remedies; Chapter IV provides an international registration system; Chapter V speaks on other matters relating to registration; Chapter VI details the privileges and immunities of the supervisory authority and the registrar; Chapter VII provides liability of the registrar; Chapter VIII discusses effects of an international interest as against third parties; Chapter IX provides assignments of associated rights and international interests, rights of subrogation; Chapter X offers rights or interests subject to declaration without registration; Chapter XI details the convention's application to sales; Chapter XII provides jurisdiction; Chapter XIII discusses the relationship with other conventions, and Chapter XV offers final provisions.

B. Benefits of Cape Town Convention of 2001

The CTC of 2001 will reduce risk applicable to asset-based financing and leasing transactions by establishing an international legal framework, backed by related conventions and where necessary, implementing national laws. The risk of reduction will increase the availability and reduce the cost of aviation credit, thus broadening the spectrum of financing alternatives available to aircraft operators.

The CTC of 2001 offers benefits for the government, airlines, commercial aircraft manufacturers and their suppliers, aviation industry investors and passengers and other end users. The benefits to the government are first through reduced debt levels to governments whose credit in the form of sovereign guarantees or national debt is used to finance aircraft acquisitions, secondly as risk reductions to government providing export credit supporting aircraft sales, and thirdly to enhance privatization potential where applicable. Airlines will also benefit through reduced financing costs and enhanced access to funds and funding sources, through increased operating efficiency and improved profitability.⁴⁰

The benefit for commercial aircraft manufacturers and their suppliers comes through higher sales, output and employment levels, as well as expanded markets, while the benefit for aviation industry investors is through increased returns on, and higher valuations of, investments, as well as enhanced security. Passengers and other end users also benefit, from by-pass-through price reductions and increased levels of service.

The cost-savings and external debt-level reduction benefits are slanted in favor of developing economies, whose systems do not currently reflect asset-based financing principles. In these countries, the CTC of 2001 would generate greater relative improvement. Conversely, the fleet planning, export and employment related benefits are, as a general principle, slanted in favor of developed economies.

⁴⁰Cape Town Convention of 2001, *supra* note 7, See also LON18625548/1.p.3

1. The Most Important Provisions

In line with the Declarations Indonesia made when ratifying the Convention, it is worthwhile to note here that the most important provision relates to (1) Declaration to Article 39(1) (a) and (b) relating to non-consensual rights or interests which according to Indonesian Law have priority, such as the wages of workers, taxation claims and claims of services in respect of an aircraft object; and Declaration to Article 40, regarding recordation non-consensual rights and interest;⁴¹ (2) Declaration to Article 53 regarding determination of courts for the purpose of Article 1 and Chapter XII on Jurisdiction and Article 13(1) (a), (b), (c) and Article (4) on Relief pending final Determination to obtain from a court a speedy relief by the creditor for the preservation of the object and its value, which should be read in line with Article 8 on Remedies of the Chargee;⁴² (3) Declaration to Article 54 (2), regarding Remedies, whereby a contracting state shall declare whether or not any remedy is available to the creditor under any provision of this Convention which is not there expressed to require application to the Court may be exercised only with leave of the Court; (4) Article XXX (1) re Article VIII, re Article XII, re Article XIII regarding the application of Article VIII on Choice of Law, Article XII on Insolvency assistance and Article VIII on deregistration/export request authorization; (5) Article XXX (2) re Article X regarding the application of Article X (2) on the means of speedy relief; (6) Article XXX (3) re Article XI making effective alternative A for Indonesia.⁴³

2. The Implementation of Cape Town Convention in Indonesia

Indonesia has ratified the CTC of 2001 and its protocol,⁴⁴ by the Presidential Decree No. 8/2007. This Convention is one of the reasons Indonesia changed the Aviation Act of 1992 (CAA of 1992) by the CAA of 2009, and this is reflected in the explanation Chapter of this Act. The CTC of 2001 and its Protocol regulates the four elements in Security Interest on Mobile Equipment, specifically on aircraft. Those are the International Interest, the International Registration, the Priority Rules and the Default Remedies. These four elements should be implemented in the national laws of Indonesia as a state party to this Convention. The CAA of 2009 has incorporated the elements of the Convention and its Protocol in Chapter IX, Articles 71 through 82. This ratification will support the aircraft procurement for the national airlines of Indonesia.⁴⁵

⁴¹Mieke Komar K., *The 2001 Cape Town Convention on International Interest in Mobile Equipment/the Aviation Protocol and Relevant Issues in Indonesian Aviation Law*. Volume 8, Number 4 July 2011, p.633.

⁴²*Ibid.*

⁴³*Ibid.*

⁴⁴*Convention on International Interest in Mobile Equipment*, 16 November 2001, 2307 UNTS 2855, UN Doc. A/AC105/C.2/2002/CRP.3 (entered into force 1 April 2004) [Cape Town Convention].

⁴⁵Based on this provision, Indonesian airlines have procurement no less than 299 aircraft from Boeing and Airbus to fulfill the country's aircraft needs.

Alongside the CAA of 2009, other international obligations arising out of the CTC of 2001 have been set up. Those regulations are Ministerial Decree Number KM 49 of 2009 Civil Aviation Safety Regulation Part 47 on Registration of Aircraft,⁴⁶ and DGAC Regulations No. SKEP/166/VII/2009 Staff Instruction (SI) regarding IDERA (*Irrevocable Deregistration and Export Request Authorization*).

In general, Articles 71 through 82 of the CAA of 2009 regulates a number of principles mentioned in the CTC of 2001 and its protocol. Article 71 defines the aircraft as an object of an international interest as a result of a security agreement, a title reservation agreement, and/or a leasing agreement. Aircraft Objects include airframe, aircraft engine and helicopter as regulated in the CTC of 2001. Furthermore, the definition of airframe, aircraft engine and helicopter can be found in the explanation chapter of this Act. Article 71 also defines International Interest as a (security) interest obtained by a creditor based on security agreements, a title reservation agreement, and/or a leasing agreement, conformable to the CTC of 2001. Article 72 of the CAA of 2009 gives the right to the parties to choose the law and jurisdiction of the agreement as regulated in Article 71. This agreement being in essence an international contract, should consider the principle on choice of law and choice of jurisdiction based on private international law. If the agreement is made under Indonesian Law, it should be made on an authentic deed which contains the identity of the parties, the identity of the aircraft objects and the rights and duties of the parties, as stipulated in Article 73.

Regarding the implementation of the agreement between the debtor and creditor which establishes an international interest, when a debtor is in default or does not comply with the obligations of the agreement, the creditor may request the deregistration of the aircraft to the minister with the application of an irrevocable de-registration and export authorizing request. The deregistration can be enforced only by a power of attorney made by the debtor, which has to be acknowledged by the minister, and cannot be annulled without approval from the creditor as regulated in Article 74. Upon the creditor's request, the minister shall remove the registration and the nationality of the aircraft or helicopter within a maximum of five (5) days from the request. These provisions are regulated in Article 75. Articles 74 and 75 provide default remedies, when a default is caused by the debtors, and therefore gives rights to the creditors to submit the deregistration request to the minister. Article 76 provides the remedies to be enforced by the minister of transportation and the assistance of other related ministers to expedite the enforcement of those remedies. Remedies and creditors' rights referred to in the previous articles are established upon the signing of the agreement by the parties in accordance with Article 77.

The International Interest registered in the international registration has priority over other interests, including national interests, as detailed in Article 78. The International Registration is the facility managed by the ICAO. Furthermore, Article 79 provides in the

⁴⁶Ministerial Decree Concerning Aircraft Registration. Ministerial Decree No. KM 49 of 2009 (10 June 2009) [Ministerial Decree]

situation of a debtor's default, that creditors may request provisional measures from the court based on the agreement mentioned in Article 71 without the submission of the case to be decided in Indonesian courts, and without conforming to the mediation procedure required in the general courts. These measures are in line with the declaration made by Indonesia when ratifying the CTC of 2001.

In the situation of a debtor's bankruptcy, the court, curator, and/or debtor shall hand over the control of the aircraft object to the creditor within the time limit provided by Law. In the situation of a debtor's bankruptcy, a number of invoices may have priority over the international interest of the aircraft object. This regulation on bankruptcy is regulated in Articles 80 and 81 of the CAA of 2009. These regulations differ from the existing Indonesian law on bankruptcy, and hence needs to be harmonized.

Article 82 provides that the Convention on International Interest on Mobile Equipment, and the Aircraft Protocol, are legally binding to Indonesia and shall be implemented as *lex-specialis* in Indonesian Law. In the Explanation Chapter, *lex specialis* means that in the case of inconsistency or discrepancy between Indonesian law and the provisions of the Convention, Protocols and Declarations, the latter shall prevail.

3. Modernization of Indonesian Air Fleet

Some Indonesian airlines have taken advantage of the CTC of 2001 and its Protocol to facilitate aircraft financing, guarantees, and securities, all of which are useful for fleet modernization. In terms of the economic results, this convention has been very helpful for Indonesian airlines; between 2009 and 2013, Indonesian national airlines have procured at least 299 aircraft with the support of the CAA of 2009, which is supposed to incorporate the financing facilities provided by the Cape Town Convention and its Protocol.

4. International Interest in Aircraft Objects and Definitions

The definitions contained in the Indonesia legislation are very similar to the definitions in the CTC of 2001 and its associated Protocol to the Convention on Interest Mobile Equipment on Matters Specific to Aircraft Equipment.⁴⁷ Thus, "aircraft objects" are aircraft frames or skeletons, air engines, and helicopters. An "aircraft frame or skeleton" is a skeleton of an aircraft (other than those frames used for military, customs, or police aircraft), provided that an aircraft engine suitable for the aircraft frame/skeleton is installed, and that it will be certified by an authorized aviation agency for transporting at least eight persons, including the crew, or goods weighing more than 2,750 kg, along with all of its installed equipment, components, and other devices, which are either built-in or attached to the aircraft other than the aircraft engine) and all data, guide books and notes associated with it.⁴⁸

⁴⁷Protocol to the Convention on Interest Mobile Equipment on Matters Specific to Aircraft Equipment, 16 November 2001 (entered into force 1 March 2006).

⁴⁸See Civil Aviation Act, *supra* note 6, art 1(2)(e)

"Aircraft engines" are engines (other than those used for military, customs, or police force aircraft) moved by jet propulsion or turbine or piston power. In the case of an aircraft engine with a propulsion jet, it must have a thrust/propulsion power of at least 1,750 lbs or the equivalent to qualify under this definition. Aircraft engines are driven by a turbine or piston, and they must have average capacity of at least 550 horsepower equivalent for take-off, along with all modules and installed equipment, components and other devices, built-in or attached to the aircraft, and all the data, guide books and notes associated with it.⁴⁹

"A helicopter" is a certain helicopter (not used for military, customs or police use) certified by an authorized aviation agency for transporting at least five persons, including the air crew, or goods weighing more than 450 kg along with all the installed equipment and devices, whether built-in or attached to the helicopter (including the rotors) and all data, guide books and notes associated with it.⁵⁰ Meanwhile, an "international interest" is obtained by a creditor arising from a security agreement, the reservation agreement and/or leasing agreement, subject to the Convention on International Interest in Mobile Equipment and the Protocol to the Convention on Interests in Mobile Equipment on Matters Specific to Aircraft Equipment.⁵¹

A "security agreement" is an agreement whereby the charger of an aircraft object gives or agrees to give to the charge of the security agreement an interest (including ownership or title) in the aircraft object in order to guarantee delivery of obligations incurred or to be incurred by the charger or third party.⁵² Meanwhile, a "title reservation agreement" is a sale agreement for any aircraft object with a provision that ownership/title shall be transferred until the requirements under the agreement have been met.⁵³ A "leasing agreement" is an agreement whereby the lessor gives his/her rights to the lessee to possess the aircraft object (with or without the option to purchase) in exchange for a rent or any other payment as compensation.⁵⁴

5. Best Practices

Indonesia, as a state party of the CTC of 2001 and its Protocol has an obligation to implement their rules in its national laws. As earlier discussed, the objectives of this Convention are to facilitate the airlines' aircraft procurement, and to obtain economic advantages such as reducing the cost of the procurement. On the other hand, in order to obtain the economic advantages from this convention, a number of documents are required to be prepared by debtors and creditors.

⁴⁹*Ibid*, art 71, explanatory notes. See also Protocol, *supra* note 88, arts 1(2)(b)(1) and 1(2)(b)(ii)

⁵⁰*Ibid*.

⁵¹Cape Town Convention, *supra* note 7, art I(o)

⁵²*Ibid*, art I(ii)

⁵³*Ibid*, art I(II)

⁵⁴Civil Aviation Act, *supra* note 6, art 71; Martono K and Amad Sudiro, *supra* note 29, at 84; See also Cape Town Convention, *supra* note 85, art I(q).

The implementation of that CTC of 2001 and its protocol in Indonesia is based on Articles 71 through 82 the CAA of 2009, Presidential Decree No. 8/2007 as the ratification instrument which contains the declarations, and Ministerial Decree KM No. 49/2009 about IDERA. In regard to the implementation of IDERA, the International Interest and the International Registration, Enny Purnomo Widya as a Partner of Mochtar Karuwin and Komar Law Firm,⁵⁵ said that in the best practice our national laws are sufficient to implement the obligation based on the CTC of 2001 and its Protocol. So far, the important thing is the implementation of IDERA stipulated in Articles 74 and 75. Based on these articles, there are two kinds of documents that should be prepared, after the airline has procured a new aircraft object with the right in the aircraft, registered as an international interest. The documents are the consent letter between the parties or the agreement that establishes the international interest, and secondly, the power of attorney that should be acknowledged by the minister. An obstacle to the implementation of this regulation is the time limit to obtain the acknowledgement from the Minister. It is supposed to be only 5 days, but in fact, it could be more. The problem is in the time limit, as when exceeded it may cause a potential default, and harm the rights of the creditor for requesting deregistration of the aircraft to the Minister. The mechanism of IDERA can be enforced in the process of a leasing agreement, restructuring and/or refinancing the aircraft. However, the regulations related to bankruptcy in Indonesia in general appear to be contrary to the bankruptcy process in IDERA.

The other practice in IDERA relates to airlines designated for pioneer flights, meaning those flights to remote areas in Indonesia. One airline had experience with the IDERA mechanism. The airline was in default and the creditor requested deregistration for one of its aircraft. Unfortunately, because of the important public purpose of pioneer flights, the Minister of Transportation (MOC) delayed the deregistration process for more than 5 (five) days. Based on mutual consent, the parties had to conduct the mediation process before the deregistration process. This process is not required either under the CAA of 2009 or the CTC of 2001. The Mediation process is required before the deregistration process because the pioneer flights are important for public purposes in Indonesia.

Garuda Indonesia, as one of the national airlines in Indonesia, does not presently have any experience with deregistration. It means that they were able to comply with the obligations of the agreement, which establishes an international interest of rights. In line with the Garuda Indonesia experience, the implementation of the CTC of 2001 and its Protocol have not been tested in practice, specifically deregistration requests.

Furthermore, it is interesting to look at one of the successful airlines established in Indonesia in recent years. Lion Air is a privately owned airline founded in 1999, which today is the largest private domestic carrier in Indonesia. The airline's success owes much to its purchase of a new generation of Boeing aircraft, which have lower operating costs,

⁵⁵Based on the interview with Mrs. Enny Purnomo Widya, Partner from MKK Lawfirm on 22 October 2015

which in turn translates to lower fares. Indonesia's ratification of the CTC of 2001 and the associated Protocol greatly assisted Lion Air's growth and expansion, as it provided an internationally recognized standard on the rights of creditors should a debtor (in this case, an airline) default or become insolvent.⁵⁶

6. Conclusion

The CAA of 2009 was an ambitious legislative attempt to adopt almost all the provisions of the Chicago Convention of 1944 (the CC of 1944) and to implement all of the standards and recommended practices of the ICAO in a single item of national legislation.

Perhaps the most successful element of the CAA of 2009 is the incorporation of elements of the CTC of 2001 and its protocol. These successful elements have been proven by Garuda Indonesia, Lion Air, Airfast and Sriwijaya Airlines, Indonesia Air Asia in relation to the procurement of aircraft. In the future, the CAA of 2009 will be very important for the development and stimulation of Indonesia's aviation industry, as well as national economic development more generally. For the sake of legal uniformity and clarity, there is no valid reason national airlines should not comply with the CAA of 2009.

Based on a number of practices, the implementation of the CTC of 2001 and its protocol is sufficient, in regard to the Act and Regulations, namely the CAA of 2009 and Minister Decree. The Act provides regulation on the International Interest, International Registration, Priority Rules, and Default Remedies. Those are the four elements provided in the CTC of 2001 and its Protocol.

One of the obstacles in the implementation of the CTC of 2001 and its Protocol in Indonesia is the harmonization of the existing national laws specifically on bankruptcy and security to the regulations provided in the CTC of 2001. **At present Indonesia is making a law regarding Security Rights in Indonesian Aircraft, as one of the efforts to harmonize the law.**

The aim of the CTC of 2001 is to reduce the costs of raising finance for large, high value mobile assets that routinely cross borders. The CTC of 2001 provides an over-arching framework for financing this type of asset while the accompanying protocols currently in existence – specifically aircraft equipment. Indonesia has ratified the CTC of 2001,⁵⁷ and it is the reason the CAA of 2009 has incorporated the elements of the Convention that regulate international interests in aircraft objects.⁵⁸ This provision is purported to support aircraft procurement by the national airlines of Indonesia.⁵⁹ Based on the CAA of 2009,

⁵⁶Martono K and Amad Soediro, *supra* note 7.

⁵⁷*Convention on International Interest in Mobile Equipment*, 16 November 2001, 2307 UNTS 2855, UN Doc. A/AC105/C.2/2002/CRP3 (entered into force 1 April 2004)[Cape Town convention].

⁵⁸See Presidential Decree No.7 of 2008

⁵⁹Based on this provision, Indonesia airlines have bought no less than 299 aircraft from Boeing and Airbus to fulfill the country's aircraft needs.

an aircraft object may be held with international interests arising as a result of security agreements, title reservation agreements and/or leasing agreements.

As above-mentioned, the definitions contained in the Indonesian legislation are very similar to the definitions in the CTC of 2001 and its associated Protocol to the Convention on Interest Mobile Equipment on Matters Specific to Aircraft Equipment.⁶⁰ Thus, “aircraft objects” are aircraft frames or skeletons, air engines, and helicopters. An “aircraft frame” or skeleton is a skeleton of an aircraft (other than those frames used for military, customs, or police aircraft), provided that an aircraft engine suitable for the aircraft frame/skeleton is installed into it, and that it will be certified by an authorized aviation agency for transporting at least eight persons, including the crew, or goods weighing more than 2,750 kg, along with all of its installed equipment, components, and other devices, which are either built-in or attached to the aircraft (other than the aircraft engine) and all data, guide books and notes associated with it.⁶¹

“Aircraft engines” are engines (other than those used for military, customs, or police force aircraft) moved by jet propulsion or turbine or piston power. In the case of an aircraft engine with a propulsion jet, it must have a thrust/propulsion power of at least 1,750 lbs or the equivalent to qualify under this definition. Aircraft engines are driven by a turbine or piston, and they must have average capacity of at least 550 horsepower equivalent for take-off, along with all modules and installed equipment, components and other devices, built-in or attached to the aircraft, and all the data, guide books and notes associated with it.⁶²

A helicopter is a certain helicopter (not used for military, customs or police use) certified by an authorized aviation agency for transporting at least five persons, including the air crew, or goods more than 450kg, along with all the installed equipment and devices, whether built-in or attached to the helicopter (including the rotors) and all data, guide books and notes associated with it.⁶³ Meanwhile, an “international interest”⁶⁴ is an interest obtained by a creditor arising from a security agreement, the reservation agreement and/or leasing agreement that is subject to the Convention on International Interest in Mobile Equipment and the Protocol to the Convention on Interests in Mobile Equipment on Matters Specific to Aircraft Equipment.⁶⁴

A “security agreement” is an agreement whereby the charger of an aircraft object gives or agrees to give to the charge of the security agreement an interest (including ownership or title) in the aircraft object in order to guarantee delivery of obligations incurred or to be

⁶⁰Protocol to the Convention on Interest Mobile Equipment on Matters Specific to Aircraft Equipment, 16 November 2001 (entered into force 1 March 2006).

⁶¹See Civil Aviation Act, *supra* note 6, art 1(2) (e)

⁶²*Ibid.*, art 71, explanatory notes. See also Protocol, *supra* note 88, arts 1(2)(b)(1) and 1(2)(b)(ii)

⁶³*Ibid.*

⁶⁴Cape Town convention, *supra* note 7, art I(o)

incurred by the charger or third party.⁶⁵ Meanwhile, a “title reservation agreement” is a sale agreement for any aircraft object with a provision that ownership/title shall be transferred until the requirements under the agreement have been met.⁶⁶ A “leasing agreement” is an agreement whereby the lessor gives his/her rights to the lessee to possess the aircraft object (with or without the option to purchase) in exchange for a rent or any other payment as compensation.⁶⁷

The parties to an agreement may choose the law that will regulate their contractual rights and obligations. Based on the agreement between the parties, there may or may not be any link between the law chosen and a party to the agreement or the implementation of the obligations under the agreement. The parties to the agreement may also have the freedom to choose the court or jurisdiction of a State Party to the Convention or Protocol mentioned above, with or without any linkage between the chosen court and the parties or the transactions arising from the agreement.⁶⁸ If the agreement is subject to Indonesian laws, the agreement must be created in an authentic form containing at least the identities of all parties, the identity of the relevant aircraft objects and the rights and obligations of the parties.⁶⁹

A debtor may issue an authorization to request the annulment of the irrevocable registration and export the aircraft object to the creditor within the meaning of the Convention and Protocol for the purpose of applying for registration annulment and export of an aircraft or helicopter already displaying Indonesian registration marks and Indonesian nationality. The power of attorney for deregistration must be acknowledged and recorded by the MOC and may not be annulled without concurrence of the creditor. It will remain valid at the time the debtor declares default or if the debtor does not have the ability to pay debts. The creditor is the only party authorized to submit a request for annulment on the aircraft or helicopter registration in accordance with the terms of the request for the deregistration authorization mentioned above.⁷⁰

In the case of a breach of contract by the debtor, the debtor may submit a request to the MOC, in accordance with the power of attorney for deregistration. The registration marks and nationality of the airplane or helicopter will be cancelled or annulled no later than five working days after the request is received. The MOC and other governmental agencies will have to assist with and expedite any recovery attempts contemplated by a creditor based on such an agreement.⁷¹

⁶⁵ *Ibid.*, art I(ii)

⁶⁶ *Ibid.*, art I(II)

⁶⁷ Civil Aviation Act, *supra* note 6, art 71. See also Cape Town Convention, *supra* note 7, art I(q).

⁶⁸ Cape Town Convention, *supra* note 7, art 72

⁶⁹ *Ibid.*, art 73

⁷⁰ Civil Aviation Act, *supra* note 6, art 74

⁷¹ *Ibid.*, arts 75-76

Some Indonesian airlines have taken advantage of the CTC of 2001 and its Protocol, as they contain provisions that easily facilitate aircraft financing, guarantees, and securities that are useful for fleet modernization. In terms of the economic results, this convention has been very helpful for Indonesian airlines; between 2009 and 2013, Indonesian national airlines have procured at least 299 aircraft with the support of the CAA of 2009, which is supposed to incorporate the financing facilities provided by the CTC of 2001 and its Protocol. In the case of the above, and to assess how the CAA of 2009 has been implemented (or not) in practice, it is interesting to look at one of the most successful and profitable airlines to be established in Indonesia in recent year.⁷²

VII. The Montreal Convention of 1999

The diplomatic conference which was held by the ICAO at Montreal on May 10~28, 1999, replaced six different legal system instruments,⁷³ with a single legal instrument. Victims of international aircraft accidents will be better protected and compensated following the historic air law agreement embodied in the Montreal Convention concluded on May 28, 1999, among the contracting states of ICAO at Montreal, Canada. The new instrument adopted by the diplomatic conference on 28 May 1999, is a separate and distinct new Montreal Convention of 1999 (MC99), not an amendment of the Warsaw System by means of a further Protocol.

The ICAO succeeded in adopting a new regime for air carrier liability, replacing the Warsaw Convention of 1929 and five other related legal instruments with a single convention that provided for unlimited liability in relation to passengers. The MC99 is the result of the efforts of the ICAO to reform the Warsaw Convention of 1929 through wholesale amendment rather than inter-carrier agreement.⁷⁴ The stated premises of the MC99 were the need to modernize and consolidate the Warsaw Convention of 1929 and related instruments and recognition that collective state action for further harmonization and codification of

⁷²Martono & Amad Sudiro in Current, *supra* note 7.

⁷³Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air, signed at Warsaw on 12 October 1929, done at Warsaw on 28 September 1955; Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air, signed at Warsaw on 12 October 1929, as Amended by the Protocol done at The Hague on 28 September 1955, signed at Guatemala City, on 8 March 1971; Additional Protocol No.1 to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air, signed at Warsaw on 12 October 1929, signed at Montreal on 25 September 1975; Additional Protocol No.2 to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air, signed at Warsaw on 12 October 1929, as Amended by the Protocol done at The Hague on 28 September 1955, signed at Montreal on 25 September 1975; Additional Protocol No.3 to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air, signed at Warsaw on 12 October 1929, as Amended by Protocol done at The Hague on 28 September 1955, signed at Montreal on 25 September 1975, see Paul Steven Dempsey., Ed. *Annals of Air and Space Law*, Vol.XXX-2005 Part I. Toronto: The Carswell Company Ltd.

⁷⁴Prof. Dr. Doo Hwan Kim

certain rules governing international carriage by air through a new convention was the most adequate means of achieving an equitable balance of interests.

A. The Main Content of MC99

The MC99 is basically the consolidation of the original Warsaw Convention of 1929 and the subsequent protocols, namely, the Hague Protocol of 1955, the Montreal Protocol Nos. 3 and 4 of 1975, the Guatemala City Protocol of 1971, and the Guadalajara Supplementary Convention of 1961. Victims of international air accidents will be better protected and compensated as a result of the historic air law agreement adopted by the contracting states' delegates of ICAO. From 11 to 28 May 1999, the ICAO headquarters at Montreal hosted a diplomatic conference to consider, with a view to adoption, a Draft Convention intended to modernize and replace the instruments of the *Warsaw* system. Some 525 participants from 121 contracting states of ICAO attended,⁷⁵ one non-contracting state, and 11 observer delegations from international organizations; a total of 544 registered participants took part in the historic three-week conference that began on 10 May.

The MC99 was a success since it adopted a new *Convention for the Unification of Certain Rules for International Carriage by Air*. The new MC99 adopted by the diplomatic conference entered into force as soon as it was ratified by 30 states. Fifty-two states including the USA, China, EU etc. signed the new MC99 at the conclusion of the historic diplomatic conference. This MC99 entered into force on November 4, 2003. At present, 108 countries including the United States, United Kingdom, Canada, France, Germany, Korea, Japan, Italy, China, Sweden, Brazil, Spain etc. are affiliated with the 1999 Montreal Convention.⁷⁶

B. Scope of Application

The MC99 applies to carriage of persons, baggage or cargo performed by aircraft for reward in which, according to the agreement between the parties, the place of departure and the place of destination, whether or not there be a break in the carriage or a transshipment, are situated either within the territories of two State Parties, or within the territory of a single State Party if there is an agreed stopping place within the territory of another State, even if that State is not a State Party. Carriage between two points within the territory of a single State Party without an agreed stopping place within the territory of another State is not international carriage for the purposes of the MC99. It applies equally to gratuitous carriage by aircraft performed by an air transport undertaking.

Carriage to be performed by several successive carriers is deemed, for the purposes of MC99, to be one undivided carriage if it has been regarded by the parties as a single

⁷⁵While this is a very impressive attendance, it represents only 65.4%—less than two-thirds—of the total ICAO membership which now stands at 185.

⁷⁶http://www.icao.int/secretariat/legal/List%20of%20Parties/Mtl99_EN.pdf

operation, whether it had been agreed upon under form of a single contract or a series of contracts, and it does not lose its international character entirely because one contract or a series of contracts is to be performed entirely within the territory of the same state. The MC99 applies also to combine carriage subject to the terms contained therein

C. The Advantage of MC99

Without regard to the air carriers, the purpose of the MC99 relates to the amount of compensation, advance payment, insurance and jurisdiction. Relating to compensation, the carrier is liable for damage sustained in case of death or bodily injury to passengers, upon condition only that the accident which caused the death or injury took place on board the aircraft or in the course of any of the operations of embarking or disembarking. In case of death or injury of passengers, the compensation will not exceed 100,000 Special Drawing Rights (SDR) for each passenger, and the carrier cannot exclude or limit its liability.

The carrier is not be liable for damages in case of death or injury of passengers, to the extent that they exceed for each passenger 100,000 SDR if the carrier proves that (a) such damage was not due to the negligence or other wrongful act or omission of the carrier or its servants or agents; (b) such damage was solely due to the negligence or other wrongful act or omission of a third party. With regard to the Air Asia QZ8501 crash, the compensation does not apply, taking into account that Indonesia has not ratified the MC99.

In accordance with Article 38 of the MC99, that in case of aircraft accidents resulting in a passenger's injury or death, if required by its national law, the air carrier shall provide advance payments without delay in order to assist entitled persons in meeting immediate economic needs. The amounts paid will be deductible from the final settlement and do not constitute a recognition of liability. In relation to this provision, the conference also adopted a resolution that encouraged states to take appropriate measures, under their respective national law, to promote such action by carriers.⁷⁷

Article 50 of the MC99 provides a mandatory insurance. At the core of this provision is the right of any State Party to request, from an air carrier operating into that State, to furnish evidence to the effect that adequate insurance coverage is maintained by the carrier. Proposed by the ICAO Legal Bureau and supported by the study group and later by the SGMW, a mandatory insurance clause had become, at least in principle, a matter of consensus during the preparatory stages of the Convention. It is expected that the heightened degree of vigilance resulting from this clause and the involvement of the insurance sector will have a positive effect for the overall safety of air transport operations.⁷⁸

⁷⁷Ludwig Weber and A. Jakob, *The Modernization of the Warsaw System : The Montreal Convention of 1999*, in Milde M.Ed., *Annals of Air and Space Law*, Vol.XXIV-1999. Toronto : The Carswell Company Ltd, p.343

⁷⁸*Ibid.*,p.345

In addition, the MC99 provides jurisdiction to protect the passengers. In this regard, an action for damages must be brought, at the option of the plaintiff, in the territory of one of the State Parties, either before the court of the domicile of the carrier, before the court of its principal place of business, before the court where it has a place of business through which the contract was made, or before the court at the place of destination.

In addition, in respect of damage resulting from the death or injury of a passenger, an action may be brought in the territory of a State Party in which at the time of the accident the passenger had his or her principal and permanent residence and/or from which the carrier operates services for the carriage of passengers by air, either on its own aircraft or another carrier's aircraft pursuant to a commercial agreement, and in which that carrier conducts its business of carriage of passengers by air from premises leased or owned by the carrier itself or by another carrier with which it has a commercial agreement. In this regard, "commercial agreement" means an agreement, other than an agency agreement, made between carriers and relating to the provision of their joint services for carriage of passengers by air, while "principal and permanent residence" means that the one fixed and permanent abode of the passenger shall not be the determining factor in this regard. In relation to Air Asia QZ8501, the fifth jurisdiction does not apply because Indonesia has not yet ratified MC99.

D. Ratification of MC99

With regard to ratification of MC99, basically, after Focus Group Discussion (FGD) with participation by Prof. L. Weber (Legal Adviser of the DGAC) in Solo, Central Java, on 5 October 2015, Indonesia intends to ratify the MC99. This focus discussion included participation from airlines, INACA, IATA, the Supreme Court, Law and Human Rights Ministry, Foreign Affairs Ministry, the DGAC and other stakeholders related to aviation activities. Actually, for the purpose of ratification, legal drafting has been prepared to fulfill the formalities, filed to the Parliament of the ROI. The intention is to ratify the MC99 in line with the General Assembly Res.A-38-19, which urges all states that have not done so to become parties to the MC99 as soon as possible.⁷⁹

VIII. Contribution of the ROI to the ASEAN Countries

A. ASEAN Cooperation on Aircraft Search and Rescue

The Government of the ROI, Malaysia, the Republic of the Philippines, the Republic of Singapore and the Kingdom of Thailand (hereafter referred to as ASEAN) have signed an Agreement for the Facilitation of Search for Aircraft in Distress and Rescue of Survivors of Aircraft Accidents, at Singapore on 14 April 1972, but it has not yet come into force due to lack of ratification from the signatory states. This agreement consists of seven articles, as follows:

⁷⁹See General Assembly Res.A38-20 regarding Promotion of the Montreal Convention of 1999

The agreement provides that the contracting parties undertake to provide such measures of assistance as may be necessitated by the circumstances of aircraft in distress in their territories and neighboring seas as they find practicable. In assistance to aircraft in distress and to survivors of aircraft accidents, they shall do so regardless of the nationality of such aircraft or survivors. In addition to that, a party shall, subject to the control of its own authorities, permit immediate entry of aircraft, vessels, equipment and personnel necessary to search for aircraft in distress, or rescue survivors of aircraft accidents, into any areas, other than prohibited areas, in which it is believed that such aircraft or survivors are located.

Each of the contracting parties shall publish, in their respective Aeronautical Information Publications (AIP), all necessary information concerning such authorities and the measures of control exercised by them. Subject to the control of their own authorities, the parties shall make arrangements to ensure entry without delay into their territories on a temporary basis of qualified personnel required for search and rescue in connection with aircraft in distress. They shall facilitate the temporary entry into their territories of all aircraft, vessels and equipment required for search and rescue, and shall admit these items free from customs duties and other taxes or charges and the application of regulations of any nature restricting the importation of goods and the subsequent re-exportation thereof.

The competent authorities of the Contracting Parties which wishes its search and rescue units to enter the territory of another Contracting Party for search and rescue purposes shall transmit a request, giving full details of the projected mission and the necessity therefor, to the Rescue Co-ordination Center of the Contracting Party concerned or to such other authority as has been designated by the Contracting Party for that purpose. This request shall, when appropriate, be made through the medium of a flight plan (or similar message in the case of a rescue vessel or boat).

The ASEAN Agreement is subject to ratification by the signatory Governments. The instrument of ratification shall be deposited with Ministry of Foreign Affairs of Singapore. The agreement is open for accession by new member countries of ASEAN. The instruments of accession shall be deposited with the Ministry of Foreign Affairs of Singapore, as well. In addition, the Agreement provides denunciation of the members' parties. It provides that a contracting party may at any time give formal notice of its intention to withdraw from the Agreement, and such withdrawal shall take effect one year from the date of the notification to the Ministry of Foreign Affairs of Singapore, which shall immediately notify all the other Contracting Parties.

To enhance cooperation within ASEAN countries, it is necessary to call for establishment of an ASEAN search and rescue forum to promote cooperation in aircraft safety and SAR, through activities such as AIP sharing, technological cooperation and exchange of visits of the authorities concerned.

In addition, ASEAN countries may enhance their cooperation through the use of facilities in each other's Search and Rescue Regions while engaged in search and rescue mission, existing information flow and information during search and rescue operations, cooperating in the management of persons rescued or missing in their airspace, and conducting frequent regional search and rescue exercises to ensure the efficiency and effectiveness of the search and rescue communications and cooperative arrangements.

To enhance cooperation within ASEAN, it is easier when there is a common framework as legal ground, considering that all ASEAN countries are parties to the Chicago Convention of 1944. It is strongly suggested that Multilateral Agreement for the Facilitation of Search and Rescue for Aircraft in Distress and Rescue of Survivors of Aircraft Accidents signed at Singapore on 14 April 1972 shall be revised to comprehend the ASEAN Countries.

ASEAN Countries should consider immediately drafting a new ASEAN Multilateral Agreement on Aircraft Search and Rescue. In the meantime, ASEAN governments should take measures to enhance their cooperation, including the use of each other's facilities in rescue missions, common standard operating procedures for entry into their respective territorial air space and exchange of information, arrangements in undefined boundary areas, more search and rescue training program, and more search and rescue exercises.

B. ASEAN Multilateral Agreement on Commercial of Non-Scheduled Air Services

Like European countries, ASEAN countries also created a Multilateral Agreement on Commercial Rights of Non-Scheduled Air Services among ASEAN (MACRNAS-ASEAN), at Manila, the Philippines on 30 March 1971, signed by the Governments of the Republic of Indonesia, Malaysia, the Philippines, Singapore and Thailand.⁸⁰ The purpose of this agreement is to accelerate and intensify the implementation of the aims and purposes of ASEAN as embodied in the ASEAN Declaration.

Article 2 (MACRNAS-ASEAN) concerns the exchange of third and fourth freedom of the air. The member states of ASEAN agree to admit aircraft registered in ASEAN states and operated by a national of one of the member states or a firm or corporation substantially owned and effectively controlled by a national of one of the member states, duly authorized by the competent aeronautical authority of the state and engaged in non-scheduled international flights for pay for hire in the territories within the ASEAN region, freely to their respective territories for the purpose of third and fourth freedom traffic in respect of the airports contained in the Annex of the agreement without the imposition of the regulations, conditions or limitations provided for in paragraph 2, Article 5 of the CC of 1944, except for traffic control where such aircraft are engaged in: (a) flights for the purpose of meeting emergency or humanitarian needs; (b) taxi-class passenger

⁸⁰I. A. Vlasic and MA Bradley, *supra* note 96, pages 30-34

flights of occasional character on request, provided that on each flight the aircraft does not carry more than 8 passengers and provided that the destination is chosen by the hirer or hirers and no part of the capacity of the aircraft is resold to the public; (c) flights on which the entire space is hired by a single individual, firm, corporation or institution for the carriage of his/her or its personnel or merchandise provided that on each flight no part of such space is resold and the total freight does not exceed 40 passengers and total freight does not exceed 2 tons and provided the total frequency between any two Member States does not exceed 2 flights per week; (d) flights on which the entire space is hired for the transport of freight exclusively, provided that on each flight the total freight does not exceed 4 tons.⁸¹

C. ASEAN Multilateral Agreement of Air Services (AMAAS)

The member states of the ASEAN,⁸² on 20 May 2009, signed AMAAS⁸³ at Manila, the Philippines.⁸⁴ The purpose of AMAAS is to implement the Declaration of ASEAN Concord II, issued in Bali, Indonesia, on 7 October 2003, in which ASEAN committed itself to deepen and broaden its internal economic integration and linkages with the world economy to realize an ASEAN Economic Community. It intends to accelerate the open sky arrangements and to advance liberalization in air services, with strategic provisions to further liberalize air services in ASEAN; to promote an enabling environment for a single and unified aviation market in ASEAN; to ensure the highest degree of safety and security in international air transport and to reaffirm grave concerns about acts or threats against the security of aircraft, which jeopardize the safety of persons or property, adversely affect the operation of air transportation, and undermine public confidence in the safety of civil aviation.

The ultimate goal of AMAAS is the full liberalization of the aviation market without any limitation on, among other items, destinations, frequencies, capacity, the applicable tariff or freedoms of the air. "Unlimited air transportation rights" are to be implemented "in stages,"

⁸¹See *Multilateral Agreement on Commercial Rights of Non-Scheduled Air Service Among the ASEAN*, done at Manila, on 30 March 1971, reprinted in I. A. Vlasic and M. A. Bradley, *the Public International Law of Air Transport: Material and Documents*. Montreal: Institute of Air and Space Law, Mc Gill University, 1974, pages 30-34.

⁸²The Governments of Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, the Lao People's Democratic Republic (hereinafter referred as "Lao PDR"), Malaysia, the Union of Myanmar, the Republic of the Philippines, the Republic of Singapore, the Kingdom of Thailand and the Socialist Republic of Viet Nam, [the Member States of ASEAN]

⁸³ASEAN Multilateral Agreement on Air Services, 20 May 2009, online: ASEAN <<http://www.asean.org/22628.htm>>.

⁸⁴Amad Sudiro and K. Martono, *Indonesia's Aviation Law in the Framework of the ASEAN Multilateral Air Agreements*, submitted to the Celebrating 70 Years of the Chicago Convention and 100 Years of World Commercial Aviation Forum, on December 17-19 December 2014, hosted by Northwest University of Political Science & Law, China, Mc Gill University, Institute of Air and Space Law, Organized by the Institute of Air and Space Law, NWUPL School of International Law, NWUPL.

in accordance with the preparedness of national airline companies for competition.⁸⁵ In this regard, the ROI has made its goal to conclude multilateral air agreements based on the national interest and principles of fairness and reciprocity. It is of interest to examine ASEAN multilateral agreements on Air Services that Indonesia has signed with ASEAN Countries to understand the nature of the Indonesian aviation market to date.

The AMAAS provides preamble, definitions such as convention, aeronautical authorities, territory of states, airline, air service, tariffs, routes, 2nd freedom of the air, and user charges; the body of the agreement consists of grant of rights, designation and authorization of airlines, revocation, suspension and limitation of authorization, aviation safety, aviation security, tariff, commercial activities, non-discrimination treatment, and customs duties; miscellaneous provisions consist of application of laws and regulations, entry into force, ratification, the duration of agreements, consultations, settlement of dispute provisions, registration and conclusion.

Most importantly, and also the focus of this article, is the matter of how routes, frequencies, capacity, tariff and ownership, and effective control provisions in the past compare to more liberal multilateral or bilateral air agreements and other provisions of the present. After the initial signing in May 2009,⁸⁶ Indonesia proceeded to ratify Protocols 5 and 6 to the AMAAS in April 2014, which respectively govern unlimited third and fourth freedom and unlimited fifth freedom traffic rights between ASEAN capital cities.⁸⁷ Indonesia's own Civil Aviation Act also contains provisions allowing the signing of open skies agreements with foreign countries.

Bibliography

Books

- Dempsey P.S. Ed., *Annals of Air and Space Law*, 2005 Volume XXX-Part I. Toronto: The Carswell Company Ltd.
- I.A. Vlasic and M. A. Bradley, *the Public International Law of Air Transport: Material and Documents*. Montreal: Institute of Air and Space Law, Mc Gill University, 1974.
- Milde M.Ed., *Annals of Air and Space Law*, Vol.XXIV-1999. Toronto: The Carswell Company Ltd.

⁸⁵Indonesia, Act concerning Civil Aviation, Act No 1 of 2009 [Civil Aviation Act], Ministry of Transportation Republic of Indonesia, online: Directorate General of Civil Aviation <<http://hubud.dephub.go.id/?en/uu>>, art 86(3).

⁸⁶ASEAN Multilateral Agreement on Air Services, 20 May 2009, online: ASEAN <>.

⁸⁷Protocol 5 on Unlimited Third and Fourth Freedom Traffic Rights between ASEAN Capital Cities and Protocol on Unlimited Fifth Freedom Traffic Rights between ASEAN Capital Cities, see online: ASEAN <>.

Articles

Amad Sudiro and K.Martono, *Indonesia's Aviation Law in the Framework of the ASEAN Multilateral Air Agreements*, submitted to the Celebrating 70 Years of the Chicago Convention and 100 Years of World Commercial Aviation Forum, on December 17-19 December 2014, hosted by Northwest University of Political Science & Law, China, Mc Gill University, Institute of Air and Space Law, Organized by the Institute of Air and Space Law, NWUPL School of International Law, NWUPL.

Ludwig Weber and A. Jakob, *The Modernization of the Warsaw System: The Montreal Convention of 1999*, (1999) XXIV, Ann Air & Sp.L.at 343

Martono K.,and Amad Sudiro, *Current Air Transport Regulations In Indonesia*, (2013) XXXVIII Ann Air & Sp.L. at 55-89.

Mieke Komar Kantaatmadja, *The 2001 Cape Town Convention on International Interest in Mobile Equipment/the Aviation Protocol and Relevant Issues in Indonesian Aviation Law*. Volume 8, Number 4 July 2011, at 633

Documents

Act Concerning Civil Aviation. Civil Aviation No.1 of 2009, State Gazette Number 1 of 2009, Supplement to State Gazette Number 4956 of 2009 [Civil Aviation Act]; Ministry of Transportation Republic of Indonesia, online: Directorate General of Civil Aviation <http://hubud.dephub.go.id/?en/uu>

Act Concerning Ratification of Tokyo Convention of 1963, The Hague Convention of 1970 and Montreal Convention of 1971, Act. Number 2 of 1976.

ASEAN Multilateral Agreement on Air Services, 20 May 2009, online: ASEAN <>.

ASEAN Multilateral Agreement on Air Services, 20 May 2009, online: ASEAN <<http://www.asean.org/22628.htm>>.

Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo 1963
Convention for the Suppression of Unlawful Seizure of Aircraft, signed at the Hague on 16 December 1970.

Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, signed at Montreal on 23 September 1971

Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, see http://en.wikipedia.org/wiki/Convention_for_the_Suppression_of_Unlawful_Acts-against_the_Safety_of-Civil_Aviation. Accessed 11/17/2015

ICAO Doc.10022, *Assembly Resolutions in Force* (as of 4 October 2013)

ICAO Doc.7500, *Convention on International Civil Aviation*, Signed at Chicago on 7 December 1944.

Multilateral Agreement on Commercial Rights of Non-Scheduled Air Service Among the ASEAN, done at Manila, on 30 March 1971, reprinted in I. A. Vlasic and M. A. Bradley, *The Public International Law of Air Transport: Material and Documents*. Montreal: Institute of Air and Space Law, Mc Gill University, 1974, pages 30-34.

Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Supplementary to the Convention for Suppression of Unlawful Acts Against the Safety of Civil Aviation, done at Montreal, on 23 September 1971, signed at Montreal on 24 February 1988

General Assembly Res. A38-4 Resolution, Montreal, 24 September – 4 October 2013.

General Assembly Res.A38-20 regarding Promotion of the Montreal Convention of 1999

Protocol to the Convention on Interest Mobile Equipment on Matters Specific to Aircraft Equipment, 16 November 2001 (entered into force 1 March 2006).

Protocol to the Convention on Interest Mobile Equipment on Matters Specific to Aircraft Equipment, 16 November 2001 (entered into force 1 March 2006).

Protocol 5 on Unlimited Third and Fourth Freedom Traffic Rights between ASEAN Capital Cities

Protocol 5 on Unlimited Third and Fourth Freedom Traffic Rights between ASEAN Capital Cities

Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air, signed at Warsaw on 12 October 1929, done at Warsaw on 28 September 1955;

Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air, signed at Warsaw on 12 October 1929, as Amended by the Protocol done at The Hague on 28 September 1955, signed at Guatemala City, on 8 March 1971;

Additional Protocol No.1 to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air, signed at Warsaw on 12 October 1929, signed at Montreal on 25 September 1975;

Additional Protocol No.2 to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air, signed at Warsaw on 12 October 1929, as Amended by the Protocol done at The Hague on 28 September 1955, signed at Montreal on 25 September 1975;

Additional Protocol No.3 to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air, signed at Warsaw on 12 October 1929, as Amended by the Protocol done at The Hague on 2 September 1955, and at Guatemala City on 25 September 1971, signed at Montreal on September 1975

Additional Protocol No.4 to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air, signed at Warsaw on 12 October 1929, as Amended by Protocol done at The Hague on 28 September 1955, signed at Montreal on 25 September 1975,

U.N.Treaty Series, Vol.974, *Administrative Package for Ratification or accession* : The Montreal Supplementary Protocol of 1988.

UN Treaties Series Vol. 2855, UN Doc.A/AC105/C.2/2002/CRP.3 *Convention on International Interest in Mobile Equipment*, 16 November 2001, (entered into force 1 April 2004)

Others

Air France Flight 8969-Wikipedia, the f... see ...Wikipedia.org/.../Air_France_Flight_89...

Garuda Indonesia Flight 206 - ...Wikipedia.org/.../Garuda_Indonesia-Fl...

http://www.icao.int/secretariat/legal/List%20of%20Parties/Mtl99_EN.pdf

The Postal History of ICAO : Legal Instruments Related to Aviation Security. See http://www.icao.int/secretariat/postalhistorylegal_instrument_related_to_aviation_securityhtm

Regulation Impact Statement "Implementation of the Cape Town Convention, paper unpublished.

Mrs. Enny Purnomo Widya, Partner from MKK Lawfirm, *Interview* on 22 October 2015

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