

International Civil Aviation Organization (ICAO)

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Year of Establishment: 1947

CTITF Working Group Membership:

- Strengthening the Protection of Vulnerable Targets
- Preventing and Responding to WMD Terrorist Attacks
- Supporting and Highlighting Victims of Terrorism
- Border Management Related to Counter-Terrorism

The International Civil Aviation Organization (ICAO) was established to set standards for the safe and orderly development of international civil aviation by developing treaties and international standards, recommending best practices, and offering guidance to states.⁹³ Today its objectives include aviation safety, security, environmental protection, and sustainable development of air transport.⁹⁴

Concern over aviation security and terrorism has become increasingly salient in the last decade, in large part as a result of the attacks on September 11, 2001. However, aviation security has been an area of international concern since 1944, when the International Civil Aviation Organization (ICAO) was established with a membership of fifty-two states (currently 191).

Shortly after the establishment of the ICAO, its assembly adopted a resolution that brought into force its relationship with the UN, making the ICAO a specialized agency of the United Nations. As such, the ICAO and the UN have benefitted from each other through an increased ability to deliver and facilitate technical assistance to member states.

As early as 1959, the ICAO Legal Committee recommended a convention to fill the gap in jurisdiction for offenses that had taken place over the high seas, in response to an increase in the number of aircraft hijackings. The resultant *Tokyo Convention* had only a modest impact, in part because several critical states implicated in hijackings refused to become signatories to the convention.⁹⁵ Subsequent conventions however, imposed more serious penalties on hijackers and defined a set of punishable offenses. This included the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970.

The ICAO greatly expanded its work on counterterrorism issues in the 1980s, in response to a surge in attacks targeting aircrafts. In 1986, the ICAO established a fifteen-member expert body, known as the Aviation Security Panel. The panel actively reviewed relevant standards, recommended practices (SARPs) and technical advice.⁹⁶ This approach also reflected several states' preferences to pursue measures to counter the threat of terrorism through more technically-focused agencies rather than the General Assembly or Security

Council, where the debate regarding terrorism had become increasingly politicized. For example, Victor Comras notes, the US State Department made it a policy to refer cases of airline hijacking to the ICAO rather than the Security Council.⁹⁷

Since the September 11th terrorist attacks on the US, protecting against civil aviation security threats has become a more prominent focus for the agency. The ICAO Security Panel has addressed regulatory gaps by amending the standards and recommended practices contained in Annex 17 to the 1971 *Convention on International Civil Aviation* (1944), established to address the unlawful seizure of aircraft. The amendment adopted in December 2001 includes various definitions and new provisions addressing the applicability of the annex to domestic operations, international cooperation on threat information, in flight security personnel and protection of the cockpit, management of response to acts of unlawful interference, and more. In addition, The Aviation Security and Facilitation Policy (FSP) Section of ICAO published a five-volume manual to assist contracting states in implementing Annex 17 of the convention by providing guidance on the application of SARPs and conducting seminars and workshops for airport security and other relevant actors.

Through its Implementation Support and Development Programme (ISD), the ICAO provides assistance to states by encouraging the exchange of information and facilitating capacity-building assistance to improve aviation security. Additionally, the ICAO provides standardized training to states through eighteen aviation security training centers, which help states to

- upgrade technological security features of travel documents,
- implement the ICAO Minimum Security Standards for Handling and Issuance of Machine Readable Passports and Other Documents,
- enhance capabilities and improve cross-border cooperation in detecting and preventing the use of fraudulent and counterfeit travel documents, and
- reduce the possibility of such lost and stolen passports being used for terrorist and other criminal purposes.⁹⁸

The development of the Comprehensive Aviation Security Strategy (ICASS) over 2011-2016 and the results of a initial audit of aviation security underscore the need for enhanced state-capacity building. In addition, recognizing the transnational and fluid nature of aviation security challenges, the ICASS highlights “addressing new and existing threats” as an area requiring greater focus. This will build on past efforts of the ICAO, which, In 2007, established a Special Sub-Committee of the Legal Committee to focus on new and emerging threats to civil aviation.

In 2010, the ICAO Legal Committee drafted the Beijing Convention and Protocol, which criminalize the use of a civil aircraft as a weapon as well as using dangerous materials such as biological, chemical, and nuclear substances to attack aircraft or other targets on the ground. The Beijing Convention includes the *Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation* and the *Protocol Supplementary to the Convention for the Suppression of Unlawful Seizure of Aircraft*. These instruments were drafted at the Beijing conference to succeed and improve provisions of the 1971 *Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation* (Montreal Convention) and its amending Airports Protocol of 1988 which had become outdated in dealing with the terrorist threat.

The Aviation Security Panel’s Working Group on Threat and Risk, which evaluates new threats, has developed a risk assessment tool known as the “Global Risk Context Statement,” that provides states with the necessary tools to conduct their own risk assessments. In addition, the ICAO has worked with the Security Council’s 1540 Committee to develop a plan of action for protection against nuclear terrorism.

The ICAO participates in five working groups of the Counter-Terrorism Implementation Task Force (listed above). As part of its contributions to the Working Group on Supporting and Highlighting Victims of Terrorism, the ICAO prepared two draft conventions addressing compensation for third parties who are victims of unlawful interference of an aircraft, which was adopted at a May 2009 diplomatic conference under the auspices of the IAEA.⁹⁹ Furthermore, the International Civil Aviation Compensation Fund was set up by

ICAO to provide compensation to victims of terrorist attacks. Among its contributions to the other working groups, the ICAO has helped to the develop of relevant regulations and security measures on cross-border movements for the Working Group on Border Management Related to Counter-Terrorism.