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# INTERNATIONAL AVIATION/ AIRSPACE LAW AN OVERVIEW

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***Abstract***

*Aviation law is the branch of law that concerns flight, air travel, and associated legal and business concerns. Some of its area of concern overlaps that of admiralty law and, in many cases, aviation law is considered a matter of international law due to the nature of air travel. However, the business aspects of airlines and their regulation also fall under aviation law. In the international realm, the International Civil Aviation Organization (ICAO) provides general rules and mediates international concerns to an extent regarding aviation law. The ICAO is a specialized agency of the United Nations. In the United States and in most European nations, aviation law is considered a federal or state-level concern and is regulated at that level. In the U.S., states cannot govern aviation matters in most cases directly but look to Federal laws and case law for this function instead. For example, a court recently struck down New York's Passenger Bill of Rights law because regulation of aviation is traditionally a federal concern. Aviation law, however, is not in the United States held under the same Federal mandate of jurisdiction as admiralty law; that is, while the United States Constitution provides for the administration of admiralty,[1] it does not provide such for aviation law. States and municipalities do have some indirect regulation over aviation. For example, zoning laws can require an airport to be located away from residential areas, and airport usage can be restricted to certain times of day. State product-liabilitys law are not preempted by Federal law and in most cases, aviation manufacturers may be held strictly liable for defects in aviation products. Space law, which governs matters in outer space beyond the Earth's atmosphere, is a rather new area of law but one that already has its own journals and academic support. Much of space law is connected to aviation law.*

***Keywords:*** *Aviation/Airspace; International; Law; Overview.*

## A. INTRODUCTION

Aviation Law is one of the specialty field in Studies of Law. Air Law is a general viewpoint that covers the special characteristics and demands of aviation field. There is no governing body with the right to frame the air laws governing all states in the legal sense or there is not any international law. But the phrase Air Law is used to describe a system of implicit and explicit agreements that the nations together. These agreements are known as conventions. There are

numerous conventions such as Chicago, Rome, Tokyo, Geneva, and few more. Let us discuss more about the aviation law.

It is a branch of law that is concerned with air transport operations, and all the associated legal and business concerns. This is a series of rules that governs the use of airspace for aviation, and its benefits for the general public and the nations of the world. The first attempt to set the air law was made around 1910, when German air balloons repeatedly trespassed over French territory. The French government wanted both the governments to come together to form an agreement to resolve the problem. The Paris Conference of 1910 was in favor of the sovereignty of states in the space above their territories.

It started developing further when after the World War I, the first scheduled flight from Paris to London took its first flight in 1909. Roman law and other ancient lund systems generally granted all rights in airspace to the owner of the underlying land. The first law specifically applicable to aircraft was a local ordinance enacted in Paris in 1784, one year after the first hot air balloon flight by the Montgolfier brothers. Several court cases involving balloonists were tried in common law jurisdictions during the 19th century.[1]

## B. DISCUSSION

### 1. Development of public international law

Balloons were used in the Franco-German War of 1870–71, and the First Hague Conference of 1899 set a five-year moratorium on the use of balloons in combat operations, which was not renewed by the Second Hague Conference (1907). Prior to World War I, several nations signed bilateral agreements regarding the legal status of international flights, and during the war, several nations took the step of prohibiting flights over their territory. Several competing multilateral treaty regimes were established in the wake of the war, including the Paris Convention of 1919, Ibero-American Convention (1926)[2] and the Havana Convention (1928).[3]

The International Air Transport Association (IATA) was founded in 1919 in a conference at The Hague, to foster cooperation between airlines in various commercial and legal areas.[4] The lack of uniformity in international air law, particularly with regard to the liability of international airlines, led to the Warsaw Convention of 1929. The Chicago Convention on International Civil Aviation was signed in 1944, during World War II. It provided for the establishment of the International Civil Aviation

1 Sand, Peter H. "An Historical Survey of International Air Law Before the Second World War" (PDF). McGill Law Journal. **7** (1): 24–42. Archived from the original (PDF) on 5 March 2016, https://www.iata.org/en/training/courses/aviation-law-regulation/tall18/en/, accessed on 4 July 2020

2 The Ibero-American Convention, ICAO History

3 The Havana Convention, ICAO History

4 *Alexander, Arthur J.* (26 May 2000). "JAPAN'S AVIATION INDUSTRY: DEREGULATION ADVANCES ON BROAD FRONT". Japan Economic Institute Report (21).

Organization as a unit of the United Nations devoted to overseeing civil aviation. The Convention also provided various general principles governing international air service. The Tokyo Convention of 1963 enacted new international standards for the treatment of criminal offenses on or involving aircraft. The Montreal Convention of 1999 updated the carrier liability provisions of the Warsaw Convention, while the Cape Town Treaty of 2001 created an international regime for the registration of security interests in aircraft and certain other large movable assets.

**2. Development of national regulations**

a. British Commonwealth

The United Kingdom enacted the Air Navigation and Transport Act in 1920, which formed the basis of aviation regulation in the British Empire and Commonwealth.

b. United States

In the United States, the Air Mail Act of 1925 and the Civil Aeronautics Act of 1938 formed the early basis for regulation of domestic air transportation. The United States established a Federal Aviation Agency in 1958, which became the Federal Aviation Administration, a unit of the newly formed United States Department of Transportation, in 1967. The Airline Deregulation Act of 1978 was a watershed in the U.S. air transportation industry, and it greatly increased the regulatory workload of the FAA as new operators were allowed to apply for operating certificates.

c. Communist bloc

The Russian Soviet Federative Socialist Republic declared sovereignty over its airspace and enacted basic aviation regulations in 1921, forming a state-owned Civil Air Fleet in 1923 which became known as Aeroflot in 1932. Other communist states followed a similar pattern in establishing state-controlled entities for civil aviation, such as the Civil Aviation Administration of China in the People's Republic of China and Interfug in East Germany.

d. Japan

Japan enacted a legal regime governing civil aviation in 1952, after a brief moratorium during the occupation that followed World War II. While the early domestic air travel market was lightly regulated and highly competitive, the government implemented a regulation system in 1970 which limited service to three carriers[5] (Japan Airlines, All Nippon Airways and Japan Air System), with largely separate markets and strictly regulated fare levels that minimized competition. Pressure from the United States, which sought to introduce new U.S. carriers to the transpacific market in the 1980s, led Japan to gradually deregulate its

5 Op.cit. Alexander, Arthur J.

market in the form of cheap packaged-tour fares and an increased international role for ANA in the 1980s and 1990s, followed by the advent of new domestic carriers such as Skymark Airlines and Air Do.[6]

## 3. International Airspace

International law generally accepts that a country's sovereign airspace includes the airspace above a country as well as the airspace above a country's territorial waters. Territorial waters extend 12 nautical miles out from a nation's coastline. Airspace not within any country's territorial limit is considered international. A country may, by international agreement, assume responsibility for controlling parts of international airspace, such as those over the oceans or the poles. For example, the US provides air traffic control services over a large part of the Pacific and smaller parts of the Atlantic Ocean, even though the airspace is international in nature. Canada, Iceland, and the UK share the responsibility for the rest of the northern Atlantic airspace. Canada and Russia share responsibility for northern polar airspace.

There is no international agreement concerning the vertical boundaries of a country's airspace. It is generally recognized that no country controls space, but there is no international agreement concerning where airspace ends and space begins. As countries move toward increased space flight and as the possibility for civilian space flight becomes more realistic, this is an area that will require attention.

## 4. The Chicago Convention

Prior to the Second World War, international flight was regulated by a patchwork of hundreds of individual agreements between countries. This system was cumbersome and inefficient, but aviation technology had not yet progressed to a point where air travel could fully compete with other established modes of international travel, such as rail and ship. In the run-up to the war, little emphasis was placed on international flight agreements because so much attention was being devoted to de-escalating the growing conflict.

The war had the unintended consequence of obliterating old geographic and political barriers to international flight. With only three dominant world powers remaining, it became uniquely possible to develop a new framework for international aviation agreements. The war also spurred significant advances in aviation technology that could be adapted for civilian use. During the war, aircraft became faster, stronger, and more fuel-efficient – all qualities that are of significant benefit to civilian air commerce. Because of wartime manufacturing needs, the necessary

6 "History". Federal Aviation Administration.

factories and skilled workers were already in place to become the foundation for a thriving civil aviation manufacturing sector.

The Second World War created not only the *means* for international air travel but also the *will*. The magnitude of the war left world governments with a firm desire to usher in a new era of cooperation and peace. To that end, delegates from 52 countries signed the Convention on International Civil Aviation shortly before the official end of hostilities in Europe. The agreement is generally referred to as the *Chicago Convention* because it was signed in Chicago, Illinois. The Convention established a framework that eventually resulted in a common system of international aviation rules. It included provisions for safety and environmental regulations, and also defined the rights and obligations of every nation as they relate to international airline operations.

The Convention was designed to replace the hundreds of patchwork individual agreements with a common system that would permit international commercial aviation to flourish. It only applies to international commercial air travel; it does not apply to military operations, domestic commercial air travel, or private aircraft operations. The purpose behind this unified approach to civil aviation can best be described by the introduction to the Convention:

Whereas the future development of international civil aviation can greatly help to create and preserve friendship and understanding among the nations and peoples of the world, yet its abuse can become a threat to the general security; and whereas it is desirable to avoid friction and to promote that co-operation between nations and peoples upon which the peace of the world depends;

Therefore, the undersigned governments having agreed on certain principles and arrangements in order that international civil aviation may be developed in a safe and orderly manner and that international air transport services may be established on the basis of equality of opportunity and operated soundly and economically; have accordingly concluded this convention to that end.

The rights and responsibilities of the *Member States* are defined in the articles of the Convention. The articles provide a framework instead of a detailed body of regulations. The Convention recognizes each country's sovereign interest in its own airspace, prohibits military aircraft and drones from operating over member countries without permission, prevents monopolies, bars member countries from discriminating against one another's aircraft, requires that public airports and aviation facilities be made available to all member countries to the same degree as domestic aircraft, recognizes the right of every country to regulate air travel within its borders, and encourages each country to adopt uniform air regulations.

## 5. The International Civil Aviation Organization (ICAO)

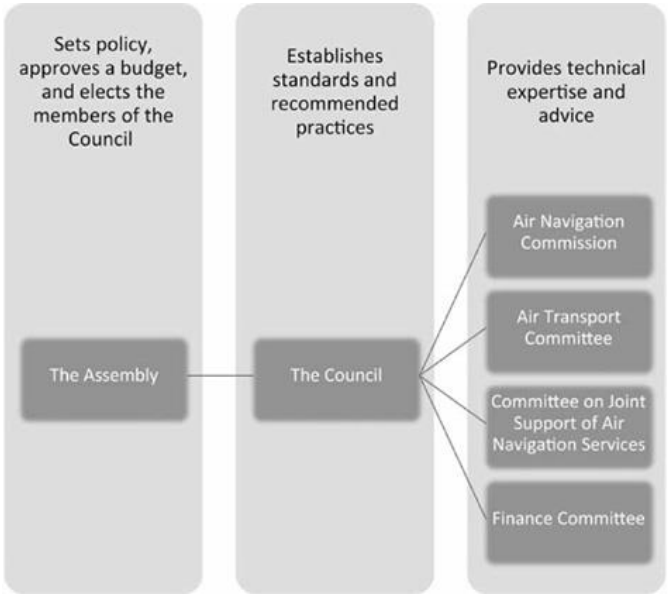
For international air travel to be efficient and effective, there must be a uniform system of air regulations. A patchwork approach is an impediment to the free flow of air traffic across international borders. In order to foster the development of a uniform approach to air regulations, the Chicago Convention created an international governing body – the ICAO. Its purpose is to "develop the principles and techniques of international air navigation and to foster the planning and development of international air transport."

The ICAO is body of the UN and it is responsible for developing uniform air transportation standards that apply to international flight. The ICAO is divided into three branches. The *Assembly* is a representative body that meets every three years to review the ICAO's work, set policy, approve a budget, and select which Member States will have a seat on the rule-making body of the ICAO, known as the *Council*[7]. The Assembly is also responsible for approving any amendments to the Chicago Convention, which are then subject to ratification by each of the Member States.

The *Secretariat* is the executive department of the ICAO and is responsible for implementing the policies set by the Assembly. It is headed by a Secretary General and is divided into five divisions, each with its own area of expertise: the Air Navigation Bureau, the Air Transport Bureau, the Technical Co-Operation Bureau, the Legal Bureau, and the Bureau of Administration and Services. The various bureaus are responsible for implementing safety plans and environmental protection policies, and for monitoring the effectiveness of the ICAO's *Standards and Recommended Practices* (SARPs).

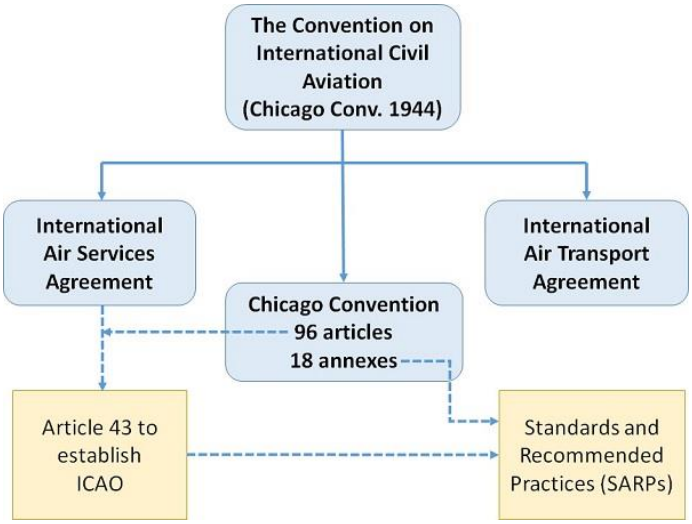
The Council is the rule-making body of the ICAO and is responsible for debating and adopting SARPs for air travel. The Council receives advice and technical expertise from various commissions and committees.

7 https://www.mcgill.ca/iasl/about/courses/aspl633, accessed on 4 July 2020




**Organizational structure of the ICAO**

ICAO consists of an Assembly of representatives from the contracting states, a Council of governing bodies out of various subordinate bodies, and a Secretariat. The chief officers are the President of the Council and the Secretary General. ICAO conducts meeting every three years to discuss about the work and to set future policies.




The suggestions, standards, and recommendations are amended by the convention. ICAO identifies nine separate geographical regions to plan the provision of air navigation facilities and on-ground services the aircrafts require for flying in these regions.

**a. Freedoms of the Air**

There are five different freedoms of the air. The first two are technical freedoms followed by three commercial freedoms:

1) First Freedom – The right of aircraft from State A to overfly State B without landing.
2) Second Freedom – The right of aircraft from State A to land in State B for technical reasons.
3) Third Freedom – The right of aircraft from State A to accept paying traffic from State A and put it down in State B.
4) Fourth Freedom – The right of aircraft from State A to pick up paying traffic in State B and put it down in State A.
5) Fifth Freedom – The right of aircraft from State A to take paying traffic from State B to State C.

At the Chicago Convention, the US urged the delegates to adopt a set of aviation rights known as freedoms of the air. Other countries, wary that the dominant US aviation industry would monopolize world air travel if such broad aviation rights were enacted, declined to incorporate these rights into the Convention on International Civil Aviation. Instead, the freedoms of the air were placed in two separate agreements called the International Air Services Transit Agreement and the International Air Transport Agreement. These agreements are open to any country that signs the Convention on International Civil Aviation. The five freedoms of the air are discussed below.

1) First Freedom of the Air

   The first freedom is the right granted by one country to another to fly across its territory without landing. For example, an airline of country A may overfly country B enroute to country C. The first freedom is sometimes called either the transit freedom or the technical freedom. First freedom rights are almost always granted with prior notification of the flight usually required.

2) Second Freedom of the Air

   The second freedom is the right granted to land in a country for technical reasons, such as refueling or maintenance, but not for commercial reasons. For example, an airline from country A might land in country B to refuel or perform maintenance while on its way to country C, but it is not allowed to load or unload passengers. Second-freedom rights are not utilized as much as they used to be. Prior to the advent of long-range jetliners, airports such as Anchorage, Alaska, Shannon (Ireland), and Reykjavik were commonly used as refueling airports. Second freedom rights are usually routinely granted with prior notification required.

3) Third Freedom of the Air

   The third freedom is the right granted by one country to another to land for the purpose of disembarking passengers who

boarded in the originating country. For example, an airline of country A is permitted to enplane passengers in country A, fly to country B, and disembark the passengers there. The nationality of each passenger is of no concern with this or any other freedom. Nationality concerns are covered by separate immigration and security rules. Freedom three simply defines the right of the airline to fly between two countries.

4) Fourth Freedom of the Air

The fourth freedom is the right granted by one country to another to land for the purpose of enplaning passengers to return to the airlines country of origin. For example, an airline of country A is permitted to enplane passengers in country B and return them back to country A. Just like freedom three, the nationality of each passenger does not matter; this freedom is concerned with the nationality of the airline itself. Third and fourth freedom rights are normally granted concurrently in the air service agreement agreed to by two countries.

5) Fifth Freedom of the Air

The fifth freedom is the right granted by one country to another to land in a second country, pick up new passengers in the second country, and take them to a third country. For example, an airline of country A might fly to country B, pick up passengers in country B, and fly them to country C. An extension of the fifth freedom rights would permit the airline of country A to bring passengers back from country C to country B. Fifth freedom rights are rarely granted as they essentially give a foreign airline a right to serve two unrelated countries, albeit those connected by a previous flight. And still another Freedom of the Air for additional such as:

The sixth and seventh freedoms of the air are generally accepted, but are not specifically included in either the International Air Services Transit Agreement or the International Air Transport Agreement. The sixth freedom of the air is the right to carry passengers from one country to another, with a stop in the airline's home country. Under this freedom, an airline of country A could pick up passengers in country B, stop in country A, and then fly to country C. The seventh freedom of the air is similar to the sixth, except that there is no stop in country A; in other words, an airline of country A could pick up passengers in country B and disembark them in country C.

The eighth and ninth freedoms of the air are also not included in the International Air Services Transit Agreement or the International Air Transport Agreement. These freedoms protect the right of cabotage and are less commonly accepted than the sixth and seventh freedoms. Cabotage is the carriage of goods or passengers

within a single country by an airline of a foreign country. It is common within Europe, but its acceptance outside the EU is more limited. The eighth freedom of the air guarantees the right of country A to stop at a two locations in country B before returning to country A. The ninth freedom of the air guarantees with right of an airline to conduct domestic operations within a foreign country, without connecting to the country of origin. For example, Ryanair is an airline based in Ireland that has routes connecting Rome and Milan in Italy without stops in Ireland.

**b. The ICAO's Rule-Making Authority**

SARPs concern specifications for physical characteristics, materials, configuration, performance, personnel, or procedure. If approved by two-thirds of the Council, SARPs are incorporated into the Chicago Convention as *Annexes*. Standards are considered necessary for the safety or regularity of international air navigation. Recommended Practices, while not strictly necessary, are strongly encouraged. Article 37 of the Chicago Convention explains the scope of the ICAO's rule-making authority.

Article 37 – Adoption of international standards and procedures

Each contracting State undertakes to collaborate in securing the highest practicable degree of uniformity in regulations, standards, procedures, and organization in relation to aircraft, personnel, airways and auxiliary services in all matters in which such uniformity will facilitate and improve air navigation.

To this end the International Civil Aviation Organization shall adopt and amend from time to time, as may be necessary, international standards and recommended practices and procedures dealing with:

a) Communications systems and air navigation aids, including ground marking;
b) Characteristics of airports and landing areas;
c) Rules of the air and air traffic control practices;
d) Licensing of operating and mechanical personnel;
e) Airworthiness of aircraft;
f) Registration and identification of aircraft;
g) Collection and exchange of meteorological information;
h) Log books;
i) Aeronautical maps and charts;
j) Customs and immigration procedures;
k) Aircraft in distress and investigation of accidents; and such other matters concerned with the safety, regularity, and efficiency of air navigation as may from time to time appear appropriate.

To date, the ICAO has adopted 18 Annexes to the Chicago Convention dealing with issues such as the training and licensing of aviation personnel, airworthiness, ATC, accident investigation, and environmental protection. A list of the current annexes is provided below:

1) Annex 1 – Personnel Licensing
2) Annex 2 – Rules of the Air
3) Annex 3 – Meteorological Services
4) Annex 4 – Aeronautical Charts
5) Annex 5 – Units of Measurement
6) Annex 6 – Operation of Aircraft
7) Annex 7 – Aircraft Nationality and Registration Marks
8) Annex 8 – Airworthiness of Aircraft
9) Annex 9 – Facilitation
10) Annex 10 – Aeronautical Telecommunications
11) Annex 11 – Air Traffic Services
12) Annex 12 – Search and Rescue
13) Annex 13 – Aircraft Accident and Incident Investigation
14) Annex 14 – Aerodromes
15) Annex 15 – Aeronautical Information Services
16) Annex 16 – Environmental Protection
17) Annex 17 – Security
18) Annex 18 – The Safe Transportation of Dangerous Goods by Air

Annexes are not laws and the ICAO does not have legal authority to enforce them. Instead, they are guidelines that Member States may use to promulgate their own aviation regulations. Under the Chicago Convention, Member States that deviate from the ICAO's Standards are required to notify the ICAO of their intention not to fully comply with an Annex. Member States are also encouraged, but are not obligated, to notify the ICAO if they do not intend to comply with a Recommended Practice. Article 38 explains:

Article 38 – Departures from international standards and procedures

Any State which finds it impracticable to comply in all respects with any such international standard or procedure, or to bring its own regulations or practices into full accord with any international standard or procedure after amendment of the latter, or which deems it necessary to adopt regulations or practices differing in any particular respect from those established by an international standard, shall give immediate notification to the International Civil Aviation Organization of the differences between its own practice and that established by the international standard. In the case of amendments to international standards, any State which does not make the appropriate amendments

to its own regulations or practices shall give notice to the Council within sixty days of the adoption of the amendment to the international standard, or indicate the action which it proposes to take.

## C. CONCLUSION

Air Law is a general viewpoint that covers the special characteristics and demands of aviation field. In any such case, the Council shall make immediate notification to all other states of the difference which exists between one or more features of an international standard and the corresponding national practice of that State. Any public transport relies on planetary resources, which are finite. Aviation cannot assume a long term sustainability as it also relies on those finite resources such as fuel. Latest technology is aiding today's aircrafts to fly efficiently over long distances. The demand of air transport around the world is increasing because of the improvement in the lifestyle. In the bargain, the society and the nature needs to pay the price, accept some drawbacks such as noise, pollution, and use of resources. Noise is the prime environmental challenge for aviation. Though it does not leave a permanent impact on the environment, people living near the airports are subjected to communication interference, insomnia, and deafness. The students show problems in learning acquisition and the patients in the nearby hospitals show have to face physiological impacts because of the noise. It is observed that the aircraft flying at least 10,000ft high above the ground does not produce significant noise. Aircraft engines operate by combusting fuel to a great extent. Due to the emission produced by fuel combustion, the quality of air around few kilometers of the airport gets affected significantly. It is about 3km up at the time of departure and 6km down at the time of landing the air quality is hampered. In addition, the baggage and food carts moving on the taxiway produce smoke if not maintained well. Climate change is the alteration in average weather conditions that a given region undergoes. It involves consideration of various factors such as temperature, storm frequency, winds, and rains. Aircrafts emit greenhouse gases such as Carbon Dioxide ($CO^2$). They also emit water vapor, which traps chemically active gases that change the natural greenhouse gases Ozone ($O^3$) and Methane ($CH^4$).

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