

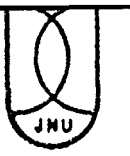
**THE ROLE OF THE
INTERNATIONAL CIVIL AVIATION ORGANISATION (ICAO)
IN THE MAKING OF INTERNATIONAL AIR LAW :**

**A Study of the Development of Annexes
to the Chicago Convention 1944**

*Dissertation submitted to the Jawaharlal Nehru University
in partial fulfilment of the requirements
for the award of the Degree of
MASTER OF PHILOSOPHY*

V. BALAKISTA REDDY

**CENTER FOR STUDIES IN DIPLOMACY
INTERNATIONAL LAW ECONOMICS
SCHOOL OF INTERNATIONAL STUDIES
JAWAHARLAL NEHRU UNIVERSITY
NEW DELHI-110 067
INDIA
1993**



JAWAHARLAL NEHRU UNIVERSITY
SCHOOL OF INTERNATIONAL STUDIES

Centre for Studies in Diplomacy
International Law & Economics

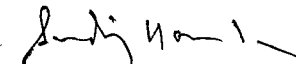
Telegram : JAYENU
Telex : 031-73167 JNU IN
Telephones : 667676/ 418, 408
667557/
Fax : 91-11-686-5886


New Delhi-110067.

20 July 1993

Certificate

This is to certify that the dissertation entitled **The Role of the International Civil Aviation Organisation (ICAO) in the Making of International Air Law: A Study of the Development of Annexes to the Chicago Convention 1944** is being submitted by **Mr.V.Balakista Reddy**, in partial fulfilment of degree of **Master of Philosophy** is his original work and may be placed before the examiners for evaluation. This dissertation has not been submitted for the award of any other degree of this University or of any other University.


Chairperson


Prof. V.S. Mani
Supervisor

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V.Balakista Reddy

PREFACE

The present day international air law has grown out of sheer necessity. Man's inventions and discoveries perhaps came at a right time. The development of the present legal regime is not confined to the transportation of men and material through and by air alone. It has a lot more to do with international peace and security. The use of aeroplanes during the course of war by a state to weaken the enemy is a well known fact. But then, a situation of this kind, right from the beginning has been regulated by international air law. Hence, the Conventions on air law repeatedly affirm the principle of sovereignty and national security rather than economic importance.

The present study makes an earnest attempt to trace the developments in the area of international air law to the end of second world war. In this endeavour, all the major Conventions in the area will be critically examined. But the study gives greater emphasis to the Chicago Convention of 1944, its merits and short comings. In addition, an attempt will also be made to record the developments in this branch of law after the Chicago Convention.

With this in view the study is divided into five chapters. The first chapter gives a brief introduction on

the evolution of the air law. The second chapter is devoted to the Chicago Convention proper. While discussing this, an attempt will also be made to analyse the developments of international air law prior to the Chicago Convention and events relating to the establishment of the International Civil Aviation Organisation (ICAO), its role, aims and objectives are covered. The ICAO's structure, law-making competence and its law-making process are the main focus of attention in the third chapter. The fourth chapter, deals with the development of Annexes to the Chicago Convention, since it is considered to be the most important legal contribution of the ICAO. The last chapter records the concluding remarks emerging from the study.

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Chapter I

INTRODUCTION

There are few areas of man's achievements that can rival his conquest of the air space. Behind the colourful and fascinating story of man's struggle to conquer the air lies centuries of dreaming, aspirations, study, speculation and experimentation.

The dream of flight is as old as mankind itself. The human race has always sought speedier and easier modes of transportation. On December 17, 1903, a frail structure of metal, wood and fabric struggled into the air and carried a single passenger 260 meters high. This represented the first recorded instance of successful flight by a heavier-than-air powered machine. Not only that, but it was also the culmination of experiments long engaged in by men of many nations during the previous century.

The evolution of the aeroplane into a major instrument of transport produced various international problems such as co-ordination of techniques and laws, the dissemination of technical and economic information, environmental protection, and problems of aviation security which could not be solved by individual governments.

Safety of life in the air has been a central problem, and the need for safety and regularity in air services involves the necessity of building suitable aerodromes, setting up of appropriate navigational aids and establishment of weather reporting systems. The creating of a wide spectrum of aviation standards, such as rules of the air, the design of aerodromes, air traffic control, air craft maintainance, flight safety, operation standards all require more than a national action.

Aviation has opened up new territories to trade and commerce in many cases, reaping completely the evolutionary stages of rail/ road and highway technologies and projecting areas literally from an ox cart economy into the jet age. For example, the number of commercial air transport air craft in service world wide increased by over 44 per cent, from 6,987 to 12,970 aeroplanes, between 1988 to 1991. During the same period there were important changes in the composition of the fleets of ICAO member states. The number of jet air crafts increased from 6,596 to 10,020 during the decade, rising from 73 pe cent to 77 percent of the fleet.¹ In 1992 air line passengers equalled one-fifth of the worlds population and almost 25 per cent of

1. The ICAO Journal, July 1992, p.12.

international trade moved by air. By the turn of this century, air line passenger traffic is expected to almost double. This also highlights the essentially international character of civil aviation today.

The present study includes the development of international air law in a historical perspective from the turn of this century to the adoption of the Chicago Convention of 1944. While the problem areas cover the whole range of civil aviation activities, will be viewed from the perspective of the organizational response of the ICAO to the needs of general aviation, and the legitimate interests of the users of the industry in terms of prescribing international standards for assistance to the national regulatory authorities.

The establishment of ICAO is a milestone in the history of the United Nations, presently composed of 175² contracting states and encompasses virtually the entire civil aviation community. The monumental developments that took place in the field of international air-law are the principle contribution of the ICAO to civil aviation. The present study has been undertaken with aim of understanding and highlighting the law-making achievements of the ICAO under the

2. The ICAO Journal, March 1993, p.28.

Chicago Convention of 1944. The ICAO provides a global forum, to develop international standards for civil aviation, through periodic meetings of representatives of its member states.

The present study also highlights the importance of the establishment of internationally accepted standards and procedures. The International Standards and Recommended Practices are essential, if the airlines of the world are to operate safely and smoothly. The air craft speed being such that a dozen small countries can be covered in a dozen hours, it is necessary that there be a universal agreement on certain technical matters.

The Chicago Convention charges the ICAO with the duty of preparing international standards of safety and uniformity covering the various technical fields of flying. The ICAO standards and recommended practices are designed to establish uniform and adequate procedures to facilitate safe, regular and efficient air transportation on a world wide scale. These international standards and practices, confined in the Annexes of the Convention, are a remarkable success, in making the possibility of safe flying a reality.

Since the establishment of the International Civil Aviation Organization, the international community has

experienced vast economic, geographic and demographic developments. The most visible are the emergence of a great number of newly independent sovereign states and the evolution of new mechanisms and organizations for global international co-operation, multi-lateral diplomacy and harmonization of potentially conflicting interests. Aviation technology has evolved even more dramatically. However, last three decades have seen the emergence of a world-wide threat to air travel - man made danger, violent human acts, use of force or threat of force in the form of unlawful seizure of air craft, and other forms of unlawful interference with civil aviation. The safeguarding of international civil aviation against acts of unlawful interference has been a matter of grave concern to governments, the United Nations and the ICAO. The cost of these acts of unlawful interference in terms of human lives, disruption to air services and adverse economic impact is incalculable.

The ICAO has recently focussed its attention on the preparation of a broad global strategy which could serve as a guide to states in their own civil aviation planning and implementation. Such framework is of particular relevance to developing countries, where civil aviation is still in its infant stage. Authorities often face difficulties in implementing improvements because of many other competing

demands such as scarce national resources. The development of human resources is one of the challenges facing the civil aviation and is considered crucial in the case of developing countries. The dominant regulatory trend of 1990's continued to be the progressive liberalization of air transport services within and between a growing number of countries. Privatisation of government owned airlines and partial foreign ownership of national airlines increased. New air service routes continued to be established in all regions. Special attention needs to be given to these problems by the ICAO.

A major challenge with respect to future technical and operating requirements in the implementation of new technology, such as microwave landing systems and air craft collision avoidance systems and of advanced satellite -based communication, navigation and surveillance systems. Other issues concern the reduction of aircraft noise and engine emissions, measures to alleviate airport and airspace congestion, further improvement of airport facilitation and requirement of airport facilitation and the requirement for increased automation in all areas.

Chapter II

THE MAKING OF THE CHICAGO CONVENTION 1944

An attempt is made in this chapter to trace the evolution of international Air Law in an historical perspective from the turn of this century to the adoption of the Chicago Convention, 1944. In this endeavour, the study begins with the contribution made by the Roman Lawyers to the problems relating to the air. Further, the major international law of the air dealt with. In addition, the contribution of private air law conventions is also briefly noted.

The origin of air law can be traced back to classical Roman law when the basic problem of rights in the airspace was first noted. The maxim, "cujus est solum, ejus est usque ad coelum" (who owns the land, owns even the skies), has provoked legal discussion ever since in the fields of both municipal and international law. Starting with the case of Bury Vs. Pope (1856 cro. Elz.118) in the common law to the codes of the civil law adopted in the 19th and 20th century, from Grotious's, "De jure belli ac pacis " and Denck's "De jure principis in aereo " in the 17th century, to the Chicago Convention of 1944, 'air law' has been retained as a

general term for what is essentially "Aviation Law" today.¹

There was no customary and statutory law on the topic under study. This was largely responsible for the development of the controversy regarding the legal status of airspace. In the beginning of the 20th century, several scholars of International Air Law propounded theories pertaining to the sovereignty and jurisdiction over the airspace.

States claimed and acquired rights in the interests of their self-preservation and national safety. This theory was championed by Fauchille.² He argued that the air, by its very nature was physically incapable of appropriation. Secondly, since states could not actually and continuously occupy the air, logically they could not exercise sovereignty over it.³

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1. See Peter H.Sand, Jeorege de Sousa Freitas and Geoffrey N.Pratt, "An Historical Survey of International Air Law before the Second World War. McGill Law Journal vol.7, no.1, (1960), p.25.
 2. This theory also called 'The Free Air Theory' was propounded by Fauchille, the great French lawyer who, as rapporteur for the Institute of International Law, submitted to the Brussels meeting of the Institute in 1902, a draft code entitled 'Regime Juridique des aerostats". This code contained 32 articles. The first 7 articles were general provisions Articles 8-20 prescribed a regime for peacetime, and the remaining articles concerned the Laws of War. This draft code was adopted by Institute of International Law in 1906.
 3. D.H.N. Johnson, Rights in Air Space (Manchester, 1965), pp.12-13.

Another theory strongly supported by British scholars⁴ was popularly known as the 'Complete Sovereignty Theory'. According to this theory, every state enjoys complete, absolute and unlimited sovereignty in all columns of superjacent airspace including those over its territorial waters, extending up to unlimited height with a concomitant right to forbid entry of foreign aircraft. This theory derives its speculative inspiration from the Roman law maxim "cujus est solum" and further developed on the basis of legal analogy.⁵

A third theory propounds that every state has absolute sovereignty in the air up to, but not beyond, a certain height and above that level the air is free to all alike. This theory appears to draw its inspiration from the law of the sea which offers similarities in geometric order and techniques for regulation of aircraft operations. It, therefore, extends, per analogium, the principles of maritime

-
4. The complete sovereignty theory was supported by English lawyers, notably Coke and Blackstone. They exalted to extent and importance of property rights in the land in the air over and above this and in the ground under below it. Johnson too supported this theory.
 5. G.S.Sachdeva, "Sovereignty in the Air - A Legal Perspective", Indian Journal of International Law, vol.22 (1982), p.402.

belt and territorial waters vis-a-vis the high seas to the air space.⁶

According to a fourth theory, a state has sovereign rights in the superjacent air space subject to a right of free passage of all foreign non-military aircraft. Loius Rolland and Blewett Lee are the main supporters of this theory. According to them, each state has complete sovereignty in the air space above its land similar to that conceded to the territorial waters subject only to the right of innocent passage of civil aircraft of all nations without discrimination and that too during peace time.⁷

In sum, the first theory is that the airspace is free, subject to the rights of states acquired in the interests of self-preservation. The second theory is literal application of the maxim *cujus est solum, ejus est usque ad cote coelum et ad inferos*. According to this theory, a state has complete sovereignty over its superjacent airspace to an unlimited height. The third theory advocates, upon the analogy of the maritime belt or territorial waters, that there is over the land and waters of each state, a lower zone of territorial airspace, and a higher, and unlimited

6. G. Sachdeva, n. 5, p.405.

7. Ibid., p.406.

zone of free airspace. The fourth theory suggests that a state has complete sovereignty in superjacent airspace to an unlimited height subject to a servitude of innocent passage for foreign non-military aircraft.

A. DEVELOPMENTS IN INTERNATIONAL LAW PRIOR TO THE CHICAGO CONVENTION

1) Before the Paris Convention 1919:

In the development of international air law, the institution of war always had a major say throughout. For instance, the first piece of legislation connected with aviation was the regulation made by the Paris police in 1784 prohibiting balloon flights without special permits. At the First Hague Peace Conference (1899), a declaration was signed in which the contracting powers agreed to prohibit for a term of five years, the discharge of projectiles and explosives from balloons or by other new methods of a similar nature.⁸

The Institute of International Law, right from 1902, had a series of discussions in evolving the future law of air. For example, as seen earlier Fauchille introduced the

8. See Johnson, n.3, p.10

celebrated theory of freedom of the air.⁹ The Institute of International Law discussed several drafts of an "international code of the air" during its sessions at Ghent in 1906, Florence in 1908, and Paris in 1910. At the Madrid session in 1911, it adopted certain rules governing aircraft. Some of the salient features of these rules continue to be the governing principles of international air law even today.

At the same time, various other international bodies also dealt with air law problem. The International Aeronautic Congress in Paris in 1889 created a permanent International Aeronautics Commission which subsequently held meetings in Paris in 1900, Milan in 1906, Brussels in 1907 and Nancy in 1909.

In 1907, at the Second Hague Peace Conference, the question arose of renewing the 1899 Declaration Prohibiting the Discharge of Projectiles and Explosives from Balloons, which had ceased to be in force since 1905. It was agreed to renew the declaration for a period extending to the close of the third peace conference which was expected to be held in -----

9. The other supporters of this theory are Meille, Nys, Fradiel-Fodere, Stephan, Stranz, Wheaton, Despagnet and Meignac. Since that date, publishers of International Air Law can be classified into four categories.
- i. The free air theory,
 - ii. The Complete Sovereignty,
 - iii. The Territorial air theory,
 - iv. the innocent passage theory.

1914.¹⁰ In 1909, the International Committee of Jurists¹¹ assembled in Paris for the express purpose of studying aviation problems. This Committee prepared a draft international code of the air through its national committees.

In 1910, at the invitation of the French Government, 19 states sent representatives to Paris to participate in an international conference on air navigation. In his opening speech, M. Louis Renault, President of the Conference, declared that "the aim of the Conference was to examine the problems as to the rules by which the freedom of circulation of aeroplanes could be reconciled in the best possible way with the legitimate interest of states".¹²

The German, French and the British delegations, each submitted its views with respect to this matter. The German expose began with the recognition of freedom of passage. The underlying state should only restrict this freedom of passage for reasons of security of the state or of its

10. Johnson, n.3, p.18.

11. The Committee was composed of jurists, lawyers, legal students from 21 countries including united states. It helds meeting in Paris 1911, Geneva 1912, and Frankfurt 1913.

12. D.Goedhuis, "Civil Aviation after the War" American Journal of International Law, vol.36 (1942), p.597.

inhabitants. The French delegation in its expose to practically the same conclusion as the German. In addition, The British delegation in its expose struck a somewhat different chord. Several authors who refers to the conference of 1910 expressed the view that the conference broke down because of the British stuck to the theory of the state's absolute sovereignty over the air space.¹³

In spite of the differences between the British on the one hand and the French and the Germans on the other, the conference was a great success because it brought out for the first time ideas on civil aviation which soon dominated during governed the First World War. Another advantage of this conference of 1910 was that the draft convention prepared by it proved to be of great value in eventually forming the international convention for air navigation which was signed at Paris on October 13, 1919.

The International Law Association formed an Aerial Law Committee at its 1912 session in Paris and discussed air law problems in Madrid in 1913. The Pan-American Aeronautic Federation held a meeting at Santiago, Chile on May 17, 1916 which recommended that the American Republics should make

13. This theory of sovereignty supported by Wastlake, Blackstone, Cooke etc.

their national aviation legislation uniform with a view to the formation of an international air code.¹⁴

The Nordic Aviation Conference in Stockholm in 1918, and the Budapest Air Law Conference in 1918 also considered the international unification of the law relating to aviation.

2) The Paris Conference 1919:

During the World War I (1914-18), aircraft were used for many purposes. Great Britain, for example, possessed only twelve military aircraft in 1914 . By the end of the war, she possessed twenty -two thousand. This increase made apparent the urgent need for some kind of international regulation of aviation. At the invitation of the French government, a conference of 38 states was held in Paris and as a result of its deliberations, the first international convention on air navigation was opened for signature on October 13, 1919. The convention came into force in 1922.

As seen already, by Article 1 of this convention, the high contracting parties recognized "that every power has complete and exclusive sovereignty over the airspace above

14. See Rowland W.Fixel The Law of Aviation, (Virginia 1967), p.31.

its territory". The 'complete and exclusive' theory of Article 1 was given practical application by Article 2 which stated that "each contracting state undertakes in time of peace to accord freedom of innocent passage above its territory to the aircraft of the other contracting states provided that the conditions laid down on the present convention are observed".

The convention did not allow unrestricted air navigation between contracting nations, but merely set up uniform conditions for such flights. Agreements between the contracting nations were still necessary for commercial airline navigation between the parties.

The following basic principles were incorporated in the convention:¹⁵

1. Sovereignty over airspace above belonged to the nations below it.
2. Nationality of the aircraft was that of the nation where it is registered.
3. Military and state -owned aircraft of respective nations did not have free access to the airspace of another state except by express permission.

15. See Charles S.Rhyne, "Legal Rules For International Aviation", Virginia Law Review, vol.31 (1945), p.271.

4. Rules as to airworthiness of aircraft, certification and competence of pilots and their licensing were to be universalised and standarized.
5. Right of a State to take Police measures to ensure safety of its people was recognized.

An important achievement of the convention was the creation of an international commission for aerial navigation, commonly known as C.I.N.A (Commission International de Navigation Aerienne). Its main functions were : preparation of amendments to the Paris Convention for submission to states for ratification; the elaboration and revision of the safety and technical regulations the interpretation of those regulations and the circulation of information respecting air navigation. In order to facilitate the co-ordination of technical questions, seven sub-commissions were set up.¹⁶

C.I.N.A. possessed administrative, legislative, executive and judicial powers. Being an advisory body it was to be very helpful in the drafting of the technical annexes to the Chicago Convention 1944.

16. These sub-commission were the operational, Legal, Wireless, Meteorological, Medical, Maps and Material.

3) The Ibero-American Convention 1926:

The Spain did not satisfy the Paris Convention of 1919, for the simple reason that it was denied a voting power equal to that of France and Italy. With the result, it invited many Latin American states to the Madrid Conference of 1926. This Convention, popularly known as the Madrid Convention, came into force in 1926. The Madrid Convention did not fair better than endorsing the text of the Paris Convention.

4) The Pan-American Convention 1928:

At the instance of the United States, the majority of the Latin American states and the US signed a Commercial Aviation Convention in 1928. This convention is popularly known as the Havana Convention. It not only accepted the basic principles of Paris Convention but also contained a number of new principles. The convention aimed at regulating both private and public international aviation law. In addition, the convention included rules governing the exchange of technical information between the contracting states through Pan-American Union. Further, the convention provided that all disagreements between the contracting states should be referred to arbitration.¹⁷

17. Sixteen States had ratified it by 1944 when the Chicago Convention held.

5) The Lima Conference 1937:

This Conference established a permanent American Aeronautical Commission known as C.A.P.A. (Commission Aeronautics Permanent Americana). The objectives of the Commission were:

- a. Gradual and progressive unification and codification of international public and private air law.
- b. Co-ordination and development of mutual interests in technical subjects related to aircraft, pilots, airways and air navigation facilities, including airports.
- c. Organisation and establishment of inter-American air routes and co-ordination of local air services in relation to local and international airlines.¹⁸

6) Development of the principles of private international air law:

Shortly after the First World War, a number of aeronautical organisations expressed concern over the lack of uniform regulations governing private air law. Every state had its own laws on this subject and they varied considerably from one state to another. Private air law conferences stressed the need for an uniform system of

18. See Fixel, n. 14, pp.41-42.

regulations, similar to that established by the Paris Convention in the field of public air law.

7) The Paris Convention, 1925:

The first international conference on private air law was held at Paris in 1925. At the conclusion of the conference, a draft convention on the liability of carriers in international transport was approved by the delegates and a resolution was adopted setting up of a committee of experts to be known as CITEJA¹⁹ (Comitè International Technical d' Experts Juridiques Aerian), to carry out the work of the Conference. Firstly, the CITEJA took up the following questions for study:

- a) Damage caused by aircraft to goods and persons on the ground;
- b) Compulsory insurance;
- c) Establishment of aeronautical registers, ownership of aircraft, vested rights and mortgages;
- d) Seizure:
- e) renting of aircraft;
- f) Aerial collisions;
- g) Legal status of aircraft commander;
- h) Bill of lading;
- i) Uniform rules for the determination of the nationality of an aircraft.²⁰

19. S. Latchford, *Private International Air Law* (1945). See also the CITESA, 10 Airlaw Review, 1939, p.169.

20. Peter H.Sand and others; n. 1, p.36.

The proposed committee was to be a purely advisory and completely independent organisation both in its methods of work and its operation. CITEJA met for the first time in Paris on May 17, 1926 and began the study of the first question submitted to it by the conference of 1925.²¹

8) The Warsaw Convention, 1929:

The second international conference on private air law took place at Warsaw from October 4 to 12, 1929.²² A draft convention prepared by CITEJA for the unification of certain rules relating to international carriage by air was submitted to the conference.

Its main purpose was to unify certain rules relating to international transportation of persons and property by air,

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21. 28 nations appointed representatives to attend the meeting. The committee met regularly upto the commencement of the second World War and the result of its work upto that time consisted on the preparaaation of four convention and protocols which were submitted to, and opened, for signatures on private air law.
22. See generally on Warsaw convention, Fixel, The Warsaw convention of October 12, 1929, 5 Detroit Law Review (1934), p.1. Liability of foreign carriers over American territory Warsaw and Rome conventions, 9 Air Law Review 1938, p.261; Cha, Air carriers Liability to carriers in International Law 7 Journal of Air Law 1936; Latchford Air Law, 8 Journal Air Law, 1936, p.200; and Sallivan, codification of air carriers liability by international conventions 17 Journal of Air Law 1936, p.1.

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fix the damages for losses or injuries sustained, and create a presumption of liability against the carrier on the happening of an injury to or death of a passenger or damage to or loss of property.²³

9) The Rome Convention, 1933:

The third international conference on private air law was held at Rome in 1933, with a view to drafting a Convention on the Unification of Certain Rules relating damage to third Parties on the Surface. This convention provided for a right of compensation where damage was caused by aircraft or persons on aircraft during flight. It fixed maximum liability for such damage. Furthermore, it provided for exoneration from liability under certain circumstances and excluded military, customs or police aircraft from the application of its provisions. A second convention related to the precautionary attachment of aircraft.²⁴ It prescribed the procedure required for attachment of aircraft to satisfy a creditor or a lienholder where the attaching creditor could not invoke a judgement and execution in the

23. Fixel, n 14, p.38.

24. Precautionary attachment is defined as every act whereby an aircraft is arrested in pursuit of private interest by the agency of or public authorities on behalf of creditor or the owner or the holder of the aircraft. Such attachment usually results from Mareva injunctions. See HJalsbary's Laws of England.

ordinary course beforehand; credit exemptions, and damages for wrongful attachment, and provided for a bond for immediate release of the aircraft.

10) The Brussels Convention, 1938:

The fourth international conference on private air law took place at Brussels in 1938.²⁵ Although the matter of insurance contract and aerial collisions were considered, the outstanding accomplishment of this Conference was the signing of a convention on the assistance and salvage of aircraft at sea. The convention outlines a uniform set of rules with respect to the assistance vessels must give aircraft in distress and the assistance aircraft must give other aircraft and surface vessels, imposing certain duties on captains surface vessels and commanding officers of aircraft; and indemnity and salvage rights.

B. EVENTS LEADING TO THE CHICAGO CONFERENCE

During the first decade of the history of the aeroplane, jurists were still free to speculate on the basic

25. See Knauth, *Aviation Salvage at Sea, Convention of 1938*, Arnold W., 10 *Air Law Review*, (1939), p.146; S. Latchfold, "Brussels Air Law Conference", 10 *Air Law Review* 199, p.147; S. Latchfold, convention relating to Assistance at Sea 4 *Federal Bar Journal* (1940), p.93; Arnold W., Knauth, "Aviation and Salvage Application of Storage Principles to Aircraft", 36 *Columbia Law Review* (1936); Arnold W., Knauth, "Slavage as between Vessels and Aircraft", 8 *Journal of Air Law* (1937), p.159.

principles of public air law. The speculations which resulted in several competing and conflicting doctrines regarding the not judicial status of the airspace had started to crystallise, though these had never been tested in practice or adjudicated upon by any international tribunal. By the end of the first decade of the 20th century, the urgency to settle the rights in the airspace was well appreciated. Hazeltin has observed as early as 1910,

I believe that the proper settlement of the question as to what rights states have in the column of the air above their territory is of first and fundamental importance".

He rejected the theory of freedom of the air and strongly advocated the sovereignty of the subjacent state over its airspace.²⁶

By this time, it had become obvious that the flying machines were not only for adventure or sport but had come to stay as weapons of war and instruments of commerce. States, therefore, acknowledged the imperative need to cooperate and mutually agree on certain rules regarding international aerial navigation where three competing interests were sought to be reconciled :-

26. Johnson; n. 3, p.22.

- a) the security interests of subjacent state; b) maximum freedom of aerial navigation for communication and transport; c) commercial interests of states resorting to aviation as an industry.

In essence, this was the period of controversy and debate when jurists held different views on the basic issue of aerial jurisdiction.²⁷

The first attempt to secure international agreement was made at a conference of nineteen European nations convened at Paris in 1910 by the French government, where a treaty was drafted. However, as seen already the conference was divided mainly over the question of territorial sovereignty and was unable to agree on its adoption and was adjourned 'sine die' without reaching any agreement. No further progress was made until the end of the World War I.²⁸

World War I brought about a realisation of the importance of aerial navigation and of its potential dangers to the subjacent state. The aircraft as a means of war had

- 27. There were two main schools on the basic issue of aerial jurisdiction: one comprising Fauchille, Nys. and others advocated complete freedom of the air. The other school with westlake, Hazeltin, Richards and other British jurists strongly stuck to the view that the subjacent states enjoyed sovereignty over airspace.
- 28. R.Y. Jennings, "International Civil Aviation and the Law", British Yearbook of International Law, vol.22 (1945), p.192.

improved in quality and multiplied in quantity.²⁹ In the beginning, aircraft were unarmed except for a personal weapon of the aviator, but very soon aircraft were developed with capabilities for gunnery and bombing . In 1914, the military role of the aircraft was uncertain and by and large restricted to reconnaissance duties. But, as the War progressed, aircraft came to be used in all kinds of combat and for diverse military purposes.

The War interrupted the theoretical speculations and debate on the status of air space and all nations acted in every way to further their national interests. Hostilities during the War undoubtedly tended to establish the principle of exclusive sovereignty of the subjacent states. The nations continuously and consistently asserted their sovereignty to unlimited height as a matter of practical expediency and measure of national defence. This attitude was adopted and enforced in practice by belligerents and neutrals alike. At the end of the War, of course, a settled practice emerged that gave states complete sovereignty over the airspace. Right or wrong, the principle has been established that states control the atmosphere over their territories.³⁰

29. For example when first World War broke out, the Great Britian had twelve military aircraft. She finished the War with 22000.

30. J.M. Spaight, Aircraft in Peace (London, 1939), p.32.

When World War I ended, an aeronautical commission was established to advise the peace conference at Versailles on air matters and to draft a convention for the general regulation of post - war international aviation. Later, certain rules for regulation of international aviation were discussed and adopted in the form of an international convention which was signed at Paris in October, 1919.

The Paris Convention, though considerably less liberal than the 1910 draft, was a great step forward - it enunciated for the first time, the general principles of international air law, introduced an important measure of uniformity in technical standards and requirements, and created the C.I.N.A. which, among other important functions, had the power to amend by majority vote the technical annexes to the convention.³¹

The Paris Convention though a laudable step towards international cooperation, did not prove equal to the complex situation. Ofcourse, ultimately 38 states including Great Britain, other European States and commonwealth countries became parties to it, although the U.S.S.R. and Germany did not adhere to it. this restricted the operation of the convention and gave it a regional look.

31. Jennings; n 28, p.192.

Two multilateral conventions came into being during the period between the two world wars. The Ibero-American convention of 1926 reproduced exactly the original text of the Paris Convention, and the Pan-American Convention of 1928, a regional agreement among the Pan-American states followed but both the conventions neither provided for a commission like International Commission of Air Navigation, nor did they provide any technical annexes and were hence not much of a success. Failure of these two conventions lead to the adoption of the Chicago Convention of 1944.

When making a general survey of the political situation during the period 1929-39, one point pertaining to airlaw clearly stands out. The question of air communciation was no longer a regional proplem, but had become a global problem.

Among the many major developments that took place, during this period, mention must be made of a Turkish law prohibiting transit flights over its territory. This not only effected continental air traffic - the connection between Turkey and other countries on the European continent, but also resulted in the severance of international air communication to the East.³² Furthermore,

32. Goedhuis; n. 12, p.603.

in 1937 the Government of the United States referred a request of the Dutch Government on behalf of the K.L.M. to open a new airroute from Hom Willemstad (Curacao) to Miami. In the same year Germany announced that it was ready to set up a permanent trans - Atlantic Air Mail Service forthwith. The American Aviation authorities at Washington refused permission on the ground that they grant no such right for a service until an American Company was ready to operate a reciprocal service to Germany on trip - for - trip basis.

In 1938, the U.S. Government took possession of the Pacific Islands of Canton and Enderbury. As against this, Great Britain subsequently protested. Discussions between the two governments resulted in a convention, signed on 6 April, 1939 by which it was agreed that the Islands in question would be governed by two officials, one American and one British. One part of this convention profoundly affected international air communication. It was stipulated that all landing rights on the Islands were reserved exclusively for American and British air companies, and no other company would be allowed to land on these territories. Considering the great importance of these Islands as an intermediate stop for air services across the Pacific, the convention sought to preserve the monopoly of air traffic in that region to its parties.³³

33. Goedhuis; n. 12, p.604.

Turning to the field of private international air law, the Havana regime has failed to produce an international legislation comparable to that of Paris regime:³⁴ Incidentally during this period, there was a prodigious increase in trans-continental and inter - oceanic aviation due to rapid aeronautical developments which made international airlines clamour for freedom of air transit and landing rights. The existing air law had proved woefully resistant to change and states were equally averse to compromising their newly acquired sovereignty over airspace.

World War II compelled aviation to take the most radical steps forward. It brought about tremendous progress in the technical standards of aircraft (increasing speed and capacity), in navigation aids, opening the North - Atlantic route by air establishment of Radio stations and floating Weather stations and international organization,³⁵ resulting in a considerable reduction in aviation costs. Commercial air transportation on a self-supporting basis finally seemed to be a reality.³⁶

34. Howard S. Lee Roy "International Air Law trends" Virginia Law Journal", vol. 31, (1945), p. 452.

35. The Allied Air Transport Command, which existed only on paper in 1941, employed 400,000 people in 1944 and operated 3000 aeroplanes which flew 600 million miles in that year, equivalent to 25000 round the world trips.

36. Peter H. Sand and others, n. 1, p.125.

As early as 1943, states began to envisage new legal patterns of post war international civil aviation.

In the spring of 1943, when the tide of World War II was on, British opinion began to interest itself in the future of civil aviation. A lead was given by the British government which declared in Parliament that "some form of international collaboration will be essential if the air is to be developed in the interests of mankind as whole, trade served, international understandings fostered and some measures of international security gained".³⁷

Canada being very sensitive to the differences between the Great Britain and the United States proposed a via - media policy which eventually became acceptable to both.

According to the American attitude the air must be free i.e., for American airlines to organize services and handle traffic as they chose, and the function of the international authority would be limited to the definition and prescription of technical standards and the collection of statistics. The Canadian plan supported by Great Britain provided on the contrary, for effective regulation of competition on the international routes by empowering the

37. Sir Archibald Sinclair, Member of House of Commons, March 11, 1943.

new authority not only to issue licences, but to fix tariffs and service frequencies.³⁸

From the above brief survey, it would appear that the broad revolutionary trends of international aeronautical law may be brought into sharper focus by dividing the 40 years period (1905-1945) into three phases.

The first phase covering (1905-1920) has seen divergent views of the pioneering jurists as to the basic jurisdictional principles which were unified by the impact of World War I. The result was the broad regulatory regime setup by the Paris convention. This integrated system contemplated a world regulatory unity.

In the period from 1920-1939 events produced a change in the trend towards regionalism. Factors contributing to this were the failure of the Paris Convention of 1919 to satisfy the nations of the Western hemisphere. This period also witnessed a commercial aviation rivalry between the United States and Europe.

During the course of World War II 1939-1945 many developments to overcome the earlier deficiencies in air law took place, which finally resulted in the adoption of the Chicago Convention, 1944.

38. Harold Stannard, "Civil Aviation: An Historical Survey", International Affairs, vol.21 (1945), p.505.

C. THE CHICAGO CONVENTION : PROBLEMS AND PROSPECTS

The prevailing law governing international aviation was totally inadequate to meet the pressing need for uniformity. Hence, there was a great need to evolve international agreements/conventions of universal application between states. The exigency of war specially for military and naval purposes was mainly responsible for a single post-war system of legal and technical rules for regulation of international air navigation. This led to the international civil aviation conference at Chicago in 1944.

The necessity of having an international organization to govern civil aviation was felt even before the end of the Second World War. President F.D. Roosevelt was the first who campaigned for the establishment of an international institution in this area. Although the attempt of President Roosevelt did not yield any fruitful result immediately, the allied and neutral powers were invited to the Chicago Conference of 1944. The invitation extended to these powers briefly mentioned the following three objectives of the Conference:

- i) The establishment of provisional world air route arrangements,
- ii) The establishment of an interim international air council, and

iii) Agreement on principles for a permanent aeronautical body and a multilateral aviation convention.³⁹

From 1st November to 7th December, 1944, representatives of 52 states,⁴⁰ numbering over 400 attended the international civil aviation conference at Chicago. Prior to the conference, the United States held discussions with other governments, which showed general agreement on important subjects and indicated that such a conference was desirable. The only notable absentees from the conference were the erstwhile U.S.S.R. and Saudi Arabia, (which did not accept the invitation), Argentina (which was not invited), and of course, the enemy states.

The conference at Chicago lasted for thirty seven days from 1st November to 7th December, 1944. Among the major achievements of the Conference were the drafting, adopting and opening for signature on one major convention, three agreements, a standard form of bilateral agreements for

39. See Michael Sassella, "The International Civil Aviation Organisation: Its Contribution to International Law", Melbourne University Law Review, vol.8 (1971), p.50.

40. Several documents state that 54 states participated in the conference. However, Denmark and Thailand were represented by their respective ministers who were invited in their personal capacity and they did not have the right to vote. See proceedings of the International Civil Aviation Conference, Chicago 1944, Department of State Publications, Washington, p.13.

provisional air routes and the text of twelve draft technical Annexes. The Convention was intended to formulate certain agreed principles and agreements to ensure safe and orderly development of international civil aviation on the basis of equality of opportunity and to ensure that the air transport service might operate "soundly and economically".⁴¹In fact the Chicago Convention became a viable "constitution for post-war global air world".

The Final Act of the Chicago Conference was adopted and signed by all the 52 nations, including the ministers of Denmark and Thailand who did not have the power to vote, (but acted) in their personal capacity. The Final Act contains twelve resolutions and the following five appendices:

- i) the interim agreement on the international civil aviation,
- ii) the convention on the international civil aviation,
- iii) the international air service transit agreement,
- iv) the international air transport agreement, and
- v) drafts of technical Annexes.

41. Preamble to the Chicago Convention.

I The Interim Agreement on the International Civil Aviation

The interim agreement on international civil aviation mentioned above provided for the setting up of a Provisional International Civil Aviation Organization (PICAO) and established the rules for international aviation in the period before the commencement of ICAO. It became effective on June 6, 1945 and expired on 4th April, 1947.⁴² PICAO had organs similar to those of ICAO: the interim assembly, the interim council, the Secretary-General and the Canadian headquarters. During the 20 months of its existence, PICAO proved to be a "virile, going concern with great number of successes to its credit, which amply justified its establishment."

II The Convention on the International Civil Aviation

The Convention on International Civil Aviation is the substantial result of the Conference and generally referred to as the 'Chicago Convention'. The most significant result of the conference was the drafting and adoption of the convention, signed by thirty-five states participating in

42. C.N. Shawcross and K.M. Beamont, On Air Law, (London: 1951), p.38. See also J. Schenkman, International Civil Aviation Organisation, (Geneva: 1951), p.118, and Warner, "PICAO and development of air law", Journal of Air Law and Commerce, vol. 14 (1952), p.1.

the Conference on 7th December, 1944. The convention came into force on April 4, 1947 after ratification by twenty-six states.⁴³ At present, there are 175 parties to the Chicago Convention and these states also form the membership of the International Civil Aviation Organisation. The convention has been as one of the most widely ratified international multilateral instrument.

The Chicago Convention was drafted with remarkable foresight. In circumstances vastly different from those prevailing at the time of its drafting, the convention continues to serve as a suitable general legal framework of international co-operation in the field of civil aviation.⁴⁴ While commenting on the achievements of the Chicago Convention, Michael Milde observes:

the Convention probably represents a record achievement in the history of drafting of international legal rules, and the Chicago Conference must be considered to be the most successful, productive and influential international conference ever held.⁴⁵

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43. Article 91(b) of the Convention: the number of ratifications required further confirms that only 52 states were deemed to have participated in the conference and ratification by one half of those brought the convention into force.
 44. Michael Milde, "The Chicago Convention - 45 years after: A note on amendments", Annals of Air and Space Law, vol.14 (1989), p.204.
 45. Michael Milde, "Chicago Convention After 40 Years", Annals of Air and Space Law, vol.9, (1984), p.121.

The Chicago Convention 1944 has been divided into four parts consisting 22 chapters and 96 articles for the sake of convenience sixteen aspects of the convention is portrayed herein, namely (1) freedom and sovereignty (2) scheduled and non-scheduled air service; (3) Cabotage; (4) Rules for Air Navigation; (5) nationality of Aircraft; (6) Measures to Facilitate Air Navigation; (7) Documents to be carried in Aircraft; (8) Aviation Personnel; (9) Certificate of Airworthiness; (10) Restrictions on Articles to be Carried in Aircraft; (11) Financing of Air Navigation Facilities; (12) Pooling Agreements and Airline Co-operation; (13) Denunciation of Paris and Havana Convention; (14) Abrogation of Inconsistent Agreements; (15) Registration of Aeronautical Agreement; (16) Amendment Procedure.

1) Freedom and Sovereignty

The argument over 'Freedom of the air' in various air law conferences was resolved in favour of national sovereignty in airspace over each nation, and this principle was established as one of the basic precepts of international aviation law. World War I had already ended the argument over international freedom of the air in favour of national ownership and sovereignty of airspace. This principle has been universally recognised and dominates every aspect of the international law of the air, and every other rule must be read in the light of it. Article 1 of the

Chicago Convention asserts it in terms almost identical with the first Articles of the Paris and Havana Conventions.

The contracting states recognise that every state has complete and exclusive sovereignty over airspace above its territory.⁴⁶

The possibility of allowing greater freedom of movement has, however, been made explicit in two agreements annexed to the convention, which divided the freedom of the air into five categories.⁴⁷ Occasionally, one may come across some references to a sixth, a seventh and an eighth freedom, but these may be said to represent only minor variations of the first five.⁴⁸

46. See Latchford, "Comparison of the Chicago Convention with the Paris and Havana Conventions", 12 Department of State Bulletin, (1945), pp.411-420. Also see Charles S. Rhyne, "A comparison of Chicago, Havana and Paris Conventions", Virginia Law Review, vol. 31 (1945), pp.309-315.

47. For details, please see at the end of this chapter under the heading "Transit and Transport Agreements".

48. Sixth Freedom: The right to fly into the territory of the grantor state and their discharge or take on traffic ostensibly coming from or destined for the flag-state of the carrier which the carrier has either brought to the flag-state from a third state on a different service or is carrying from the flag state to a third state on a different service.

Seventh Freedom: The right for a carrier operating entirely outside the territory of the flag state to fly into the territory of the grantor state and their discharge, or take on, traffic coming from or destined for a third state or states.

Eighth Freedom (Cabotage): The right to carry traffic from one point in the territory of a state to another point in the same territory.

Apart from the above mentioned freedoms, the Chicago Convention contains some other provisions clearly related to the principle of sovereignty. Article 2 of the Chicago Convention states:

For the purpose of this Convention, the territory of a state shall be deemed to be the land areas and territorial waters adjacent thereto under the sovereignty, suzerainty, protection or mandate of such a state.

Two points relating to this definition call for an independent examination. One, a state and its possessions are considered to constitute a territorial entity. The significance of this rule becomes apparent, later in connection with cabotage. Secondly, the 'complete and exclusive sovereignty' extended not only to the airspace over the land areas but also over the territorial seas; in other words, there is no right of innocent passage for aircraft as an analogy to that enjoyed by merchant ships in territorial waters.

Article 8 deals with pilotless aircraft. It states that "each contracting state undertakes to ensure that the flight of such aircraft without a pilot in a region open to civil aircraft shall be so controlled as to obviate danger to civil aircraft". Article 9 concerns bans and restrictions in exceptional circumstances and for reasons of public safety or military necessity.

2) Scheduled and Non-scheduled Air Services

In so far as the right to fly is concerned, the Chicago Convention makes a fundamental distinction between scheduled and non-scheduled international air services.⁴⁹ Article 6 of the Chicago Convention provides that "no scheduled air services may be operated over or into the territory of a contracting state, except with special permission or other authorization of that state, and in accordance with the terms of such permission or authorization."⁵⁰ Therefore, each state is free to impose such limitations as it deems fit on the aircraft of a foreign state.

On March 28, 1952, the ICAO Council adopted the following definition of scheduled international air services:-

A scheduled international air service is a series of flights that possesses all the following characteristics:

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49. Article 96(b) of the Chicago Convention defines "International Air Services" to mean an air service which passes through the airspace over the territory of more than one state.
 50. Article 96(a) of the Chicago Convention defines "Air Service" to mean any scheduled air service performed by aircraft for the public transport of passengers, mail and cargo.

- a) it passes through the airspace over the territory of more than one state.
- b) it is performed by aircraft for the transport of passengers, mail and cargo for remuneration, in such a manner that each flight is open to use by members of the public.
- c) it is operated so as to serve the traffic between the same two or more points, either
 - i) according to a published time-table or
 - ii) with flights so regular or frequent that they constitute a recognisable systematic series.⁵¹

As for non-scheduled flights, Article 5 of the Chicago Convention provides: "each contracting state agrees that all aircraft of the other contracting states, being aircraft not engaged in scheduled international air services shall have the right to make flights into or in transit non-stop across its territory and to make stops for non-traffic purposes without the necessity of obtaining prior permission, and subject to the right of the state flown over to require landing."

On April 30, 1956, the multilateral agreement on commercial rights of non-scheduled air services in Europe was concluded in Paris. Pursuant to this convention, facilities were granted for such services on the following conditions:

Article-1: This agreement applies to any civil aircraft

51. ICAO Doc. 7278 -c/841 (1952).

- a) registered as a state member of the European civil aviation conference, and
- b) operated by a national of one of the contracting states duly authorised by the competent national authority of that state.

Article-2: The contracting states agree to admit the aircraft referred to in Article 1 where such aircraft are engaged in

- a) flights for the purpose of meeting humanitarian or emergency needs.
- b) taxi-class passenger flights of occasional character on request,
- c) flights on which the entire space is hired by a single person for the carriage of his or its staff or merchandise, provided that no part of such space is resold,
- d) single flights, no operator or group of operators being entitled under this paragraph to more than one flight per month between the same two traffic centres for all aircraft available to him.

The same treatment shall be accorded to aircraft engaged in either of the following activities

- a) the transport of freight exclusively, and
- b) the transport of passengers between regions which

have no reasonably direct connection by scheduled air services.⁵²

An examination of the above provisions shows a considerable difference between the Articles 5 and 6. Article 5 refers to all aircraft, Article 6 refers to scheduled international air services. Article 5 grants to the aircraft certain privileges to transit and stop for non-traffic purposes. It also grants a qualified traffic privilege (taking on and discharging passengers, cargo and mail) in respect of aircraft not engaged in 'scheduled international air services', i.e., aircraft which do not perform public transport. Article 6 does not grant any privileges in respect of scheduled international air services. The operation of these air services depends upon an exchange of commercial rights under bilateral agreements between contracting states.⁵³

3) Cabotage

Issues relating to cabotage are covered under Article 7 of the Chicago Convention. In international law, cabotage

52. I.H.Ph. Diederiks Verschoor, An Introduction to Air Law (The Hague, 1983), p.16.

53. See Julian G. Thomka Grazdik, "Are inclusive tour charters scheduled or non-scheduled services?", in McWhinny(ed), The Freedom of the Air, (New York: 1968), p.108.

was originally held to apply to a state reserving to itself the right to restrict all coastal navigation between two points within its territory for the exclusive use of its own subjects. This concept has also been incorporated into the air law. It has been the practice in both multilateral conventions and bilateral agreements to include a clause by which each contracting state reserves all its traffic, mail and cargo between places within its own territory to its national aircraft. This reservation is commonly called cabotage.

4) Rules for Air Navigation

Articles 10 to 16 of the Chicago Convention prescribed the various rules relating to flights.

Under Article 10, aircraft are permitted to cross the territory of a contracting state without landing. If the regulations of that state so requires the aircraft may land at any airport designated by that state for the purpose of customs and other surveillance.

State laws and regulations will apply to foreign aircraft engaged in international air navigation under Article 11. Article 12 refers to the rules and regulations relating to the flight and manoeuvre of aircraft, specially those over the high seas, and also prosecution of all persons violating the regulations applicable.

The regulations relating to entry, clearance, immigration, passports, customs and quarantine are covered by Article 13. According to this Article, the rules laid down in the convention shall be complied with by or on behalf of such passengers, crew or cargo upon entrance into or departure from or while in the territory of the state.

For the purpose of preventing the spread of diseases like cholera, typhoid, smallpox, yellow fever, plague and such other communicable diseases by air navigation in accordance with the internationally accepted requirements of what is now the World Health Organisation, states shall take the necessary measures under Article 14 subject to the provisions of Article 68⁵⁴ of the Convention. Member states, under the provisions of Article 15 are accepted to give standards of national and equal treatment among all contracting states.

Article 16 lays down that the appropriate authorities of each of the contracting states shall have the right, without unreasonable delay, to search the aircraft of other contracting states on landing or prior to departure, and inspect the certificates and other documents mentioned in the Chicago Convention.

54. Article 68 of the Chicago Convention permits each contracting state to designate the route to be followed within its territory by an international air service and the airports which any such service may use.

5) Nationality of Aircraft

Nationality is important for its recognition that an aircraft possesses legal personality under municipal law and are endowed with nationalities of their own. It opens the way to other rights and liabilities being grafted directly into the aircraft, irrespective of their owners or operators. It also helps attribute jurisdiction and responsibility to the national state under international law.

Article 17 of the Chicago Convention states: "Aircraft have the nationality of the state in which they are registered". The convention also lays down the following two rules.

Article 18: An aircraft cannot be valid if registered in more than one state, but its registration may be changed from one state to another.

Article 19: The registration or transfer of registration of aircraft in any contracting state shall be made in accordance with its laws and regulations.

Article 17 is made applicable to non-parties to the convention, but Article 19 is addressed only to contracting states.

Article 20 requires of every aircraft engaged in international air navigation to bear its appropriate nationality and registration marks.

Article 21 states that each contracting state undertakes to supply to any other contracting state or the ICAO, on demand, information concerning the registration and ownership of any particular aircraft registered in that state. In addition, each contracting state shall furnish reports to the ICAO, under such regulations as the latter may prescribe, giving such pertinent data as may be made available concerning the ownership and control of aircraft registered in that state and habitually engaged in international air navigation. The data thus obtained by the ICAO shall be made available by it on request to the other contracting states.

It should finally be mentioned that Article 17 of the Chicago Convention 1944 provides inter alia :

the (ICAO) council shall determine in what manner the provisions of this convention relating to nationality of aircraft shall apply to aircraft operated by international operating agencies.

6) Measures to Facilitate Air Navigation

Articles 22 to 28 of the Chicago Convention deals with the measures to facilitate air navigation. Provisions were made for facilitating the flight of aircraft engaged in international air navigation, including simplification of customs requirements, giving assistance to aircraft in distress, aiding investigation of accidents, exempting

aircraft from seizure by reason of patent claims or infringements, and by the adoption of standard practices in respect of airports, radio services, meteorological services and other air navigation facilities, standard communication procedures, codes, markings, signals, lighting and publication of charts and maps.⁵⁵

7) Documents to be carried in Aircraft

Under Article 29 of the Chicago Convention, every aircraft of a contracting state, engaged in international air navigation, shall carry the following documents:

- a) its certificate of registration,
- b) its certificate of airworthiness,
- c) the appropriate licenses for each member of the crew,
- d) its journey log book,
- e) if it is equipped with radio apparatus, the aircraft radio station licence,
- f) if it carries passengers, a list of their names and places of embarkation and destination, and
- g) if it carries cargo, a manifest and detailed declaration of the cargo.

55. Fixel, n. 14, p.46.

8) Aviation Personnel

The technical standards required for aircraft and the issuing of certificates of competency and licences for the crew are matters which have been made subject to uniform rules. Annex-1 of the Chicago Convention contains a system of rules on pilot certificates. These rules were introduced for urgent reasons of safety. The Annex constitutes an collaboration of Articles 32 and 33 of the Convention.⁵⁶

The aircraft commander occupies a special position within the legal framework. Since 1947, ICAO has been working at an analysis of the legal status of aircraft personnel. In April 1980, the legal status of the aircraft commander was examined by a panel of ICAO experts on the basis of a study⁵⁷ prepared by the Secretariat and in the light of comments by states and international organisations.

Other personnel involved in aviation may be divided into two categories, i.e., ground personnel and flying personnel.

Ground personnel are employees who, without leaving the ground, are involved in the preparation and guidance of

56. For details, please see Annex I of Chapter IV.

57. Study on the legal status of the Aircraft-Commander, ICAO Doc. C-WP/6946 (1979).

aircraft. The group therefore includes airport personnel, meteorological, safety and other ground services personnel. Flying personnel includes anyone who normally performs his duties during the flight and whose presence on board throughout the flight is essential: the commander, the co-pilot and the flight attendants. Flying personnel is subdivided into the following categories:

- a) persons charged with command, the actual flying or technical matters during the flight, and
- b) persons performing ancillary services, for instance, cabin stewards.⁵⁸

9) Certificate of Airworthiness

Every aircraft engaged in international navigation must be provided with a certificate of airworthiness issued or rendered valid by the state in which it is registered,⁵⁹ and this certificate must be carried with the aircraft. The contracting states undertake to "collaborate in securing the highest practicable degree of uniformity" in standards of airworthiness and to recognise as valid certificates issued or rendered valid by another contracting state in which the

58. Diederiks-Verschoor, n. 52, p. 25.

59. Article 31 of the Chicago Convention and also see for details, Annex 8 of Chapter IV.

certificate is registered, provided they comply with any minimum standards established 'pursuant to' the convention. International standards as to the airworthiness certificate have been adopted.⁶⁰

The multilateral agreement relating to Certificate of Airworthiness for Imported Aircraft, was signed at Paris on 22nd April, 1960 and entered into force on 24th August, 1961 now provides for the issue and validation of certificates of airworthiness for aircraft imported from one contracting state to another, and makes provisions for the exchange of information concerning national laws, regulations and requirements relating to airworthiness.⁶¹

10) Restrictions on Articles to be Carried in Aircraft

The contracting states have the following powers to prohibit or control articles carried in aircraft over their territory, and their use:

- i) Aircraft radio equipment: The use of radio transmitting apparatus is permitted only in accordance with the regulations prescribed by state flown over.⁶²

60. Articles 33, 37 and 38 of the Chicago Convention.

61. Shawcross and Beamount, n. 42, p.210.

62. Article 30(a) of the Chicago Convention.

- ii) **Photographic Apparatus:** Each contracting state may prohibit or regulate the use of photographic apparatus in aircraft over its territory.⁶³
- iii) **Cargo Restrictions:** Under Article 35 of the Chicago Convention, each contracting state has the right "for reasons of public order and safety" to regulate or prohibit the carriage in or above its territory of any articles, provided that there is no discrimination and that no restriction shall be imposed which may interfere with the carriage and use on aircraft of apparatus necessary for the operation or navigation of the aircraft or the safety of the personnel or passengers.

11) Financing of Air Navigation Facilities

The Chicago Convention provides that in cases where the air navigation facilities of a contracting state are not reasonably adequate for the safe, regular, efficient and economical operation of international air services, the council may at the request of such state, provide for all or a portion of the costs of making such facilities adequate.⁶⁴

63. Article 36 of the Chicago Convention.

64. Articles 69 and 70 of the Chicago Convention.

The ICAO council, at the request of a state, may also agree to provide men, maintain and administer any or all of the airports and other air navigation facilities, and the council may make just and reasonable charges for the use of the facilities (Article 71). Under Article 75 of the Chicago Convention, a contracting state may at any time take over air navigation facilities provided by the council, by paying to the council an amount which in the opinion of the council is reasonable under the circumstances.

12) Pooling Agreements and Airline Cooperation

There has been a trend in favour of so-called 'pooling arrangements' a form of co-operation between airline companies with purely commercial ends. A 'pooling arrangement' involves at least two companies co-ordinating their flight programmes and sharing the proceeds of their services operated on the same route on the basis of a fixed formula, such as each company's share in the total revenue. When, besides the proceeds, the costs are also shared on such a basis, their cooperation is commonly called a 'joint venture'.

The Chicago Convention provides that joint operating and pooling agreements shall be registered with the council (Article 77), and also that international airlines shall file with the council traffic reports, cost statistics and

financial statements showing among other things all receipts and the sources thereof (Article 67).

13) Denunciation of Paris and Havana Convention

Article 80 of the Chicago Convention requires that contracting states denounce the Paris and Havana Conventions and declares that their convention supercedes them.

14) Abrogation of Inconsistent Agreements

The Chicago Convention requires that contracting states who have undertaken obligations inconsistent with the convention, with a contracting state, a non-contracting state, or a national of a contracting state, shall take immediate steps to procure its release from such obligation. Further more, it is provided that if any airline of a contracting state of which the airline is a national, shall use its best efforts to secure their termination as soon as possible.

15) Registration of Aeronautical Agreement

The Chicago Convention requires the registration of all existing aeronautical agreements and all future agreements between contracting parties, or between a contracting state and an airline which are covered by Articles 81 and 83 respectively.

16) Amendment Procedure

A discussion on the Chicago Convention is incomplete without mentioning its amendment procedure.

The procedure for amendment of the Chicago Convention is outlined in Article 94(a). Under this provision, any "proposed amendment to this Convention must be approved by two-thirds of the Assembly and then shall come into force in respect of states which have ratified such an amendment when ratified by the number of contracting states specified by the Assembly. The number so specified shall not be less than two-thirds of the total number of contracting states.

The expression, "two-thirds vote of the amendments" is to be interpreted as meaning "two-thirds of the total number of contracting states represented at the Assembly and qualified to vote at the time the vote is taken." Article 48(c) of the Chicago Convention says "a majority of the contracting states is required to constitute a quorum for the meetings of the Assembly". With the current membership of ICAO standing at 175,⁶⁵ the quorum of the Assembly is 88 states. 59 states comprising of the two-thirds majority would theoretically be entitled to approve an amendment to the Convention even if such majority represents just one-

65. ICAO Journal - March 1993, p.28.

third of the total membership of the Organisation. However, pursuant to Article 94(a) of the Convention, any amendment to it comes into force only when ratified by the number of contracting states specified by the Assembly. This number must not be less than two-thirds of total number of contracting states.⁶⁶

Most amendments to the Convention adopted since 1947,⁶⁷ and all of those which are actually in force, deal with the constitutional matters of the Organisation.

Indeed, the amendments referred to herein are formal amendments, as the ICAO has independent authority to add to, or alter or delete the whole or parts of annexes to the convention which are deemed an internal part of the convention itself.

Ratification, adherence, admission of others states and denunciation are discussed by Articles 91, 92, 93 and 95 of the Chicago Convention respectively.

Problems and Prospects

The civil aviation law has had a checkered and turbulent past behind both successes and failures of the

66. See Michael Milde, n. 44, p. 204.

67. So far 13 amendments were made to the Chicago Convention.

Chicago Convention. The Convention, as we have seen, represents the agreement on principles of air navigation, the disagreement of the British and American delegations on the freedom of air traffic and the last minute abstention of the erstwhile U.S.S.R.

The contrast between the British and American experiences in the organisation and commercial flying could not be more complete and the differences of approach which prevented agreement at Chicago were founded in the divergent backgrounds. No line of compromise between the diametrically opposed conceptions had been discovered when the United States issued invitation to a conference to meet in Chicago on November 1, 1944. Neither the time nor the venue of the conference was altogether propitious. The beginning of November saw the closing stages of the U.S. Presidential campaign, and Chicago is the home of the most consistently anti-British of the major American dailies. The terms of the invitation issued by the U.S. government may themselves have been inspired by political considerations and facilitated misunderstanding. The invitation set three objectives before the conference -- the early institution of international air routes and services, the establishment of an interim council to act as the clearing house and advisory agency during the transitional period, and agreement upon

the principles to be followed in setting up a permanent aeronautical body and a multilateral aviation convention. The order in which these objectives were set out proclaimed readiness to advance American interests in the air, but it must have been clear to the American authorities that in practice the order would be exactly reversed.⁶⁸

The Chicago Conference resolved itself into four committees, which sub-divided their work among sixteen sub-committees. The first committee drafted the new air convention, the second dealt with the technical standards and procedures, the third with provisional air routes, and the fourth with the interim council. Of these, the third, which was not able to go beyond the production of a standard form of provisional route agreements, soon dropped out of sight; the second and the fourth completed the tasks assigned to them; the first, which was the storm centre of controversy throughout, successfully dealt with all but one of the matters referred to it.⁶⁹

The main controversy at the Chicago Conference centred around the so-called five freedoms of the air. The first two freedoms consist of the right of innocent passage and the right to land for technical stops. The last three freedoms

68. Harold Stannard, n. 38, p.504.

69. Harold Stannard, n. 38, p.507.

cover the right of an airline to convey passengers, mail and freight (a) from the country of origin to any point, (b) from any point to the country of origin and (c) intermediately, and it was on the question of intermediate traffic.

There has been little difficulty over the first four freedoms. It is over the fifth freedom that controversy has arisen. At the Chicago Conference in 1944, the United Kingdom team led by Lord Swinton, first Minister of Civil Aviation, and the United States team led by Mr. Adolf Berle, had a head on clash. The United States stood for complete freedom of the air with an unlimited right of picking up and setting down passengers, mail and cargo. Its attitude was based on the belief that as Britannia had ruled the waves in the nineteenth century, so would the United States rule the air in the twentieth century.⁷⁰

The United Kingdom presented exactly the opposite thesis. The British view was that the right of picking up and setting down fifth freedom traffic should be incidental to the third and fourth freedoms.

After acrimonious discussions at Chicago, no agreement was reached at on the fifth freedom of traffic. These

70. Ivor Thomas, "Civil Aviation: International Questions Outstanding", International Affairs, vol. 25 (1949), p.58.

unresolved differences between the UK and the US had become a serious matter. As a result of the failure of the Chicago Convention, the bilateral Bermuda agreement on commercial rights was entered into between the US and the UK in 1946.

However, there were several notable accomplishments to the credit of the Chicago Convention. The most notable accomplishment of the Chicago Convention was that it worked "in direction of Wendell Willkie's "One World" in that the nations of the world are to open up the skies by granting each other on a reciprocal, non-discriminatory basis". The most important achievement was the transit agreement, popularly known as the "two freedoms agreement" they are:⁷¹

a) the privilege to fly across their territories without landing; (b) the privilege to land for non-traffic purposes such as the amirately equivalent of distress to wit to the refuel and make repairs.

On the technical side, forward steps were taken on a number and international aviation problems which were not solved by the previous conferences. There included customs rulings, immigration, quarantine laws, search and inspection, registration and proper markings, assistance in distress, inquiry into accidents, mutual airports, radio, meteorological and air navigation facilities, safety

71. Edward Warner, "Accomplishments and Unfinished Business", Foreign Affairs, vol.23 (1944-45), p.407.

regulations, military safeguards, photographic regulations, uniformity of signals.

The formation of ICAO and other bodies for the discussion and control regulation for designating and filling routes, registration of future agreements etc. The splendid initial basis, however, has been laid at Chicago for a peaceful world adjustment of a huge crop of international air problems. But if these conferences help to make of this world 'one world' and thus serve to avoid future international embritments then surely it was a constructive contribution in the abstract world peace. Establishment of the ICAO under the Chicago Convention is a milestone in the history of international civil aviation. It may not be an exaggeration to say that almost every bit of post-second World War international air law has been drawn from the ICAO. In fact, the Chicago Convention became a viable constitution for post-war global air world.

III The International Air Service Transit Agreement

This agreement is popularly known as "two-freedom agreement", which grants:

- a) the privilege to fly across its territory without landing (right of transit).
- b) The privilege to land for non-traffic purposes (right to technical stop for refuelling, repairs, etc.).

Other provisions of the agreement recognised the authority of each contracting state to designate the route to be followed within its territory by an international air service and the airports. Such services could be used also to improve just and reasonable charges for the use of such airports and other facilities. In addition, each contracting state reserved the right to withhold or revoke a certificate or permit for the air transport enterprise of another state where it was not satisfied that substantial ownership and effective control were vested in the nationals of that contracting state; or in case of failure of the foreign air carrier to comply with the laws of the state or to perform its obligations under the agreement.⁷²

IV The International Air Transport Agreement

This agreement is popularly known as "five freedoms agreement". The first two freedoms are the same as in the Air Transit Agreement. The other three freedoms are --

- c) the right to discharge passengers, mail and cargo taken on the home ports.
 - d) The right to pick up passengers, mail and cargo to be taken to the home ports.
 - e) The right to pick up and discharge passengers, mail and cargo to or from any other contracting states.
-

72. Fixel, n. 14, p.50.

This agreement was an attempt to achieve the freedom of air trade advocated by the United States by clubbing together the two technical freedoms of transit and stop for technical purposes, with the above mentioned three commercial freedoms. When the US became aware that a majority of states refused to accept a free enterprise system in air transport, it finally withdrew from the agreement. Today the agreement is virtually a dead letter.⁷³

V The Draft of Technical Annexes

The fifth appendix to the Final Act of the Chicago Convention contains about the draft of technical Annexes. It did not require signature. It covered the different phases of technical fields of aviation, being an exposition of suggested technical matters for further study in international aviation. It contains numerous recommendations which when studied, revised and agreed upon, have standardised the following 18 technical aspects of aviation:⁷⁴ 1) Personnel licensing, 2) Rules of the air, 3) Meteorological service for international air navigation, 4) Aeronautical charts, 5) Units of measurement to be used in air and ground operations, 6) Operation of aircraft, 7)

73. Peter H. Sand & others, n. 1, p. 129.

74. J. Schenkman, n. 42, p. 99.

Aircraft nationality and registration marks, 8) Airworthiness of aircraft, 9) Facilitation, 10) Aeronautical telecommunications, 11) Air traffic services, 12) Search and rescue, 13) Aircraft accident investigation, 14) Aerodromes, 15) Aeronautical information services, 16) Environmental protection, 17) Security - safeguarding international civil aviation against acts of unlawful interference, and 18) The safe transport of dangerous goods by air.

These 18 technical annexes covering the varied and important phases of air transport operation are a tribute to the sincerity and objectivity of the framers of the Chicago Convention.

History will record that the cause of international aviation was advanced by many years through the Chicago Conference. The delegations to the conference faced with the conflicting, overlapping and sectoral provisions of past international aviation conventions. However, much was accomplished by the very act of bringing the aviation experts of great nations together for a mutual exchange of experience in international relations, real concrete progress was made towards mutually agreeable solutions for existing problems in a field which will doubtless call for active efforts for many years to come. The basic framework has been established by the Chicago Conference for co-

operative work to solve the legal and technical problems of international aviation.

As Adolf Berle, President of the Conference, declared while closing the Conference that

from now on, air agreements throughout the world, must be open conventions known to all. The day of secret diplomacy in the air was past".

Chapter III

**LAW-MAKING BY THE ICAO: CONSTITUTIONAL
AND ORGANISATIONAL ASPECTS**

The Chicago Convention of 1944, and the International Civil Aviation Organisation (ICAO) established by it, are intended to provide the legal and institutional framework for post war international civil aviation. The preamble to the Chicago Convention lays stress on international civil aviation to help establish and preserve friendship and understanding among the nations and peoples of the world. According to Article 44 of the Convention, the aims and objectives of the organisation are, "to develop the principles and techniques of international air navigation and to foster the planning and development of international air transport," so as to:

- a) Insure the safe and orderly growth of international civil aviation throughout the world;
- b) Encourage the art of aircraft design and operation for peaceful purposes;
- c) Encourage the development of airways, airports, and air navigation facilities for international civil aviation;
- d) Meet the needs of the peoples of the World for safe, regular, efficient and economical air transport.

- e) Prevent economic waste caused by unreasonable competition;
- f) Insure that the rights of contracting states are fully respected and that every contracting state has a fair opportunity to operate international airlines;
- g) Avoid discrimination between contracting states;
- h) promote safety of flight in international air navigation;
- i) promote generally the development of all aspects of international civil aeronautics.

ICAO: Membership¹

Membership in the ICAO is open to sovereign states only.² The Convention of international civil aviation distinguishes between states that may join the organisation either by ratification³ of or by adherely⁴ to the Convention. Former enemy states were subjected to a special

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1. International Civil Aviation Organisation is one of the specialized agencies within the United Nations family is presently composed of 175 contracting states. See ICAO Journal, March, 1993, p.28.
 2. See the discussion in the Council relating to the application of treats, ICAO Council, 3rd session DOC. 5302, (1948).
 3. Article 91 of the Chicago Convention.
 4. Article 92 of the Chicago Convention.

admission procedure⁵. The admission of states belonging to this category was also subject to a number of conditions.⁶

But once admitted as a member of ICAO, each state is entitled to all the rights and privileges of membership without any distinctions based on the admission procedure that applied to it. The Chicago Convention does not provide a reservation clause.⁷ The membership status of 'new states' in ICAO presents two separate problems.⁸ The first has to do with the question whether these newly independent states to whose territory the Convention applied before they acquired statehood⁹ automatically succeed to membership in ICAO. The second problem related to the membership of states created by the union of two or more contracting states.

5. Article 93 of the Chicago Convention.
6. First, in each case the assent of any state invaded or attacked during the Second World War by the state seeking admission was necessary. Second, the approval of United Nations was required. Thirdly, admission of such states was affected by fourth - fifth vote of the ICAO Assembly. Fourthly, the ICAO Assmebly was free to prescribe such other conditions as it deemed fit.
7. This question has been considered, however both by the ICAO Assembly and Council primarily because of an attempt by Yougslavia to ratify the Convention with a reservation.
8. See Mankeiwicz, "Air Law Conventions and new states" Journal of Air Law and Commerce, Vol.20, (1963), p.52.
9. Article 2 of the Chicago Convention describes the territory of a state to be, the land areas of territorial waters, adjacent thereto under the sovereignty, suzerainty, protection and mandate of such state.

The ICAO functions through an Assembly, a council and a Secretariat.¹⁰

The Assembly:

The Assembly is the plenary organ of the ICAO where all the members are represented. The Assembly meets not less than once every three years.¹¹ All contracting states shall have an equal right to be represented at the meetings of the Assembly and each contracting state is entitled to one vote. A majority of member states is necessary to constitute a quorum and unless the Convention provides otherwise, all Assembly decisions are taken by a simple majority of votes cast.¹²

Powers and functions of the Assembly are outlined in Article 49. They include the election of the president and the other officers, election of contracting states to the council, examination of and action on council reports, decision on any matter referred to by the council and

10. Thomas Burgenthal, Law making by the International Civil Aviation Organisation (New York, 1969), p.24.
11. Since the protocol relating to Certain Amendments to the Convention on International Civil Aviation (1954) came into force on 12 December 1956 it has been provided that the Assembly meets not less than once in three years instead of every year. ICAO DOC. 7667, (1956).
12. Article 48 para (c) of the Chicago Convention.

various deliberations concerning internal finance and organisation. The Assembly also has the power to suspend a state's voting rights for failure to discharge its financial obligations to the ICAO¹³. The Assembly may lay down rules for the appointment of the Secretary General and other personnel.¹⁴ The Assembly's approval is required for the organisation to enter into international arrangements with the United Nations in respect of other matters within its competence,¹⁵ and similar approval is required for most agreements with other international institutions for the facilitation of the ICAO work¹⁶. Funds for some council activities depend on Assembly's approval¹⁷.

The Council:

The Council is a permanent organ responsible to the Assembly, composed of thirty three contracting states¹⁸

13. Articles 62 and 98 of the Chicago Convention.
14. Article 58 of the Chicago Convention.
15. Article 64 of the Chicago Convention.
16. Article 65 of the Chicago Convention.
17. Article 73 of the Chicago Convention.
18. According to original Article 50 (a) of the Chicago Convention, the council was composed of 21 contracting states. But in 1961 an amendment raised the membership from 21 to 27. Another amendment in 1971 raised membership from 27 to 30. The same Article was amended for a third time in 1974 raising the membership from 30 to 33. Article 50 (a) was ammended for a fourth time on October 26, 1990 to raise the membership from 33 to 36. This will become effective when it is ratified by 108 states.

elected by the Assembly for a three year term, Article 50 part (b) provides that in electing the members of the Council, the Assembly is to give adequate representation to (1) the leading states in air transport. (2) the states which make the largest contribution to the provision of facilities for international civil air navigation and (3) the states whose designation will insure that all major geographical areas of the World are represented in the Council.

The council elects a President and other officers.¹⁹ The President holds office for a three year term, and is not eligible to vote. The council also elects from among its members one or more vice-presidents who shall retain their right to vote even when serving as acting President. The president's duties include the convening of meetings of the council. President serves as the representative of Air Transport Committee and Air Navigation Commission and also acts on behalf of the Council as its representative.²⁰ During its history, the Council of ICAO has had only three presidents.²¹ Decisions of the Council are taken by a majority of its members.²²

19. Article 51 of Chicago Convention.

20. Ibid.

21. Dr.E.Warner of the USA 1947-1958, W.Binagh of Argentina 1958-1976 and Dr. A.Kotaita of Lebanon since 1976.

22. Article 52 of the Chicago Convention.

The Council appoints the Air Navigation Commission and Air Transport Committee, which are responsible to the Council. The Council also appoints the Secretary - General of the Organisation, and makes provision for the appointment of such other personnel as may be necessary. The council may, on behalf of the organisation, enter into agreements with other international bodies for the maintenance of common services and for common arrangements concerning personnel, with the approval of the Assembly. In addition, it may also enter into such other arrangements as may facilitate the work of the Organisation.²³ Under Article 81 of the Convention all member states must register with the Council all existing aeronautical agreements.

The Council's mandatory functions listed in Article 54 are : Control over ICAO's internal Organisation, procedure, functions and personnel, submission of annual reports to the Assembly, appointment and functions of the Air Transport Committee, establishment of Air Navigation Commission, determination of the emoluments of the President of the Council, report to contracting states of any information on the Convention as well as any failure on the part of a state to carryout recommendations or determinations etc.

23. Article 65 of the Chicago Convention.

Article 55 provides for a number of discretionary functions including the creation of regional air transport commissions, the carrying out of research, investigation of matters referred by members and the study of any matters affecting ICAO or international air transport. Certain functions have been assigned to the council to improve the safety and efficiency of air navigation facilities, and it may consult with a member whose airports and other air navigation facilities are insufficient, with the ability to take over such facilities at the state's request.

The Council of ICAO is endowed with quasi - legislative powers²⁴ with regard to adoption of standards and recommended practices and also with judicial powers²⁵ with respect to the settlement of differences relating to the application or interpretation of the Convention and Annexes there to. The Council President is obviously more powerful than the Secretary General and similarly the Council overshadows the Assembly and the Secretariat in respect of its powers and functions.

24. Articles 37, 54(1) and 90 of the Chicago Convention.

25. Articles 84 to 88 of the Chicago Convention.

The Office of the Secretary - General:

The Secretary - General or the Chief Executive Officer of the ICAO as he is referred in the Convention, is appointed by the Council, which also appoints other necessary personnel of the Secretariat.²⁶ Such personnel are to have an international character, that is they shall be responsible to ICAO rather than to their states of origin. They are not subject to regulation and control, regarding the discharge of their responsibilities, of any authority outside ICAO. State parties undertake to respect the international character of the Secretariat personnel and to refrain from influencing nationals in the performance of their duties.²⁷ The Secretariat has so far had eight Secretaries - General.²⁸ The distribution of different responsibilities between the President of the Council and the Secretary - General has served the organisation well in the past and is a credit to the creative imagination of the authors of the Convention.

26. Article 54 para (h) of the Chicago Convention.

27. Article 59 of the Chicago Convention.

28. Dr.A.Roper (France), E.C.R.Ljungbergh (Sweden) R.M.Mac Donnal(Canada) B.T.Twigt (Netherlands) Dr.A.Kotaite (Lebenon) and Zambert (France) S.S. Sidhu (India). Dr. Philippe Rochat (Presently).

At present, the Secretary - General's Office directly deals with external relations, public information and internal audit. The Secretariat itself is divided into five main divisions namely, the Air Navigation Bureau, the Air Transport Bureau, the Legal Bureau, the Administrative and Services Bureau and the Technical Assistance Bureau.²⁹

In addition, the ICAO maintains seven Regional Offices at the following places:

1. European and African Office in Paris,
2. Far East and Pacific Office in Bangkok,
3. Middle East office in Cairo,
4. Northern American, Central American and Carabian Office in Mexico.
5. South - American Office in Lima.
6. Western and Central African Office in Dakar,
7. Eastern and Southern African Office in Nairobi.

Subsidiary Organs of the Council:

i) **Air Navigation Commission**

One of the Mandatory functions of the Council of the ICAO Under Article 54 of the Chicago Convention is to

29. J. Schenkman International Civil Aviation Organisation (Geneva, 1955), p.218.

establish an Air Navigation Commission which according to Article 56, consists of fifteen members³⁰ appointed by the Council from among persons nominated by the Contracting states. The Commission was established by a resolution of the Council on February 1, 1949³¹.

The duties of the Commission are defined by the Convention and relate to the technical aspects of international civil aviation. Article 57 provides, that the Air Navigation Commission shall;

- (a) consider and recommend to the Council for adoption, modifications of the Annexes to the Convention.
- (b) Establish technical sub - commissions on which any contracting state may be represented, if it so desires.
- (c) Advise the Council concerning the collection and communication to the contracting states of all information which it considers necessary and useful for the advancement of air navigation.

- 30. Article 56 was amended on July 7, 1971 to increase the composition of Air Navigation Commission from 12 to 15. The amendment entered into force on December 19, 1974. The same Article was amended for a second time on October 6, 1989 to raise the membership from 15 to 19 which will become effective when ratified by 108 states.
- 31. ICAO Doc. 6433 (1949), and Doc.6968 (1950), and also Schenkman, n. 29, p.170.

ii) **Air Transport Committee**

The Convention does not define the composition and functions of Air Transport Committee, except stating that its members shall be chosen from among the representatives of the members of the Council.³² It is composed of twelve members appointed by the Council for a period of three years from a list of representatives of ICAO members on the council submitted by the president of the Council. The functions of the committee, which is concerned with the economic aspects of international civil aviation are defined by a resolution of the Council.³³

iii) **Joint Support Committee**

The Committee on joint support of air navigation services was established by a resolution of the first Assembly.³⁴ It is composed of nine members of the Council, selected by the council itself every year. Although the joint support Committee was a creation of the Assembly, it is responsible to the Council and its work is to consider the provision of financial and

32. Article 54 of the Chicago Convention.

33. ICAO Doc.4557 (1947) also see Article 3 of the Interim Agreement.

34. ICAO Doc.7325 C/852, Resolution A1-7.

technical aid for the provision and maintenance of the infrastructure of international civil aviation.

iv) **Legal Committee**

The Legal Committee was created by the Assembly and made responsible to the Council. It is a permanent committee of the organisation set up by the first Assembly of the ICAO in 1947. The Legal Committee is composed of legal experts designated as representatives of the contracting states.³⁵ Each member state represented on the Committee has one vote. The decisions of the committee are reached by the rule of majority.³⁶ The Legal Committee has taken over the work formerly performed by the Committee on International Technical Experts of Juridical Nature (CITEJA). The committee's work includes the interpretation of the Convention and a study of problems relating to the public and private international air law, referred to it by the Council or the Assembly. The most impressive work of the Legal Committee has been in the preparation of final drafts of several international air law Conventions.³⁷

35. ICAO Doc.7669, LC/139/2 Rule 4 of the Rules Procedure.

36. ICAO Doc.7669, LC/139/2 , Rules 36 and 38 of the Rules Procedure.

37. See for details Pre-legislative functions from the following section of this chapter.

v) **Finance Committee**

The first Assembly also voted to establish a Finance Committee which through the Council, was appointed on 24 June, 1947.³⁸ The work of the committee is purely financial, and the Council chooses the nine states represented on the Council for this committee.

Law - making by the ICAO

The legislative functions of ICAO are generally confined to technical problems of non-political character. ICAO's regulatory activities leave little room for serious policy disagreements. Its legislative goals are largely determined by technical advances in the aviation field. The requirements for compliance with ICAO regulations moreover are sufficiently flexible to accommodate the economic and technical problems which any of its member states might face. Thus it champions a consensus oriented legislative process whose regulatory product is geared to the technical requirements of modern aviation without unduly straining the economic, administrative and technical resources of a constituency that empare the most advanced industrial nations of the world as well as the most underdeveloped ones.³⁹

38. ICAO Doc.7325, C/852 Resolution A1-58.

39. Thomas Burgenthal, n. 10, p.57.

Quasi - Legislative Functions

Quasi - legislative functions are so called because, although they are law in the making, they do not immediately bind members against their will. These consists basically of technical regulations promulgated by the ICAO Council. One of the most important legislative functions performed by ICAO consists in the formulation and adoption of 'International Standards' and 'Recommended practices'.⁴⁰

Under Article 37 of the Convention, ICAO is empowered to adopt international standards and recommended practices and procedures in regulation of aircraft personnel, airways and auxiliary Services. Under this Article the organisation is expected to adopt and amend standards and practices as and when necessary, dealing with matters concerning navigation aids, flight regulations, personnel licencing,

40. With regard to Annex 9 (Facilitation), the Council of ICAO defined 'Standards' and 'Recommended Practices' as follows. Standards: Any specification, the uniform observance of which has been recognised as practicable and as necessary to facilitate and improve some aspect of international air navigation, which adopted by the council pursuant to Article 54(1) of the Convention and in respect of which non-compliance must be notified by the states to the council in accordance with Article 38. Recommended Practice: Any specification, the observance of which has been recognised as a general practice and as highly desirable to facilitate and improve some aspect of international air navigation which has been adopted by the council pursuant to Article 54 (1) of the convention and to which contracting states will endeavour to conform in accordance with the Convention.

air worthiness of aircraft, the collection and exchange of information and the simplification of procedures, the safety of aviation, etc. ICAO may also adopt standard practices or procedures for such other matters concerned with safety, efficiency and regulation of air navigation as may arise. It is for the Council to adopt these standard and practices. The Council is also empowered to amend the annexes for the purpose.⁴¹

Adoption of Annexes requires a two thirds majority vote by the Council at a meeting called for the purpose.⁴² The Annexes are then to be submitted to each contracting state and become effective within three months of submission or at the end of a longer period if so prescribed by the Council. It is open to the majority of the notified states to register their disapproval with the Council, which may prevent the Annex from coming into effect. Article 90 does not refer to Annexes in its first sentence. According to Prof. Bin Cheng a special Council meeting need not be called to introduce an amendment and that two - thirds vote by the Council in favour of an amendment is not necessary.⁴³ The

41. Article 90 para (a) of the Chicago Convention.

42. Article 90 para (a) of the Chicago Convention.

43. Bin Cheng, Law of International Air Transport, (London, 1962), p.66.

first sentence of Article 90 refers back to Article 54, para (1) which does not mention of amendments. The second sentence of Article 90 does however refer to amendments so as to be binding between the contracting states within three months from the date of notification, unless a longer period is specified by the Council or unless a majority of contracting states register their disapproval with the Council.⁴⁴

A state which finds it impracticable to comply with any standards or procedures in all respects or which deems it necessary to adopt regulations and practices differing in any respect from those adopted in an international standard is required to notify ICAO of such difference.⁴⁵

A state's departure from amended international standards are covered by Article 38. A state may fail to bring its own regulations or practices into, full accord with any amended standard or procedures. In this case it must notify the Council within 60 days of adoption of the amendment or otherwise indicate its proposed action. The Council then immediately notifies all other states of the

44. Michael Sessella, "The International Civil Aviation Organisation: Its Contribution to International Law" Melbourne University Law Review Vol.8 (1971), p.64.

45. Article 38 of the Chicago Convention.

difference existing between that standard and the state's practice. When an Annex is amended the Council may notify to state parties. In other words, non - notifications of any deviation by a state within 60 days of the Council's adoptions of an standard or recommended practices will amount to acquiescence to this coming into force of a standard or recommended practice.

ICAO also formulates procedures for Air Navigation Services (PANS) which are approved by the Council for universal application. Regional supplementary procedures (SUPPS) are approved by the Council for application in specific regions, Neither PANS nor SUPPS are issued directly under any provision of the Convention, but are merely 'approved' by the Council and it has been argued that they are not mandatory despite the use of positive words in the text. States are not obliged to notify differences observed in practice but the Council has invited notification where such knowledge is important for the safety of air navigation. As in the case of recommended practices, the ICAO Council has invited member states to notify any difference between their national practices and the PANS and SUPPS when the information on such differences is important for the safety of air navigation.⁴⁶

46. Bin Cheng, n. 43, p.71.

ICAO's actual legislation through standards, practices and procedures has been of great value. As noted already regulations have been issued under this process.⁴⁷ The procedure adopted by ICAO are effective because none of the Annexes offered by the Council have been rejected by a majority Assembly and as a general rule derogation from the standard procedures as notified by member states have not been numerous, nor have been important consideration. ICAO's modification procedures permit an industry to keep up with the rapid changes that are taking place in international civil aviation.

Pre - legislative Functions

Pre - legislative functions are tasks performed with a view to effecting further legislation. At this stage no actual change in the legal situation is achieved, as in the drafting of multilateral Conventions. However, it seems that in performing these functions, ICAO is actually making law, though such law will not take effect until sufficient number of states accept the terms of this future law.

The first session of the Assembly in 1947, established the legal committee and its constitution. Although the legal committee was established by the Assembly, it is

47. See for details next chapter.

subject to a substantial measure of control by the Council. Since the measure of this control was not clearly defined in the 1947 constitution, it was spelled out in greater detail in a revised constitution adopted by the Assembly at its 7th session on 6 July, 1953.⁴⁸

The duties and functions of the committee as expressed in the revised constitution are:

- a) to advise the Council, on matters relating to the interpretation and amendment of the constitution on international civil aviation referred to it by the Council;
- b) to study and make recommendations on such other matters relating to public international air law as may be referred to it by the Council or Assembly.
- c) by the direction of the Assembly or the Council or at the initiative of the committee itself and subject to the prior approval of the Council, to study problems relating to private air law affecting international air law Conventions and to submit reports and recommendations thereon;

48. ICAO Doc.7417 A7- P/3, 1953, 7th Session of Assembly June-July 953. Resolution and indexes to Documentation Resolution A7-5.

- d) to make recommendations to the Council as to the representation at its session of the Committee of non - contracting states and other international organisations, as to the co-ordination of the work of the committee with that of other representative bodies of the organisation and the secretariat and also as to such other matters as will be conducive to the effective work of the organization.⁴⁹

The legal committee establishes and maintains a general work programme including any subjects proposed by the members of ICAO as well as other states and international organisations invited to participate in the deliberations of the committee. The programme is subjected to the approval of the Council⁵⁰. In each session, the committee, after taking into consideration the requirements of international civil aviation with due regard to the stage of preparation of subjects on its programme establish the following two lists.

- a) subjects to be placed for action on the agenda of the next session of the Committee;

49. G.F.Fitzerald, "The International Civil Aviation Organisation and the Development of Conventions on International Air Law (1947-1978)", Annals of Air and Space Law, Vol.3, (1978) p.58.

50. ICAO Doc. 7669 - LC/139/2, Rule 8 of Rules Procedure.

- b) subjects to be studied and reported on for future consideration by the Committee.

Subjects are placed on these lists in order of priority to be established as far as practicable in accordance with any direction or recommendation made thereon by the Assembly at triennial session or the Council.⁵¹

Pursuant to a practice suggested by the Council in 1953, the Work programme of the Committee is divided into two parts.⁵² They are

part A : Subjects of current study.

part B : subjects on which no work should be undertaken or directed by the legal committee unless and until a report has been submitted to the Council by the ICAO Secretary - General or the Chairman of the Committee indicating the need for such work and the Council has approved or unless the Assembly or Council has otherwise directed that active work should be undertaken.

Subjects of Current study: During its 136th session on 17

51. ICAO Doc.7669 - LC/139/2 Rule 9 of the Rules Procedure.

52. This division was established by the council on May 15, 1953 on a proposal made by the representative of the United Kingdom (Doc.7390-5 c/861/, Minutes of nineteenth session part I p.59). The division was recommended by the Legal Committee in 1967 Doc. 8704 - LC/155/1967.

July, 1992 the Council examined a draft Assembly working paper on the Work programme in the legal field for consideration by the legal commission at the 29th session of the Assembly. They are⁵³

1. Consideration with regard to Global Navigation Satellite System (GNSS) of the establishment of a legal framework.
2. Action to expedite ratification of Montreal protocol Nos. 3 and 4 of the Warsaw system.
3. Study of the establishment of 'Warsaw System.'
4. Liability rules which might be applicable to Air Traffic Services (ATS).
5. Liability of air traffic control agencies.
6. United Nations Convention on Law of Sea - implications if any, for the application of the Chicago Convention, its Annexes and other international air law instruments.

It may be noted that, item No. 6 was introduced way back in 1970's as the Convention on the law of the Sea was still on the agenda.

53. ICAO Doc.A 29 - WP/37 LE/3, June (1992).

Procedure for the preparation of a Draft Convention

As a first step, the Legal Bureau would continue, as at present, to collect documentation (national laws, case law, doctrine, technical and economic information) in relation to subjects in Part A of the Work Programme of the Legal Committee. The Committee would then, with the aid of the Legal Bureau, prepare a summary of the essential problems on which a decision is required in order to facilitate the work of the Committee. The next step would be for the legal Committee to refer the subject for study either to a rapporteur or to a sub-committee or both as the committee considers appropriate.⁵⁴

Under Rule 12 of the Rules of Procedure of the Legal Committee, the number of members of a sub-committee is left for determination by the committee or its chairman, depending on whether the sub-committee is established during a session of the committee or between sessions. Although no change is recommended in Rule 12, it is nevertheless considered that the membership of a sub-committee should not be large. The most important criterion to be applied in making appointments to a sub-committee is the contribution

54. Rene H.Mankiewicz "The Legal Committee - Its Organisation and Working Methods" Journal of Air Laws and Commerce, vol.32, (1966), p.97.

which a member can make to the work of the sub-committee; other considerations in such appointments are the achievement of geographical representation and linguistic distribution as well as the balancing of diverse legal system.

Further more, the legal committee must consider the report and the draft Convention prepared earlier by the sub-committee and the comments which may have been received from states or other bodies. The legal committee would, at this stage, refer back to the sub-committee, with an indication of the committee's views, a text which requires additional work by the sub-committee on a specific problem or problems. The final step would be to discuss the draft Convention revised by the sub-committee and recommend its adoption after all revisions.⁵⁵

The Legal Committee since 1947 has considered many issues in the field of private and public international air Law and adopted drafts of the following instruments.⁵⁶

1. Convention on International Recognition of Rights in Aircraft, signed at Geneva in June 1948.

55. Rene H. Menkeiewicz, n 54, p.98.

56. Michael Milde., "The Chicago Convention - After Forty Years", Annals of Air and Space Law, vol.9, (1984), p.128.

2. Convention on Damage caused by Foreign Aircraft to Third Parties on the Surface, signed at Rome on 7 October, 1952.
3. 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 The Hague on 28 Spetember, 1955
4. Convention, supplementary to the Warsaw Convention for the Unification of Certain Rules Relating to International Carriage by Air Performed by a Person Other Than the Contracting Carrier, signed at Guadalajara on 18 September 1961.
5. Convention on Offences and Certain Other Acts Committeed on Board Aircraft, signed at Tokyo on 14 September, 1963.
6. Convention for the Supression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December, 1970.
7. Protocol to Amend the Convention for the Unification of Certain Rules relating to International Carriage by Air signed at Warsaw on October 12, 1929, as Amended by the protocol done at The Hague on 28 September, 1955, signed at Guadalajara city on 8 March, 1971.
8. Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September, 1971.

9. Additional Protocol No. 1 to Amend the Convention for the Unification of certain Rules relating to Warsaw on 12 October, 1929, signed at Montreal on 25 September, 1975.
10. Additional Protocol No. 2 to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air signed at Warsaw on October 12, 1929 as amended by the protocols done at Hague on 28 September, 1955 and at Guatemala City on 8 March, 1971, signed at Montreal on 25 September, 1975.
11. Additional protocol No. 3 to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air signed at Warsaw on October 12, 1929 as amended by the protocols done at the Hague on 28 September, 1955 and at Guatemala City on 8 March, 1971, signed at Montreal on 25 September, 1975.
12. Montreal Protocol No. 4 to amend the Conventional for the Unification of Certain Rules Relating to International Carriage by Air signed at Warsaw on 12 October, 1929, as amended by the protocols one at The Hague on 28 September, 1955 and at Guatemala City on 8 March, 1971, signed at Montreal on 25 September, 1975.
13. Protocol to amend the Convention on Damage Caused by Foreign Aircraft to third Parties on the Surface signed at Rome on 7 October, 1952, signed at Montreal on 23 September, 1978.

14. Convention on International Marking of Plastic Explosives for the purpose of Detection, Done at Montreal on 1st March 1991.

In the Legal Committee, states are represented by legal experts who, at least in the early years of the committee, attempted to follow the CITEJA tradition of emphasizing legal aspects of the work as distinct from political aspect. Today the Legal Committee is really a dryrun for a diplomatic conference and political issues are also discussed at the committee level. Other causes for the decline of the Legal Committee include, lack of common terminology of language. And the difference in legal concepts among the countries also hinders the drafting process in the Legal Committee.

It may now be appropriate to make a few recommendations for improvement of the working of Legal Committee.

- (a) continuity of participation of representatives,
- (b) informal meetings,
- (c) establishment of national groups of lawyers to discuss ICAO's legal items on national levels,
- (d) the adoption of a detailed procedure for the preparation of the draft Convention;
- (e) information on developments in the other transportation fields.

The above discussion tells us that ICAO's Legal Committee has played a useful role in the development of Conventions on international air law for 1947 to 1992. Structurally and organisationally, the machinery exists for the production of useful Conventions.

Administrative Functions

Chapter XV of the Chicago Conventions of 1944, provides for technical and financial assistance to be given to a member state on the installation and operation of airports and other air navigation facilities. At the Chicago conference it was pointed out that without that provision international air transportation might be hampered by a lack of airports in strategically located states that were either unwilling or unable to provide adequate facilities. At the first Assembly of ICAO in May, 1947, resolutions were passed which laid down the policy, to be followed by the organisation in providing financial and technical assistance and establishing at the same time the committee on Joint Support Air Navigation Services.⁵⁷ The main points of their policy are the followings:-

1. The facilities for which provisions may be made
include aerodromes and ground aids to navigation, air

57. Resolution A1-64 ICAO DOC 4411, A1-p/45 (June 1947).

traffic control services, meteorological services, search and rescue services, telecommunications and radio aids.

2. The aim will be to provide facilities adequate, but no more than adequate, to meet the requirements of international air services in accordance with the standards and recommended practices established under the Chicago Convention.
3. The primary responsibility for providing facilities rests with each state in respect of its own territory.
4. The provisions of financial and technical aid through the ICAO will always be based on voluntary action on the part of contracting states.
5. The construction, operation or maintenance of facilities or services by persons working under the jurisdiction of ICAO will only be undertaken in most exceptional cases.⁵⁸

The Chicago Convention of 1944 explicitly provides for a joint support programme based entirely on the agreement of the member states concerned. Article 69 makes it clear that no contracting state shall be guilty of an infraction of the Convention if it fails to carry out recommendations of the council directed to the provisions or improvement of air

58. Bin Cheng, n. 43, p.77.

navigation facilities in the territories of member states. In joint financing programmes, the ICAO may agree "to provide for all a portion of costs (Art. 70) or to provide maintenance and administer any or all of the airports and other air navigation facilities, including radio or meteorological services (Art. 71). Article 74 of the Convention empowers the ICAO Council to provide technical assistance in the supervision and operation of airport and other facilities only when the council is providing assistance in cash or in kind under Articles 70 and 71.

The responsibilities placed upon the ICAO in these joint financing schemes are essentially administrative in character. From a purely formal standpoint, the ICAO is more closely involved when it has to undertake negotiations and enter into agreements with the state in which the supported services are located.

Quasi-Judicial Functions

Article 55(e) of the Chicago Convention provides that the ICAO council has power to investigate at the request of any contracting state, any situation which may appear to prevent avoidable obstacles to the development of international air navigation, issue such reports as may appear to be desirable. In discharging this permissive

function the power of the Council is not limited to a purely judicial review of the situation but may take into account economic, technical as well as other factors and base its reports on what is equitable and convenient.

The same may be said of its mandatory functions under Article 54(n) under which the ICAO Council may consider any matter relating to the Convention which may be referred to it by any contracting state. This provision was invoked by Pakistan in November 1950, which raised the following questions.⁵⁹

- (a) Is a state, party to the Transit agreement, entitled to require that a permit be obtained by Scheduled international air services of the other states parties to the transit agreement before flights without landing over its territory are initiated?
- (b) If so, what form of permit may be required and to what extent has the state to be over flown the discretion to grant or to withhold the same?

The Council considered the matter in 1950 and 1951 under the provisions of Article 54(n). After having invited and received comments from member states, the council delivered the following advisory opinion:

59. Bin Cheng, n. 43, p.99.

1. The Convention on international civil aviation and in particular Article 6 thereof, does not override the provisions of Section 1, Article 1 of the International Air Services Transit Agreement.
2. A state by becoming party to the Air Transit Agreement, grants the privileges of transit and landing for non-traffic purposes subject to the requirements of other provisions of this agreement with respect to their scheduled international air services.⁶⁰

The supervisory functions of the Council under the first part of Article 54(j) of the Convention, which places upon it a duty to report any infraction of the Convention to the contracting states, including the state in default, must be regarded as essentially judicial in nature, for what the Council is to report under Article 54(j), as well as 54 (k), is not a mere alleged infraction, but in fact, an infraction. It would appear that, under the general principles of law, before such an infraction can be said to exist, the party or parties concerned must have first been given an opportunity to be heard and a judicial or at least quasi-judicial procedure must have been followed.⁶¹ Moreover, in exercising its functions under Article 54(j)(k)

60. ICAO DOC 7101-12, C/823-12.

61. Bin Cheng, n. 43, p.100.

it would appear that both parts of Article 53 must be applied. In other words, the member states concerned, whether or not members of the Council, should be allowed to take part without vote in the Council's consideration of the alleged infraction.

Judicial Functions:

The Convention on international civil aviation controls on the ICAO (include), extensive judicial functions for the settlement, of disputes between the contracting states. Under Chapter XVIII (At. 84-88) of the Convention, the Council is empowered to adjudicate any disagreement between two or more contracting states relating to the interpretation or application of the Convention and its Annexes which cannot be settled by negotiations.⁶² The Council is vested with jurisdiction to decide such a dispute "on the application of any state concerned in the disagreement". Its decision may be appealed against either before the International Court of Justice (ICJ) or before an ad-hoc international tribunal,⁶³ whose judgement or award

62. Article 84 of the Chicago Convention.

63. Articles 84 and 85 of the Chicago Convention. While the Convention refers to P.C.I.J. it is clear that I.C.J. is to be regarded as the Judicial Institution Contemplated by the Convention to exercise this function. See ICAO DOC 4039, A1-CP/12, (1947).

shall be final and binding. The Convention provides two types of sanctions for non-compliance with these decisions.⁶⁴ The first applies to the case of non-compliance by airlines. Here, if the Council renders a decision on such non-compliance, each contracting state is under an obligation to debar the airlines in question from operating through the airspace above its territory.⁶⁵ The second type of sanction applies to states. If they are found to be in default of their obligations, the ICAO Assembly must, suspend their voting power both in the Assembly and in the Council.⁶⁶

As for the Council's competence, as mentioned before in case of an infraction, the Council transfers the examination of the situation to the Assembly as set out in Article 84 of the Convention. This Article sets the parameters of the Council's jurisdiction in such matters. The question analysed has nothing whatsoever do do with Article 5 of the ICAO rules. For settlement of disputes, this Article deals with the primary aspect of the Council's Jurisdiction. Thus, it follows that it is not a matter of the Council's Jurisdictional power.

64. Thomas Burgental, n. 10, p.125.

65. Article 87 of the Chicago Convention.

66. Article 88 of the Chicago Convention.

If the appeal is taken against the Council's decision about its own competence to settle a certain matter, this shall have a suspensive effect on proceedings. If there should be an appeal against the decision of the Council in the situation envisaged by Article 84, it shall also have a suspensive effect regarding the decision's execution held over until the issue of the appeal is decided.⁶⁷

On April 21, 1952, India lodged a complaint in the ICAO Council against Pakistan, alleging that Pakistan disregarded her obligations under Article 5 (right of non-scheduled flights), 6 (scheduled air services) and 9 (prohibited areas) of the Chicago Convention and the provision of International Air Service Transit Agreement to which both states were parties. India maintained that Pakistan made the region in question, which was within the Afghanistan border a prohibited area and refusing to allow Indian aircraft to overfly it, prevented direct Indian air services from being established between Delhi and Kabul. An element in the Indian complaint was that the prohibition was discriminatory in that an Iranian airline was operating a scheduled air service over the prohibited area. Pakistan

67. J.C. Sampia de Lacerda "A study about the Decisions of the ICAO Council, the Admissible Appeals and their effects" Annals of Air and Space Law, vol.3 (1978), p.223.

replied that the prohibited area had been created in 1935 before the partition, primarily for security reasons and reasons had since then become more important. The complaint of India was subsequently supported by Afghanistan.⁶⁸

In May, 1952, the Council adopted provisional rules of the procedure governing the discharge of its functions under Chapter XVIII of the Chicago Convention. Pursuant to these rules, a working group was established by the Council in June, 1952, to report on the dispute. The working group met with special representatives of the parties. The representative of Pakistan having intimated the willingness of his government to discuss the terms of the settlement with the Indian government, the Council approved a recommendation of the working group to invite both parties to enter into further direct negotiations. An amicable settlement reached between the parties was brought before the ICAO Council on January 19, 1953, providing, *enter alia*.⁶⁹

1. The Pakistani government, although it found itself unable to open the direct routes, Peshawar - Kabul and Quetta - Kandhar requested by India, agreed to open two

68. Bin Cheng, n. 43, p.101.

69. Bin Cheng, n. 43, p.102.

corridors, twenty miles wide across the prohibited area, one in direct line between Lahore and Kandhar for aircraft operating between Delhi and Kabul, the other on the direct line between Karachi and Kandhar for aircraft operating between Bombay and Ahmedabad and Kabul. The government of India accepted this offer.

2. The Government of Pakistan would make available to Afghanistan a quantity of aviation fuel required by the Indian airline flying into that country (estimated not to exceed 2,500 gallons per month) and would provide certain operational facilities to the two routes. This would avoid the necessity of Indian aircraft carrying a heavier fuel load to be able to make the return trip, and thereby increase the amount of useful load that could be carried.

The ICAO Council has been involved in a quite a number of other cases. They include⁷⁰

1. Jordan Vs. UAR, concerning a ban on overflying UAR territory;
2. UAR Vs. Lebanon, concerning an attack on a Mystere aircraft;
3. UAR Vs. Lebanon, concerning the establishment of a danger zone;

70. I.H.Ph. Diederiks-Verschoor, An Introduction to Air Law: (Netherlands 1983), p.33.

4. Lebanon Vs. UAR, involving a temporary ban on flying and a failure to furnish adequate information;
5. UAR Vs. Israel concerning an attack on an aircraft; and,
6. Lebanon Vs. France, concerning the seizure of passengers and freight of a Lebanones aircraft.

A case of compulsory jurisdiction of the ICAO Council again arose between India and Pakistan in 1971. While flying over Pakistani territory, an Indian aircraft was forced to land at Lahore airport, where it was subsequently destroyed. The government of India decided, in February 1971, to ban flights by Pakistani aircraft above Indian territory.

On March 3, 1971, Pakistan filed a complaint with the ICAO Council. The Council declared itself competent, because both countries were parties to the Transit Agreement, which allowed contracting states to fly over each other's territory. India lodged an appeal with the International Court of Justice (ICJ) against the Council decision; being of the opinion that the Chicago Covention and the Transit Agreement were no longer in force, since during the war between Indian and Pakistan in 1965 the regulations of the Chicago Convention had been suspended and never renewed, and that, therefore, the Council had no

jurisdiction. The issue was decided on August 18, 1972, by the ICJ. It rejected the government of Pakistan's objection on the question of ICJ's competence and held that it had jurisdiction to entertain India's appeal; It further considered the Council of the ICAO to be competent to entertain the application and complaint laid before it by the government of Pakistan; and in consequence, the Court rejected the appeal lodged by the government of India against the decision of the Council to assume jurisdiction in those respect.⁷¹

The ICAO Council is also entrusted with the function of settling disputes under the Two Freedoms and Five Freedoms Agreement. In that event Chapter XVIII of the Chicago Convention is to be applied.

71. ICJ Reports (1972), Appeal Relating to the Jurisdiction of the ICAO Council, pp.46-179.

Chapter IV

DEVELOPMENT OF ANNEXES TO THE CHICAGO CONVENTION:

A CASE STUDY IN STANDARD SETTING BY THE ICAO

Standards and Recommended Practices

The establishment of internationally accepted modern technical standards procedures is essential if the airlines of the world are to operate safely and smoothly. The Chicago Convention charges the ICAO with the duty of preparing international standards of safety and uniformity covering the various technical field of flying. The ICAO standards and recommended practices are designed to establish uniform and adequate procedures and facilities, so that air-craft operation on international routes will be carried out in such a uniform way as to ensure safe, regular and efficient air transportation on a world wide scale.¹

The ICAO standards and recommended practices are originally drafted by experts from member states at Divisional meetings held in Montreal and elsewhere for each of the technical field. The Divisional recommendations are then considered by the Air Navigation Commission and subsequently examined by this commission for the purpose of

1. Jacob Schenkman, International Civil Aviation Organisation. (Geneva, 1955), p.258.

making any changes found necessary. Then the recommendations are sent to member states for comment over a period of not less than three months and upon return are again reviewed by the commission. The revised draft is then brought before the council for approval or amendment at a special meeting called for their purpose. Upon adoption of the council by a two-thirds vote² The completed standards are then sent to the member states, which are given a specified length of time - at least three months - for disapproval. If a majority of states approve all or part of a standard within this specified time, it becomes effective and each contracting state is bound under the terms of the Convention³ either to put it into practice in its own territory in accordance with the council resolution of adoption or to notify the ICAO of any difference between any of its own practices and those established by the international standards,⁴ so that other nations may at least be warned of the variations.

The Annexes did not require signature. This character and binding force of the Annexes to the Convention were subject to a great amount of criticism, particularly among

2. Article 90 of the Chicago Convention.

3. Ibid.

4. Article 38 of the Chicago Convention

the international lawyers like C. Parrey and C.W. Janks.⁵ The main criticism of these lawyers is that the present Annexes have not the same obligatory force as the text of the Convention itself. The technical Annexes of the Paris Convention were part of it and had same force as the Convention itself.⁶

Hitherto, 18 Annex of these standards and recommended practices were adopted by the council and are in effect. They indicate the widely varied nature of the subjects dealt with. They are the following:

Annex I: Personnel Licensing

Standards and Recommended practices for personnel licensing⁷ were first adopted by the council on the April

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5. C. Parry, 'Constitution of International Organisation', British Year Book of International Law, vol.23 (1946), p. 460.
C. W. Jenks, 'Some Constitutional Problems of International Organisations', British Year Book of International Law, (1945), p.68.
 6. Shawcross and Beaumont On Air Law (London, 1951), vol. 1, pp.47-48.
 7. The expression 'licence' used throughout this annex has the same meaning as the expression of 'certificate of competency' and similarly the expression 'flight crew member' has the same meaning as the express 'member of the operating crew of an aircraft' and 'operating personnel' used in the Convention the expression 'personnel other than flight crew members'. Included the expression 'mechanical personnel' used in the Convention.

14th 1948 in pursuant to the provisions of Article 37 of the Chicago Convention 1944, and designated as Annex I to the Convention. They became effective on 15 September 1948.⁸

As long as air travel cannot do without Pilots and other air and ground personnel, their competence, Skills and training will remain the essential guarantee for efficient and safe operations. Adequate personnel training and licensing also instill confidence between states, leading to international standards for recognition and acceptance of personnel qualifications and licences and greater trust in aviation on the part of the traveller.

To day's air-craft operations are so diverse and complex that protection must be provided against the possibility of total system breakdown due to human error or failure of one system component. The human beings are not only the vital link in the chain of air-craft operations but also the most flexible and variable. Proper training in necessary so as to minimize human error and provide able, skilful, proficient and competent personnel.

The ICAO training manuals and Annex I describe the various skills necessary to build proficiency at various jobs, thereby contributing to occupational competency. The

8. ICAO DOC. E/P1/5000, (August 1988).

medical standards of the Annex provide for early warning for possible incapacitating medical conditions and contribute to the general health of flight crew and traffic controllers through periodic examination.

The Human factors programme addresses known human capabilities and limitations, providing states with basic information on their vital subject as well as with the material necessary to design proper training programmes ICAO's objective is to improve safety in navigation by making states more aware of human factors in civil aviation operations.

The recently amended⁹ Annex is applicable to all applicants for and on renewal, to all holders of the licences and ratings specified herein. However, there are licences no longer provided for in the rights edition of Annex I (the senior commercial pilot licence, the flight radio operator licence, the controlled VFR rating and the flight instructor rating for glides and free balloons. These were issued before 16 November 1989. But issuing state may maintain their validity until November 1994 and such licences and ratings shall be recognized by other states.

9. The present eighth edition (July 1988 and applicable from November, 1989) of Annex I contains standards and recommended practices adopted by ICAO the minimum standards for personnel licency. It incorporate all Amendments.

International Standards and Recommended Practices are established for licencing the following personnel.¹⁰

I. Flight Crew

- a) private pilot - aeroplane.
- b) commercial pilot - aeroplane.
- c) airline transport pilot -aeroplane.
- d) private pilot - helicopter.
- e) airline transport pilot - helicopter.
- f) glider pilot.
- g) free balloon pilot.
- h) flight navigator.

II. Other Personnel

- a) aircraft maintenance (technical/engineer mechanic) Type II.
- b) aircraft maintenance (Technical/engineer mechanic) Type I.
- c) air traffic controller.
- d) flight operation officer.
- e) aeronautical station operator.

It is one of the main tasks in ICAO to foster the resolution of differences in licensing requirement and to make sure that the international licencing standards are kept in line with current practices and probable future developments. This is even more crucial as the flight crew

10. ICAO DOC. E/P1/5000, (August 1988).

will be exposed to ever increasing traffic density and congestion of the air-space, highly complicated terminal area patterns and more and more sophisticated equipment demanding foster return times.

Annex 2: Rules of the Air

Air travel must be safe and efficient: this requires, among other things, a set of internationally agreed rules of the air. In October 1945, the rules of the air and Air Traffic Controls (RAC) Division at its first session made recommendations for standards, practices and procedures for the rules of the air, these were reviewed by the then Air Navigation Committee and approved by the council on 25 February 1946. They were published as "Recommendations for standards, practices and procedures - Rules of the Air"¹¹

On 27 November 1951 the council adopted a complete new text of the Annex, which no longer contained Recommended practices. The standards of the Amended Annex 2 (Amendment) became effective on 1 April 1952 and applicable from 1st September 1952.

The rules developed by ICAO which consist of general rules, visual flight rules, and instrument flight rules

11. ICAO DOC. 2010, (February 1946).

contained in Annex 2 - apply without exception over the high seas and over national territories to the extent that they do not conflict with the rules of the state being overflown. The pilot-in-command of aircraft is responsible to compliance with the rules of the air.

An aircraft must be flown in accordance with the general rules, i.e., either the Visual Flight Rules (VFR) or the Instrument Flight Rules (IFR). Flight in accordance with VFR is permitted if a flight crew is able to remain clear of clouds by a distance of at least 1500 m. horizontally and at least 300 m (1000 ft.) vertically and to maintain a forward visibility of at least 8 km. For flights in some position of the airspace and at low altitudes, and for helicopters, the requirements are less stringent: An aircraft cannot be flown under VFR at night above 6100 m. (20000 ft.) except by special permission. Ballons are classified as aircraft, but unmanned free ballons can be flown only under specified conditions detailed in the Annex.¹²

Most airlines fly under IFR at all times. Depending upon the type of airspace, these aircraft are provided with air traffic control service, airtraffic advisory service or flight information service regardless of weather condition.

12. ICAO DOC. E/P1/8000, (February 1991).

To fly under IFR an aircraft must be equipped with suitable instruments and navigation equipment appropriate to the route to be flown.

A flight plan must be filed with air traffic service units for all flights that will cross international borders and for most other flights that are engaged in commercial operations. The flight plan provides information on the aircraft identity and equipment, the time and date of departure, the route and altitude to be flown, the destination and estimated time of arrival, and the alternate airport to be used should landing at designation be impossible.

All these rules, when complied with by all concerned, help for safe and efficient flights.

Annex 3: Meteorological Service for International Air Navigation

Standards and Recommended Practices relating to meteorology were first adopted by the council on 16 April 1948, pursuant to the provision of Article 37 of the Chicago Convention 1944, and designated as Annex 3 to the Convention with the title 'Standards and Recommended Practices - Meteorological codes'. These standard and recommended practices were based on recommendations of the special

session of the meteorology division held in September 1947.¹³

The objective of meteorological service for international air navigation shall be to contribute towards the safety regularity and efficiency of international air navigation. This objective shall be achieved by supplying operators, flight crew members, air traffic service units, search and rescue services units airport management and others concerned with the conduct or development of international air navigation with the meteorological information necessary for the performance of their respective functions.

At international aerodromes the weather information is normally supplied to aeronautical users by a meteorological office. Aerodrome reports and forecasts include surface wind, weather and clouds. Meteorological bulletin containing such reports and forecasts are normally filed for transmission to other aerodromes at prescribed times.

Landing forecasts are prepared to meet the requirement of local services of aircraft within about one hour's flying time, from the aerodrome. Take-off forecasts are normally

13. ICAO DOC. E/P1/5000, (July 1986).

supplied on request to operators and flight crew within three hours before the expected time of departure. Both types of forecasts contain expected conditions over the runway complex in regard to surface wind direction and speed, temperature and pressure and other elements as agreed locally.¹⁴

To provide aircraft in flight with information about significant changes in weather, meteorological watch offices are maintained. They provide warnings of hazardous weather conditions, including active, thunderstorm areas and tropical cyclones, severe line squalls, heavy hail streams, severe turbulence, maintain waves, sandstorms, duststorms and volcanic clouds. Meteorological offices also issue aerodrome warnings of weather that could adversely effect aircraft or facilities on the ground. For example warnings of expected snowstorms and warnings for wide shear in the climb-out and approach paths.

The special requirements of supersonic aircraft on the one hand, call for new types of meteorological knowledge and techniques. On the other hand, more and more smaller aircraft are coming into use in general aviation, their requirement for detailed weather information is excepted to

14. ICAO DOC. E/P1/8000, (February 1991).

call for increasing use of automated facilities to acquire, purpose and disseminate en-route and terminal airport weather data.

A new system called the ICAO world Area Forecast System (WAFS) is being implemented to assist states for providing standardized and high quantity route forecasts to international civil aviation. This system, implemented in 1984 to replace the existing regional system, uses modern computer and telecommunications technology to prepare and disseminate global forecasts.¹⁵

Annex 4: Aeronautical Charts

Standards and Recommended practices for Aeronautical charts were first adopted by the council on 16 April 1948, pursuant to the provision of Article 37 of the Chicago Convention 1944, and were designated an Annex 4 to the Convention. They became applicable on 1 March 1949.¹⁶

The world of aviation, while by its very nature knows no geographical or political boundaries, requires maps, which are unlike those used in ground transportation. The safe and efficient flow of the air traffic is facilitated by

15. ICAO DOC. E/P1/8000, (February 1991).

16. ICAO DOC. E/P1/7000, (July 1985).

aeronautical charts drawn to accepted ICAO standards. The ICAO series of aeronautical charts consists of as many as 17 types, each intended to serve specified purposes.

There are three series of charts available for planning and visual navigation, each with a different scales. The ICAO small scale charts cover the largest area for a given amount of paper, they provide a general purpose chart series suitable for long-range flight planning. The ICAO 1:1000000 charts provide complete world coverage with uniform presentation of data at a constant scale and are used in the production of other charts. The ICAO 1:500000 series supplies more detail and provide a suitable medium for pilot and navigation training. This series is most suitable for use in low-speed, short or medium range aircraft operating at low and intermediate altitudes.

The area chart provides pilots with information to facilitate the transition from en-route phase to final approach phase, as well as from take off to en-route phase of flight. The instrument approach charts provide the pilot with a graphic presentation of instrument approach procedures and missed approach procedures to be followed should the crew be unable to carryout a landing. These charts contains a plan and profile view of the approach with full details of associated radio navigation aids and

necessary aerodrome and topographical information. When a visual type approach is flown, the pilot may refer to a visual approach chart which illustrates the basic aerodrome layout and surrounding features easily recognisable from the air. As well as providing orientation, these charts are designated to highlight potential dangers such as obstacles, high terrain and areas of hazardous airspace¹⁷.

The heights of obstacles around airports are of critical importance aircraft operations and these heights are given in detail in ICAO aerodrome obstacle charts. These charts are intended to assist aircraft operators making the complex take-off mass, distance and performance calculations required including those covering emergency situations such as engine failure during take-off. The detailed topographical information provided by some aerodrome obstacle charts includes coverage of areas as far as 45 km away from the aerodrome itself.

To ensure that aeronautical charts meet the technological and other requirements of modern aviation operations, ICAO is constantly monitoring improving and updating aeronautical charts specifications.

17. ICAO DOC. E/P1/8000, (February 1991).

Annex 5: Units of Measurement to be used in Air and Ground Operation

International standards and Recommended practices for Dimensional Units to be used in Air Ground Communications were first adopted by the council on 16 April 1948 pursuant to Article 37 of the Chicago Convention 1944 and were designated as Annex 5 of the Convention. They became effective on 15 September 1948 and became applicable on 1 January 1949.¹⁸

The international system of units developed and maintained by the General Conference of Weights & Measures (CGPM) shall be used as the standard system of units of measurement for all aspects of international civil aviation air and ground operations.

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Many attempts to improve the level of standardization were made in the following years and a number of amendments to Annex 5 were introduced. By 1961 the number of tables of units in the Annex had been reduced to two, which remained until amendment 13 was adopted in March 1979. Amendment 13 extended considerably the scope of ICAO's role in standardizing units of measurements to cover all aspects of air and ground operations and not just air ground

18. ICAO DOC. E/P1/6000, (July 1979).

communications. It also introduced the International System & Units, know as SI from the "System International & Unites, as the basic standardized system to be used in civil aviation."

An addition to the SI units the amendment recognised a number of non SI units which may be used permanently in conjunction with SI units in aviation. These include the litre, the degree celsius, the degree for measuring plane angle, etc.

Annex 6: Operation of Aircraft¹⁹

In 1948 the council first adopted standards and Recommended practices for the operation of aircraft engaged in international commercial air transport. They were based on recommendations of states attending the first session of operations Division meeting held in 1946, and are the basis for part of the Annex 6.

The purpose of Annex 6 is to contribute to the safety, of international air navigation by providing criteria for safe operating practices, and to contribute to the efficiency and regulation of international air navigation by

19. Annex 6 i.e. operation of aircraft is divided into III parts. Part I: International Commercial Air Transport Aeroplanes, Part II: International General Aviation-Aeroplanes, Part III: Internatinal Operations-Helicopters.

encouraging ICAO's contracting states to facilitate the passage over their territories of commercial aircraft belonging to other countries that operate in conformation with these criteria.

ICAO standards do not preclude the development of national standards which may be more stringent than those contained in the Annex. In all phases of aircraft operations, minimum standards are the most acceptable compromise as they make commercial general aviation viable without prejudicing safety. The standards accepted by all contracting states over such areas as aircraft operations, performance, communications and navigation equipment, maintenance, flight documents, responsibilities of flight personnel and its securities of aircraft.²⁰

The advent of the turbine engine and associated high performance aircraft designs necessitated a new approach to civil aircraft operation. Aircraft performance criteria, flight instruments navigation equipment and many other operational aspects required new techniques and definitions and they in turn created the need for international regulations to provide for safety and efficiency. The introduction of high speed, long and short range aircraft,

20. ICAO DOC. E/P1/8000, (February 1991).

for example created problems associated with endurance at relatively low attitudes where fuel consumption becomes a major factor.

The human factor is an essential component in the safe and efficient conduct of aircraft operations. Annex 6 spells out the responsibilities of states in supervising their operators, particularly in respect of flight crew. Another important aspect covered in Annex 6 is the requirement for operators to establish rules limiting the flight time and flight duty periods for flight crew members.

ICAO is actively engaged in efforts to foresee the requirements of future operations. This is illustrated by the recent acceptance of a new set of procedures which revise the obstacle clearance requirements and instrument approach procedures for all categories of international civil commercial aviation, including supersonic aircraft.

Part II of Annex 6 deals with aeroplanes in general aviation. This became effective on 2 April 1969 and applicable on 18 September 1969. The provisions in Annex 6 part III cover the operation of all helicopters in international air navigation, where it is necessary to distinguish between general aviation and commercial air transport helicopter operations, they are done in relation to the specific provisions involved. This part of Annex 6

becomes effective on 27 July 1986 and applicable on 20 November 1986.²¹

Annex 7: Aircraft Nationality and Registration Marks

This Annex is based on Articles 17 to 20 of the Chicago Convention. The ICAO council adopted the first standards concerning their issue in February 1949, based on recommendations from the first second session of the Airworthiness Division, held in 1946 and 1947 respectively. Since then only four Amendments have been made to this Annex.²²

The first amendment introduced the definition of a 'rotocraft' and modified requirements related to the location of nationality and registration marks on wings. The second amendment redefined the word 'aircraft' the use of which became effective in 1968, it also implemented a decision that all air cushion type vehicles, such as hovercraft and other ground effect machines, should not be classified as aircraft.

Amendment 3 was introduced to define "Common Mark"
"Common Mark Registering Authority" and 'International

21. ICAO DOC. E/P1/7000, (October 1983).

22. ICAO DOC. E/P1/6000, (July 1981).

Operating Agency' to enable aircraft of international operating agencies to be registered on other than a national basis. The fourth Amendment, adopted in 1981, introduces provisions relating to registration and nationality marks for unmanned free balloons.²³

The Annex sets out procedures for selection by ICAO contracting states of nationality marks from the nationality symbols included in the radio calls signs allocated to the states of Registry by the International Telecommunications Union (ITU). It sets standards for the use of letters number and other graphic symbols to be used in the nationality and registration marks, and spells out where these characters will be located on different types of airborne vehicles, such as lighter-than-air aircraft and heavier-than-air aircraft.

This Annex also calls for the registration of aircraft and provides a sample of this certificate for use by ICAO contracting states. This, certificate must be carried in the aircraft at all times, and an identification plate, bearing at least the aircraft nationality or common mark and registration mark, must be affixed in a prominent position to the main entrance.

23. ICAO DOC. E/P1/8000, (February 1991).

Annex 8: Airworthiness of Aircraft

Standards and Recommended practices for the Airworthiness of Aircraft were first adopted by the the council on 1 March, 1949 pursuant to the provisions of Article 37 of the Chicago Convention 1944 and designated as Annex 8 to the Convention.²⁴

Annex 8 is divided into four parts. Part I includes definitions; Part II deals with administrative procedures for the issuing of a certificate of airworthiness and determination of continuing airworthiness of aircraft; Part III includes technical requirements for the certification of new aeroplane designs; Part IV deals with helicopters.

One of the supporting clauses in the definitions used in the Annex defines the environment in which an aircraft is to perform in "anticipated operating condition." These are conditions which are known from experience or which can be reasonably envisaged to occur during the operational life of the aircraft, taking into account the operations for which the aircraft is made eligible. They also include conditions relating to the weather, terrain surrounding the aerodromes from which aircraft is expected to operate, functioning of the aircraft, efficiency of personnel and other factors affecting safety in flight.²⁵

24. ICAO DOC. E/P1/4100, (July 1988).

25. ICAO DOC. E/P1/8000 (February 1991).

Under the provisions related to continuing airworthiness of aircraft, the state of Registry must inform the state of manufacture when it first enters in its register an aircraft of the type certified by the latter. This is to enable the state of manufacture to transmit to the state of Registry any generally applicable information it has found necessary for the continuing airworthiness and for the safe operation of the aircraft.

The technical standards dealing with certification of aeroplanes are limited at present to multi-engined aeroplanes of over 5700 kg maximum certificated take off mass. These standards include requirements related to performance, flying qualities, structural designs and construction engine and proper design and installation, instrument and equipment design and installation, instrument and equipment design and installation, and operating limitations including procedures and general information to be provided in the aeroplane flight manual.

Requirements for detailed design and construction provide for a reasonable assurance that all aeroplane parts will function reliably and effectively. Functioning of all moving parts essential to safe operation must be demonstrated by suitable tests, all materials used must conform to approved specifications. Methods of fabrication

and assembly must produce a consistently sound structure which must be protected against deterioration or loss of strengths due to weathering, corrosion, abrasion or other causes, which could pass unnoticed. Special consideration is given to requirements dealing with design feature which effect the ability of the flight crew to maintain controlled flight.²⁶

Requirements for the certification and engines and accessories are designed to ensure that they function reliably under the anticipated standards of operating conditions. An engine of the type must be tested to establish its power or thrust characteristics, to ensure that operating parameters are satisfactory and to demonstrate adequate margins of freedom from detonation, surge or other conditions. Tests must be of sufficient duration and must be conducted at such power and other operating conditions as are necessary to demonstrate the reliability and durability of the engine.

The airworthiness requirements are cardinal to airline operations. Compliance with them is critical for the currency of aircraft assurance and also for questions of manufacturer's and efficiency inabilities.

26. ICAO DOC. E/P1/8000 (February 1991).

Annex 9: Facilitation

Standards and Recommended practices on facilitation were first adopted by the council on 25 March, 1949, pursuant to the provisions of Article 37 of the Chicago Convention 1944 and designated as Annex 9 to the Convention. They became effective on 1 September, 1949. The SRPSS were based on the recommendations of the first and second sessions of the Facilitation Division, held at Montreal in February 1946 and at Geneva in June 1948.²⁷

Annex 9 was designed from the very start to facilitate things at both ends of a flight and is thus called 'Facilitation'. Addressing itself to the expeditious entry and departure of aircraft, people, cargo and other Articles at international airports, Annex 9 also contains provisions pertaining to designation of aircraft, errors in documentation, facilitation of search and rescue, accident investigation and salvage, natural disaster relief flight and implementation of international health regulations.

Annex 9 is dedicated to serve the principles of efficiency, one of the building blocks which led to the Chicago Convention. This is the reason for the annotated

27. ICAO DOC. E/P1/9500 (July 1980).

standard in chapter 3. Entry and Departure of persons and their Baggage, which states that "contracting states shall not require from visitors travelling by air any other document of identification than a valid passport". At ICAO's instigation a machine readable passport has been designed and is now in use in several states. More than 25 million such passports have so far been issued according to ICAO specifications and their use is spreading rapidly.²⁸

The need to expedite cargo movements is recognised in chapter 4 of the Annex, which details 62 separate standards, Recommended practices and clarifying notes. Chapter 5 requires each state to provide for direct transit areas at airports so that aircraft, passengers, cargo, stores and mail need not undergo any examination, except in special circumstances.

Annex 9 was reviewed in September 1988 by the Tenth Session of the ICAO Facilitation Division. Among the chief recommendations of the Division were amendments designed to harmonize the requirements of facilitation with those of security and narcotics control, provisions to facilitate the access to airports by elderly and disabled persons, new procedures for handling of inadequately documented

28. ICAO DOC. E/P1/8000 (February 1991).

passengers and special facilities for courier and express shipments.

Annex 10: Aeronautical Telecommunications

Three of the most complex and essential elements of international civil aviation are aeronautical communications, navigation and surveillance. These three elements are, covered by Annex 10 of the Chicago Convention 1944.

Standards and Recommended practices for Aeronautical Telecommunications were first adopted by the Council on 30 May, 1949, pursuant to the provisions of Article 37 of the Chicago Convention. They became effective on 1 March, 1950. The SRPSs were based on recommendation of the Communications Division at its third session in January 1943.²⁹

Annex 10 is divided into two volumes. Volume I specifying equipment systems and radio frequencies and Volume II setting out the communications procedures to be used in international civil aviation operations.

Two general categories of communications exist to serve international civil aviation. They are Aeronautical Fixed Service (AFS) between points on the ground, and the

29. ICAO DOC. E/P1/10000, (April, 1985).

Aeronautical Mobile Service (AMS) between aircraft in flight and points on the ground. The AMS provides aircraft in flight with all necessary information to conduct flight in safety, using both voice and digital data. An important element of the AFS is the Aeronautical Fixed Telecommunications Network (AFRN), a world-wide network organised to meet the specific requirements of international civil aviation with the AFTN category, all significant ground points, which include airports, air traffic control centres meteorological offices and the like, are joined by appropriate links designated to serve aircraft throughout all phases of flight. Messages originated at any points required for the safe conduct of the flight.³⁰

The material in Annex 10 is under constant review by world-wide meetings of panels of experts and states to ensure that new systems and technology are introduced as necessary to improve the safety, regularity and efficiency of international air navigation.

Annex 11: Air Traffic Services

An October 1945, the Rules of the Air and Air Traffic Control (RAC) Division at its first session made recommendations for standards, practices and procedures for

30. ICAO DOC. E/P1/8000 (February 1991).

Air traffic control. These were reviewed by the then Air Navigation committee and approved by the council on 25 February 1946. They were published as 'Recommendations for standards practices and procedures - Air Traffic Control'.³¹

The SRPSs in this Annex together with the standards in Annex 2, govern the application of the procedure for Air Navigation Rules - Rules of the Air and Air Traffic Services. Annex 4 pertains to the establishment of airspace, unity and services necessary to promote a safe, orderly and expeditious flow of air traffic. A clear distinction is made between air traffic control service, flight information service and alerting service. Its purpose, together with Annex 2, is to ensure that flying on international air routes is carried out under uniform conditions designed to improve the safety and efficiency of air operations.³²

The prime objective of air traffic services, as defined in the Annex, is to prevent collisions between aircraft weather taxing on the maneuvering area, taking off, landing enroute or in the holding pattern at the destination aerodrome.

31. ICAO DOC. E/P1/2010 (February 1946).

32. ICAO DOC. E/P1/10000, (July, 1987).

To meet these objectives, ICAO provision calls for the establishment of flight information centres and air traffic control units.

As noted already, all aircraft fly in accordance with either instrument flight rules (IFR) or visual flight rules (VFR). Air traffic control service consists of clearances and information issued by air traffic control units to achieve longitudinal, vertical or lateral separation between aircraft.

Flight information service is provided to aircraft operating in controlled airspace and to others known to the air traffic services units. The information includes significant meteorological (SIGMET) information changes in the service ability of navigation aids and in the condition of aerodromes and associated facilities and any other information likely to affect safety. Annex 2 also contain specifications for operational flight information service (OFIS) broadcasts including automated terminal information service (ATIS) broadcasts.³³

The sky may be limitless but not for air traffic. As more aircraft fill the crowded air routes, air traffic control concepts, procedures, equipments and rules will continue to evolve as will the provisions of this Annex.

33. ICAO DOC. E/P1/8000 (February 1991).

Annex 12: Search and Rescue

In December 1946, the Search and Rescue Division at its second session, made recommendations for standards and Recommended practices for search and Rescue. These proposals were adopted by the council on 25 May , 1950 and designated as Annex 12 to the Convention. The Annex became effective on 1 December, 1950 and came into force on 1 March, 1951.³⁴

Annex 12 is applicable to the establishment, maintenance and operation of search and Rescue services in the territories of contracting states and over the high seas and to the coordination of such services between states.

Co-operation between search and Rescue (SAR) services of neighbouring states is essential to the efficient conduct of operations. ICAO contracting states to publish and disseminate all information needed for the entry into their territory of rescue units of other states. This Annex also recommended that persons qualified in the conduct of aircraft accident investigation accompany rescue units in order to facilitate accident investigation. Preparatory measures which must be undertaken by rescue units, training requirements and removal of wreckage.³⁵

34. ICAO DOC. E/P3/3000, (June/83), E/P4/1500 (July 1988).

35. ICAO DOC. E/P1/8000 (February 1991).

Three distinct phases exist in an emergency situation. The first is the uncertainty phase which occurs when radio contact has been lost with the aircraft and cannot be re-established or when the aircraft fails to arrive at its destination. Second 'Alert phase' in which the Rescue coordination centre (RCC) immediately alerts the appropriate SAR service units and initiates the necessary action. Third, 'Distress phase', is declared when an aircraft is believed to be on distress, or when a distress situation is known to exist. In this phase, the RCC is responsible for taking the action necessary to assist the aircraft and to determine its location as rapidly as possible.

Annex 13: Aircraft Accident Investigation

All causes which lead to an aircraft accident must be rapidly identified with a view to preventing another such accident. Identification of causal factors is accomplished through a properly conducted accident investigation.

While the Annex has been adopted pursuant to the provisions of Article 37 of the Chicago Convention, Aircraft Accident inquiry is itself the subject of Article 26 of the Convention. This Article imposes an obligation on the state in which the aircraft accident occurs to institute an inquiry in certain circumstances and as far as its Laws

permit to conduct inquiry in accordance with the ICAO procedures.³⁶

It may be noted that all states must invariably provide for accident investigation under the Civil Aviation Authority. In India this is a statutory requirement.

The implications involved in the determination of which states may participate in an investigation, such as the states of occurrence, Registry, operator and manufacture - and the apportionment of respective rights and responsibilities are considerable. These implications are compounded when they have to be considered with respect to the establishment of authority in the investigation of an aircraft accident.,

If the accident occurs outside the territory of any state, the state of Registry is bound to conduct the investigation.³⁷

"The investigation shall include the gathering, recording and analysis of all available relevant information, if possible the determination of the causes of an accident and the completion of the Final Report,

36. ICAO DOC. E/P1/6000, (May 1988).

37. ICAO DOC. E/P1/8000 (February 1991).

followed, if appropriate, by safety recommendations. When possible the scene of the accident shall be visited, the wreckage examined and statements taken from witnesses."

This general statement of the responsibilities of the state conducting the investigation is followed by a set of 14 standards and Recommendations covering the investigator incharge, flight records, autopsy examinations, coordination with judicial authorities informing aviation security authorities, disclosure of records and re-opening of an investigation.

Computerisation greatly facilitates the task of storing and retrieving information on accidents and incidents. One of the salient features of ICAO is that this World body seeks to sharing of such information as being a vital function of accident prevention. To this end, ICAO has introuced a computer system, known as ADREP, which allows its contracting states to benefit from the exchange of accident information. It may be noted that some aircraft manufacturing companies like the Boeing, maintain uptodate accident simulators to enable their customers to deal with accident conditions.

Annex 14: Aerodromes

Standards and Recommended practices for Aerodromes were first adopted by the council on 29 May 1951, pursuant to the provisions of Article 37 of the Chicago Convention and designated as Annex 14 to the Convention. The SRPs were based on the recommendations of the Aerodromes, Air routes and Ground Aids Division at its third session in September 1947 and at its fourth session in November 1949.³⁸

Annex 14 is divided into two volumes. Volume I covers four different aspects of air ports: planning, design, operation and air port equipment. Provisions for heliports have recently been introduced in a new Volume II of the Annex 14.

Volume I is applicable to all airports open to public use in accordance with the requirements of Article 15 of the Convention. This also includes specifications for water aerodromes and aerodromes without runways. Today over 100 pages of specifications and additional pages of guidance material set forth the requirements for international airports around the world.

38. ICAO DOC. E/P1/10000 (June 1983), E/P2/5000, (July 1987).

The objective of most specifications is to improve the safety of aviation. Volume I is devoted to improving the safety of equipment installed airports. Particularly noteworthy are specifications concerning the construction and setting up of equipment near runways. In recent years more attention has been given to the operation of airports. Particular emphasis is given to pavement areas and visual aids. Attention is also given to eliminating features of airports which may be attractive to birds that endanger aircraft operation.

Striking features of airports at night are the hundreds, sometimes thousands of lights used to guide and control aircraft movements. In contrast to flight, where guidance and control are exercised through radio aids, moments on the ground are primarily guided and controlled through visual aids.

As the technology and the types of aircraft change so will the airports. New large aircraft with short runway requirements may some day become a reality, requiring different movement area characteristics. Much interest is currently being shown in facilities for taxing and parking aircraft on aprons in contrast to earlier years when attention was focussed on the requirements for runways.

Annex 15: Aeronautical Information Services

One of the least known and most vital role in support of international civil aviation is filled by the aeronautical information Service (AIS).

Standards and Recommended practices for aeronautical information services were first adopted by the Council on 15 May, 1953, pursuant to the provisions of Article 37 of the Chicago Convention and were designated at Annex 15 to the Convention. This Annex became applicable on 1 April, 1954.³⁹

There are two fundamental requirements in providing aeronautical information services as defined in Annex 15. The first is that the person or agency issuing the information possess a thorough understanding of exactly what the user needs to know. The second is that the user of this information be assured of receiving all the available and relevant information when it is needed.

An obvious user of such information would be the pilot about to undertake a flight, or anyone else connected with aircraft operations. Distribution of this information stems from each, ICAO contracting states Aeronautical Information publication division, its own International notices to airmen and aeronautical information circulars.

39. ICAO DOC. E/P1/8000, (July 1987).

Of all activities in international civil aviation, the provisions and sustaining aeronautical information services may not rank among the most glamorous, but without their service a pilot will be flying into the unknown.

Annex 16: Environmental Protection

Standards and Recommended practices for Aircraft Noise were first adopted by the council on 2 April, 1971 pursuant to the provisions of Article 37 of the Chicago Convention and designated as Annex 16 of the Convention.⁴⁰

Aircraft noise was of concern even during the formative years of ICAO, but it was then limited to the noise caused by propellers whose tips rotated at speeds approaching that of sound. The real problem however, began with the introduction of the first generation jet aeroplanes and accelerated with the increase in the number of jet aircraft in international operations.

Annex 16 dealing with various aspects of aircraft noise problems was adopted in 1971 on the basis of recommendations of the 1969 special meeting on Aircraft Noise in the vicinity of Aerodromes. These aspects included considerations of six categories, procedures for describing

40. ICAO DOC. E/P1/4500, (August 1988).

and measuring aircraft noise, human tolerance to aircraft noise, aircraft noise certification, criteria for establishment of aircraft noise abatement procedures, land use control and ground run-up noise abatement procedures.⁴¹

One of the recommendations of this meeting resulted in the establishment of the committee on Aircraft Noise to assist ICAO in the development of noise certification requirements for different classes of aircraft. The first meeting of this committee developed the first amendment to Annex 16, which became applicable in 1973; noise certification of future production and derived versions of subsonic jet aeroplanes.

During subsequent meetings, the committee on Aircraft Noise developed noise certification standards for future subsonic jet aeroplanes and propeller-driven aeroplanes other than STOL (Short Take-off and Landing) aeroplanes, and for future production of existing supersonic transport aeroplanes types and helicopters. It also developed guidelines for noise certification of future supersonic and propeller-driven STOL aeroplanes as well as installed APUs (Auxiliary Power Units) and associated aircraft systems when operating on the ground.⁴²

41. ICAO DOC. E/P1/8000 (February 1991).

42. ICAO DOC. E/P1/8000 (February 1991).

The scope of the existing Annex 16 was widened to include engine emission provisions and the Annex was retitled Environmental protection. Volume I of the reorganised Annex 16 contains provisions related to aircraft noise while Volume II contains provisions related to aircraft engine emissions. Evidently this organisation leaves further scope for the Annex to respond to newer aviation-related environmental problems.

Annex 17: Security - Safeguarding International Civil Aviation against Acts of Unlawful Interference

Following the work of the Air Navigation commission, the Air transport committee and the committee on unlawful interference and as the result of the comments received from contracting states and interested international organisations, to whom draft material had been circulated, standards and recommended practices on security were adopted by the council on 22 March, 1974 pursuant to the provisions of Article 37 of the Chicago Convention and designated as Annex 17.⁴³

Annex 17 is primarily concerned with administrative and coordination aspects, as well as with technical measures for the protection of the security of international air

43. ICAO DOC. E/P1/5400, (October 1989).

transport, requiring each contracting state to establish its own civil aviation security programme with such additional security measures as may be proposed by the other appropriate bodies.

The single most important security procedure mandated by this Annex is what is referred to as the inspection/screening of persons and baggage at international airports. The ICAO Assembly and council have formally recognised the unique importance of this procedure in separate resolutions.

Recent years have seen an increase in acts of sabotage, particularly attempts at totally destroying civil aircraft in flight. Most of the recent cases of loss of life stem from acts of sabotage as opposed to unlawful seizure of aircraft. There have been significant new specifications put in place to combat the problem, the most important of which calls for the removal from the aircraft baggage of passengers who fail to board.⁴⁴

Annex 17 also seeks to coordinate the activities of those involved in security programmes. It recognises that airline operators themselves have a primary responsibility to protect their passengers, baggages, assets and revenues

44. ICAO DOC. E/P1/8000 (February 1991).

and that therefore states must ensure that the carriers develop and implement effective complementary security programmes compatible with those of the airports out of which they operate.

Lawlessness can never be completely eliminated. However, the coordinated and cohesive action advocated by ICAO can ensure continuing improvements in the safety and security of international civil aviation.

Annex 18: The Safe Transport of Dangerous Goods by Air

The material in this Annex was developed by Air Navigation Commission in response to a need expressed by contracting states for an internationally agreed set of provisions governing the safe transport of dangerous goods by Air.⁴⁵

In order to assist in achieving capability with the regulations covering the transport of dangerous goods by the other modes of transport, the provisions of this annex are based on the recommendations of the United Nations Committee of Experts on the Transport of Dangerous Goods and the regulations for the safe transport of Radioactive Materials of the International Atomic Energy Agency.

45. The broad provisions of this annex are amplified by detailed specification of the Technical Instructions for the safe Transport of Dangerous Goods by Air, See ICAO DOC.9284.

Annex 18 and the Technical Instructions became effective on 1 January, 1983 and applicable on 1 January, 1984 when all of the contracting states of ICAO were expected to conform the ICAO requirements and give them legislative recognition.⁴⁶

More than half of the cargo carried by all modes of transport in the world is dangerous cargo - explosive, corrosive, flammable, toxic and even radioactive. These dangerous goods are essential for a wide variety of global industrial, commercial, medical and research requirements and processes. Because of the advantages of air transport, a great deal of this dangerous cargo is carried by aircraft.⁴⁷

Annex 18 makes binding upon contracting states the provisions of the Technical Instructions, which contain the detailed and numerous instructions necessary for the correct handling of dangerous cargo. This requires frequent updating as developments occur in the chemical manufacturing and packaging industries and a special procedure has been established by the council to allow the Technical Institution to be revised and reissued regularly to keep up new products and advances in technology.

46. ICAO DOC. E/P1/4600, (August 1989).

47. ICAO DOC. E/P1/8000 (February 1991).

Indeed, a legal analysis of these 18 annexes will not be complete unless they are correlated to national legislation and where appropriate to the jurisprudence of courts. However, there has been a very large measure of harmony between these annexes and the national laws of states. Any significant deviation by a state is not viewed kindly by most other states and would thus invite the sanction of non-recognition by the latter of the airworthiness and airline standards of the former. The implications of such non-recognitions may even include less of a right to fly to this non-recognising state.

Chapter V

CONCLUSION

The beginnings of international air law antedated any substantial international development of the art. Following the epic flight of the Wright Brothers in 1903, the rest of that decade was devoted to research and exploitation of the new art sufficient to demonstrate that it did possess promise of social, economic and military utility.

The early efforts towards international aeronautical legislation in the years prior to World War I were retarded by the conflict of two divergent schools of thought on the basic issue of aerial jurisdiction. Fauchille and other French jurists espoused the doctrine of Freedom of the Air. A British group supported the doctrine of national sovereignty in the superjacent air space. The institute of International law discussed several drafts of an International code of the air during its various sessions. At the same time several other international societies also deal with air law problems. The Paris Air Navigation Conference of 1910 discussed the issues relating to the freedom airspace.

The use of aviation in World War I focused world wide attention on its potentialities both for military and commercial uses. This was reflected in the Paris Convention

of 1919. The Paris Convention was a major step forward in the development of international air law. It enunciated the general principles of international air law, introduced an important measure of uniformity in technical standards and requirements. The convention has created the C.I.N.A., (Commission International de Navigation Aerienn), which among other important functions, has the power to amend by a majority vote the technical Annexes of the convention.

Coming to the field of private International Air Law, the Havana regime has failed to produce an international legislation comparable to that of Paris regime. In the Paris convention of 1925, a draft convention on the liability of carriers in international airtransport was approved. In this conference, a resolution was adopted for setting up a committee of aspects to be known as CITEJA to carryout the work of the conference. The Warsaw Convention of 1929, provides uniform rules for liability of international air-carriers with respect to persons, baggage and goods, including transportation by aircraft for hire as well as gratuitous carriage by an airtransportation enterprise. The Rome Conference of 1933, led to two other conventions. (1) International Convention for the Unification of Certain Rules relating to Damage Caused by Aircraft to Third Parties on the Surface and (2) Convention for the Unification of

Certain Rules relating to Precautionary Attachment of Aircraft. The Brussels Convention of 1938, although discussed the matters of insurance contract and aerial collisions, the outstanding accomplishment was the signing of a convention on the Assistance and Salvage of Aircraft at Sea.

None of these conventions made any provision for international regulation on the economic opposed to the technical field. As a result, the growth of air transport was in weighed more to political than to economic considerations and its development as an orderly system of world communications was impaired.

World War II compelled aviation to take the most radical step forward. It brought about tremendous progress in the technical standards of aircraft and navigational aids. Apart from that the conventions and agreements which were-then governing international civil aviation pointed out the the pressing need for uniformity to replace the confusion created by the existing legal rules for international civil aviation, which were regional, out of date or limited in scope. This need was the reason for the adoption and international civil aviation conference at Chicago in 1944.

The aim of the Chicago Convention, 1944, was to formulate certain agreed principles and arrangements to ensure safe and orderly development of international civil aviation on the basis of equality of opportunity and to ensure that the air transport services may operate soundly and economically. In fact, the Chicago Convention proved to be a viable constitution for post war global air world.

The Chicago Convention covered many aspects of international civil aviation. They include, Freedom and Sovereignty, scheduled and non-scheduled air services, cabotage, rules for flights, nationality and registration of aircraft; measures to facilities air navigation, documents to be carried on board the aircraft, aviation personnel, certification of air worthiness, rule regarding on articles carried in aircraft, financing of air navigation facilities, pooling agreements and airline co-operation etc.

The Chicago Convention was drafted with remarkable foresight. In circumstances vastly different from those prevailing at the time of its drafting, the convention continues to serve as a suitable general legal framework of international co-operation in the field of civil aviation. Yet the convention did not cover important problems which were not foreseen in 1944. For example, problems of aviation security, necessitating protection of civil aviation against

criminal acts, technical assistance, computer reservation system, environmental protection, satellite-based communication, navigation, surveillance systems etc. are not mentioned in the convention.

Article 44 states that the aims and objectives of the ICAO will be to develop principles and techniques of international air navigation and to foster the planning and development of international air transportation.

The Chicago Convention, the constitution of ICAO, provides for a supreme organ called the Assembly. The Assembly meets annually and it is open to attend by all 175 contracting states of ICAO. The convention also provides for a council composed of 33 contracting states elected by the Assembly, which normally meets triannually, the council has mandatory and discriminatory functions for the development of international air law. The Secretariat composed of Secretary General who is appointed by the councils, and other necessary staff. Pursuant to the Chicago Convention, most of ICAO's subsidiary organs are of limited membership and are appointed by, and responsible to the Council. These are the Air Navigation Commission, the Air Transport Committee, the Joint Support Committee, the Legal Committee and the Finance Committee.

The legislative functions of ICAO generally continued to technical problems of non-political character. The quasi-legislative functions of ICAO basically consist of technical regulations promulgated by the ICAO Council one of the most important legislative functions performed by ICAO consists in formulation of International Standards and Recommended Practices. 18 regulations have so far been issued under this process.

Pre-legislative functions are tasks performed with a view to effecting further legislation. Performing these functions the first session of the Assembly in 1947 established the Legal Committee. Although the Legal Committee was established by the Assembly, it is subject to a substantial measure of control by the Council. The duties and functions of committee are (a) to advise the council on matters relating to the interpretation and amendment of the convention, (b) to study and make recommendations on such other matter relating to public international air law referred to by the Council or Assembly, (c) Study problems relating to private air law convention and the submit reports and recommendations and (d) make recommendations on such other matters as will be conducive to the effective work of the organisation.

Since 1947 the Legal Committee has adopted many conventions on issues relating to public and private international air law.

The Chicago Convention also contains provisions for technical and financial assistance to be given to a member state for the installation and operation of airports and other air navigation facilities. At the first Assembly of ICAO in 1947, resolutions were passed to lay down the policies to be followed by the organisation in providing financial and technical assistance and establishing at the same time the Committee on Joint Support on Air Navigation Services. The responsibilities placed upon the ICAO in joint financing schemes are essentially administrative in character.

The Chicago Convention confers on the ICAO extensive judicial functions for the settlement of disputes between the contracting states. Under chapter XVIII (at 84-84) and the Chicago Convention, the Council is empowered to adjudicate any disagreement between two more contracting states relating to the interpretation or application and its annexes which cannot be settled by negotiations. The Council is vested with jurisdiction to decide such a dispute on application of any state concerned in its disagreement. Its decisions may be appealed either to the International Court

of Justice (ICJ) or an ad-hoc international tribunal whose judgement or award shall be final and binding. Cases between India and Pakistan in 1952 and 1971 are among the best illustrations after Council competence.

The ICAO standards and recommended practices in the form of Annexes are designed to establish uniform and adequate procedures and facilities, so that aircraft operations on international routes will be carried out in such a way as to ensure safe, regular and efficient air transportation on a world wide scale. The Annexes define aviation terms and explain and show diagrammatically aircraft construction as affecting status and load factors. The 18 technical Annexes covering the varied and important phases of air transport operations are a tribute to the sincerity, objectivity and farsightedness of the organization and of the technicians who drafted them. Indeed, no legal analysis of these 18 Annexes will be complete unless then are correlated to national legislations and whose appropriate to the jurisprudence and courts. Analysis of these annexes has been advisedly kept aside for future work.

The world and aviation is facing challenge today as never before in its history. Everywhere you see, you will notice steady, continuous growth in the volume of freight, in the number of passengers and in tonnes of freight. As the

air space remains the same and the number of flights and passengers are increasing, we have to optimize the utilisation of the air space. We need a greater realization that today national boundaries are absolute where air travel is concerned. If the nations and the peoples of the world are to reap the benefits of modern aviation, then we must recognise the fact that the time has gone when each nation could do whatever it wished without regard for what the others were doing. It is the time for us to adopt a global vision of what aviation can be and what we can do with it. With a global vision we can make aviation more efficient, increase its capacity, reduce costs and make flying even safer than it is now. But we must realise that they will require a strong international co-operation. The law-making capabilities of the ICAO undoubtedly provide vast opportunities for such co-operation.

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