



## GLOBAL GOVERNANCE OF AIR

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**ABSTRACT:** This article refers to some very important issues such as global governance of Air. Global governance is the area of interest and it is understandable. The analysis of international organizations generally evidences that international organizations are developing into more than mere forums for state interactions; rather, they are distinctly independent bodies with competence to regulate and change the behaviour of sovereign states. Given constitutional foundations of international organizations, their authorities and functions are capable of incremental growth, through interpretation of their constituent instruments, to sustain their usefulness and allow them to fulfill the purposes and objectives envisioned by their creators, especially in light of drastic change in social conduct and technological advancement.

**RESUMEN:** Este artículo aborda un aspecto tan relevante como es el gobierno global del aire. La gobernanza global es el área de interés y es comprensible. El análisis de las organizaciones internacionales generalmente evidencia que éstas se están convirtiendo en algo más que meros foros para las interacciones de los estados; más bien, son organismos claramente independientes con competencia para regular y cambiar el comportamiento de los estados soberanos. Habida cuenta de los fundamentos constitucionales de las organizaciones internacionales, sus autoridades y funciones son capaces de crecer gradualmente, mediante la interpretación de sus instrumentos constitutivos, para mantener su utilidad y permitir que cumplan los propósitos y objetivos previstos por sus creadores, especialmente a la luz de los cambios drásticos en la conducta social y los avances tecnológicos.

**KEYWORDS:** Aircraft, Navigation, Governance, ICAO, Paris Convention, Chicago Convention.

**PALABRAS CLAVE:** Aeronáutica, Navegación, Gobernanza, OACI, Convenio de París, Convenio de Chicago.

### 1. *Introduction*

There is a big debate between many experts representing different universities, who did research on global peace and security in general as well as in more specified areas such as the environment, human rights or economy. An impressive number of different international global and regional organizations representing the idea of globalization may be observed. This number is still growing, mostly by global non governmental organizations or private actors. It's interesting that most of the research on global governance is still being undertaken by different scientists, so the outcome reflects many points of view, mostly international relations and politics. A lot of research and publications touch the UN system based on the 1945 UN Charter.

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There is not much in existing literature referring to the air issues in the context of global governance. This was the reason why the author of this article to concentrate on Air (which also belong to the UN family), defining the role of the global governance and examining its institutions, laws, management and policy. The three year experience of the Author from 2013 to 2016 serving in International Civil Aviation Organizations (ICAO) Council as the permanent Representative of Poland (first time in its history) guided her in writing this article.

The aim of this article is to consider if we can talk about global governance in Air ? What does this (global governance) definition mean and if it is necessary to use it today? The most important question is the following: Is there a need to create a new global organization in Air or do those, that already exist work properly? The audience of this article can be any reader. If you are interested in Aviation Management this article might be for you.

The author used a long list of international publications while preparing this article and made more than number footnotes from them. She decided to choose the most significant and updated ones. The same happened with the reports prepared by the universities or coming directly from the conferences, seminars or other working groups organized by different international entities. She also used articles from the specialized annals or journals, such as: "Annals of Air and Space", "Air and Space Law", "ICAO Journal", and many others. The long list of articles means that the texts are updated and refer to today's issues about global governance of Air.

A big improvement to the Aviation was made by the Institutes of Air Pace Law, such as the ones in Montreal or Leiden. A long list of authors used to write essays on this subject in annals or journals. The Chicago Convention, which was the basis document for the Aviation Law, was interpreted and commented on by many authors, i.e. by J. Cobb Cooper, M. Matte, I. Vlasić or M. Milde. The last commentary of the Convention comes from 2014 (R. I. Abeyratne). Most of the publications about Aviation I encountered were connected to safety and security, which are a priority for the International Civil Aviation Organization. Technical issues referring to aircrafts and aviation infrastructure, use of weapons against civil aircrafts, accidents or security measures, protection of safety information, conflict zones, protection of the environment or market access are examples of points of interests of aviation experts. Aviation is an international issue, which is why many issues refer to global aviation and regional aviation. Some authors refer only to the latter (R. van Damm, V. Correia ). In this article a long list of documents and reports have been used which are available at the ICAO web page. Certain reports were cited, some of them coming from the international aviation conferences and symposia organized mainly by ICAO. For this reason so much attention was given to the worldwide aviation organization ICAO. The great history of this important organization was made by D. Mackenzie and L. Weber (published in 2007). The Author also wished to emphasis the publication written by T. Buergenthal referring to the legislative procedures in the organization in 1969. The future of ICAO and Air law was addressed, in a very innovative article, made by P. S. Dempsey.

Global governance of air a lot was mentioned about the global regulations for international aviation. Thus several legal acts forming the international air navigation system, such as the Paris Convention of 1919 or the 1944 Chicago Convention on International Air Navigation and its following additions. In this aspect many issues referring to global governance in air were presented, such as the scope of the Chicago Convention, general principles and application of the Convention, rules

referring to aircraft and navigation conditions and many more (such as cabotage and aviation agreements, flights, air navigation safety, airports, nationality of civil aircraft, facilitation of air navigation, technical requirements for aircraft and conditions for admission to flight, personnel and financing of the organization). Some themes pertaining to the International air transport, ratification, amendment of the articles and the laws of the States Parties have been touched as well. The author emphasizes the crucial role, that global governance in Air, the International Civil Aviation Organizations is playing. A lot has been mentioned in this context about this organization.

## *2. The international air navigation system*

We will now address some of the most relevant issues of the International Air Navigation System.

### *2.1. The Paris Convention*

During the First World War, Europe and the United States of America experienced a rapid development of military air forces and an increase in the importance of the aviation industry. In March 1919, the Aeronautical Commission of the Paris Peace Conference, which had been set up a month earlier, officially started its work, and experts in the fields of aviation and aviation law were also included. The committee's task was to draw up an international convention on global air navigation.

The Aeronautical Commission, after heated discussions (mainly between the French delegations, which demanded restrictions on freedom of flight, and the UK, which advocated lifting all restrictions), adopted a number of principles at the request of the US delegation, which shaped its work: 1) the sovereignty of a State over its territory and territorial waters and the right of a State to exercise its airborne jurisdiction over that territory, 2) granting air navigation maximum freedoms, limited only by the safety of the State and not exceeding its domestic law, 3) the prohibition of discrimination against foreign aircraft, 4) limiting nationality of the vessel to only one country, 5) the obligation to hold a navigation certificate, a pilot license and other aircrew licenses, the use of signals and signs to avoid collisions, strict rules on takeoffs and landings, 6) special treatment of military and other ships serving the State, 7) the right of transit without landing (outside the territory of the State, between two other points) and assistance with forced landing, 8) Airport charges the same for all users (regardless of nationality), 9) Cooperation of states on compensation for damage caused by aircraft (people and property), 10) Creating a standing international committee on air navigation, 11) Establishing the principle, that the Convention may not concern the obligations and rights of States participating in the war against an Enemy or of neutral States.

The draft convention was presented on July 10, 1919 by the Aeronautical Commission to the Supreme Council of the Peace Conference. The Supreme Council recommended minor amendments and on October 13, 1919 submitted the Convention to the delegates of the individual states for signature. The Convention was signed by delegates from 32 countries (it was not signed, among others, by the US).

The Paris Convention established the first permanent international commission: Commission Internationale de la Navigation Aérienne (CINA). The task of the Commission was drawing up amendments to the detailed provisions of the Annexes to the Convention. It was rightly anticipated that, as aviation technology evolves,

there would be a need of updating the legislation. The Paris Convention has had a major impact on the development of domestic aviation law in many countries. It has become a model for many subsequent international agreements and conventions.

## 2.2. The 1944 Chicago Convention on International Air Navigation and its successive supplements

At the beginning of October 1944, the U.S. Department of State send an invitation to Chicago for the International Civil Aviation Conference to countries taking part in war with Germany and Japan, to neutral countries. The conference's program was to establish a worldwide network of air carriers, to divide the various air routes between the "relevant countries", to draw up and adopt a new aviation convention that would cover all the countries of the world and replace the Paris Convention of 1919, and to establish the organisation and competence of an international body to control air transport worldwide. The new Convention was intended to ensure that, without prejudice to the principle of national sovereignty over its airspace, civil aircraft belonging to any of the signatories of the Agreement would have the right to fly and land freely to refuel and in the event of an emergency. Other powers are left to the governments concerned to be determined through bilateral agreements.

Unexpectedly, however, even before the conference, there was a dispute between the USA and the UK over free competition in air traffic, which the latter was very concerned about. It emerged that the concerns of the UK were shared by other delegations, 52 of which came to Chicago. In order to reach a compromise, all the drafts tabled were rejected and it was decided to base the new conventions on the slightly modified terms of the Paris Convention of 1919. Established, at the request of the US delegation, by the Provisional Organization for International Civil Aviation (PICAO), later, since 1947. The International Civil Aviation Organisation (ICAO) was intended to have relatively minor prerogatives, but was associated with a universal world organization the United Nations (regulated by the Agreement, approved by the General Assembly of the United Nations on 14 December 1946).

The Chicago Conference is widely regarded as a successful wartime conference; primarily because it produced ICAO, a new international air convention, and other aviation agreements.

As a result of the United States-British conference held in Bermuda in February 1946, the development of civil aviation was not guaranteed by the Chicago Convention and the PICAO, but by bilateral agreements (concluded between states). The PICAO had no influence on them the organization was only left with the right of registration. As these agreements were dominated by issues of national interest, the large carriers reborn the IATA (International Air Transport Association), which existed in the 1930's. The PICAO operated until April 1947 and was transformed into ICAO 30 days after 26 countries ratified the Chicago Convention. Ratification of the Convention has been very reluctant. The most difficult situation was in Poland, where, on the basis of the agreement of the powers, the Provisional Government of National Unity was formed at the end of June 1945, and at the same time the Polish Government in London ceased to be recognized by the Allies on 5 July. The USSR signed the Chicago Convention only in 1970.

## 2.3. Scope of the Chicago Convention

The Chicago Convention is ICAO's fundamental as well as a multilateral air navigation treaty that regulates the relations of the Contracting States inter se. The preamble of the Convention clearly reflects the fact that the signatory States (ICAO

Member States) have agreed on principles and arrangements in support of the safe and orderly development of international civil aviation, which are complemented by the objective of ensuring the proper and economic functioning of international air transport services and their establishment on the basis of the principle of equal opportunities.

The Chicago Convention recognized the principle of national sovereignty over its airspace and of the freedom of private civil aircraft to fly over the territory of States Parties. The final document of the air conference (concluded on 7 December 1944) consisted of the following parts: 1/ Final Act 2/ Five annexes, namely I Interim Agreement on International Civil Aviation, II Convention on International Civil Aviation, III International Air Services Transit Agreement, IV International Air Transport Agreement Five Freedoms of the Air, V Drafts of Technical Annexes. Documents I, II and V were signed by all delegations, document IV by 17 delegations and Document III by almost all of the others. With the exception of Instrument II (Standing Convention), which was to be ratified, the other instruments were about to enter into force on the date of their acceptance by the Governments of the Member States, which had been notified to the Government of the United States. Moreover, there is nothing to prevent the signatories of the Convention from granting one another the “freedoms” provided for in documents III and IV.

The Convention gives the State certain rights, such as the possibility to introduce prohibited zones and temporary flight restrictions (Article 9) and to impose coercive measures on aircraft operating in violation of the rules (Article 3 bis). Each State is also entitled under the Convention to lay down rules on the movement of aircraft within its territory (Article 11), on air traffic (Article 12) and on arriving passengers and cargo (Article 13). The State designates airports and lays down the conditions for their use (Articles 10, 15 and 68) . The State is also entitled to inspect foreign aircrafts (Article 16). The Chicago Convention imposes a number of obligations on States Parties. These include, inter alia, compliance with the rules for registration of aircraft in one country with transferability (Article 18), ensuring that the aircraft registered therein bear the appropriate nationality and registration marks (Article 20), are properly equipped and have documentary evidence (Articles 29 to 36). In addition, each State exercises the control functions assigned to it over an aircraft. When an aircraft is registered in one State and the operator is established in another, both States are responsible in case of the unlawful use of aircraft (Article 3 bis). Other tasks of the Convention include facilitating and improving the navigation and handling of aircraft, crew, passengers and cargo (Article 22), issuing customs and immigration regulations in accordance with the rules of the Convention (Article 23), assisting aircraft in distress, investigating the circumstances of foreign aircraft accidents, allowing the State registered to send observers and subsequently sending reports and the results of investigations to that State (Article 26). The Convention considers important to cooperate in ensuring the uniformity of national legislation in accordance with ICAO standards and recommendations on the safety, regularity and efficiency of air navigation (Article 37).

The text of the Convention was divided into 4 parts: Part I Air Navigation, Part II International Civil Aviation Organisation, Part III International Air Transport, Part IV Final Provisions, with 22 chapters and 96 articles in all (the Paris Convention had only 43 articles). Each article of the Chicago Convention is preceded by an additional title. The official languages of the Chicago Convention were English, French and Spanish (the Paris Convention is drawn up in French, English and Italian). Subsequently, the text of the Convention was also drafted in the Russian, Arabic and

Chinese languages. Today ICAO uses 6 official languages (English, French, Spanish, Chinese, Arab and Russian).

#### 2.4. General principles and application of the Chicago Convention

Chapter I contains provisions on issues such as sovereignty, territory, aircraft and abuse of civil aviation. Article 1 of the Convention gives States complete and exclusive sovereignty over their airspace. Every State has the right to determine international traffic rights for commercial flights, including the granting or refusal of rights to operate scheduled services to foreign carriers.

Article 2 sets out a territorial limit (land areas and adjacent territorial waters), using the term sovereignty. The provision of Article 3 of the Chicago Convention concerns State and civil aircraft and clarifies in paragraph a) that the Convention applies only to civil aircraft. Point b) states that aircraft used for military, customs and police purposes are a State aircraft, which flight does not fall under the scope of the Convention. Neither the Paris nor the Chicago Convention define the concept of aircraft, but only which types of aircraft they consider to be State aircraft. Both Conventions provide a functional definition of State aircraft without previous ownership. The Chicago Convention itself provides a general definition of State aircraft (but does not exclude aircraft used to provide other State services). Where it is used e.g. for business (commercial) purposes, it ceases to be a State-owned ship, and therefore falls under the provisions of the Convention, and the exemption in paragraph 4 does not apply.

States that are Parties to the Chicago Convention are required to regulate the operation of State aircraft in order to ensure the safety of civil aviation. The Chicago Convention made it clear that a military aircraft is a State aircraft. In addition, ICAO has published the "Manual concerning safety measures relating to military activities potentially hazardous to civil aircraft operations" which describes the procedures governing the interception of aircraft.

The Chicago Convention was created during World War II and the division into civil and military aircrafts, corresponding to the legal situation at the time, seems to be anachronistic today.

If a state-owned aircraft operates as a civil aircraft, it must comply with all the procedures provided for by the Chicago Convention (including registration as a civil aircraft). This issue was deliberated at the 36th ICAO Legal Committee, after presenting one of the working papers prepared by Poland and few more states. One of the reasons of Poland's interest to present this issue to the Council was the crash of Presidential plane in 2010. Some other examples of the similar accidents have happened before in a different part of the globe. The Author of this article was the initiator and author of this document. The main idea was to ask ICAO for the benefit of the Organization and other states, which presented its support the definition and updated interpretation of the "state aircraft". One of the outcomes of the Legal Committee was to ask states in the form of surveys about regulating this issue in their national legislations and eventually create the ICAO working group to continue working on these still important issues.

Article 4 deals with the abuse of civil aviation. No specific sanction is provided other than in the Convention for States that have committed an offence (reciprocal obligation to carry out international inspections of air services).

The shooting down of a Korean passenger aircraft by a Soviet military plane, which was mistakenly located above the airspace of the USSR, caused great indignation among the world. In May 1984 in Montreal, at an extraordinary ICAO

session attended by 400 representatives, it was decided, *inter alia*, to examine the causes of the accident involving a Korean aircraft and to amend Article 3bis of the Chicago Convention. Considered that the provision on the use of force was prohibited by customary law and was not need to be included in the Convention (the process of amending the Convention required quite a length of time and the consent of 2/3 of the States Parties). On 10 March 1986, the ICAO Council adopted Amendment 27 to the Rules of the Air (Annex 2 to the Chicago Convention) concerning the identification and shooting down of civil aircrafts. It is an exception to the creation of international law that the executive body of an international organization may be a legislator for all states members, among others, in the matter of the rules of air navigation over the high seas, which account for 70% of the area of land.

There were concerns that political issues related to this might exceed ICAO's constitutional mandate. In the end, however, no country opposed Amendment 27 to Annex 2 and the extended interpretation of Article 3bis was reflected in the criminal conventions against air terrorism, including the Tokyo Convention of 1963.

Article 6 of the Chicago Convention refers to the scheduled air services. The Convention grants the right to exercise that right over the territory of a Contracting State only by a special authorization or other authorization granted by that State. The state is equipped with the possibility to decide (by issuing a permit) who to allow to use its airspace. Article 6 of the Chicago Convention can be considered to as a foundation to the conclusion of bilateral agreements by States.

Cabotage has received special treatment through the Chicago Convention. The first element of Article 7 is the term "transport". The second element is paid transport to the place of destination. In practical terms, transport should cover two points within the same territory. The second part of Article 7 provides rules for the granting of cabotage rights; in practice, despite the requirement for equal treatment, such rights are mostly granted to national air carriers.

The tenth freedom is regional cabotage between countries in a certain area. Article 7 of the Convention further provides that each State should not conclude agreements granting such exclusive privileges to another State or to the carrier of another State, or to accept such exclusive privileges from another State. The term "Commonwealth cabotage" is also used in aviation law. Following the example of the Paris Convention (Articles 16-17), the Chicago Convention recognized that no country would have the right to take exclusive cabotage rights from another county.

The provision of Article 8 of the Chicago Convention refers to the safety of air navigation and addresses issues related to the prohibition of unmanned aircrafts (reconnaissance, airships, and balloons) from flying over a State's territory. The exception to this prohibition is a special authorization issued by the country concerned. The Convention obliges each State to ensure that the flight of pilotless aircraft is controlled in areas open to civil aircraft in such a way as to avoid the risk of collision.

Article 9 of the Chicago Convention (prohibition of overflight in certain areas) should be read in conjunction with Article 5 (second paragraph). It somehow reproduces the provision of Article 3 of the 1919 Convention. The Paris Convention allowed any State (for military reasons or in the interests of State security) to prohibit foreign vessels from flying within certain (published) areas of its territory under the threat of criminal sanction. Both the Paris Convention in Article 4 and the Chicago Convention in Article 9(c) provide that any State may require that any aircraft flying into a prohibited area would land as soon as it has been determined for the according

airport. Article 10 of the Chicago Convention concerns the landing at a customs airport. This provision has been moved from Article 15 (second paragraph) of the Paris Convention and completed. Both provisions provide the obligation to land foreign aircraft at an airport designated by the State.

The State of registry shall extend its jurisdiction to wherever the aircraft is located, both internationally and nationally (Article 12). The jurisdiction of the State of registry, shall extend to aircrafts (which bear the nationality mark) operating in international airspace, as defined in Annex 2 to the Chicago Convention.

Article 12 of the Chicago Convention and Annex 2 (Air Traffic Regulations, which may be recognized as customary international law) provide that the same rules shall apply to the high seas as to airspace. In practice, states that are not parties to the Chicago Convention also comply with these rules, which apply not only to civil aircraft but also to state aircraft. The 1977 ICAO Resolution provided that air traffic control interference with the sea should be limited to technical and operational functions only. It was also added to the resolution that the Council's compliance to regional navigation agreements relating to a State's competence over the high seas does not provide for recognition of its sovereignty over this airspace. Article 12 of the Chicago Convention, which deals with air navigation rules, can be considered to apply also to archipelagic States and archipelagic waters. Archipelagic waters and the adjacent territorial seas can be considered as 'high seas' in the meaning of Article 2 of the Chicago Convention. Nevertheless, the relationship between the 1982 Convention on the Law of the Sea and the Chicago Convention is still unclear.

Chapter III of the Chicago Convention deals with the nationality of civil aircraft. Article 17 of the Chicago Convention provides that every aircraft shall be of the nationality of the State of its registration. The aircraft must also be of national origin. Article 18 also refers to the prohibition of multiple registrations and the obligation to notify ICAO of registrations (Article 21). The obligation to inform ICAO also applies to ownership. All this information may be shared by ICAO with other States.

Article 28 of the Chicago Convention concerns all air navigation facilities. Each State is obliged to operate airports, radio services, meteorological services and other air navigation facilities in accordance with the models and methods prescribed or established by the Convention. In addition, each State shall adopt and implement appropriate reference systems for communication methods, codes, markings, signals, lighting and other methods and rules of operation which may be prescribed or established from time to time by the Convention.

Articles 29-36 of the Chicago Convention deal with technical details, including: deck documents, radio equipment, certificates of airworthiness and personnel licenses. Article 37 requires States to harmonize their domestic law with international standards and recommended practices (SARP's). However, this obligation is reduced by the possibility for the State to adjust the deviations when the SARP is deemed unacceptable by the State (Article 38). In accordance with Article 37 (second sentence) of the Chicago Convention, the ICAO Council may adopt SARP's on matters relating to the safety, regularity and efficiency of air navigation.

To date, 19 annexes have been introduced: I –Personnel licensing, II –Rules of the Air, III – Meteorological Services, IV Aeronautical charts, V Units of Measurement, VI Operation of Aircraft, VII Aircraft Nationality and Registration Marks, VIII Airworthiness of Aircraft, IX Facilitation, X Aeronautical Telecommunications, XI Air Traffic Services, XII Search and Rescue, XIII – Aircraft Accident and Incident Investigation, XIV Aerodromes, XV Aeronautical Information



Services, XVI Environmental Protection, XVII Security, XVIII The Safe Transport of Dangerous Goods by Air and Annex XIX Safety management.

International models and ICAO recommended methods are a source of law, but are distinct from the Chicago Convention. Nevertheless, they play an important role in enhancing the safety and efficiency of international civil aviation. According to ICAO studies, on average only 25% of States Parties responded to the changes introduced by 19 Annexes; others remained silent. Hence the proposal to amend this article so that each country can be required to ensure that its own procedures are consistent in every respect with international standards. The status of ICAO standards, especially on these most important issues in aviation, i.e. safety, can only be called wishful thinking. Technical standards are “safe”, technical and not economic. They are in the interest of states (e.g. safety) and are written in a way to encourage acceptance by states. Although ICAO has not developed a mechanism for coercion, there are a number of other coercive measures (such as blacklists of states, carriers, reputational damage) resulting in the loss of the aviation market. ICAO has not developed a procedure for punishing them into complying with the SARP’s rules, the only role of jurisdiction of national courts, is mainly to deal with what is happening within national borders.

#### 2.5. Personnel and Financing of the Organization

Chapter XI of the Convention concerns the personnel employed at ICAO. According to Article 58 of the Convention the Council has been equipped with a right to establish the course of appointing and making redundant, training, remunerations, allowances and conditions of the Secretary General’s service and of other personnel at the organization. The Council may appoint or take advantage of member states citizens services (Article 58). It can be said that the ICAO personnel is of international character. Neither the President of the Council, the Secretary General nor the remaining personnel may ask for instructions or accept any instructions related to their work from any authority other than the organization. This rule is about neutralism and objectiveness in making decisions. Each state has to fully respect the international character of the personnel’s obligations and should refrain from attempts to influence any of its citizens in relation to his/her obligations at ICAO (Article 59).

Each state is obliged to grant immunity and privileges to the personnel, especially to the President of the Council and the Secretary General. Article 60 of the Convention anticipates a possibility to create a convention or another international agreement on immunities and privileges of international civil servants. If such an agreement is concluded, the immunities and privileges granted to the President of the Council, the Secretary General and other personnel of the organization, shall be identical with immunities and privileges granted according to the mentioned above general international treaty.

The Assembly suggested in 1947 to sign an agreement on privileges and immunities of the special agencies employees (on the basis of Article 47 of the Chicago Convention). A majority of the states initially did not accept this proposal, however, finally in 1955 the bureaus, offices and the personnel of ICAO (mostly from the member states) were granted immunities and tax relieves.

Articles 61-64 of the Convention relates to the organization’s finances. Every year the Council submits to the Assembly a budget, a profit and loss account and estimates of income and expenditures. The budget with all necessary amendments is then approved by the Assembly. The Assembly divides the ICAO expenditures between the Member States on conditions defined in separate regulations. According

to Chapter XV contributions, from states granting their consent (Article 61) constitute an exception here. If a state does not pay the contribution, the Assembly may suspend its membership rights (Article 62). These, however, are rare cases. Expenditures of delegations and other representatives are covered, according to Article 63 by the member state. According to Article 93 bis a state may still be an ICAO member after the sanctions have been imposed. The rules of exclusion from the organization are defined in Article 94 b.

Except budget there is also a possibility for gathering voluntary funds for emerging needs, which have been used to provide targeted assistance, to carry out needs assessments, to implement Aviation Security Improvement Plans (ASIPs) and to fund posts in order to ensure the effective application of aviation security support. As part of the multiannual grant to ICAO, funds from the Canadian contribution were used to assist 25 countries in 2016 in the Americas and Asia Pacific regions, providing direct assistance and scholarships for state participation in regional workshops and tenders. Volunteering has also been used to support the implementation of the aviation security cooperation training programme, the AsiaPacific training programme (CASP-AP), the Global Load Security Implementation Plan and the development and updating of ICAO support material. In addition, the United States has provided voluntary contributions to the three seconded ICAO aviation security staff.

Continued voluntary contributions from Canada, Chile, China, Japan, Saudi Arabia and the United States to the AVSEC Fund have made it possible to provide assistance to States throughout 2016 under the ICAO Strategy for Aviation Security and Capacity Building in support of No Country Left Behind (NCLB). The NCLB initiative decided that ICAO should provide more direct assistance to developing countries by playing a more active coordinating role between States and by helping to build the political will necessary for States to pool resources, participate in regional efforts, allocate voluntary funds and build capacity. The main objective of this work is to assist in the implementation of ICAO Standards and Recommended Practices (SARPs) worldwide so that the socioeconomic benefits of safe, secure and reliable air transport can be shared between all States.

In April 2015 the first contribution to the Voluntary Air Transport Fund under NCLB was made by the Dominican Republic.

## 2.6. International air transport

International air transport was not previously regulated by the Paris Convention. Therefore, Articles 68 to 76 of the Chicago Convention, which deal with airports and other air transport facilities, are important and show how States Parties are encouraged to cooperate in order to improve the operation of air navigation. For each international air service each State may designate, a route to be used by a foreign aircrafts within its territory and the airports (Article 68). With regard to facilities used for air navigation, the ICAO Council may make recommendations to the State Party whose airports and other facilities are not adequate to ensure the safety, regularity and efficiency of air services. However, the state does not have to comply with this recommendation (Article 69). According to the legislator, the agreement and consultation of states in this area is used intended to improve the conditions for air navigation. These issues are also included in Annex 9 to the Convention (Facilitation). The Council may make recommendations which any State may, by agreement with the Council, implement at its own expense or at any rate (Article 70).

The Chicago Convention and many of its predecessors set out the principles of airspace freedom and territorial sovereignty between which air freedoms take their

place. On the one hand, they restrict the principle of territorial sovereignty of a State in its airspace and, on the other hand, they are an institutional expression of recognition of the principle of freedom of airspace. Indeed, the air freedom system is a fundamental condition for the existence and development of international air navigation. The scope of this freedom can be defined differently. This may include scheduled or non-scheduled air services. It should be noted that by scheduled international traffic we mean, as defined by ICAO, such recurring flights of aircraft which are characterized by the following characteristics: crosses the airspace of more than one State, is performed by an aircraft for the carriage of passengers, mail and cargo for remuneration, each flight being open to the public and serving traffic between the same two or more points either according to a published timetable or with such regularity or frequency that it constitutes a clearly continuous series of flights.

The principle of freedom of airspace may be expressed in the right to fly an aircraft in the airspace of a foreign State or in the right to fly and land on its territory. Air freedoms may be granted on the basis of multilateral or bilateral international agreements or on the basis of unilateral acts granted by individual States to foreign aircrafts.

The concept of air freedom is sometimes combined with the concept of air services. In addition to the consent of the granting State, the granting of air freedoms also requires the establishment of fixed air routes for international navigation. Such consent may be given by means of an international agreement concluded by the States concerned, an act of national law of the State granting freedom in the form of an operating license or a concession contract concluded with the foreign air transport undertaking concerned.

#### 2.7. Tasks and structure of the International Civil Aviation Organisation

ICAO is a specialized United Nations agency established by States in 1944 for the purpose of administration and management of the Chicago Convention.

The vision of ICAO is to achieve sustainable growth in the global civil aviation system. The mission is to act as the Global Forum of States for International Civil Aviation. ICAO develops policies and standards, conducts compliance audits test emerging threats to civil aviation cybersecurity, conducts investigations and analyses, assists and builds air transport capacity through many other activities and through the cooperation of Member States and stakeholders. ICAO's strategic objectives as part of its current mission to support and enable a global air transport network that meets or exceeds social and economic development and the connectivity needs of global companies and passengers, and recognizes the clear need to anticipate and manage the projected doubling of global air transport capacity by 2030 without unduly compromising the safety, efficiency, comfort and environmental performance of the system. ICAO has established five comprehensive strategic objectives: safety (improving global civil aviation safety ; this strategic objective focuses primarily on the state's regulatory oversight capacity. The Global Aviation Safety Plan (GASP) sets out the main actions for three years), efficiency and effectiveness of air navigation (increasing the capacity and efficiency of the global civil aviation system), strengthening global civil aviation security and facilitation, economic development of air transport (promoting the development of a robust and economically viable civil aviation system and environmental protection (minimizing the environmental impact of civil aviation activities).

ICAO is working with 192 Member States and industry groups to reach a consensus on international standards and recommended practices in the field of civil aviation and on a policy to promote a safe, efficient, secure, economically sustainable and environmentally responsible civil aviation sector. These SARP's and policies are used by ICAO Member States to ensure that their local civil aviation operations and regulations are compliant with global standards, which in turn allow the safe and reliable operation of more than 100 000 flights per day on the global aviation network in each region of the world.

In addition to its core work of consensus building in international SARP's and Member States' and industry's policies, and among many other priorities and programs, ICAO also coordinates States' assistance and capacity building to support numerous aviation development objectives; develops global plans to coordinate multilateral strategic developments in the field of safety and air navigation; monitors and reports on a number of performance indicators for the air transport sector; and monitors Member States' civil aviation safety and security oversight capabilities. ICAO shall provide the global aviation community with a comprehensive overview of the annual programs, activities and achievements of the Organization. These actions are being implemented in support of ICAO's strategic objectives and tasks as defined in the Chicago Convention.

## **CONCLUSIONS**

Taking into account the contemporary, transnational economic challenges there is ability of the post-war international Chicago system to deal with the global nature of today's aviation sector. It posits that the ongoing work of the global aviation community of not only States but also non-state and private actors on a global aviation market. In turn, this reveals the emergence of a new, global approach to governance of aviation in which the ranges of issues that traditionally have been exclusive to the national remit: health, human rights, environment and even market regulation are elevated to the global level. These actions create a new governance space for addressing global is-sues more effectively through enhanced cooperation, shared responsibility between States, non-state actors and private actors and participants as partners in civil aviation.

The analysis of international organizations generally evidences that international organiza-tions are developing into more than mere forums for state interactions; rather, they are distinctly independent bodies with competence to regulate and change the behavior of sovereign states. Given constitutional foundations of international organizations, their authorities and functions are capable of incremental growth, through interpretation of their constituent instruments, to sustain their usefulness and allow them to fulfill the purposes and objectives envisioned by their creators- especially in light of drastic change in social conduct and technological advancement.

One of the most ingenious and effective program is the audit program created by ICAO to ascertain State compliance with SARP's. In 1999 ICAO established a Universal Safety Oversight Audit Programme (USOAP) in order to assess State compliance with SARP's. In 2004 the ICAO General Assembly passed a resolution requiring the Secretary General to make the results of the audit available to all member States and to post them on the secure portions on the ICAO website. In

2005 the ICAO Council approved a procedure for disclosing information about a State having significant SARP's deficiencies in its aviation safety obligations. A more significant action was taken in 2006, when aviation directors general from 153 of 190 member States agreed that by March 23, 2008, the names of those States that fail to agree to full transparency of their USOAP audits would be posted on the ICAO website. By 2006, more than 100 States agreed to transparency.

It's unprecedented for an international organization to be given the authority to assess State compliance with international obligations and to: "name and shame" states that are delinquent. Also in the area of aviation security, ICAO SARPs are to be applied to domestic, as well as international airports. It is unprecedented for an international organization to apply its standards domestically.

Particular importance is creating ICAO and its general nature. ICAO (and temporarily PICAQ earlier) is fully authorized to adopt any necessary international standards for worldwide unification of the technical and safety procedure so vital to every phase of international air navigation. No further world organization is needed to meet these problems. In the economic and political fields the need for international organization remains unsatisfied. The Convention has given ICAO very limited economic powers, and these are largely of an administrative and advisory character, such as research; study of operation of international air transport, including ownership of international services on main routes; investigation of situations appearing to present avoidable obstacles to development of air navigation; collection and publication of information, including cost of international operations and subsidies from public funds. Under certain circumstances ICAO may provide and administer airports and facilities required by international air services. But ICAO has no power to fix or control rates, allocate routes, or control operating frequencies or capacity.

The two main characteristics of ICAO are: that it is created by states (the ICAO bends to the will of its members. It has the ability to influence, but it cannot force any member to act against its national interest), more specifically, as states themselves are abstractions, by duly authorized representatives of States; and they are created by treaty, which is a written agreement signed by the states parties to it and governed by international law. States can only act by and through their agents. Different government departments of instrumentalities of states bear responsibility for different international organizations. In the case of ICAO the most likely government department that would be responsible for the Organization within a state would be ministry or departments of transport or aviation as the case may be. The third characteristic that distinguishes an international organization as a "club" of States without just being the spokesperson or mouthpiece of those states is that it is expected to have a will of its own. ICAO's independent will recognized by the Government of Canada for purpose of its activities within the country is closed in a provision that ICAO has an identity of its own capable of entering into contracts. ICAO is by no means sovereign in its own rights, although courts have on occasion referred to sovereign rights of an organization merely to seek a compromise between absolute acceptance or parity between a State and an organization and absolute refusal of an international organization's ability to perform *acta iure imperii* (governmental acts).

In reality, however, the organization has considerable ability and a degree of independence to pursue its goals. It has the authority to settle disputes between members, at least in some circumstances, and through its Legal Committee it has been in the vanguard of the establishment of international air law. Both fields, in their

own separate ways, deal with solving problems of orderly development of international civil aviation.

The most simplistic definition of “governance” which may refer to the air domain would be that it is the process of decision-making and the process by which decisions are implemented (or not implemented as the case may be). Governance can be categorized into several institutional bases and used in several contexts such as corporate governance, international governance, national governance and local governance. Good governance must be rewarded. Recognition should be given through “satisfaction surveys” where a direct causal nexus could be drawn between the manners in which the worker was enabled to reach a level of satisfaction with governance provided. Positive changes in expectation and results obtained should be weighed against perceived adequacies of the business entity in the provision of services.

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