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The Chicago system: A steadfast legal blueprint for world civil aviation?

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The legal landscape

Legal perspective
on aviation issues

International legal affairs

ECAC Spotlight
State Assistance
to Air Accident Victims
Task Group

NAVIGATING THE SKIES: emerging legal issues in the aviation sector

CONVENTION
ON INTERNATIONAL CIVIL AVIATION

Signed at Chicago, on 7 December 1944

CONVENTION
RELATIVE À L'AVIATION CIVILE INTERNATIONALE

Signée à Chicago, le 7 décembre 1944

CONVENIO
DE AVIACIÓN CIVIL INTERNACIONAL

Firmado en Chicago, el 7 de diciembre de 1944

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
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The Chicago system: A steadfast legal blueprint for world civil aviation?

1944 – 2024

Eighty years ago, while war raged on in Europe, Japan and the South Pacific, there was a fresh breeze of hope in Chicago, “the windy city”. The Conference on International Civil Aviation delivered the Convention on International Civil Aviation (“Chicago Convention”). Signed by 52 States on 7 December 1944, today the Chicago Convention boasts 193 signatories. As the legal blueprint of civil aviation, it covers the world.

The Chicago legal system that has developed around the Convention has generally managed to balance the competing interests of sovereign States with the need for global interoperability. The Chicago system, at its core, relies on multilateral agreements, mutual respect for legal norms and diplomatic dispute resolution.

Actors in the Chicago system have accepted the international law custom of “peaceful transit for peaceful planes in peaceful commerce”, though States’ acceptance has wavered between high and low points. The world experienced far too many downings of civil aircraft during the Cold War, and in response the Chicago Convention was amended by the international community of States through inclusion of a carefully worded Article 3 *bis*.

But the geopolitical environment is shifting, making the enforcement of multilateral agreements in-

creasingly precarious. Disputes over airspace violations, sanctions affecting airline operations, and emerging security concerns have led to a breakdown in, or even blatant disregard for, some of these legal norms. And to boot, new forms of warfare, particularly cyber attacks and the use of drones, are testing the limits of an air law system designed in an earlier era.

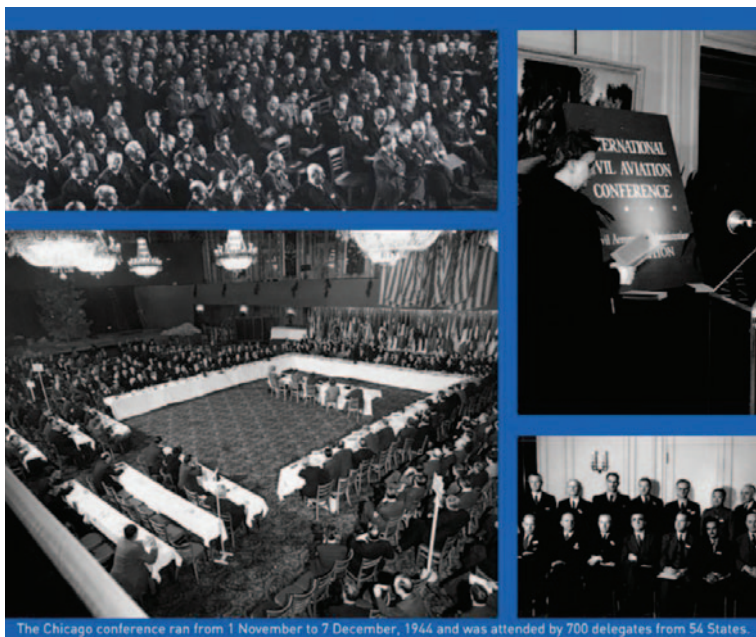
World civil aviation, long a bastion of cooperation and technical advancements, now finds itself in a highly disputatious condition, increasingly mired in the crosswinds of tense geopolitics, territorial disputes and breaches of international legal norms. As geopolitical tensions escalate, the Chicago system – built on the principles of sovereignty, freedom of navigation and global cooperation – is being tested like never before. In ICAO’s 80-year history, 12 disputes were brought before the ICAO Council, half of which came before the millennium, and the other half thereafter.

One of the most glaring examples of how tense geopolitics impacts international air law can be seen in the ongoing Russian war in Ukraine. Since Russia’s annexation of Crimea in 2014 and the subsequent war, the international aviation community has faced numerous challenges. Russia’s annexation led to disputes over the control of Crimean airspace, with Russia asserting its control while Ukraine and the international community largely



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rejected these claims. The downing of Malaysia Airlines Flight MH17 in 2014 by a missile launched from territory held by Russian-backed separatists exacerbated these tensions and underscored the unfortunate and unacceptable vulnerability of civilian aviation to geopolitical conflicts. The legal proceedings surrounding this incident remain a focal point for international air law, involving complex issues around State responsibility, airspace sovereignty and international criminal accountability.

The ICAO Council President was called, without precedent, to brief the UN Security Council on the Ryanair Flight FR 4978, informing the Security Council of the Assembly Resolution number 1 adopted at the 41st ICAO Assembly in 2022, “condemning the actions of the government of the Republic of Belarus in committing an act of unlawful interference that deliberately endangered the safety and security of Ryanair Flight FR 4978 and the lives of those on board”.

Now, while it is understandable that European and a small handful of Asian airlines are affected financially by circumventing (Bela)Russian airspace – and there may be a strong desire to reopen the airspace as soon as possible, for economic reasons – such a move must be balanced with wider issues around safety and security, and respect for the rule of (international) law.

Certainly, the imposition of sanctions against airlines or entire countries is another area where geopolitics intersects with air law. The sanctions imposed by the United States and the European Union on Iran and Russia, for example, have led to disruptions in the operations of airlines from these countries. As a result, airlines are restricted from flying certain routes, denied access to genuine

parts and services, and faced with asset freezes that undermine their ability to operate in some places. While in other parts of the world, a blind eye has been turned to stolen aircraft, as they were permitted – unhindered – to fly under their re-registration, though inconsistent with the Chicago Convention. On the one hand, sanctions are often implemented as a tool of foreign policy, and their impact on aviation challenges the principles of free movement and open skies, which for decades have been cornerstones of international air law. On the other hand, the Chicago system is about uniform law, legal norms and customary practice, rather than rules that apply arbitrarily or when States deem convenient.

Breaches of international legal norms extend beyond the European continent though. In the Asia-Pacific region, tensions over the South China Sea have led to increasing confrontations over airspace. China’s establishment of an air defence identification zone (ADIZ) over parts of the East China Sea, which overlaps with territories claimed by its neighbours, notably Japan, has escalated regional disputes. While ADIZs are not illegal under international law, their use for political or military coercion complicates the situation, as it becomes difficult to distinguish between defensive posturing and aggression. Such geopolitical dynamics introduce legal uncertainties, as international air law seems to struggle to keep pace with evolving territorial claims and modern air defence tactics.

The challenges posed by these disputes raise fundamental questions about the future of international air law. The Chicago Convention, and the system of international air law that flows from it, was built on the assumption that States would act in good faith and that disputes could be resolved through diplomatic channels, or by the ICAO Council, or the International Court of Justice, on appeal. Yet, as States increasingly flout international norms or use the aviation sector as a battleground for political conflict, these assumptions – and the legal blueprint for world civil aviation – are being tested to an extreme not seen before.

What can be done?

First, the role of the ICAO Council as a neutral arbiter of disputes must be strengthened. ICAO’s capacity to mediate disputes and enforce compliance with international agreements and standards must be expanded. It could, for instance, play a more proactive role in investigating airspace violations and ensuring that sanctions’ regimes are implemented in a way that complies with international law, but it will need legal advice throughout. At present, the ICAO Council settles disputes more than it adjudicates them, and as such is not well equipped to handle decisions of a legal nature. Work is already underway to provide just that via the Civil Aviation Legal Advisers Forum (CALAF) and the Competency Framework for Civil Aviation Legal Advisers.

Second, there must be a renewed emphasis on multilateralism in air law. In an age of rising nationalism, it is tempting for States to retreat into unilateral action. But the interconnected nature of global aviation demands cooperation. Countries must work together to progress with modernising the legal frameworks governing airspace and dispute resolution to address new challenges like cyber warfare, drone use and hybrid warfare tactics.

Third, aviation industry stakeholders must play a more stringent role in advocating for the rules-based Chicago system. They have vested interest in the stability and predictability of the legal landscape and can serve as a counterbalance to the politicisation of international air law. By pushing for adherence to international norms, private stakeholders can help to ensure that aviation remains a safe and reliable means of global transport, even in today's fractious world.

Without a doubt, the international air law landscape is at a crossroads. Geopolitical tensions, territorial disputes as well as new forms of conflict – regrettably – are testing the legal blueprint that has governed our skies for decades. As these challenges multiply, the need for strong, enforceable and adaptable legal systems becomes most urgent. Upholding these frameworks will require a combination of multilateral diplomacy, stronger international institutions and the engagement of the industry stakeholders. If the global community can rise to this challenge, civil aviation can continue in its mission to be a force for connectivity and cooperation in an otherwise – every day almost increasingly – divided world. However, if States allow international legal norms to continue to be eroded, the consequences for the aviation sector – and for global peace and security – could be dire.



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Tolerated or excluded

The importance of holding States responsible for their acts or omissions was brought into focus already at the very first ICAO Assembly held in May 1947. At that time, the Convention was amended by way of Resolution 3, adding Article 93 *bis* to the Chicago Convention in light of the recommendation by the UN General Assembly that the then-Franco government of Spain be debarred from membership of specialised agencies established by or brought into relationship with the UN. The recommendation also called for Spain to be excluded from participation in conferences or other activities arranged by such agencies until a new and acceptable government was formed in Spain.

Article 93 *bis* provides that “A State whose government the General Assembly of the United Nations has recommended be debarred from membership in international agencies established by or brought into relationship with the United Nations shall automatically cease to be a member of the International Civil Aviation Organization...,” with the possibility “after approval by the General Assembly of the United Nations, [to] be readmitted to the International Civil Aviation Organization upon application and upon approval by a majority of the Council”.

Art 93 *bis* has not yet been invoked.

Conclusion

In ICAO depository libraries like the International Institute of Air and Space Law at Leiden University in the Netherlands, one may find *A Blueprint for World Aviation*, published by the United States Department of State in 1945 as a reflection by American delegates on the Chicago conference. As the legal blueprint for world civil aviation, the Chicago system is under an unprecedented, heavy burden. International air law and legal norms must be respected to keep this special legal blueprint steadfast for the next 80 years and beyond. After all, the forefathers of the Chicago Convention recognised that international civil aviation had the potential to “create and preserve friendship and understanding among the nations and peoples of the world, yet its abuse can become a threat to the general security”. The Chicago system must remain a steadfast legal blueprint to foster the benefits of world civil aviation and reproach any abuses. ●

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