Centre for Aerospace & Defence Laws (CADL)

Directorate of Distance Education

NALSAR University of Law, Hyderabad

<u>Course Material</u>

M.A. (AVIATION LAW AND AIR TRANSPORT MANAGEMENT)

1.1.2. International Air Law

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INTERNATIONAL AIR LAW

Aviation is probably the most extensively and strictly regulated human activity. The technical and operational complexity and the concern for safety and security in the operation of aircraft are reflected in detailed legal regulation that is enforced by national and international mechanisms. Since aviation is by its nature international in character, extensive international legal regulation has been developed from the very inception of international aviation operations to unify and harmonize the fundamental legal principles governing aviation and the appropriate standards and procedures. This uniform international legal framework was indispensable to permit and facilitate the development and globalization of civil aviation.

Thousands of years human beings have looked to the skies with hope and admiration. The dreams of achieving artificial flight have occupied the imagination of thinkers and engineers since the days of ancient Greece right up to the time of Leonardo da Vinci. Although these flights of fancy were ultimately futile, in 1903 Wilbur and Orrville Wright brothers finally turned centuries of dreaming into reality when they flew 120 feet in Kitty Hawk, North Carolina on December 17th, 1903. Since then, air travel grew in speed and sophistication and nations would need to cooperate to establish a body of law applicable to international aviation activities. Over time, two distinct bodies of international air law i.e. public and private international air law has developed.

Before the Wright brothers had made their first fight, nations had already started developing legal mechanisms for regulating their airspace. As modern civil aviation evolved, almost every aspect of aviation operations began to be regulated at both the international and national levels. The impact of legal regulations has been critical on the development of an aviation industry in any country. The earliest origins of international air law are rooted in the period following the end of World War I. Before and during the war, aircraft were largely viewed as military weapons. In the aftermath of the war, lawyers, judges, and politicians from all over the world recognized the profound impact that air travel would have in challenging traditional notions of borders and "ownership" of airspace.

After World War I, the Paris Convention of 1919 was drafted. The Paris Convention marked the first formal efforts at establishing a rule of law related to sovereignty over airspace, registration of aircraft, standards for pilots, and movement of military aircraft. The Paris Convention also created the first formal organization for the oversight of international aviation activities, the Commission Internationale de Navigation Aerienne. Although the Paris Convention was a start in the right direction, it became apparent that more extensive cooperation and legal infrastructure might be necessary to support a growing aviation industry. The Havana Convention of 1928 built on much of what was started in the Paris Convention and established several new legal principles upon which
international aviation would be governed.

It is generally understood that there is no universal recognition of air law or aviation law as a distinct legal subject matter. Often, legal matters concerning airlines, aircraft, airports, and/or airmen involve issues that are more directly addressed in traditional legal subject matter such as Criminal Law, commercial law, tort law, employment law, property law etc.,. Therefore, when a reference is made to air law, it is often referring to the legal environment of aviation.

It is important for all aviation professionals including pilots, executives, air traffic controllers, and mechanics to have a fundamental understanding of the legal environment in which they operate. Indian is a nation which build with a foundation on the rule of law. The world of aviation is no exception. Almost every facet of the aviation industry is impacted by some body of law or another.

The purpose of this paper/course is intended to bring legal context to many of the issues that aviation professionals will come in contact with during their careers. We live in a world where virtually every aspect of our personal and work lives is touched by the legal system. Aviation activities are no exception. From the moment a pilot embarks on a flight, her every action is guided by a complex set of laws and regulations designed to enhance safety. Whenever aircraft or aviation equipment is sold, there is a set of laws in place governing the rights and duties of the parties to the transaction. When airports are constructed or expanded, local, state, and federal codes must be considered. When things go wrong and people and/or property is harmed due to an aviation accident, there is a well-established body of law in place to identify those who might be at fault and compensate the victims.

Air Law can be defined as "the body of rules governing the use of airspace for the benefits for aviation, the general public and the nations of the world." We also use terms of like Air Law, Aviation Law, Navigation Law, Air Transport Law and Aeronautical Law to regulate the aviation industry.

Application of Air Law: when a person boards an aircraft as a passenger and reads the small print on his ticket he suddenly realizes that he is bound by the provision of the Warsaw Convention. Air law is also intertwined with other areas of laws including the Constitution law, Administrative Law, Civil law, Commercial law, Criminal Law and so on . Its international nature is always paramount.

Litigation between national and international law, or it between private and public law is applicable in Air Law. Private International Air Law, in its context means the series of rules pertaining to the relations between private persons involved in the operation and use of aircraft, whereas Public International Air Law is the corpus of legal norms pertaining to the relations involving states and international organizations in respect of those activities in aviation among problems of political, technical, economical, financial, social or legal nature.

The Scope of this paper is only Civil Aviation Law and not the military aviation. Transport (particularly air transport) being an integral part of the international law plays an important role in the field of aviation and hence, the laws and principles of international law act as an umbrella law for regulating the law of Aviation and aerospace management. Below is a brief overview of the contents of the module.

<u>Module – I covers Introduction to International Law including Definition, Nature Scope, Sources, Subjects, Relations between International Law and Municipal Law.</u>

This module provides an introductory preface to the International Law, to make the students familiar with the basic principles and concepts relating to the course in general. The module contains discussions on the overview of the existing global legal systems, an exhaustive introductory approach to the International Law, containing its definition, nature, scope and development over the period. The discussion further includes sources and subjects of international law. It elaborates Article 38 of the Statute of the International Court of Justice

(ICJ), and other sources are discuss briefly. Further it also covers the subjects of International law including States, International Organizations, Individuals and Non-State Entities. The last chapter of the module will cover on relation between International Law and Municipal Law while focusing on Indian State Practice.

Module-II Covers Introduction to International Air Law including Definition, Sources, Theories and Subjects of Air Law. This module also briefly covers the Development of Air Law before the Chicago Convention including the Paris Convention 1910, Paris Convention 1919 and other International Air Law Treaties.

This module takes into account the introduction to the international air law and aims to impart the basic information relating to the development of the international air law. The module commences with the definitions of air space and outer space and the delimitations between the two. The discussion further introduces the concept of state sovereignty in air law, with the help of various theories on the subject, followed by an exhaustive study on the nature, scope and stages of development of the international air law. The module further provides for the sources of international air law, followed by a comprehensive discussion on the development of air law in general and the role of the Paris Conventions of 1903, 1910 and 1919, and concludes with a discussion on regionalism and private international air law conferences in the development of international air law.

Module-III Covers Chicago Conference and Chicago Convention. It briefly touches the historical evolution of Chicago Convention and the outcome of the Chicago Conference including interim agreement, Two freedoms agreement, Five freedoms agreements, Standard Form of Bilateral Air Service Agreement and various annexes to the Chicago Conference.

This module encompasses a very exhaustive discussion on the Chicago Conference, 1944 and its role in the development of the International Air Law. The discussions in this module start with the events leading to the conducting of the Chicago conference, followed by the controversy regarding the freedom of the air and sovereignty in the air and the differences between the two concepts. The module then covers the outcomes of the Chicago Conference, including the interim agreement, the two-freedoms and the five-freedom agreements, technical annexes and a standard form of bilateral agreement. The recent developments, including the bilateralism philosophy involving the liberal and open skies also find a place in this module. Further, a critical analysis of the Convention on the International Civil Aviation or Chicago Convention is present, with the recent developments in respect of the conference.

Module-IV focuses on the Structure and Functioning of the International Civil Aviation Organsation (ICAO). Its role in making International Air Law including the recent Aviation Treaties.

This module deals with the role of ICAO in development of International Air Law and the Annexures appended to it. The discussion includes the membership and organs of the ICAO: the legislative administrative and judicial, followed by the functions of the ICAO and the economic and technical regulations by the ICAO. The discussion then refers to the ICAO Air safety and security regulations, along with its various Annexes, and the related recent developments. Lastly, the module concludes with ICAO, the International Court of Justice and Dispute Settlement Mechanism.

Module-V covers the recent developments in International Air Law including Deregulation and its impact on Aviation Industry. It also further covers Globalization, Liberalization, Privatization of International Civil Aviation.

The last module covers the recent developments in the field of international air law. The module discusses the globalisation, liberalisation and privatisation of the field of civil aviation. The recent developments include the aviation insurance, mergers and acquisitions, CRS etc. The discussion also highlights the technological development and its impact of the international air law. A discussion on Air law and the environmental issues is also included. Finally, some information is provided on the activities of ICAO and the other recent developments.

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MODULE – I

Introduction to International Law

DEFINITION, NATURE, SCOPE AND DEVELOPMENT OF INTERNATIONAL LAW

Why Module on International Law?

In this modern age, the world has greatly shrunk as a result of scientific and technological developments drastically. As a consequence events in one part of the world have an immediate impact on the rest of the world. Similarly there are other issues such as maintenance of peace, security and sovereignty of states, Environment degradation, Terrorism, Piracy, Air and Space law, Law of seas, Airplane Hijacking, International trade and commerce and disputes related thereto, Economic-Social and Cultural developments of states, promotion, protection of Human Rights and International trade and business etc. These issues are global in nature and cannot be confined to and solved within territorial or political boundaries. Therefore, States maintain regular relations with other states because a modern State cannot lead an isolated life in the present context of world affairs. The more a State is civilized and perfect in its organization, the greater and more familiar shall be its intercourse with other States. This leads to that a Government of a State must not only conduct its internal affairs but also regulate its conduct towards the Governments and citizens of other States.

Just as men could not live together in a society without laws and customs to regulate their actions, so States could not have mutual intercourse without usages and conventions to regulate their conduct. International Law impinges on state sovereignty by creating new structures for regulating relations across international boundaries. International Law and International norms limits the state sovereignty in another way. They create principles for governing international relations that compete with the core realist principles of sovereignty and anarchy. International Law derives not from actions of any legislative branch or other central authority, but from traditions and agreements signed by states. It also differs in the difficulty of enforcement, which depends not on the power and authority of central government but on reciprocity, collective action and international norms. Without International laws and customs, it is impossible for states to maintain relations on the basis of peace, harmony and mutual co-operation. Rather, then the rule 'might is right' will prevail that would be destructive for the global peace and humanity.

International law has emerged & grown to fulfill the essential needs of men organized in separate communities & national entities bound together by common bonds of geography & civilization. The political order of the world is divided into three kinds of nations/ states according to their political, social, economic & cultural backgrounds as to: The western or the capitalist countries are known as First World Countries; The Communist or Socialist countries of East Europe, Latin America & China are known as Second World Countries; The developing or under-developed countries of Asia & Africa are coined as Third World countries. International Law is to be found in the history of ancient & medieval as well as modern times of each kind of political communities.

International law governs relations between states. It provides the basis for peace and stability and aims to protect and ensure the well-being of humankind. Globalisation has not only increased the importance of international law but also the complexity of international legal issues. Transportation is one of the important fields of international law. International treaties are essential for ensuring the safety of international air and rail travel. International Air Law being a part of Contemporary International Law has many branches including the relevant principles and rules of international law, the International Human Rights Law, International Humanitarian and Refugee Law, International Trade Law, International Intellectual Property Law, International Environmental Law, International Space Law, etc. that affect the use of air space and aeronautics.

What is International Law (IL)?

International Law also called other names likes Law of Nations, Public International Law Inter-State Law and Trans-national Law, etc. It is generally viewed that International Law regulates the relations between or among states or International Law is Body of legal rules, norms, and standards that apply between sovereign states and other entities that are legally recognized as international actors. International also called Law of nations because it regulates the behavior of nation-states. The expression 'International Law' and 'Law of Nations' is synonymous and is equivalent terms. Jermy Bentham introduced the former in 1789. Prior to that International Law was known by the name 'Law of Nations'. International law also called Public International Law because there is a private international law or Conflict of Laws. Public International law is commonly divided into the law of war and the law of peace. Hugo Grotius, "considered to be father of international law" called his great work as *De Jure Bella ac pacid* or the Law of War and Peace. Oppenheim divides his treatise into one volume on peace and the other on war.

The conventional view is that public international law is made up of two separate and distinct branches, with the law of war being necessary to regulate the rights and obligations of belligerents and neutrals when the law of peace is no longer applicable. Private International law or Conflict of laws is different which regulate the behaviors of two or more individuals of different countries. International law also called as Inter-state law, which provides a system of rules governing the conduct of inter-state relations. Judge Philip Jessup called international law as Trans-national law because it regulates the actions or events that transcend national frontiers. International law also equated other terminology like Common Law of Mankind, World Order and World Law.

DEFINITIONS

Traditional Definitions of International Law

Oppenheim: International Law is "the name for the body of customary and treaty rules which are considered legally binding by civilized states in their inter course with each other." There are three main elements present in this definition: Body of rules governing the relation between the states, States regard them binding in their relation with each other and Rules are derived from customs and Treaties. *J.L.Brierly:* International Law may be defined as "the body of rules and the principles of actions, which are binding upon civilized states in their relation with the one another. Hackworth: "International Law consists body of rules governing the relation between states." According to Bentham, international law is a collection of rules governing relations between states. *Queen Vs. Keyn: Lord Coleridge C.J.* defined "the law of Nations is that collection of usages which civilized states have agreed to observe in their dealings with one another"

Modern definitions of International Law

Charles G. Fenwick: International Law may be defined as "the body of general principles and scientific rules which are binding upon members of the International Community in their mutual relations." Whiteman: International law is "the standard of conduct at as given time for states and other entities subject there to." *J.G.Starke:* International Law may be defined as that body of law which is composed for its greater part of the principles and rules of conduct which states feel themselves bound to observe, and therefore, do commonly observe in their relations with each other, and which includes also: The rules of law relating to the functioning of international institutions or organizations, their relations with each other, and their relations with states and individuals; and Certain rules of relating to individuals and non-states entities so far as the rights or duties of such individuals and non-state entities are the concern of the international community. *Schwarzenberger* "International Law as the body of legal rules which apply between sovereign states and such other entities as have been granted international personality." Whiteman defined International Law as**--** The standard of conduct at a given time, for states and other entities subject thereto.

On the basis of above definition we may conclude that international law is a body of rules and principles which regulate the conduct and relations of the members of international community. The contention that states alone are the subject matter of international law is not only inconsistent with the changing nature of international law but has become completely obsolete and inadequate. Individualistic character of international law is being replaced by the law of social inter-dependence. International law has been remarked as a "living and expanding code". In view of some changing character and expanding scope of international law today, international institutions, some non-state entities and individuals have also become the legitimate subjects of international law. Thus, international law is constantly evolving body of norms that are commonly observed by the members of international community in their relation with one another. These norms confer rights and impose obligations upon state and to a lesser extent, upon international organizations and individuals. Moreover, International law has effects on, and effected by the international relations, political thought and communications, as well as by the awareness of women and men in every state that they are part of those addressed by the United Nations as being " we the people of the United Nations".

NATURE OF INTERNATIONAL LAW

The status of international law is the most controversial and debated topic among the jurist all over the world. The important to be debated is whether international law is really a law or not? Or is it just a code of rules of conduct of moral force only? In order to understand the real nature of international law it is important to take into consideration how the various theorists have defined the tern *"law"*.

International Law is not true Law. The initial reaction of law students and laymen alike, when they are first told about international law, is usually highly skeptical. They believe that states have little respect for international law, and have no incentive to obey it in the absence of a supranational system of sanctions capable of being enforced against the law-breaker. In short, the popular belief is that international law is not really law. In fact, however, states do accept that international law is law and what is more, they usually obey it. It is true that international law is sometimes broken with impunity, but the same could be said of any legal system. The supporter of the positivists school like *Hobbes*, *Bentham* and *Pufendrof* are of the view that international law is not a true law as it is not binding on the states. Many other prominent jurists took the similar view.

The most prominent amongst them is the British jurist Austin who believed that law is the command of the sovereign attended by sanction in case of violation of the command. In other words law should be limited to the rules of conduct enacted by a determinate legislative authority and enforced by physical sanction. The definition of law as given by Austin basically has two parts: Any rule which is not enacted by sovereign or superior cannot be regarded as law; and Command must be enforced by the sovereign authority. According to him existence of both is necessary for any law to be called as "Proper Law" and other senses of law are "improper law". International law is law improperly so called because it has neither sovereign authority to enact laws nor there is adequate sanction behind it. Since the international law governs the relation of the states inter se and there is sovereign political authority of the state inter se, there is no supreme executive government to execute these laws nor there is any judicial organization with compulsory jurisdiction, it cannot be said to be law.

Criticism: *Austin's* view has been vehemently criticized by mane jurist. According to *Sir Henry Maine* and *Savigny* Austin has not taken into consideration certain important facts which are necessary as to: 1) He completely ignores the customary or unwritten laws and only treats laws enacted by the sovereign legislative authority as law. 2) Laws are not only obeyed because of the fear of sanction behind them, they are also observed because of habit of mind and practice of communities. *Oppenheim:* Another famous jurist Oppenheim defines law as a body of rules for human conduct within a community which by a common consent of the community shall be enforced by external power. Thus this definition of Oppenheim has three main parts: There must be a community; there shall be a body of rules to govern the community; and there shall be a common consent of the community that the rules be enforced by external power.

International law as weak law: International law is a law in the true sense of the term which is in turn affirmed by the state practice as well as the practices of the international judicial institutions. International law is observed by all the state and the international level because it is crucial for the peaceful relations and cooperation. Never the less it has to be conceded as a weak law. There are many reasons behind saying so which can be summarized as: 1)

International law is not as efficient and as effective as the state legislative machinery as wide options are given to the state parties through customs and treaties. 2) Courts at the international level act with the consent of the state and don't have jurisdiction to decide the disputes of al the states. 3) Under International law the enforcement measures are not effective as courts do have real power to enforce its decisions. 4) Rules as laid down at the international level are frequently violated by the states.

International law is a weak law on the institutional side as there is no legislature, the court though present is not strong enough and has no real powers to enforce its decisions. There is an urgent need to develop formal institutions which will be responsible for law creation and enforcement. There shall be a strong enforcement mechanism and for which the state cooperation is the need of the hour. According to *Austin*, International Law is not true law but positive International morality only. *Holland* remarked that International Law is the vanishing point of jurisprudence. According to him, rules of International law cannot be kept into the category of law because they lack sanction, which is an essential element of municipal law. He further said there is no judge or arbiter to decide international disputes and that the rules of international law are followed by states by courtesy.

- Austin Definition of Law: Law is the command of sovereign political authority given by political superior to inferiors.
- In International Law, no political superior, no physical force and no enforcing authority. So international law is not a law. Rules of international law.
- The rules of international law are positive morality: Holland Bentham, Brown etc., is denied the legal character of international law.

International law is not law because: No agency for international legislation. International Law is a limitation imposed by sovereign state upon itself. Auto limitation is no limitation; therefore international law is not a law, No organised force, No a determinate impartial arbitrato, Though we have the International Court of Justice, but has no compulsory jurisdiction. Some writers called international law as a quasi-law. Starke: International law is a weak law *In Queen vs. Keyn* case the court said International law is not an exactly law.

International Law is a Law: *Oppenhiem, Brierly, Starke, H.L.A.Hart, Pollock, etc.* States obey International law far more often than most people suppose. Fear of sanctions has very little to do with this obedience. There are other factors inherent in the very nature of international law and of international society which induce states to obey international law. These factors more than compensate for the weakness of sanctions, but few people are aware of them, because they have no counterpart in international system of law.

In international law the absence of a legislature means that states very largely create law for themselves, and it is unlikely that they will create law which is not in their interests or which they will be tempted to break. Interdependence is the order of the day. In today's world states are interdependent in many ways, and international law facilitates international cooperation. For example states have a common interest in preventing pollution of the sea, but prevention of pollution requires detailed rules about such things as the discharge of oil from ships, and a treaty or some other legal instrument is the obvious way of laying down the necessary rules. Similarly, when a particular problem is constantly arising (for example, do aircraft from one state have a right to fly through the air space above another state?), it is everyone's interests to have an agreed rule to deal with all such cases, instead of leaving every individual case to be decided by a trial of strength between the particular states concerned. Even when the relevant rule of international law is imprecise, it still performs a useful function; it may not eliminate the area of disagreement between states, but at least it reduces that area, and thus makes it easier for disputes to be settled without frictions.

Sanctions of observance of International Law: A controversial question is the extent to which sanctions, including sanctions by way of external force, are available under international law, to secure observance of its rules. At one extreme there is the view that international law is a system without sanctions. However, it is not quite true that there are no forcible means of compelling a state to comply with international law. The United Nations Security Council may, pursuant to Chapter VII of the United Nations Charter of 26 June 1945, in the event of a threat to the peace, breach of the peace, or act of aggression, institute enforcement action against a particular state to maintain or restore international peace and security, and to the extent that the state concerned is in breach of international law. For example, economic sanctions proclaimed in 1966 against Rhodesia or military in the Korean War 1950 or both in 1990 against Iraq. Also, under article 94, paragraph 2 of the Charter, if any state, party to a case before the International Court of Justice, fails to perform the obligations incumbent upon it under a judgment rendered by the Court, the Security Council may upon application by the other state, party to the same case, make recommendations or decide upon measures to be taken to give effect to the judgment.

Public opinion can also be an effective sanction. The role of reciprocity in international law observance should not be minimized. The international legal system is intrinsically different from municipal law. The principal participants of the international legal system states are all treated as equally sovereign. The international community is composed not of a homogeneous grouping of states, but rather a heterogeneous group of some nearly 200 states, which differ politically, economically, culturally and ideologically. States need to co-exist. International law was conceived and born out of such a need, and thus is designed to promote international peace and harmonization. The international legal system is a young, immature system, which is constantly evolving and developing. It is not simply lawyer's law. Politics play an influential role. (See Rebecca, p.4) International law is primarily formulated by international agreements, which create rules binding upon the signatories, and customary rules ,which are basically state practices recognized by the community at large as laying down patterns of conduct that have to be complied with.

Contrary to popular belief states do observe international law, and violations are comparatively rare. However, such violations are well publicized and strike at the hear of the system, the creation and preservation of international peace and justice. But just as incidents of murder robbery and rape do occur within national legal orders without bringing down the whole edifice or stimulating citizens to deny that law exists, so analogously assaults upon international legal rules point up the weaknesses of the system without denigrating their validity or their necessity. In support of the above argument *Professor Louis Henkin*, observed, “Almost all nations observe almost all principles of international law and almost all of their obligations almost all of the time”

SCOPE OF INTERNATIONAL LAW

The scope of international law has expanded due to the inclusion of new subjects; establishment of International Organizations; the emergence of new states; and the emergence of new problems like nuclear weapons, expansion of international trade and trade related problems, development of transport and communications, etc.,

International law has expanded both in terms of its subjects and its content. Major problems of international law concern have been tackled collectively by states. This has proved, for example, more resource effective than attempting individual state action. The consequence has been a proliferation in the number of international organizations in the years since 1945. Modern technology has brought states and their populations into close and more frequent contact with each other, and rules have evolved to regulate such contact.

The subject matter of international law has correspondingly expanded. For example boundaries of nations on land or at sea, international servitudes, succession of states and governments, ports and inland waters, international rivers and lakes, territorial waters, contiguous zones, continental shelf, exclusive economic zones, international canals and straits, rights and duties of states on the high seas, fisheries, whaling and sealing, air navigation, polar regions, outer space, nationality and statelessness, rights of aliens, asylum, extradition, international communications, protection of minorities, human rights ,governmental and state immunities, status and immunities of international organizations and their personnel, status of armed forces on foreign territory, limits of criminal jurisdiction ,limits of anti-trust jurisdiction, enforcement of foreign judgments and commercial arbitral awards, validity of international treaties and agreements, interpretation and application and termination of treaties and agreements, validity and interpretation of international arbitral awards, pacific blockade, reprisals, indirect aggression and subversion, rights of neutrals, relations between belligerents and neutrals, violations of the laws of war, terrorism and hijacking and overlying all of these , the limits of countermeasures and retaliatory measures designed to protect existing primary rules of international law and so on…

International law is a dynamic law. It has been changing since its inception. However, in the four decades changes have been so radical and tremendous that was not witnessed in the last four centuries. The process of change has resulted in reconstruction and development of international law and at the same time has created many faceted problems because of the demand of further changes. The most significant change that has taken place is the emergence of a number of new states, which hitherto were colonies, into independent states. However, international law still favors their power rather than the number.

International Law has been expanding its frontiers not only in terms of its subject matter but also in terms of its content and orientation. In addition to such new areas as international constitutional law, law of international institutions, international economic law, international communications and air law, law of outer space, human rights law and international humanitarian law, there have also emerged new sources of the law and of the ways by which new laws are made by means of declarations, resolutions and the use of consensus at the UN Security Council and the General Assembly. Either because or in spite of this expansion of its frontiers, traditional notions and attitudes are beginning to show a certain resilience and adaptability: the rigid assertion that only sovereign states are the subjects of international law is giving place to the idea that other entities, notably certain international organizations like the United Nations itself, as well as individuals are now also subjects of international law for most practical purposes.

One such entity has successfully litigated a case before the International Court of Justice in Certain Expenses case (1949) stated that the U.N was a subject of international law and could enforce its rights by bringing international claims. While in the Fasla Case, certain rights of the individual were recognized, albeit by way of appeal from the UN Administrative Tribunal. Indeed, the European Commission and the European Court of Human Rights have both been entertaining cases brought before them by individual citizens of the States of the Council of Europe. There also exists established machinery, although limited, for the implementation of the fundamental rights of the individual through state action. All these are recent developments in contemporary international law, which could not have taken place before 1945. The Euro centric character of international law has been greatly weakened in the last six decades and opinions; hopes and needs of other cultures and civilizations are beginning to play an increasing role in the evolution of world juridical system. Third World's concern for the recognition of sovereignty of states is complemented by their support of the U.N and its charter and supplement of their desire for economic self-determination or Right of permanent sovereignty over natural resources.

This expansion of international law into the field of economics is a major development of the 20th century and is evident by the creation of GATT, UNCATD and establishment of IMF and World Bank. The scope of international law today is immense. From the regulation of space explorations to the question of the division of ocean floor, and from the protection of human rights to the management of the international financial system, its involvement has spread out from the primacy concern with the preservation of peace to embrace all the interests of contemporary international life. The scope of international law today is immense from the regulation of space expeditions to the question of division of the ocean floor, and from the protection of human rights to the management of the international financial system, its involvement has spread out from the primary concern with the preservation of peace to all the interests of contemporary international life. The determining factor of international law lies in its composition consisting of needs and characteristics of the international political system.

International organizations have now been accepted as possessing rights and duties of their own and are distinctive legal personalities. The international court of justice in 1949 delivered an advisory opinion that United Nations was a subject of international law and could enforce its rights by bringing international claims. Such a ruling can be applied to other international institutions like the ILO and the FAO which have a judicial character of their own. They have been joined by other non state entities whose importance is likely to grow in the near future. The growth of regional organizations should also be noted at the same time in this stage. Many of those were created for reasons of military security, for example, NATO and the opposing Warsaw Pact Organizations, others as an expression of regional and cultural identity, such as the OAU and OAS.

DEVELOPMENT OF INTERNATIONAL LAW

There are two views on the development of international law. One view says that International Law is essentially a product of Christian civilization – middle Ages – Oppenheim. Another view opinioned that International Law is a product of ancient times: Ramayana & Mahabharata – S.S.Dhawan Development of International Law in ancient period (from ancient times to 10th century) Jews practiced international law in their relations with other nations. Inviolability of diplomatic agents was recognized and maintained. They recognised humanitarian rules of warfare. They entered treaties with other countries and sanctity was attached to treaties. Hindus: In ancient India international law was practiced. It operated in the Vedic age from 4000 B.C. to 100 B.C. between tribal heads known as Rajahs. The basis of international law in ancient India was religious teachings like Manu’s Dharam Shatras and Kautiliys’s Arthsgastra. International law then had more sanctity because it was based on the concept of Dharma, which was sacrosanct for all Indian states. Then India was divided into many kingdoms having the same religion. They conducted their foreign relations through rajdoots who are known today as ambassadors.

Manusmriti prescribes qualifications of a good envoy and his functions. It also provided that an ambassador must be well versed in all branches of knowledge. He should be of noble lineage, of pure character, efficient and able to read minds through gestures and postures. Kautiliya expected the envoy to be endowed with power of persuasion, well trained in arts and with foresight, memory and enthusiasm and industry in addition to being in the enjoyment of good physique. According to Manu, inheritance, recovery form usurper and conquest as a result of enforcing of some right or settlement of dispute or could acquire territory by occupation of territory which was unoccupied. Cession of territory by dana (gift) to avoid war or as a token of matrimonial settlement was also prevalent. Foreigners were allowed entry by royal warrant—which we term as visa today—and they had to report at points of entry. There was practice of grant of asylum to political refugees who sought protection. The practice of *Pacta Sunt Servanda* was not to Hindu international law. Kautiliya required faith and honesty in carrying out international obligations. War was resorted to as the last step when everything else failed. Wars were divided into two categories: just war which was termed as *Dharma Yudha*, and unjust war – *Adharna Yudha*.

Ancient Greeks also practiced international law. It was during Greek period that the rule of international law requiring prior declaration of war was developed. The dead were given a decent burial even during the fury of war and prisoners of war could be exchanged. International law was followed on the basis of religion. City state relations were common at that time. Greeks were considered as superior race and non-Greeks were treated as barbarians. It is said that Aristotle studied 158 city state constitutions at that time. Romans have contributed a fair amount to the rules of the international law as they exist today. *Jus Gentium*—International law—was the Roman device to deal with foreigners. This law consisted of commonly accepted rules among states based on law of nature. The rule of acquiring territory through means of occupation has been borrowed form Roman law. Romans has drafted elaborate rules of warfare and the doctrine of postilminium as we know toddy is based on *Jus Postliminii.*

Development of I.L in middle Ages (from 11th century to 16th century) The supremacy of church and the universality of its laws; Feudalism; Sea Trade and the growth of Maritime Law; Renaissance and Reformation etc. have helped the growth of international law at that time.

Development of Modern I.L (from 17th century to 21st centuries) the age Discovery in the sixteenth and seventeenth centuries necessitated the evolution of rules governing the acquisition of territory. At the same time, the principle of freedom of the seas was articulated. International law grew out of necessity in response to the need of states to co-exist. During this period international law was developed by various jurists, international treaties and conferences and judicial and arbitral tribunals also helped.

1648 Westphalia peace treaty; Members of Holy Roman Empire attained sovereignty; International peace treaties started; French was common language; Alabama claims Award 1872; Maritime law convention of 1856 – Sea welfare rules were framed; the Hague conference of 1899 and 1907 – established the permanent court of arbitration; Development of International Law in 20th century was Before the World War I; Between World War I & II; After World War II and the establishment of the United Nations. Otherwise development of International law before the league of Nation, under the league of nation and under the United Nations and its specialized agencies.

Basis of International Law or Theories of International Law

Natural Law Theory: According to this school, the Law of Nations is only part of the law of Nature. Previously, it is related to religion, Divine Law. From Greeks, Romans to 18th century this school dominated. States relations are regulated by higher law "the law of Nature". Pufendrof and Vattel are the chief exponents of this school. Traces of the natural law theories survive today, albeit in a much less dogmatic form. Kelsen has said: The theory of natural law, which was dominant throughout the 17th and 18th centuries, after relapsing during the 19th has again in the 20th re-entered the foreground of social and legal philosophy, in company with religious and metaphysical speculation.

Positivist theory: Positivism begins from certain premises, that the state is a metaphysical reality with a value and significance of its own, and that endowed with such reality the state may also be regarded as having a will. This psychological notion of a state-will is derived from the great German philosopher, Hegel. To the state-will, the positivists attribute complete sovereignty and authority. The positivists base their views on the actual practices of states. Growth of International law to treaties and customs rather than human nature: Law is will of states. Chief Exponents of this school are Bynkershoek and Anzilotti.

Grotiu's Theory: This theory propounded by Grotius – He is the father of International law. His principal work, *De Jure Belli ac Pacis*, was continually relied upon as a work of reference and authority in the decisions of courts, and in the textbooks of later writers of standing. His contribution to development of International law.

a. According to Wheaton that "Grotius seems to have been the first to lay down rules of Justice would be binding on men living in a social state.
b. Grotius tried to establish that law governed the totality of relations between states.
c. He secularized the concept of law of Nature
d. Grotius further recognized that the individuals and the state composed of the individual were essential identical.
e. Grotius maintained a fine distinction between Just and Unjust Wars.
f. Grotius developed the qualified Neutrality.
g. Grotius emphasized the binding force of promises and agreements in international sphere.
h. He supported peaceful settlements between states.
i. Grotius recognized Fundamental Rights Freedom of the individuals.
j. Grotius rejection of the reason of state.

Theory of consent: Supporters of this theory says consents of states in the basis for International Law. States observe International Law because they have given their consent for it. Chief exponent of this school – Anzilotti, Tripele, Oppenheim. This theory supported to the positivism. *Auto Limitation Theory:* According to this theory, international law is binding upon states because they have restricted their power through the process of auto – limitations. Each state has a will, which is completely independent and free from external influence. But process of limitation they can restrict their powers and follow the international law. Jellinck is the chief exponent of this theory. *Pacta Sunt Servanda:* According to Anzilotti the binding force of international law is based on the supreme fundamental norm or principle. Is known as Pacta Sunt Servanda. This means that the agreements entered into by states will be respect and followed by them in good faith. *Theory of fundamental rights*: this theory is based on Naturalist. According to this, prior to the existence of state, man lived in natural state; in that state he possessed some fundamental rights such as independence, equality, right of self-preservation. Like man state has possessed their rights because there was no world institution above the state.

Perspectives on International Law or Contribution of First, Second and Third World Countries to IL

Contribution of the first world countries: The foundation of International Law as it is understood today lie firmly in the development of western countries & political organizations. Ancient Greece & Rome were divided into small city-states & the mutual relation or these states are governed by some definite rules & principles. They deserved the credit of developing the laws of- War & peace; Resolving the dispute through Arbitration; Prior declaration before the commencement of the war. The modern International Law is ordinarily regarded as dating from sixteenth & seventeenth centuries, the medieval period, for its special character has been determined by that of the modern European National States system. Meanwhile, there were certain counter-factors leading to inmate & constant relations of the states with another as states could never be accepted as the final & perfect form or human association, so it would be necessary to recognize the existence of a wider unity - the rise of International Law was the recognition of this truth. The seventeenth & eighteenth (modern period) centuries are given birth to three different schools if International Law, namely –

The naturalists; The Positivists; & the Grotians: There were factors led to the development of International Law in the nineteenth & twentieth centuries. The twentieth century witnessed two World Wars & the aftermath was the transformation of European International Law into Law of Nations or Universal International Law. As a result of this, the states & their mutual contracts had greatly increased during this periods, for e.g.-

a) Hague Conferences of 1899 & 1907: It was the establishment of Permanent Court of Arbitration. It also emphasized the settlement of International disputes through peaceful means, formation of many rules of International Law relating to land & naval welfare.
b) Treaty of Versailles 1919: The League of Nations was established under this.
c) Geneva Convention 1929: It laid down rules relating reprisal of prisoners of wars.
d) United Nations: The U.Ns was established in 1945 to ensure the maintenance of international peace & security.

Contribution of the second world countries: Classical Marxist theory described Law & politics as the means by which the ruling class maintained their domination of society. International Law as a method of exploitation would also be criticized by socialist states. Soviets theorists expressed the view that International Law was an inter-class law within two antagonistic class systems (Capitalism & Socialism) would also seek accommodation until the victory of socialist system. International Law was not a form of temporary compromise between capitalist states & U.S.S.R but rather a means of conducting the class war. The new approach in late 1930s was reflected in Russia's successful attempt to join League of Nations. But U.S.S.R was bound only by those rules of which accorded with its purposes. The years that followed the Second World War saw a tightening up the Soviet doctrine as the Cold War gathered pace and the law of transition and state was replaced by International Law of peaceful co-existence. Peaceful co-existence itself rested upon the certain basic concepts, e.g.- Non-intervention in the internal affairs of the others states; The sovereignty of states;

Good neighborhood; International co-operation; The observance in good faith of international obligation. The concept was an attempt to reiterate the basic concepts of International Law in a way that was taken to reflect an ideological trend. But it must be emphasized that the principles themselves have long accepted by the international community.

With the decline of the Cold War & the dissolution of the Soviet Union a process of re-evolution in the field of international legal theory took place. Global inter-dependence & the necessity for international co-operation were emphasized. The essence of new Soviet thinking was started to lie in the priority of universal human values & the solution of global problems, which is directly linked to the growing importance of International Law in the world community.

Contribution of the third world countries: The old civilization like in Egypt & India had significant contribution in the history of International Law. The duties of the states in administrative & external matters; The privileges & immunities enjoyed by the diplomatic agents during war – are their contribution in the field of International Law. In the evolution of international affairs since Second World War one of the most decisive had been the disintegration of colonial empires & the birth of new states, in the so-called Third World. The new nations have eagerly embraced the ideas of sovereignty & equality of the states & the principles of non-aggression & non-intervention.

The Soviet emphasized on the territorial integrity & sovereignty proved a great attraction to the developing nations of the Third World anxious to established their own national identities & counteract western financial & cultural influences. The new internationalization of International Law that has destroyed the European based homogeneity & emphasized in universalistic scope, e.g., the Declaration on the Granting of Inter-dependence to colonial countries & Peoples of 1960 enshrined the rights of colonies to obtain their sovereignty with least possible delay for recognition of the principles of self-determination. Their concern for the recognition of the sovereignty of the states complemented by the support of the U.N & its character & supplemented by their desire for economic self-determination. The interests the new states of Third World are often in conflict with these of industrialized nations, but contrary to many fears expressed in the early years of Decolonization saga, International Law has not been discarded & altered beyond recognition. The end of Cold War & rapid development of Russian-American co-operation lead to the development of Globalization in the sense of inter-dependence of High order of individuals, groups & corporation. Both public & private, across national boundaries & might be seen the triumph of one special particularism which had sometimes been used as a justification for Human Rights abuses free from international supervision or criticism

Differences between Public & Private International Law: Public International Law deals with states: private International Law deals with individuals. Private International Law is a part of Municipal Law. But Public International Law is not. Public International Law has Uniformity of rules: But private International Law is different. Private International Law determines as to which law will apply in a case having foreign element. No such provision in public International Law. Private International Law also determines the count which will have jurisdiction to decide the issue. It is not in Public International law. Breach of public International Law is possible. But not in Private International Law

Basic Principles of Modern International Law: In Municipal Legal systems we have well-established rules, organizations to regulate and control human behaviors, whereas in international law not so well developed rules, institutions to regulate or control the behavior of states. In the absence of the above system the international community had experienced tow world wars and their effects. The United Nations was established in 1945 to prevent third world war and maintain peace and security in the world. In spite of the Charter Principles, international community suffered from two shortcoming, firstly, the principles won't apply states who are outside the UN system and secondly, emergence of new states. So to get reaffirmation from the international community the socialist and developing countries initiated process of revision of the UN Charter—the process was stated in 1950s but it reached its climax in 1962, special committee was set up. Its work lasted several years and in 1970 a Declaration on Friendly Relations was adopted unaninasmusly. Sovereign Equality of States; Good faith Principle; Peaceful Settlement of Disputes; Prohibition of force; International Cooperation; Non-intervention; Equal Rights and Self-determination.

New trends regarding basis of obligation in international law: Since the beginning of modern international law, consent has been the basis of obligation under international law. Consent played a predominance role that it was even extended to explain the basis of customary rules of international law. The positivists tried to establish that international customs were based on "tacit-agreements" between states. The unanimity rule was the prevailing rule for every conference and treaty was bound by it. The United Nation charter introduced majority rules in all of its organs and which is having a binding force.(like General assembly. Security Council etc.). A unique feature of new international law is that it is found not only in law making conferences but also in law creating conferences such as UNCTAZ, GATT, IBRD, IMD, OECD, OPEC etc.

One of the most important change is that has taken place is that many a decisions at international conferences and General assembly of the UN are being adopted by 'consensus'. Though the unanimity rule has not been completely defeated, the basis of obligation in international law is changing from sovereignty oriented consent to community oriented consensus. The international court of justice has also lent its support to the above mentioned change i.e. from sovereignty oriented consent to community oriented consensus. This undoubtedly is a clear triumph of community oriented consensus over sovereignty oriented consent. But the battle has not been finally won and the struggle is likely to a prolonged one. As a matter of fact, consent will continue to be a basis of obligation and there should be no objection to it, but in view of even widening scope of international law it has become necessary to recognize the importance and utility of 'consensus' as a basis of obligation in international law. It is therefore, necessary to enunciate a dynamic and comprehensive theory of basis of obligation so that it may take into account the interest and inspirations of international community as a whole.

SOURCES OF INTERNATIONAL LAW

The words 'Sources of Law' (*i.e.'source de droit'*) has a variety of interpretations. In technological sense, the term 'sources' relates to the law making process. The most important source of International law for centuries was Customary Law, evolving from the practice of states. The recent attempt to codify international law and the conclusion of multinational treaties in many important areas, such as diplomatic and consular relations, the law of war or the law of the sea, have sought to clarify the law and to establish universally accepted norms. It has to be noted that, the changes in international society since 1945 have led to basic disputes on the sources of International law and it must be noted at the outset that they have become an area of considerable theoretical controversy. In particular, the two main traditional elements, customs and treaties, are now often difficult to distinguish clearly.

Types of Sources: Now we come to the various types of sources. Sources are divided into: **Formal Sources ('law creating')** and **Material Sources ('law identifying')** also known as **Primary Sources** and **Secondary Sources.** A Formal or Primary Source of law, is a process by which a legal rule comes into existence i.e. it is law creating. Hence in International Law, Conventions, Customs and the General Principles of Law are considered formal sources (as they are law creating processes). Material Sources are those sources of law concerned with the substance and content of legal obligations i.e., they are law identifying. In this sense, state practice, judicial decisions, the writings of jurists and now even General Assembly resolutions are all considered as material sources. A few mentioned here, though are not in Article 38 are considered as material or secondary sources.

The question of how these sources are derived brings us to **Article 38 of the Statute of the International Court of Justice**. It provides that:
(1) The Court whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:
(a) International Conventions, whether general or particular, establishing rules expressly recognized by the contesting states;
(b) International Custom, as evidence of a general practice accepted as law;
(c) The General Principles of Law recognized by Civilized Nations;
(d) Subject to the provisions of Article 59, **judicial decisions** and **the teachings of the most highly qualified publicists** of the various nations, as a subsidiary means for determination of rules of law.
(2) This provision shall not prejudice the power of the Court to decide a case *ex aequo et bono*, if the parties agree.

1. International Conventions (Treaties)[1]: International Conventions or Treaties are considered the most important source of law, primarily because, it reflects the understanding of states, i.e. they are the only way states can consciously create law. Treaties are known by a variety of differing names such as Conventions, International Agreements, Pacts, General Acts, Charters, through to Statutes, Declarations and Covenants. According to Article 2 of

[1] Article 38(1) (a)

Vienna Convention on Law of Treaties, 1969, " A treaty is an agreement whereby two or more states establish or seek to establish relationship between them governed by international law."

Prof. Schwarzenberger defines it as follows: "Treaties are agreements between subjects of international law creating a binding obligation in international law." Prof. Oppenheim states that, "International treaties are agreements of a contractual character entered into between states or organization of states creating legal right and obligation."All the above definitions show how the rights and duties of parties to a treaty are in the first instance, determined by an agreement between them. McNair gives the most appropriate definition[2]. He says, "Treaty means a written agreement by which two or more states or international organizations create or intending to create relationship between them, operating within the sphere of international law."

We can divide International Treaties into 2 types: (A) Law- making Treaties (B) Treaty Contracts.

(A) Law-making Treaties: Law making treaties are those treaties, entered into by a large number of States; they are the multilateral treaties that lay down rules of universal or general application. Hence, the provisions of a 'law-making' treaty are a direct source of international law. Law-making treaties can be divided into two: (a) Treaties enunciating rules of universal international law- The best example for such a treaty is the United Nations Charter, to which 192 States are members. (b) International treaties that lay down general principles- These are multilateral treaties entered into by a large number of countries. E.g.: Vienna Convention on the Law of Treaties, 1969, Vienna Convention on Diplomatic Relations, 1961. In order to understand treaty as a source of law, we need to look into the Principles Governing a Treaty: (i) Treaties are voluntary i.e., a treaty can bind no state, without the state having given its consent to be bound by one of the methods recognized as effective in international law for this purpose (i.e. signature, ratification, accession etc.). There is an exception to this general rule, as there are certain treaties, which contain rules available against the whole world known as *erga omnes.* This concept is being dealt with towards the end. (ii) Treaties require consent, once a state has signified its consent to a treaty, and then it is bound by the terms of the treaty. Here, I would like to explain the two types of consent:Express Consent – those states that are parties, are bound by the treaty, as the treaty has been formed as a result of their express agreement,

Tacit Consent – sometimes, if state practice develops along the lines of the treaty code, the result could be that new rules of custom, similar to those found in the treaty, come into being. When such a thing happens, the new customary law will bind non-parties- here the non-parties give their tacit consent to the treaty. E.g. the 1982, United Nations Convention on Law Of the Sea, crystallized the concept of Exclusive Economic Zone (EEZ). According to the ICJ in the *North Sea Continental Shelf Cases*[3], for a treaty provision to give rise to a

[2] McNair on Law of Treaties
[3] 1969

general customary law principle, it 'should be of a fundamentally norm-creating character such as could be regarded as forming the basis of a general rule of law'.

(B) Treaty Contracts: 'these are 'particular' treaties entered into between two or more sovereign states'. They are like contracts in national law, and hence are not directly a 'source' of international law, as they are not binding on states that are not parties to it. But treaty contracts may help in the development of a new customary rule as it indicates state practice. E.g. are Bilateral Treaties between states.

2. International Customs[4]: The essence of custom according to Article 38 is that, it should constitute 'evidence of a general practice accepted as law'. Before looking into what constitutes a custom, we need to have a general understanding of what a custom is. International Custom is the oldest and the original source of international law. Though it is said that, the role of international custom as a source of international law has diminished, it is undeniable that it still has, a significant role to play, as a dynamic source, in the development of new rules of international law.

Now, the terms 'custom' and 'usage' are often used interchangeably; but there is a clear distinction between the two. 'Usage' represents the initial stage of custom. It is an international habit of action that has not yet received, full legal attestation[5]. Hence, when the states in their international relations start behaving in a particular way, in certain circumstances, that behaviour is called usage. When this usage receives the general acceptance or recognition of the states, in their relations, the usage becomes a custom. A Custom is a usage that has obtained the full force of law. When a usage crystallizes (i.e. becomes clear and definite) it becomes a custom. Hence, custom begins where usage becomes general[6]. But an international customary rule emerges only when there is satisfactory evidence that the rule has been accepted generally by states. Hence, it is possible to detect 2 basic elements in the making of a Custom: (A) The Material Fact, i.e. the actual behaviour of States or State Practice and (B) The Psychological or Subjective belief that such behaviour is law, i.e., *opinio juris*. This has been pointed out in *Libya/Malta* case[7], where it was held that the substance of customary law must be 'looked for primarily in the actual practice and opinio juris of states'.

(1) The Material Fact/ State Practice- Customary rules crystallize from usages or practices of States that evolve usually from three sets of circumstances: a) Diplomatic Relations Between States- Evidence of usages followed by states is found in acts or declarations by representatives of states, opinions of legal advisors to State Governments, bilateral treaties and press releases or official statements by governments. b) Practice Of International Organs- The practice of international organs, by conduct or declarations, may lead to the development of customary rules of international law concerning their status, or their powers and responsibilities. c) State Laws, Decisions Of State Courts, And State's Parliamentary Or

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4 Article 38(1) (b)
5 I.A. Shearer, Starke's INTERNATIONAL LAW, 11th ed. (2007), p. 31
6 *Supra* at n.6
7 ICJ (1985)

Administrative Practices- This can be found by looking into statutes i.e. State's municipal laws, official books and documents or the internal regulations of a state's diplomatic and consular services.

There are certain points that ought to be considered in order to ascertain State Practice: (1) Duration of Practice – In municipal systems, there is a recognized time-scale for acceptance of a practice as customary law. For e.g. in British legal system it is time- immemorial, while in some continental countries it is thirty to forty years. But in international law, there is no such rigid time element. The ICJ also does not give any clear guideline as to what will the time required be for the formation of customary law. This is because it depends from case to case, as to how a custom evolves. In certain cases the progress is slow, but in certain fields, the need for rules to develop quickly becomes necessary. In such cases, 'instant' customary law is possible. This is often known as 'Custom on Demand'. For e.g. the principle of state sovereignty in Air Law and the principle of non-sovereignty in Space Law are examples of Instant Custom. Hence, the duration is not very important in constituting state practice.

(2) Uniformity and Consistency of Practice- This is one of the most important factors in determining State Practice. The basic rule regarding this was laid down in the *Asylum Case* [8] where the Court held that a customary rule must be '*in accordance with a constant and uniform usage practiced by the States in question.*' The facts of the case are as follows:
Haya de la Torre, a Peruvian was sought after by his government after an unsuccessful revolt. He was granted asylum by Columbia's embassy in Lima, but Peru refused to grant safe passage for Haya de la Torre to leave the country. Columbia brought the matter before ICJ and stated that it wanted the right to try Torre in its country. The Columbian government stated that the practice of granting asylum existed in the Latin-American countries and that it was a regional custom. But the ICJ held that, what needs to be proved is an existing 'constant and uniform usage' or practice, by the states in question. Hence, Columbia's plea was rejected due to lack of 'uniformity and consistency'. Thus we can see that ICJ emphasizes on a certain degree of uniformity amongst state practices as essential before a custom could come into existence.[9]

(3) Generality of Practice – Though universality of practice is not required, ICJ requires that the practice should have been generally observed or repeated by numerous states, i.e. there should be a certain degree of continuity and also the practice must be common to a significant number of states. As an exception to generality of practice is the *Lotus Case*[10] the facts says there was a collision on the high seas between The Lotus, French ship and The Boz – Kourt, Turkish ship. 8 crew- members of the Turkish ship died. Turkey alleged negligence and arrested the captain of the French ship, De Mones, when he arrived on the Turkish territory. The French government challenged the Turkish government stating that the jurisdiction to try the accused lies with the French government and hence, they should not be barred from trying him. The French State argued that there existed a custom of abstaining criminal proceedings

[8] *Columbia* v. *Peru*, (1950) ICJ
[9] *Anglo- Norwegian Fisheries Case* (1951) ICJ
[10] *France* v. *Turkey*, (1927) PCIJ

by which states in similar situations and hence that practice ought to be given regard. The PCIJ rejected this argument and held that, abstention will form international customary rule 'only if such abstention were based on the states being conscious of a duty to abstain. Hence, this case shows how protests and acquiescence, as such will not form customary law. But, if there is a conscious abstention by states in general, then a particular rule may become customary law.

(B) The Psychological Element/ Opinio Juris- '*opinio juris sive necessitates*' is the factor that differentiates legal custom from mere social usage. It is the belief by a state, which behaved in a certain way that it was under a legal obligation to act that way. *The North Sea Continental Shelf Cases*[11] can explain the concept of opinio juris. The case is concerning the dispute between delimitation of continental shelf between Germany, Denmark and Netherlands. In this case, the ICJ laid down the two conditions for the existence of opinio juris. Not only should: 1) The act amount to a settled practice 2) The act must also be carried out in such a way, as to give evidence of a belief that a practice is obligatory by the existence of a rule of law. Hence, state practice along with opinio juris leads to the emergence of a customary rule of international law.

3. General Principles of Law[12]: According to clause 1 (c) of Article 38, the Court recognizes general principles of law, recognized by civilized nations, as a third source of international law. There are many opinions as to what constitutes 'general principles of law'. Generally, when the court finds that a principle has received general recognition, the court may apply it as a principle of international law.

Some jurists believe that Article 38 (1) (c) incorporates natural law doctrines, and that they have a pre-existing legal validity, irrespective of whether they are contained in a treaty or custom. Then there are those principles and rules, common to all municipal legal systems. Given are important case- laws that have recognized the following rules as general principles: (i) *Chorzow Factory Case*[13] where the PCIJ applied the principle of *res judicata* and also held that one who violates a rule is liable to make reparation. (ii) *Mavrommatis Palestine Concessions Case*[14] in this case the court applied the general principle of Subrogation. (iii) *Case Concerning the Temple of Preach Vihar*[15] ICJ in this case recognized and applied the principle of estoppel. (iv) *Barcelona Traction Case*[16] here also the principle of estoppel was applied by the ICJ

Other than these general principles that have gained their importance through application in the municipal sphere, there are other principles, which have gained international significance also. They are: Principle of *pacta sunt servanda*: The whole idea of binding international agreements rests upon this. This doctrine is also the basis of law of treaties[17]. Also mentioned

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[11] *Germany* v. *Denmark*, (1969) ICJ
[12] Article 38(1) (c)
[13] (1928) PCIJ
[14] (1925) PCIJ
[15] (1962) ICJ
[16] *Belgium* v. *Spain*, (1970) ICJ
[17] Vienna Convention on Law of Treaties, 1969.

in Article 2(2) of UN Charter are obligations resulting from international law, including treaties. Principle of Equity: 'Principles of equity have long been considered to constitute a part of international law and as such have often been applied by international tribunals.'[18] Here, what needs to be understood is that usage of equitable principles in deciding cases is different from deciding a case under Article 38(2), i.e. deciding *ex aequo et bono* (according to fairness and good faith). Hence, while applying the Principle of Equity in the *Case of Rann of Kutch Arbitration*[19], the Court emphasized that equity is not an abstract concept, but denotes the application of substantive rules of international law. Hence, it can be said that general principles help in validating certain important rules through them being applied in the process of deciding cases by various international courts and tribunals.

4. Judicial Decisions: Though described as a 'subsidiary' means[20]for the determination of law, judicial decisions can be of immense importance. This is because, in spite of Article 59, which states that ' the decision of the Court has no binding force, except between the parties and in respect of that particular case', the ICJ is more involved with the process of law creation. The best example is the *Anglo- Norwegian Fisheries* case, where the baselines from which to measure territorial waters were laid down. This was later incorporated in the Geneva Convention on Territorial Sea and Continguous Zone, 1958. Hence, what is to be noted is that, while deciding cases these international courts may actually form a new treaty rule or provide evidence for the existence of a customary rule. In addition to the decisions and opinions given by the Permanent Court of International Justice and the International Court of Justice, 'judicial decisions' include International Arbitral awards and the rulings of national courts also. International Arbitral Tribunals, like the Permanent Court of Arbitration and Claims Tribunals like The Iran-US Claims Tribunal, are all significant in the development of international law.

5. Writers: Article 38 includes as a subsidiary means for the determination of rules of law, 'the teachings of the most highly qualified publicists of the various nations'.[21] Historically, the influence of academic writers on the development of international law was immense. Classic writers like Hugo Grotius and Gentili have contributed to help in determining the scope, form and content of international law. Similarly, writers like McNair on Law of Treaties and Jenks on Space Law, have all helped in the process of evolution of rules of law. But it is to be noted that 'juristic works cannot be treated as an independent source of law'. They can only assist in the development of law in emerging areas. For example, jurists played a very significant role in the development of Air Law and also Law relating to Outer Space since its evolution. Other than the sources explicitly mentioned in Article 38 of the Statute of ICJ, there are a few other sources the existence and importance of which cannot be denied in the development of international law.

Decisions or Determinations of the Organs of International Institutions: In this come the resolutions and declarations of the General Assembly of the United Nations. The General

[18] *The River Meuse Case*, *Netherlands* v. *Belgium*, (1937) PCIJ
[19] *India* v. *Pakistan*, (1968) ICJ
[20] Article 38(1) (d)
[21] *Ibid.*

Assembly has produced a large number of highly important resolutions and declarations, and hence, it is inevitable that they should have some impact on the development of modern international law. The biggest drawback is that General Assembly Resolutions are not binding, even if they are adopted unanimously, by voting of all states. But the importance of General Assembly Resolutions lies in the fact that, these resolutions may give evidence of state practice, which in turn may lead to the creation of a new customary rule in international law. An example for such a declaration is the Declaration on the Legal Principles Governing Activities of States in the Exploration and Use of Outer space (1963), where unanimous votes led to evidence of state practice and that in turn led to the formation a binding rule of customary law[22]. Similarly, the Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States also led to emergence of requisite opinio juris. Hence, General Assembly Resolutions, though not binding, may have normative value, and provide evidence important for establishing opinio juris. It is because of its non- binding nature that they are termed as 'Soft Law'.

Soft Law is per se, not law. But it has a great influence in the development of treaties or laws in certain areas. The Helsinki Final Act, 1975 is an example of this. Though it is not a binding agreement, it is from this that the concept of International Human Rights Law has evolved. Similarly, in the area of International Economic Law and International Environmental Law, there are many such guidelines and recommendations which are though non-binding instruments play an important role in the development of legally binding rules. Also bodies like the International Law Commission (ILC), The United Nations Commission on International Trade Law (UNCITRAL), The United Nations Conference on Trade and Development (UNCTAD), The International Labour Organisation (ILO), United Nations Educational, Scientific and Cultural Organisation (UNESCO) etc. are all specialized bodies playing a significant role in the development of international law by working from within their respective spheres.

Hence, though the rules made by these bodies are termed 'Soft Law', it is undeniable that there these organizations are instrumental and influential in creating legal norms.

Newly Emerging Concepts: Lastly, there are two more emerging concepts that give way to creating sources, which are slowly gaining significance. They are:

Jus Cogens and *Erga Omnes* Obligations: The concepts of *jus cogens* and *erga omnes* obligations, which are now at the heart of the concern for "serious beaches of obligations arising from a peremptory norm under general international law", are important new elements in the structure of international law. They are an attempt to signify that international law is, going beyond the bilateral and State centric interaction, becoming more and more responsive to the needs of more globalize international relations and the demands of increasingly integrated international community interests.[23]

[22] This later crystallized into The Outer Space Treaty, 1967
[23] Pemmarajulu Sreenivasa Rao, "The Indian Position on Some General Principles of International Law", Bimal N. Patel (ed.), INDIA AND INTERNATIONAL LAW, 2n ed. 2001, p. 33

The concept of *Jus Cogens* was introduced in Article 53 of the Vienna Convention of Law of Treaties, 1969 which states that *jus cogens* is a peremptory norm of general international law, i.e. it is a norm accepted and recognized by the international community of States as a whole[24]. Hence, a treaty is void, if at the time of its conclusion, it conflicts with a norm of such a nature. *Jus Cogens* is a norm from which no derogation is possible. Also, it can be modified only by a subsequent norm of general international law having the same nature. Examples of *jus cogens* norms are fundamental rules of humanitarian nature (like prohibition of genocide, slavery and racial discrimination), rules of sovereignty of States, the concept of Common Heritage of Mankind (in High Seas, Outer Space).

Next, is the concept of *Erga Omnes*. The ICJ laid down the concept of *erga omnes* obligation, in the *Barcelona Traction* case[25]. It explained that, *erga omnes* is an obligation a State owes to the international community as a whole. This obligation, gives locus standi for any State to invoke the responsibility of a State, even if it is not directly injured by the wrongful conduct. Examples are obligations to outlaw genocide, protection from slavery etc. are issues that can be raised by any State, on behalf of the international community. Violation of these obligations is considered as a 'serious breach' of peremptory norms in international law[26].

SUBJECTS OF INTERNATIONAL LAW

Theories relating to subjects of International Law: "A subject of rules is a being upon which the rules confer rights and capacity and imposes duties and responsibility; whereas an object enjoys and is burdened by no such competence. The law commands its subjects but it merely regulates the use and disposition of the objects." Subjects of law are those upon whom law bestows a capacity to act. Capacity implies personality. Legal personality indicates that the entity may be capable of possessing international rights and duties. During the classical era of international law, the positivists were of the view that the only legitimate legal person on the international plane is the "state". While states remained the most important subject of international law, one feature of development since 1945 has been recognition of other legal persons. In principle it is for international law to determine firstly whether an entity has legal personality and secondly the scope of that personality. The other subjects of international law are International Organizations and certain non-state entities like NGOs, MNCs etc. and now even the individuals are also included in the realm of international law.

Following are the three main theories prevalent in regard to the subjects of international law:

- States alone are the subject of international law.
- Individuals alone are the subject of international law.
- States are the main subject of international law, but to a lesser extent individuals and certain non-

[24] Article 53 of Vienna Convention on Law of Treaties, 1969: " A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purpose of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only a subsequent norm of general international law having the same character."
[25] *Belgium* v. *Spain* (1970) ICJ
[26] ILC Draft Articles on State Responsibility, 2001

state entities have certain rights and duties under international law.

State as a Subject of International Law

As we all know International Law is also called as ‘Law of the Nations’. The term itself suggests that it is the law which operates amongst various states. States are traditional subject of international community; in the sense that they have been ‘dramatis personae’ (character of the play) on the international scene since its inception. The position could not have been expressed more clearly than by Oppenheim who observed in 1912: ‘since the law of the nations is based on the common consent of the individual human beings, states solely and exclusively are the subjects of the international law’. Therefore with this background the paper will cover following points which are provided in the form of questions: What kind of states are the subjects of international law? Definition of state, traditional and modern concept of international law. Why are the states important in the international law? Role played by the states in the scenario of international law. How is the international law operating between states? Fundamental rights and duties of the states as a subject of international law. Admission case.

Definition of State: Many jurists have attempted the definition of STATE but no definition can be called as a complete one. Still some of them are optimized to cover characteristics of ‘state’. According to Salmond ‘State is a society of men established for the maintenance of order and justice within a given territory by way of force’. According to Oppenheim: ‘the existence of state is possible only when people of the state have settled under highest government authority and habitually follow its order’. According to Kantarowicz ‘a state as a jurist person endowed with the right to impose its will on the inhabitant of a given territory, of which right it cannot by law be deprived without its own consent ’.

From above definitions we can define state – A group of society within defined geographical area united to ensure their mutual welfare and security. Today it is generally accepted that the legal criteria for statehood are those set in Art.1 of the Montevideo Convention on the Rights and Duties of the States (1933) which reads: The state as a person of the international law should possess the following qualifications –(a) a permanent population (b) defined territory (c) a government and (d) Capacity to enter into relations with other states. All the above criteria set out are flexible. Statehood is recognized in the international law though they do not fulfill some of the criteria. These states may be condominium, federal states, protected states etc. From the outset the states has been at the centre of the international society. States are so important because State can only seek membership of the United Nations; State can only participate in litigation before the International Court; Only state commands the permanently organized armed forces; It is normally only state that can mobilize the large resources needed to relieve suffering and afford humanitarian relief.

As the subject of international law state are imposed with certain rights, duties and powers. In broad terms they may be expressed as: the doctrine of the equality of states; the principle of non-interference; the principle of independence of state; and The principle of self-preservation or self-defense. To some extent, these principles overlap and are but consequence of each other however in the interests of clarity it is sensible to segregate them.

These may be discussing in brief: The United Nation Charter (1945) Art.2 (1) expressly asserts that: ‘The organization is based on the principles of sovereign equality of all its members’. In particular, sovereign equality includes the following elements: States are juridically equal; Each state enjoys the rights inherent in full sovereignty; Each state has duty to respect the personality of the other states; Each state has a right freely to choose and develop its political, social, economic and cultural systems; The territorial integrity and political independence of the other state; Each state has the duty to comply fully and in good faith with its international obligations and to live in peace with other states. It would be seem that the concept of equality indicates that the each state will be answerable in international law for its conduct. Independence is nothing but consequences of sovereignty. To an extent it is clear that sovereignty implies independence and independence implies jurisdiction.

Peaceful Co-Existence: The doctrine has been reworked to meet anxieties of cold war and nuclear age. It obtained legal recognition in Art.13 of the Charter of the Organization of the American States, Charter of the Organization of The African Unity (1963), and Declaration of the Principles of International Law (1970). The preamble in effect states seven principles which may be summarized as: State shall refrain in international relations from the threat or use of force. States shall settle their international disputes by peacefully means. States recognize a duty not to intervene matters within the jurisdiction of another state. State recognizes a duty to cooperate with one another in accordance with the United Nations Charter. States recognize the principle of equal rights and self determination of peoples. States recognize the principle of sovereign equality. States agree to fulfill in good faith the obligations assumed under the charter.

Admission Case [(1948) Icj 61]: In the early years after 1945 cold war rivalry caused the Security Council to be reluctant to admit new States. In consequence, the General Assembly sought an Advisory Opinion from the ICJ on the criteria for admission; and the criteria that a State should have in mind when casting a vote for admission. In the Advisory Opinion on conditions of membership in United Nations the ICJ held by a majority that there were 5 conditions mainly that the applicant had to be A State; Peace loving**;** Accept the obligations of the charter**;** Be able to carry our these obligations; Be willing to do so. Secondly, the Court ruled that when casting a vote for admission a State should have these criteria in mind and no others. Nevertheless, the situation became less tense on admission after December1955, when a ‘Package Deal’ was negotiated to enable 16 new States to become members.

In the International Law, States remain the principle subject. It is the only permanent entity which is broadly accepted as having legal rights and duties in the International scenario.

International Organisations as Subjects of International Law

One of the most important developments of the 20th century has been the establishment of numerous international Organisations for inter state relations. International organisations are also generally counted among the subjects of International law together with states, individuals, and perhaps, some other entities like International corporations, national corporations, and national liberation movements as well. In accordance with the standard definition of 'subjects', they are deemed capable of independently bearing rights and obligations under International law. The question as to whether International Organisations could be regarded as subjects of International Law reverberated well into the second half of twentieth century. It is pertinent to note that even before the establishment of League of Nations, the problem of assuming international legal personality was in vogue. There is a long history of non- sovereign organisations performing acts in international law.

Classifications of International Organisations: The international organisations may be classified on various grounds such as the on the basis of functions they perform, the membership and their scope of jurisdiction. But they are mainly divided into two main categories: *Inter governmental Organisations* and *Non-governmental organisations*. Inter governmental Organisations have national governments as their members. Hundreds of IGO's operate in all parts of the world. The United Nations and its agencies are IGO's. They are again classified on the basis of the area of their operation. They are divided into **international** and **regional**. SAARC, OPEC, G8, Arab League and the African Union are the best examples of IGOs operating at regional level.

Importance of International Organisations: The main objective of all the international organizations has been welfare improvement of member countries. International organizations, such as International Trade Centre and World Trade Organization, assist member countries in promoting fair trade with each other. The World Bank and Institute of International Finance are international organizations that provide monetary help to member countries and to enhance sustainable economic development in the world. And they are facing the challenges of enhancement of international reforms and integrating developing countries on various measures.

International organisations play as necessary instruments for organising the growing relation of states ***per se***. They are the institutions which represent that process and play significant roles in the contemporary world. International organisations have become indispensable instruments to deal with international problems confronted by international society.

International Organisations as a Subject: It was in the case of Reparations for injuries suffered in the services of United Nations (I.C.J Reports, 1949p.174), the international court of Justice held that the United Nations is a subject of international law and capable of possessing international rights and duties, and it has capacity to maintain its rights by bringing international claims. Hence the subjectivity of international organisations is cleared with the help of three indicators. They are, Whether the organisation possesses the right to enter into international agreements? Whether they have the right to send and receive legations? Whether they can bring and receive international claims? These are not strict requirements as such. At best they can be viewed as indicators; to the extent that proposed subjects of International Law on any of these indicators, they can be deemed to be subjects of international law. And it was also held that the organisation was intended to exercise and enjoy the functions and rights which can only be explained on the basis of the possession a large measure of international personality and the capacity to operate upon the international plane. Therefore, we can say that the idea of considering International organisations as subjects of international law emerged from the decision of the ICJ in this case where it pronounced that UN was not the same as a state, let alone a super state.

Position of International Organisations in Municipal Law: It is usually explicitly provided for in the constituent treaty of the organisation. Article 104 of the United Nations charter provides in this context that 'The organisation shall enjoy in the territory of each of its members such legal capacity as may be necessary for the exercise of its functions and fulfilment of its purposes.' And the ICJ has also stated that the organisation should be regarded as possessing the powers which even if they are not expressly stated in the charter are conferred upon the organisation as being essential to the discharge of its functions.

Contribution of United Nations in International Law: The United Nations is an international organization founded in 1945 after the Second World War by 51 countries committed to maintaining international peace and security, developing friendly relations among nations and promoting social progress, better living standards and human rights. Due to its unique international character, and the powers vested in its founding Charter, the Organization can take action on a wide range of issues, and provide a forum for its 192 Member States to express their views, through the General Assembly, the Security Council, the Economic and Social Council and other bodies and committees. The work of the United Nations reaches every corner of the globe. Although best known for peacekeeping, peace building, conflict prevention and humanitarian assistance, there are many other ways the United Nations and its System (specialized agencies, funds and programmes) affect our lives and make the world a better place. The Organization works on a broad range of fundamental issues, from sustainable development, environment and refugees protection, disaster relief, counter terrorism, disarmament and non-proliferation, to promoting democracy, human rights, governance, economic and social development and international health, clearing landmines, expanding food production, and more, in order to achieve its goals and coordinate efforts for a safer world for this and future generations.

The Changes Happening in the International Scenario: It may however, be noted that the Brettonwoods conference held in 1944, was the beginning point in the direction of a new International Economic Order. The establishment of WTO has marked the emergence of a new era of economic order of the world. As a result of Uruguay round of GATT negotiations for about 7 years, as many as 125 states including India formed by consensus, the world trade organisation which came into force on January 1, 1995. The WTO is playing an active role in setting up the trade policy agenda, working on consensus and basing itself on the fundamental principles of non- discrimination. WTO has become the world body to oversee a comprehensive set of rules and disciplines covering every aspect of world commerce including trade in services and intellectual property protection. Thus World trade organisation is the main organ for implementation of Multi lateral trade Agreements. It has become the negotiating forum for the member states. It is been regarded as the third economic pillar of world trade and commerce dimensions along with the International Monetary Fund and the International Bank for reconstruction and Development or World bank.

The paradigm of subjectivity of International law differs from subject to subject and even between various subjects of same category. It is because the scope of International law keeps on widening, thus making the corporations, individuals, and movements come into the ambit of subject of international law. There is a radical transformation from UNO to WTO in controlling the international trade and administration of Multi-lateral Trade Agreements and also of the plurilateral Trade agreements.

Individual as Subjects of International Law

Subject of any law means an entity capable of possessing rights and duties. Similarly a subject is said to possess international personality if the entity is capable of possessing international rights and duties .Thus subject of international law owes responsibility to international community and enjoys rights that may be claimed and if denied may be enforced via legal procedure: that means the particular entity will have *procedural capacity*. To be recognized as a subject of international law is not a choice that an individual in his capacity as an individual has an option of subscribing to, unlike in the municipal legal arena where it is forcibly thrust upon an individual that he has to be the subject weather to his liking or not. Thus one may find in this particular field not lot of changes have taken place, at least in the theoretical concepts of traditional international law. The states themselves afford the status of subjects of international law to individuals, as every thing in international law is dependent on consent even if this does not concern the state but only individuals are affected by them. Even today though lot of inroads are made in traditional view point put forward by older jurists there still remains some hope and scope of improvement in different arenas where international law operates.

Scope on International Law and Changing Concepts of Subjects: In order to understand individual as a subject of international law one must understand the changing structure of scope of international law. The scope of international law have developed and expanded, so new entities have been admitted as subjects, but *the personality enjoyed by such subjects varies considerably.* In order to understand the evolution of the scope of international law one must look into the definition of international law given by various jurists. There were two schools of thought regarding the scope of international law one was the *traditionalistic* school of thought and the other was the *modernistic* school of thought.

The traditionalistic scholars believed *state as the exclusive subjects of international law*.

Oppenheim was the most prominent exponent and as pointed by him "Since law of nations is based on the common consent of the individual states and not of the individual human being states solely and exclusively are the subjects of international law." *Starke* was the most important exponent of modernistic theory and according to him, "international law may be defined as that body of law which is composed for its greater part of the principles and rules that state feel themselves bound to observe and therefore do commonly observe in their relation with each other and which include also the rules of law relating to the functioning of international institutions, their relations with each other and their relation with state and individual and certain rules relating to individuals and non-state entities are the common concern of international community**.** Today states are the primary subjects of international but hey are no longer the only subjects, international organizations, non-state entities and individuals are also considered as subjects of international law." The scope of international law has widened as a result of greater international awareness of human rights, proliferation of international organization. "State possess international personality as inherent attribute of their statehood, all others do so only to the extent that their states allow i.e. their personality is derived from states. Thus, *personality of states may be characterized as original and that of the other entities as derivative.*

Individual as Subjects: Individual in general have very limited personality but contemporary international law recognizes that individual may possess international rights and duties. *Why is this so?* One of the reasons may be the greater awareness of human rights for individual through both international and regional regulation. As a consequence of this it is being recognized that individuals may be responsible for certain conduct – earlier it was believed that states are exclusively the perpetrators of breach of international law but now this belief if not shattered but definitely dented, some of the examples are piracy**-**has been recognized under customary international law as international crime. Pirates are considered as hostis humani generis i.e. common enemies of mankind any state that apprehends then can punish them under international law. War crimes and crimes against humanity are recognized as international crimes and individuals may be held liable under the ICC. Nuremburg trail-Judge Jackson made an opening statement "Crimes against international law are committed by men and not by abstract entities and only by punishing individuals who commit such crimes can the provisions of international be established."

Convention on the prevention and punishment of the crime of genocide – article 4 – "*Genocide is punishable as crime irrespective of whether they are committed by A) Constitutionally responsible rulers B) Public officials and C) Private individuals.* As a natural corollary of this individuals are under obligation to refrain from such conduct. Individuals thus have limited right and duties in international scene. There are also other acts that an individual may be personally be held responsible these are hijacking, sabotage, terrorism, drug trafficking and acts upon diplomats.

One point to be noted here is that individual responsibility derives from international law and is independent of law of the state for they may be responsible in municipal law also but the exception is that the responsibility is founded in international law.

Drawback: The most important drawback is that for individual exercising international personality is the lack of procedural capacity which is denied to them because of reluctance of states to grant them such capacity. Some instances though where international law affords procedural capacity are 1) Permanent court in Danzing railway official's case recognized-"*Those exceptional treaties could create rights for individuals and in certain cases these rights could be enforced in municipal courts*.

Vangenden Hoos V. Nederlandse Tarief Commissioner (1963) **-** where article 12 or the European community treaty was interpreted to read- "*The very object of international agreement, according to the intention of the contracting parties may be the adoption by the parties of some definite rules creating individual rights and obligations and enforceable by international courts"* Central American Court Of Justice – where for the recourse was made available to an individual for violation of international law (human rights)-1908- it was novel in the aspect that court had jurisdiction to deal with dispute between individual and states and individual "court had jurisdiction to hear dispute between private individual of any of the five contracting parties and any of the other contracting parties. Treaty Of Versailles –provided for claims by individuals against government and nationals of defeated state. Tribunal Established under Upper Silesian Convention**-**it was competent to hear cases brought by nationals of state against their own.

In modern international law individual definitely can be considered as a subject of international law there can be no arguments against this fact simply because it is a fact and not a myth. Any student of international law should know better than argue that individual is not a subject of international law, but to what extent is deficiently a arguable issue not just for students of international law but also for any human being. The status of individual as a subject of international law is pointed towards an upward incline which is a relief for all human beings as evident from the case of Astronauts – they are considered as friends of mankind in general in respect of the. Asylum- every individual has a right to claim asylum in any other country and other states may or may not consider them but if they do there is no practice of questing that particular states decision. Extradition- there is also a duty upon every state subject to the bilateral treaty between them to extradite criminals found in their territory wanted in other states. Slavery And Slave Trade**-** work they do for the development of humans hence there is a duty upon every state to actually render help and return any astronaut to their respective states upon entry into the earth from any mission. There is also a duty upon every individual and state to desist from slave trade and practicing slavery and every person has a right against slavery. Diplomats –diplomats as individuals have the variety of rights enumerated in Vienna convention on diplomatic agents (1961) and a person may be held liable for the crimes committed against them.

Non-State Entities as Subjects

All the legal persons in the international law apart from State are termed as non-state entities. In the 19th Century States were the only legal persons in International Law. But the position has changed in the last century, and international organisations, individuals and companies also acquired some degree of international legal personality. The problem of including new actors in the international legal system is reflected in very concept of legal personality, the central issue of which has been:- Capacity to bring claims arising from the violation of International law. To conclude valid international agreements. To enjoy privileges and immunities from national jurisdiction.Thus, International Court of Justice has noted that, 'the subject of law in any legal system is not necessarily identical in their nature or in the extent of their rights, and their nature depends upon the needs of the community. The non-state entities can be categorised under following heads namely:- International Organisations, Non-governmental Organisations, Multi-national Organisations, Insurgents and National Liberation Movements, Ethnic minorities, Indigenous people under International Law.

Non-Governmental Organisations: Non-governmental Organisations are those organisations which are not established by a government or by an agreement between states but, its members are private citizens or body corporate. International NGOs have proliferated considerably in past decades and are engaged in a broad variety of different areas, ranging from politics, the legal and judicial field, the social and economic domain, human rights and humanitarian relief, education, women, to the environment and sports. The role of NGOs in International Law is primarily of informal character. They have some effect on International law-making in certain areas by adding additional expertise and making procedures more transparent. They are essentially providers of information, lobbyists or pressure groups, and as such may properly be regarded as so-called non-state actors. From formal point of view, on global level there are no international legal standards governing the establishment and status of NGOs. The relevant law is that of the State where an NGO is based. This may cause problems in the case of international activities because national laws are different. Inter-governmental organisations may agree to grant NGOs a certain consultative or observer status (such as the exceptional case of the observer status granted by the UN General Assembly to the International Committee of Red Cross in1991) and thereby a limited international status, but this does not make them a subject of international law. Since the beginning of this century, efforts have been made by the bodies such as the Institute of International Law (itself being an NGO) to improve the international legal standing of NGOs, but such efforts have remained fruitless in view of the doctrine of sovereignty. On the regional level, however, within the framework of the Council of Europe a common status for NGOs has been recently laid down in the European Convention on the Recognition of Legal Personality of International Governmental Organisations. The State which has ratified it attributes legal personality in any one of the state parties.

The problem as regards NGOs is that they are based in industrial part of the world. Therefore it is concentrated in few home countries like U.K., France, Belgium, Switzerland and U.S. As a resultant, it creates geographical imbalance. Although these countries are democracies, guaranteeing freedom of association, NGOs are sometimes misused by governments in their international dealings. Now the question which raised is- Is it really advisable that these non-territorial entities should seek to obtain a formal international status on the universal level? Owing to its work in the field of human rights, they are now generally acknowledged. But in regard to international law-making in general, it is unlikely that NGOs will be included in formal process in near future. As is said by one recent author, " As NGOs are not democratically authorised to realise common good, they often neglect the common good in pursuance of their specific interests."

Multi-National Corporations: MNCs are those corporations and associations that operate transnationally in the finance, transportation, communication and other areas of economic life. Because they operate across many state boundaries, they serve as a global vehicle to transfer and esseminate capital, skill and technology. They are profit oriented and hence are commonly treated as distinct from NGOs. The larger transnational corporations negotiate directly with nation-state representatives in a new form of democracy. Agreements with these corporate giants may surpass treaties between states in terms of values affected and the prescribing effect engendered. They have contributed greatly to the internationalization of production, finance, and ownership and to the growing integration of national economies into world economy. Though they are labelled multi-national, trans-national, or international, MNCs owe their creation to national laws. Their success in operation however, depends greatly on trans-national recognition of such national laws.

MNCs are incorporated under domestic law of State of incorporation. But conflicting national laws are inadequate to deal with manifold problems of MNCs. Profit-oriented by nature, multinational corporations have come to be perceived variously as exploiters of the labour and physical resources of the developing countries, environmental polluters, manipulators of currencies and commodities, tax dodgers, practitioners of corrupt business practices, supporters of reactionary regimes, and instruments of their national governments. They have recently gained particular notoriety due to the exposure of the widespread business practice of bribery- corruption and conspiring with power elites to the detriment of democratic values and the masses of the population. As their operations expand in geographical reach and in magnitude of impact and grow in complexity, it has become increasingly apparent that conflicting national laws are inadequate to deal with manifold problems having to do with multinational corporations. So in 1972 Economic and Social Council called together a group of eminent experts to study the role and impact of MNCs and to recommend measures towards international accountability. In 1974 they established two permanent bodies to deal with problems of MNCs - Inter-governmental Commission on Transnational Corporation, consisting of 48 members. U.N. Centre on Transnational Corporations. The commission made it a top priority to develop code of conduct for activities of transnational corporations. This are because MNCs basically are also seen as a threat to nation-states because they possess more resources than most of these nation states. Hence the nation-states fear that there power would be undermined over their own nationals.

Insurgents and Non-Liberation Movements: Insurgents in civil war have long been recognised in international law as subjects having certain rights and duties because they control some territory and might become the effective new government of the state. This is also reflected in Articles 14 and 15 of the United Nations international Law commissions draft articles on state responsibility, according to which the whole old government is still in power, a wrongful act of an insurrectional movement established in the territory of the state shall not be considered as an act of that state under international law (involving responsibility to other states for it).

New problems emerged in the process of de-colonisation concerning the international legal status of liberation movements of ‘peoples under colonial, alien or racist domination’ having a representative organisation (such as SWAPO, the ANC or the PLO). With regard to such national liberation movements there have been conflicting positions of states on this issue in the past, which has now lost most of its former relevance.

Ethnic Minorities and Indigenous People: With the rise of ethno-national in many parts of the world, not only in the Balkans and in the former Soviet Union, the status of Ethnic Minorities and other groups in International Law has again become a central issue. This is witnessed in various recent efforts on the global and regional level to improve their legal protection. The question of international legal personality of minorities is more complicated than the issue of international legal personality of individuals or corporations. The problem of minorities has quite different political and legal dimensions. Indigenous people are not subjects of international law in any meaning full sense of the term and have not (yet achieved an international legal status any higher than that of individuals).

RELATION BETWEEN INTERNATIONAL LAW AND MUNICIPAL LAW

International Law, in the present context, is considered as one of the most significant concepts, which has been gaining momentum at a fast pace in the world community. There has been several occasions, since the evolution of human civilization, where efforts have been put by mankind throughout the world in order to legitimise the concept of International Law in a broader perspective, with the sole objective of maintain universal brotherhood and keeping international war and conflicts at bay. Since the formation of the world community, especially after the Second World War (1939-44), inferences of International Law can be found quite frequently. The presence of International Law has increased by leaps and bounds which is quite evident from the fact that almost all the sovereign nations of the world, irrespective of their political, social, economic, religious or geographical background, have voluntarily accepted the authority of International Law.

With the due passage of time, the role of International Law has also widened accordingly and the concept of International Law is no more restricted only to the maintenance of international tranquility. The ambit of International Law has been growing expansively and hence, it becomes very essential to analyse what could be the possible aspects of international community, where the seeds of International Law can be sown. One can easily chalk out the significance of International Law with the presence of several agencies or sources of International Law, such as, International Organisations, Non-Governmental Organisations (NGOs), International Treaties and Conventions, Multi-National Corporations (MNCs), etc., which have been exhaustively assisting in the growth and development of International Law, with the establishment of the first inter – governmental organization in the year 1864, viz., the “International Telegraphic Union.” It is also essential to note that there has been a significant contribution on the part of the internal organs of the sovereign States, such as, the Legislature, the Executive, the Judiciary, etc. who have been making a valiant effort to uphold the principles of International Law in their own territory for achieving the ultimate goal, i.e., ‘international peace and security.’

The practice of States regarding the relationship of International Law and Municipal Law is divergent. Application of International Law depends largely upon the Legislature as well as the Judiciary of a State. They are expected to take cognizance and endeavour to honor the international obligations of the State. It has to be realized by them that neither Municipal Law nor International Law is supreme, but they are concordant to each other. They both have been made to solve the problems of human beings in different areas. If they refuse to accept the rules of International Law, relations between the States would obviously become tense and the high ideals of ‘maintaining international peace and security’ will be at peril.

Theories as to the Relation between International Law and Municipal Law

The proper understanding of the concept of International Law is possible only when its relation with Municipal Law is analysed in a comprehensive manner. Even though International Law regulates the conduct of international subjects, the question arises whether International Law has any impact on domestic legal systems or on subjects within those systems. The framework under which a domestic legal system relates to and applies international law is very important as it is this aspect that gives an effect to the domestic implementation of International Law in the domestic circuit.

There are two major models for this relationship: dualism and monism.[27] In a dualist approach, the domestic and international legal systems are kept separate because they operate in different spheres. Monism, on the other hand, holds that the domestic and international legal systems are simply two connected areas of a single legal dimension. The two principal theories can be elaborately discussed as under:

Monism: Kelsen (1881-1973) is one of the chief protagonists of this theory. Besides Kelsen, the other supporters of monism are Lauterpacht, Fitzmaurice and Starke. According to monism, International Law and State Law are similar aspects of the same system, i.e., law in general. Monism considers that all law as a single unity is composed of binding legal rules, whether those rules are obligatory on States, on individuals or on entities other than States. Monists opine that the science of law is a unified field of knowledge and the decisive question that needs attention is whether or not International Law is true law. Once it is accepted that International Law is a system of rules that are of a true legal nature, it was impossible to deny that the two systems constitute part of that unity corresponding to the unity of legal science. Both Municipal Law and International Law are part of the same universal body of legal rules binding all human beings collectively or individually. It is the individual who lies at the root of the unity of all. Thus, any construction other than monism is bound to amount to a denial of the true legal character of International Law.

Dualism: In the 19th and 20th centuries, there developed a strong view towards the dualist view. The chief exponents of dualism have been the positivist writers Triepel and Anzilotti. For the positivists, with their consensual conception of International Law, it was natural to regard state law as a distinct system. Dualists state that International Law consists of principally of customary and treaty rules whereas, Municipal Law consists of in most part the legislative enactments and judicial legislation. The difference between International Law and

[27] Supra n. 24.

Municipal Law is depicted by the dualists as under: Source: Under International Law, customs grown up among States and Law making treaties are the main sources, whereas, under Municipal Law, customs developed within the territory of the State and Statutes enacted by law-giving authority are the main sources. Operation: International Law operates between Relation of States, whereas, Municipal Law operates between the relations of individuals within the sway of the State. Substance: International Law is a weak law as it operates between the States and is not above them, whereas, Municipal Law is the supreme law where the law is the sovereign and operates over individuals. Subjects: States are considered as the subjects of International Law, whereas, Individuals are considered as the subjects of Municipal Law.

The question of primacy, i.e., whether International Law or Municipal Law is superior and in case of a conflict which should be given primacy. On the question of primacy, the monists are divided. Some of them give primacy to International Law. Kelsen has made structural analysis of International Law and Municipal Law. For this, he has applied his 'hierarchical' doctrine or 'grund norm'. On this basis, he asserts that each rule is conditioned by a superior rule for its validity, and thus, in turn, it derives validity from the fundamental rule, i.e., the grund norm. This grund norm is not exclusive in International Law and it may pertain either to International Law or Municipal Law. The primacy of Municipal Law is perfectly legitimate because the choice between either system could not be decided scientifically. As dualism attaches importance to the sovereignty of 'State Will', they give primacy to Municipal Law over International Law.

Transformation and Specific Adoption Theories: The application of International Law within the municipal sphere would be incomplete without referring to certain theories. On one hand, the positivists have put forward the view that the rules of International Law cannot directly be applied within the municipal sphere by state Courts or otherwise. In order to be so applied, such rules must undergo a process of specific adoption by Municipal Law. As according to positivists, International Law and Municipal Law constitute two distinct and structurally different systems, the former cannot be applied upon state law unless the latter allows its constitutional machinery to be used for that purpose. In the case of treaty rules, it is claimed that there must be a transformation of the treaty into state law, which is not merely a formal but a substantive requirement. The transformation theory is based on an alleged difference between treaties on one hand, and state laws or regulations on the other.

Delegation Theory: According to the exponents of this theory, there is delegated to each state Constitution by constitutional rules of International Law, the right to determine when the provisions of a treaty or convention are to come into force and the manner in which they are to be embodied into state law. The procedure and methods to be adopted for this purpose by the state are a continuation of the process begun with the conclusion of the treaty or convention. There is neither any transformation nor any fresh creation of rules or Municipal Law, but merely a prolongation of a single act of creation. Whatever are the ultimate merits of this theoretical controversy over the alleged necessity for a transformation or specific adoption of International Law by Municipal Law, the actual practice of states concerning the application of International Law within the sphere of Municipal Law must remain of critical importance. It is therefore essential to pass to a consideration of such state practice, and then to derive there from any necessary conclusions with regard to the matter.

Pre Independence Implementation of International Law in British India

Before the adoption of the Constitution, the British 'Doctrine of Incorporation' with certain qualifications as prevailing in Britain was followed in India. It is the part of the public policy that the Courts should in principle give effect to clearly established rules of international law. When a Municipal Court in England has decided as a preliminary issue that a rule of Customary or Treaty law is applicable to a case before it, the rule is applied as though it is a rule of the law of the forum.[28] In the sphere of customary international law, the doctrine of incorporation has become the main British approach.

Conditions for Implementation of Customary International Law in British Practice:[29]
Consistency: Such rules should not be inconsistent with the British statutes, no matter whether the statute is earlier or later in date than the particular customary rule concerned..2 Supremacy of the Court: If the scope of such customary rules has been determined by the final authority of the British courts, all British courts are thereafter bound by that determination, notwithstanding a divergent customary rule of international law developing later on.

'Doctrine of Incorporation': The British model of interpretation of the 'Doctrine of Incorporation' can be discussed as follows: In **Triquet** v. **Bath**,[30] the 'Doctrine of Incorporation' was quoted as "the Law of Nations, in its full extent was a part of the law of England." This view was in practice for a subsequent period of time. But a departure in this practice of British Courts was noticed in the latter part of the 19th century. The majority of the Court refused to apply the 'Doctrine of Incorporation' and said that English Courts had no jurisdiction over crimes committed by foreigners within the maritime belt extending to three miles from the British coast, although such right existed under customary international law in Franconia case (**R.** v. **Keyn**).[31] The Court held that a rule of customary international law does not apply in England on its own force, but needs preliminary legislation. However, this decision of the Court was reversed by the territorial Waters Jurisdiction Act, 1878 of the British Parliament. In **West Rand Central Gold Mining Co**. v. **R.**,[32] the Court observed that whatever has received the common consent of civilised nations must have received the assent of the country, which may properly be called 'International Law' and as such will be acknowledged and applied by the municipal tribunals of England. This was a partial return to the 'Doctrine of Incorporation'. In **Chung Chi Cheung** v. **R**.,[33] Lord Atkin declared that the Courts acknowledge the existence of a body of rules which nations accept among themselves. On any judicial issue they seek to ascertain what the relevant rule is, and, having found it,

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[28] Ian Brownlie, PRINCIPLES OF PUBLIC INTERNATIONAL LAW, 5th ed. 1998, p. 42.
[29] I. A. Shearer, STARKE'S INTERNATIONAL LAW,11th ed. 2007, p.68.
[30] (1764) 3 Burr 1478 KB.
[31] (1876) 2 Ex D 63.
[32] (1905) 2 KB 391.
[33] 1939 AC 160.

they will treat it as incorporated into the domestic law, so far as it is not inconsistent with rules enacted by the Statutes or finally declared by their tribunals. It is a recognized prerequisite of the adoption in the Municipal Law of the British, a doctrine of Public International Law that it shall have attained the position of general acceptance by civilized nations as a rule of international conduct, evidenced by international treaties and conventions, authoritative textbooks, practice and judicial decisions. The Privy Council further observed that the Courts acknowledge the existence of that body of rules which are accepted by the nations themselves. Any international rule can be incorporated into the domestic law, so far as it is not inconsistent with rule enacted by Statutes or finally declared by the English tribunals. To conclude, it can be clearly observed that the English Courts did not apply any rule of customary international law if it is in conflict with the existing Parliamentary legislation or any clear judicial precedent. The same practice was also equally exercised in the pre independence implementation of the principles of international law in the Indian context as well.

Post-Independence Implementation of International Law in Independent India

The Constitution of India does not include any clear direction on treaties as found in the United States and French Constitutions. It, however, follows the British approach, namely, that treaties are not the part of internal law unless specifically adopted. But unlike Britain, India has a written Constitution and it contains several provisions which have the bearing on treaty making and treaty implementation in India, but at the same time, there is no provision making treaties as the supreme law of the land. The relevant provisions are Articles 37, 51, 53, 73, 77, 246 read along with Entries 10, 13 and particularly 14 of List I of the Seventh Schedule (The Union List), as well as Article 253, 372(1). In accordance with these provisions, the Union Parliament has the exclusive power to legislate in the realm of treaties, i.e., for the making of treaties and their implementation. But Parliament has not yet legislated; it is instructive, therefore, to refer to the Indian practice, as reflected in the constitutional provisions and the judicial precedents.

Article 37, which provides that the provisions contained in Part IV shall not be enforceable by any Court, also states that the principles laid therein are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.

Article 51 strengthens the common law principle that International Law is a part of Indian Law which reads as follows: "Promotion of International Peace and Security – The State shall endeavour to – (a) International Peace and Security (b) Maintain just and honourable relations between nations (c) Foster respect for International Law and treaty obligations in the dealings of organised people with one another (d) Encourage settlement of international disputes through arbitration" Article 51 does not give any clear guidance regarding the position of International Law in India as it since it is included in Part IV of the Constitution of India which is unenforceable by the Indian Courts. However, it would be wrong to contend that Article 51 is of no relevance and provides no guidance at all.

Article 73(1) states that “Subject to the provisions of this Constitution, the executive power of the Union shall extend: (a) To the matters with respect to which Parliament has power to make laws and (b) To the exercise of such rights, authority and jurisdiction as are exercisable by the Government of India by virtue of any agreement or treaty”.

Article 246 empowers the Parliament to legislate on Entry 14 (of the Union List), which it has not done yet, and until it does so, the President’s treaty making power remains unfettered by any internal constitutional restrictions. Hence, the Executive will be very much within its power to bind India internationally under a valid treaty, without referring to the Parliament, or require legislation sanctioning money expenditure, or require a change in existing laws for implementation of the treaty obligations of the Union.

Article 253 of the Constitution of India confers exclusive power upon the Parliament to make law for giving effect to any treaty, agreement or convention with any other country or countries or any decision or any decision made at any international conference. Article 253 of the Constitution provides that “Notwithstanding in the foregoing provisions of Chapter XI of Part XI, the Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at an international conference, association or other body.”

Article 372(1) provides that “Notwithstanding the repeal by this Constitution of the enactments referred to in Article 395 but subject to other provisions of this Constitution, all the laws in force in the territory of India immediately before the commencement of this Constitution, shall continue in force therein before until altered or repealed or amended by a competent Legislature or any competent authority.” This Article contemplates the fact that before the adoption of the Constitution of India, the British practice was prevalent in India which has been continued even after the adoption of the Constitution by virtue of the provisions of Article 372.

Indian Judiciary and International Law

Before independence, the Common Law Principles of the British, which practised customary rules of International Law as part of the land, applied in India as well. Prior to the Constitution of 1950, Indian Courts were following the British practice of enforcing International Law in the domestic circle. The Constitution of India contains a specific provision in Article 51 (which is stated under Part IV of the Constitution of India, i.e., the Directive Principles of State Policy) a direction to the State, which shows that the intention of the founding fathers towards International Law.

The British practice of the ‘Doctrine of Incorporation’ continues still in India by virtue of Article 372(1) of the Constitution as was held in *T.K. Varred v. State of Travancore-Cochin.*[34]

In the case of *A.M.S.S.V.M. & Co. v. The State of Madras*,[35] the question was whether the State was entitled to abolish private right in the exploitation of chank fish in Palk Bay. The

[34] AIR 1956 SC 142.

Madras High Court, in its judgment relied on principles of English Common Law and corresponding rules of International Law relating to fisheries, maritime belt, harbours and estuaries, particularly the historic title based on prescription. It held that chank fish cannot be treated as fisheries proper, since they do not move away from the seabed. The rulers of the State adjacent to the sea had acquired the right from the time immemorial to exploit chank fish in the bay. The Court held that particular part of the seabed, though outside the three-mile limit, vested in the Crown and thus, the Government had the right to abolish private right to exploitation of the chank fish in the Bay.

In *Birma v. State of Rajasthan*,[36] the Court held that the Courts that are part of International Law do not form part of the law of the land unless expressly made so by the legislative authority. In *Motilal v. U.P. Government*,[37] it was held that any obligations or arising out of international treaties do not have the force in India and they can be enforced in the territory of India only through proper legislations.In *Keshavananda Bharati v. State of Kerala*,[38] it was opined that in view of Article 51 of the Directive Principles, the Court must interpret language of the Constitution, if not intractable, which is after all a Municipal Law, in the light of the United Nations Charter and the solemn declaration subscribed to by India.

In *Shri Krishna Sharma v. State of West Bengal*,[39] the Calcutta High Court held that the Indian Courts would apply rules of internal law which includes The Constitution of India, the Statute enacted by the Parliament of India and the Statutes enacted by the State Legislatures. The Court held: "If the Indian Statutes are in conflict with any principle of International Law, the Indian Courts will have to obey the laws enacted by the legislature of that country to which they owe their allegiance. In interpreting and applying Municipal Law, the Courts will try to adopt such a construction as will not being into conflict with the rights and obligations deductible from the rules of internal law. If such rule or rights and obligations are inconsistent with the positive regulation of Municipal Law, the Courts override the latter. It is futile in such circumstances to seek to reconcile, by strained construction which are really irreconcilable."

In *Maharaja Vikram Kishore of Tripura v. Province of Assam*,[40] the Court held similarly as the above case and stated that it is a well established rule of construction that a statute will not be construed as overriding International Law unless the words of the statute compel the Court to put such a construction upon it. In *A.D.M. Jabalpur v. Shivakant Shukla*,[41] popularly known as the "Habeas Corpus case", one of the questions for consideration of the Supreme Court was whether the Universal Declaration of Human Rights, 1948 and the two International Covenants on Civil and Political Rights and Economic, Social and Cultural Rights, 1966 were part of Indian Municipal Law. By majority, the Supreme Court held that

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[35] MLJ (2-1957) 587.
[36] AIR 1951 Raj. 127.
[37] AIR 1951 All. 257.
[38] (1973) 4 SCC 225: AIR 1973 SC 1461.
[39] AIR 1954 Cal 591.
[40] (1948) 15 ILR 64.
[41] AIR 1976 SC 1207: (1976) 2 SCC 521.

they were not part of Indian Municipal Law. In his dissenting opinion, however, H.R. Khanna, J. held that if there was a conflict between the provisions of a International Treaty and the Municipal Law, it is the latter that will prevail. But if two constructions of the Municipal Law is possible, the Court should give that construction as might bring about harmony between Municipal Law and International Law or Treaty. In his view, the constitutional provision should be construed in such a way as to avoid conflict with the Universal Declaration of Human Rights, 1948, which seems to be more rational and better.

In *Gramophone Co. of India v. Birendra Bahadur Pandey*,[42] the Supreme Court accepted the binding force of international Law with certain limitations. The Court's observation in this regard is relevant: "There can be no question that nations must march with the international community and Municipal Law must respect rules of International Law. The Comity of Nations requires that rules of International Law may be sanction with Acts of Parliament. But when they do run into such conflict, the sovereignty and the integrity of the Republic and the supremacy of the constituted legislatures in making the laws may not be subjected to external rules except to the extent legitimately accepted by the constituted legislatures themselves. The doctrine of incorporation also recognises the position that the rules of International Law are incorporated into national law and considered to be part of national law, unless they are in conflict with an Act of Parliament. Comity of Nation or no, Municipal Law must prevail in case of conflict. National Courts cannot say 'yes' if Parliament has said 'no' to a principle of International Law. National Courts will endorse International Law but not if it conflicts with Municipal Law. National Courts being organs of the State and not organs of International Law must per force apply national law if International Law conflicts with it."

In *People's Union for Civil Liberties (PUCL) v. Union of India*,[43] the Supreme Court of India held that it is almost an accepted proposition of law that the rules of customary International Law which are not contrary to the Municipal Law shall be deemed to be incorporated in Municipal Law. In *Daya Singh Lahoria v. Union of India*,[44] the Apex Court has observed that there is no rule of International Law which imposes any duty on a state to surrender a fugitive in the absence of an Extradition Treaty. This question is decided by national courts on the basis of international commitments as well as rules of International Law relating to the subject. In *State of Madras v. G.G. Menon*,[45] the question before the Apex Court was whether any legislative enactment which was prevalent in pre Independence period is applicable to the post-independence era by the reason of the provisions of Article 372 of the Constitution of India, without any alteration or repeal or amendment of the pre Independence legislative enactment by a competent Legislature or any other competent authority. In this case, the Supreme Court held that such a legislative enactment cannot be enforced in the Indian territory notwithstanding Article 372. In *Shiv Kumar Sharma and Others v. The Union of India and Others*,[46] the Delhi High Court held that in India, treaties do not have the force of law and consequently obligations arising there from will not be enforceable in Municipal

[42] AIR 1984 SC 667: (1984) 2 SCC 534.
[43] (1997) 1 SCC 301.
[44] (2001) 4 SCC 516.
[45] AIR 1964 SC 517.
[46] AIR (1968) Del. 64.

Courts unless backed by legislation. Settlement of dispute as to boundary arises no such obligation requiring implementation in Municipal Courts. Cases may arise where a domestic law is in express terms extended to a named city and that city as a result of treaty settling a dispute like the present, has to be handed over to another country. In that case, legislation may be necessary.

In *Maghanbhai Ishwarbhai Patel and Others v. Union of India,*[47] the Supreme Court opined that international treaties are enforceable in India by the Municipal Courts only when there is a legislation with that regard as treaties do not have the force of law. In *Civil Rights Vigilance Committee, Bangalore v. Union of India,*[48] the Karnataka High Court observed that if the Parliament does not enact any law for implementing the obligations under a treaty entered in to by the Government of India with foreign countries, Courts cannot compel Parliament to make such law. In the absence of such law, Court cannot also enforce obedience of the Government of India to its treaty obligations with foreign countries. In this case, the question was as to whether Geoff Boycott and Geoff Cook, the two cricket players shall be allowed to visit India and to play cricket matches as members of the English cricket team against India in view of their links with South Africa which was practicing the policy of apartheid. Here, the Petitioner contended that the action of the Government of India in permitting these two cricket players to enter into India and to play cricket in India was in breach of its obligations under the Gleneagles Accord and obligations attached to its membership to the United Nations. The Court held that the Government of India's obligations under the Gleneagles Accord and obligations attached to its membership to the United Nations, cannot be enforced, at the instance of citizens of this country, or associations of such citizens, by Courts in India, unless such obligations are made part of the law of this country by means of appropriate legislation.

In *Vineet Narain v. Union of India*,[49] the Supreme Court held that it is the duty of the Executive to fill the vacuum by executive orders because its field is conterminous with that of the Legislature and where there is inaction even by the Executive, for whatever reason, the Judiciary must step in, in exercise of its constitutional obligations to provide a solution till such time as the Legislature acts to perform its role by enacting proper legislation to cover the field. In *Jolly George Varghese v. Bank of Cochin*,[50] the question was in case of a conflict between a provision of an International Treaty (such as Article 11 of the International Covenant on Civil and Political Rights) to which India is a party and a provision of a State Statute (such as Section 51 of the Code of Civil Procedure), it is the latter which shall prevail if the International Treaty in the question has neither been specifically adopted in the domestic field nor has gone under transformation.

In *Union of India v. Association for Democratic Reforms*,[51] the Supreme Court held that the foundation of a healthy democracy is to have well informed citizen voters. The reason to have

[47] AIR 1969 SC 783.
[48] AIR (1983) Kar. 85.
[49] AIR 1998 SC 889.
[50] AIR 1980 SC 470.
[51] (2002) 5 SCC 294: AIR 2002 SC 2112.

right to information with regard to the antecedents of the candidate is that voter can judge & decide in whose favour he should cast his vote, which is considered as an important aspect of International Law which promotes fair and free elections. In *Sunil Batra v. Delhi Administration*,[52] it was observed by the Court that as a police officer is vested with power to restrain a person by handcuffing him, there is simultaneous restraint by the law on the police officer as to the exercise of the power. The handcuffs should not be used in routine manner. The minimum freedom of movement which even an under trial prisoner is entitled to under Article 19 of the Constitution, cannot be cut down cruelly by application of handcuffs or other hoops. This is in accordance with Universal Declaration on Human Rights, 1948.

In *Prem Shankar Shukla v. Delhi Administration*,[53] the Supreme Court emphasised that handcuffs should be used in the "rarest of the rare cases" and only when the person is 'desperate', 'rowdy' or one who was involved in a non-bailable offence. Krishna Iyer J., speaking for the Court held that 'to manacle man is more than to mortify him. It is to dehumanise him and, therefore, to violate his very personhood; too often using mask of dangerousness and security. The Supreme Court also opined that involvement of the prisoner in a score of criminal cases is no ground for handcuffing. Nor can a person be handcuffed only because he is charged with a grave offence. It cannot be used only for the convenience of the escort party. The rules, regulations and manuals of various states authorising the police to use handcuffs have been struck down as violative of Article 14 of the Constitution of India. This opinion of the Supreme Court is in accordance with the Universal Declaration on Human Rights, 1948.

In *Sheela Barse v. Secretary, Children's Aid Society*,[54] the Supreme Court stressed on the role played by the International Instruments and highlight the fact that these Instruments cast an obligation on the Indian State to gender sensitise its laws and the Courts are under an obligation to see that the message of the International Instruments is not allowed to be drowned. This Court and Counsel must never forget the core principle embodied in the International Conventions and Instruments and as far as possible give effects to the principles contained in those International Instruments. The Courts are under an obligation to give due regard to International Conventions and Norms for construing domestic laws more so when there is no inconsistency between them and there is a void in domestic law. The President can validly exercise his treaty-making power without an authorising legislation of the Parliament. This was clearly stated in *Union of India v. Manmull Jain*,[55] where the validity of the treaty relating to the transfer of the Chandannagore, a former French possession, without the prior parliamentary legislation was questioned. The Court observed that "Making a treaty is an executive act and not a legislative act. Legislation may be and is often required to give effect to the terms of a treaty.

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52 AIR 1978 SC 1675.
53 AIR 1980 SC 1535.
54 AIR 1987 SC 656.
55 AIR 1954 Cal. 615.

In *Rai Sahib Ram Jawaya Kapur v. State of Punjab*,[56] the Supreme Court laid down that for the exercise of the executive power (of which treaty making is one), under Article 73, the Union legislation is not a pre-requisite. In *Jayanti Lal v. Rana*,[57] the above decision was taken into consideration by the Supreme Court. In *Nirmal Bose v. Union of India*,[58] emphasis was laid on Article 253 of the Constitution of India which talks about the Parliamentary power to implement in the whole or any part of the Indian territory, any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body. In *Union of India v. Sukumar Sengupta*,[59] the Government of India leased in perpetuity "Teen Bigha" connecting Bangladesh enclaves of Dahagram and Angerpota, surrounded by Indian Territory, with Panbari Manza of Bangladesh in accordance with 1974 and 1982 agreements between India and Bangladesh, so as to enable Bangladesh to exercise her sovereignty over those enclaves. The Court held that the implementation of these agreements, as far as "Teen Bigha" was concerned, did not amount to cession of the said territory or transfer of sovereignty in respect of the same and did not require any constitutional amendment.

Legislations in connotation to International Law: International Treaties are enforceable in India when they are incorporated into domestic law by Parliamentary legislations, which can be seen in a number of legislations, such as:

- The Diplomatic Relations (Vienna Convention) Act, 1972.
- The SAARC Convention (Suppression of Terrorism) Act, 1993.
- The Territorial Water, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976.
- The Maritime Zones of India (Regulation of Fishing by Foreign Vessels) Act, 1981.
- The Chemical Weapons Convention Act, 2000.

Domestic Implementation of International Air Law in India: Globally, civil aviation is undergoing technological advances in several areas which have impact on agreements. A major supporting development for the aviation industry in most parts of the world has been the globalization and liberalization of economies and an increasingly active role for the private sector in the economic development of the countries. These economic changes brought about structural changes in civil aviation throughout the world and also in the approach towards bilateral agreements and open skies. In 1944, the international aviation community and representatives of various States organised a major international conference in Chicago to consider regulation of international air transport with a view to developing and ensuring safe secure, efficient, and economical international air transport services and to avoid arbitrary action of the States which could hinder such development. This conference culminated in signing of three major agreements, which may be described as follows:

[56] AIR 1955 SC 549.
[57] AIR 1964 SC 648.
[58] AIR (1959) Cal. 606.
[59] AIR 1990 SC 1692.

(a) Convention on International Civil Aviation (The Chicago Convention):
The first agreement was the Chicago Convention to which presently 189 States, including India are signatories. This Convention established the International Civil Aviation Organisation (ICAO) and the primary basis for the regulation and development of international airports. The provisions of the Convention are binding on all the Contracting States. The ICAO has a General Assembly which meets at least every three years. It has also a permanent governing Council with 36 members of which India is a member.
(b) International Air Services Transit Agreement: This agreement provided for multilateral exchange of first two rights of freedom, namely, Overflight, i.e., the right to fly across the territory of other contracting States without landing. And Non traffic stop for scheduled air services among its contracting States, i.e., the right to land for non-traffic purposes.

As many as 122 States have ratified this agreement, including India.
(c) International Air Transport Agreement:
This agreement was intended to for grant of the right to five freedoms of air. This agreement was to have a far reaching effect in liberalising international air transport operation and grant of traffic rights. However, only 19 States could ratify this agreement, thus, this agreement is of no proper use in the international air transport regime. India is not a signatory to this agreement. Had this agreement been ratified by the States, the shape of international air transport would have been different from what it is today, as there would been no need of any bilateral or regional agreements. India today has a large civil aviation network. There are 122 airports in the country today, out of which 11 are international airports, which are maintained by the International Airport Authority of India, established in 1986.

There are a number of legislations that have come into practice on the pipeline of international air law norms, such as, the Airship Act, 1911, a pre-independence Act which in itself is a unique feature in the world, the Air Corporations (Transfer of Undertakings and Repeal) Act, 1994 which came into existence after the repeal of the previous Airport Corporation Act, 1953, the Airport Authority Act, 1994, w.e.f. 1995, the Aircraft Rules, 1937, the Airport Infrastructure Policy, 1997, the Aviation Policy, 2000, to name a few. At the normative level, the Aircraft Act, 1934 created the fundamental legislative framework for manufacture, possession, use, operation, sale, import and export of aircraft in India while the Carriage By Air Act, 1972 implemented the Warsaw Convention, 1929 in India. These legislations have been supplemented by host of statutory rules and notifications covering different aspects of aircraft operations and several security related enactments like the Tokyo Convention Act, 1975 and the Anti Hijacking Act, 1982.

After years of talks and negotiation, the “open skies” Air Transport Agreement between the United States of America and India was signed on 14.04.2005 opening a new era in civil aviation partnership. Although there are a number of rules and regulations that have been covering the aviation sector in India, but still there are a number of problems that are prevalent even today which need immediate attention. In spite of all such struggle, the Indian aviation industry is one of the most prosperous one in the world which needs a positive effort from the Indian government to implement various international Conventions.

MODULE – II

Introduction to International Air Law

INTRODUCTION

International aviation law is a phase of international law which has undergone tremendous growth since World War I. Its importance is due to the momentous technological developments over last one century. However, the legal rules themselves have a varied and interesting history-not all of which can be classed as modem. The currently accepted doctrine of airspace sovereignty had its origin in the thirteenth century,' while the doctrine of freedom of the air had its roots in the Justinian Code and, consequently, in the earlier Roman codes dating at least as far back as the Ulpian Digest. It may also be noted, by way of introduction, that international aviation law in common with other branches of the law of nations-has drawn extensively upon other segments of judicial science. This has been especially true in its relation to maritime law.

International Aviation Law covers the rules that apply to both domestic and international aviation. These rules govern the complex relationship between States, Service Providers and Passengers. The rules also govern the impact of aviation on the environment and on individuals affected by aircraft operations. It is a very broad subject of relevance to most involved in civil aviation. Air Law is found interesting on the ground of Aviation is in the process of achieving its next phase of development and arouses interest in ever-larger circles. For instance, when a person boards an aircraft as a passenger and reads the small print on his ticket he suddenly realizes that he is bound by the provision of the Warsaw Convention. It will be useful to possess some means of appreciating the benefits and disadvantages of the rules to which he has become bound. Besides, Air law is intertwined with other areas of laws. It involves many aspects of Constitution law, Administrative Law, Civil law, Commercial law and especially Criminal Law. Its international nature is always paramount.

HISTORY OF AVIATION AND AIR REGULATIONS

The history of aviation is indeed fascinating and makes a thrilling story of adventure and achievement. Though essentially a record of triumphs of men and machines, yet predominantly it is a saga of the courageous deeds of brave individuals, their unconquerable human spirit, their uncompromising determination and above all their selfless sacrifice for a passionate cause- the love of flying. Early flying started with kites, graduated to balloons and then to heavier-than air machines.

The early aviators and experimenters toiled hard and risked their lives to achieve the feat of flying, which they ultimately did accomplish. Their exploits were exciting and their discoveries important. It behaves us to remember in thanksgiving, the heroic deeds of the pioneers in flying and pay tribute to the sacrifices of earlier adventurers who made flight by man possible and progressively made it safe. In this chapter, an endeavour has been made to recapitulate the story of aviation in a historical perspective, collating certain scarcely known facts and recently researched manuscripts.

<u>The Early Attempts:</u> The annals record that an English monk and philosopher Roger Bacon (1214-1294) had designed a Flying Chariot. So had the Italian artist-scientist. Leonardo da Vinci (1452-1519). He also designed a mechanism to enable man to operate a pair of flapping wings by leg power.[60] But this "Bird Machine" was never built nor tested. In 1507, John

[60] Sir Robert Saundby, *Early Aviation-Man Conquers the Air*, (New York, 1971), p.6.

Damian, a philosopher and physician at the Court of James IV of Scotland, made for himself a pair of wings and launched from the high wall of the Stirling Castle in an attempt to fly; he fell to the ground and was lucky to escape with just a broken leg.[61] Several other similar attempts to fly with winged contraptions or dives from hilltops to achieve soft landing appear to have been undertaken for thrill and adventure, but with limited or no success. Many such experiments took a toll of tragedy caused by much the same blend of zeal and experimentation.

<u>Flight with Kites:</u> The kites[62] were an instrument of man's earliest success in making a heavier-than-air object fly in the air. It is on record that kites of such huge size had been developed that could lift a man and are known to have been used for military purposes as early as the seventeenth century by the Chinese and the Japanese.[63]

History reports that Greek general, Archvtas, in 40 BC, made several futile attempts to get airborne. One day, he stumbled upon a sharp incline and the kite broke his fall and saved him. A Korean general had also once suspended a lantern from a kite as a morale boosting signal to his troops. And a Japanese bandit in an ingenious attempt stole his way into a castle by suspending himself from a large kite, presumable to steal some fish.

<u>Airlift through Balloons:</u> Another line of research produced the balloons, which provided ascent, gave freedom of movement to fly but precious little control. A Jesuit priest named Francisco de Lana Terzi is believed to have produced the first known design for a lighter-than-air craft in 1670. He had toyed with the idea of a “flying boat" with four hollow metallic spheres that would become lighter and float in the air; but it failed.[64]

It was only in the later half of the eighteenth century that enough knowledge had been gained and gathered in the Europe to travel through the medium of air by hot-air balloon. The Montgolfer brothers. Joseph and Etienne, followed this line of research to obtain lift to rise above the ground and experimented with paper bags in the kitchen of their farm-house near Lyons. Later, on 5 June, 1783, the two brothers, built a roaring fire in the market place of their native village, Annonay, and ascended a smoke filled balloon made of paper and linen."[65]

On 19 September 1783, the Montgolfiers successfully demonstrated "in the presence of Louis XIV and his Court, in sending to a height of about 1500 feet, a silk balloon filled with hot air carrying a rooster, a sheep and a duck in a small gondola. All emerged safe from the experiment except that the rooster suffered a broken leg, probably from a kick by the sheep."[66] Shortly after this success, the king of France offered a criminal for experimentation in manned flight, but considering such pursuits worthy of "officers and gentlemen" two daring French courtiers went up instead. Thus, the marquis of Arlandes and M Pilatre de Rozier were to share the honour of being the first men to fly. They made a successful ascent in a wicker gondola swinging beneath a Montgolfier hot-air balloon from Bois de Boulogne,

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[61] Ibid, p.9.
[62] Kites are believed to have been invented in China around 1000 B.C.
[63] PC Swanborough, *Aircraft and Airpower*, (London, 1958), p. 2.
[64] John WR Taylor,ed., *Combat aircraft of the World,* (London, 1969),p. 8. However, Chinese are believed to have known for many centuries before that heated air weighs less and played with toys of hollow paper dragons inflated with hot air to send these aloft.
[65] Lynn Poole, *Ballooning in the Space Age*, (New York, 1958), p.11.
[66] DHN Johnson, *Rights in Air Space,* (Manchester, Manchester University Press, 1965), p. 7.

Paris on 21 November 1783. The aerostats, as the fliers were then called, stayed aloft for twenty-five minutes, rose at least 300 feet, covered a short distance of 25 miles and made a safe return to the ground."[67] The era of lighter-than–air craft had been ushered. In fact, the balloons soon became a common sight in the French skies and thereafter, the British, Americans, Russians, Poles and Italians joined the French pioneers in the balloon parade. They manufactured balloons for assorted uses.

The scientists soon discovered that hydrogen being lighter than air could be used instead of hot air because as air cools it becomes relatively less lighter and the balloon tends to descend. So hydrogen balloons could ascend higher and stay longer in the sky. In 1783, J.A.C. Charles, a French physicist, had filled a silk balloon with hydrogen gas and sent aloft. But these were "free balloons" and depended on the mercy of winds. Till then, balloons could not be steered and perforce floated with the wind rather unmanoeuvred. These were unsatisfactory and hazardous too. Nevertheless, enthusiastic balloonists had been undertaking flights for the exhilarating experience or for scientific investigation. It is, of course, on record that balloons have ascended to the troposphere and even the stratosphere. The record height flown in a balloon so far is 1,02,000 feet. Chronicles have it that in August 1931, Piccard flew in a balloon to an altitude of nine and a half miles above the earth.[68]

Airships and Dirigibles: The next stage of development was the construction of airships called "dirigibles or blimps" which remained aloft by buoyancy alone. These were based on the Archimedean principle and were actually an adaption of the balloons. It was designed in 1784 in cigar like shape by Meusnier, a French army officer but with no propulsion as the steam engine then existing was too heavy. For its success, the concept had to wait till the invention of petrol-driven engine in 1890. As yet, these had neither propelling force nor steering systems. But controls were gradually improvised. On 9 August 1884 a controlled flight in an electrically powered dirigible was accomplished. It was the airship, "La France" fabricated by Charles Renard and AC Krebs. It consisted of an envelope of Chinese silk and a car of bamboo trolley work. It possessed power and controls sufficient to return to the point of ascent and it made a circular flight of five miles.[69]

Shortly afterwards in 1900, Count Graf Ferdinand von Zeppelin, a German army officer, developed an airship that was made of aluminum in large cigar-shaped streamlined hull, inside which were compartments filled with hydrogen gas. It had air-screws propelled by petrol engine. In July 1900 he flew in it over Lake Konstanz. Zeppelin was successful. By 1910 he had put in the air large passenger and cargo carrying airships which were self-propelled dirigibles, albeit lighter than air.[70] During the WW I, Zeppelins were used by German Air Force for dropping bombs over London. Later, in 1919, the huge German airship "Graf Zeppelin" flew round the world in twenty-one days. The success was widely hailed.

Generically airships had many disadvantages, inter alia, their shape and huge size which made its control difficult in strong winds. Even greater danger came from fire because hydrogen catches fire easily. As a result, over the years the airships were involved in a series

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[67] Sir Robert Saundby, *Early Aviation—Man Conquers the Air*, (New York, 1971), p. 11. Also refer Lynn Poole, *Ballooning in the Space Age*, (New York, 1958). P. 14.

[68] Lynn Poole, Ibid, p.440.

[69] *Encyclopedia Britannica*, 1969. P.468.

[70] Zeppelin's LZ-13, *HANSA*, was a passenger carrying ship.

of accidents, and worst of these happened in 1937 to "*Hindenberg*" while landing at Lakehurst, New Jersey, U.S.A., in which 36 lives were lost and this brought an end to the age of airships. The tragedy was awesome and confidence shaken.

The Conquest of Air: Sir George Cayley, an English scientist (who died in 1857) is generally credited with establishing the basic principles of heavier-than-air flight.[71] He invented the glider in 1804 and foretold that given a suitable engine it could be converted into a flying machine. But it took pretty long to accomplish this aeronautical theory into practical application.

Similar flights in heavier-than-air craft were made in 1855 by De Bris in a glider constructed on the principle of the wings of an albatross.[72] But this flight too, primarily, remained at the mercy of the winds and afforded scant control to the flyer. Nevertheless, several similar flights in motor-less crafts were attempted by Lillienthal, Pilcher, Chanute and many others before the end of the nineteenth century.

Aviation in Ancient India: Latest researches into ancient Sanskrit literature have established evidence of flying in India in the hoary past. They have revealed the existence of certain manuscripts, one of which is entitled "*Yantra Sarwaswa*" or Encyclopaedia of Machines. This tome is believed to be written by Maharshi Bharadwaj presumably around 2000 B.C. A part of this encyclopedia is captioned *Vimanika Sastra* (Aircraft Manual). The script of this *Shastra* is in Sanskrit and has been retold by word of mouth down the generations. In the recent past this has been expounded and predicated by Subbaraya Sastri nearly a century ago. This has now been translated and published in English.[73]

It is interesting to find in this book, intricate details of aerodynamic designs, manufacturing technology, metallurgical composition and construction procedures of aircraft. It contains designs of VTOL vehicles as also double and treble-decker aircraft. It bears amazing concepts of sophisticated radio and radar and precision photography. It also mentions of techniques to harness different types of energies, integral and ambient, though "Darpan" meaning mirrors and lens. In all probability this is an allusion to harnessing of solar energy.

A few *slokas* (stanzas) of this Shastra even deal with the qualification and training of pilots and the kind of food and clothing to be provided according to seasons to keep them fit for flying. It discusses of specially processed, treated and anointed clothing. Regarding food it recommends five meals a day and food balls described as "*Tadabhavaay-Satva Golavaah*" which seems comparable to energy/vitamin pills of today. As per this text a flier is not only a trained professional, but a Yogi who has mastered 32 secrets of the "*Vimaan*", the aircraft hardware, and "*Uddaan*", the flying skill. It is hard to dismiss this manuscript as fantasy, or as a feat of clairvoyance; it sure is a glory of ancient India that stayed hidden for long in the sands of time.

Authenticated First Flight: In recent history, the first ever authenticated, controlled and sustained flight by man in a power-driven, heavier-than-air machine was achieved in America on 17 December 1903 by the Wright brothers—Orville and Wilbur Wright. Their vehicle was a biplane equipped with an elevator, rudder and warping wings which measured 40 feet from

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[71] REG Davies, *A History of World Airlines,* (London, 1954), p. 3.

[72] Shawcross, Beaumont and Browne, *Shawcross and Beaumont on Air Law,* (London, 2nd Edition, 1951), p. 3.

[73] Maharishi Bharadwaj, *Vymaanika Shastra-Aeronautics,* propounded by Subbaraya Sastri and translated into English by GR Josyer, published for International Academy for Sanskrit Research, Mysore in 1973.

end to end and were 6 feet apart. The engine was placed a little to the right to the centre on the lower wing and pilot had to lie flat on his stomach to the left of the centre to keep the machine in balance. It was powered by a petrol engine driving a pair of air-screws (now popularly called propellers). A series of five epoch-making flights were undertaken by Wright brothers on a flat beach at the foot of the Big Kill Devil sand dune near Kitty Hawk, North Carolina, U.S.A.

The first flight was flown by Orville Wright. It lasted twelve seconds and landed one hundred and twenty feet from the point of take-off. It was certainly a small flight, but admittedly an important event and a big leap forward. Man had conquered the air. The public was startled in disbelief. Patiently, the Wright brothers kept on working at their invention to improve it in various ways. By 1905 aero plane could fly an half-an-hour sortie covering a distance of 25 miles.

There is, however, another school of aviation history and research headed by Major William O'Dwyer, which maintains with ostensibly conclusive and irrefutable documentary evidence that the Wright brothers were beaten into the air by more than two years. He claims that the first to fly an airplane was Gustav Whitehead, a German engineer and immigrant, who died in Bridgeport in 1927 at the age of 53. Whitehead's flight was undertaken in 1901 off Lordship beach in Bridgeport, Connecticut, USA and he flew in a butterfly shaped acetylene powered monoplane.

It is held that Whitehead initially made several attempts to fly an aircraft powered by steam engines and in one such effort crashed against a wall. He was thus forced to switch his attention to an acetylene engine. In the end he built an aircraft with three such engines linked to two large propellers. It had wings that folded so that it could be driven out of his yard onto a nearby field. It was this airplane that he flew on 14 August 1901. He is supposed to have flown for more than half a mile and at an height not less than 3 feet above the ground.

<u>Experiments in Europe:</u> It is an historical fact that similar experiments were being made in the Europe also at the same time. Langley had designed a practical aircraft capable of flight under its own power. Again, Alberto Santo Dumont, a Brazilian engineer, experimented in France to get airborne. The other experiments and later successful aviators were Lilienthal, Ferber and Cody to name a few. However, to Dumont success came early and he was the first in Europe to get airborne in an aero plane. That was on 13 September 1906. This accomplishment stirred a lot of public enthusiasm and evinced great interest. On this news, Lord Northcliffe, the British press magnate commented: "This news is not that man can fly, but that England is no longer an island."[74]

On 25 July 1909, Bleriot became the first man to fly across the English Channel. His vehicle was a monoplane and he flew from Les Barraques near Calais to Dover. The event was hailed at that time. Soon thereafter, on 3 November 1909 Henry Farman flew 144 miles in four hours and six minutes. With these proven flights dawned a new realization, the traditional foundations of military strategy and age-old concepts of national defence were rudely shaken. The security of international boundaries could no longer be achieved by land fortifications or naval blockades. Man had conquered a new frontier and nations now had no aerial shores.

[74] Eugene M Emme, *The Impact of Air Power*, (1965), p. 5.

The Early Uses of Aircraft: It needs no genius to conjecture and appreciate the uses of aircraft for military purposes and its exploitation for combat roles. Therefore, in the beginning only military potential and sporting uses of the aircraft were envisioned and recognized. The airships and aeroplanes started being deployed for tactical reconnaissance and even bombing. Reflecting on the potential of the aircraft for aerial warfare, Orville Wright in 1917 wrote "what a dream it was, what a nightmare it has become."[75]

On the other hand, flying was a passion for the enthusiast, a hobby for the rich and was generally confined to air races, aerial demonstrations, aerobatic displays and for providing joy rides. Amidst these romantic exploits of adventure, there were occasional functional sorties, for example, the early experimental airmail service, which, of course, soon proved the potential and versatility of aircraft for diverse non-military uses. New vistas for the exploitation of a new mode of transportation had been opened. Thus its suitability for commercial transport of mail, passengers and even cargo became apparent pretty soon.

Further development of aviation has been wavering between two conflicting architectural requirements and circumstantial compulsions for combat and for commerce. During the wars, it was combat demands that dictated development and when the world was at peace commercial utilization got the fillip. This has been because maneuverability and stability in aeronautics are mutually antithetical. Whereas combat needs speed and maneuverability, commerce demands stability and safety. It is only recently that both lines of requirement, defence and civil, have got amicably separated and at the same time harmoniously shared the fruits of technological advances while continuing to grow in their own stature, distinct identity and specific roles.

The Growth of Air Carriers: The credit for the formation of a genuine operating company established with a view to carrying passengers must go to Germany. Even before the WW- I, Count von Zeppelin, the fanatical crusader and visionary for air travel, had formed an airline called DELAG (Deutsche Luftschiffahrt Aktien Gesselschaft) on 16 October 1909, with a capital of three million marks and six Zeppelin airships. The airline operated scheduled service between Friedrichshafen and Dusseldorf. There is, however, a controversy whether DELAG was the world's first regular passenger airline in the strict sense of the term or that it merely provided a series of unconnected joy rides and pleasure trips. But the statistics of its operations over the period from March 1912 and November 1913 reveal that 881 flights were undertaken which covered 65,000 miles and carried 19,100 passengers.[76] This data amply vindicates Zeppelin's claim, considering the small capacity and low speed of the aircraft, the limited availability of the resources at the disposal of the company and the 'air mindedness' of the people.

In the United States, the flights made by the Wright brothers elicited no official recognition nor state patronage. The public at large also exhibited an indifferent, if not apathetic attitude towards this marvelous feat. Therefore, the first attempt to operate a regular passenger service was made much later by a company called St. Petersberg-Tampa Airboat Line in 1914. Thus in the U.S., except a few minor air mail services that operated before the WW I, commercial aviation got off to a relatively slow start. Perhaps, the distances involved were too great to

[75] John Taylor, n. 6 *supra*, p. 13.
[76] Davies, n. 15 *supra*, p. 5.

make the air transport feasible and there were more comfortable modes of other transportation available.
England too, though well aware of the aviation developments in Europe and elsewhere, made little contribution on its part in the early stages of the growth of aviation. In France, however, greater interest was stimulated but it was largely oriented towards military applications of aviation technology. For the Soviet Union no authentic records of the development of aviation are readily available and very little is known of any chronicled efforts. Nevertheless, Aeroflot, the domestic and international flag carrier of the Soviet Union (till its disintegration), was acknowledged as the largest airline in the world despite its classified balance sheet and well guarded secret of aircraft possessions.
Formation of Air Force: Historically, France can boast of having equipped the first air force in the world with nearly 200 planes. Its fleet then comprised the Farman biplanes, the Nieuports and Antoinette monoplanes. In the ensuing decades the development of military aeroplanes was directed towards faster speed, greater manouvreability, altitude attainment, higher payload and suitability for multiple weapon configurations. Gradually, the concepts of air power crystallized and specific aircraft for specialised roles, for example, air superiority, air defense, ground attack, tactical air support, tactical and strategic reconnaissance, deep penetration strikes, strategic bombing etc., have been designed and manufactured.
On military transport side also there have been developments on similar lines for discrete requirements of air communication, medium transport, and strategic airlift and so on. These military specifications have often been harmonized with civil considerations of transport airlines. However, combined thrust towards design and technology development has been made continuously. Of course, military transport aircraft have demanded low priority to cabin comfort and noise abatement.
The Legacy of First World War: Over the following decades, aircraft continued to improve in size, strength, speed, power, range, reliability, capacity and above all numbers. The aviation industry embarked upon these technological improvements and concomitant design developments in high urgency due to the outbreak of WW I. During this period few civil aircraft flew in the European skies and all resources were requisitioned to support military objectives. Aircraft came to be acknowledged as a credible instrument of war and a proven sentinal for defence.
The hostilities ended in 1919, and Europe woke up from the nightmare of war to face, inter alia, an unprecedented glut of military aircraft. Naturally, efforts converged on exploring alternative uses and feasibility of conversion of combat aircraft to tools of commerce. Concerted endeavors were afoot in Britain, France and Germany to refurbish military aircraft to suit civil transport requirements. These European nations had also over the years of war developed a viable network of airfields, an infrastructure of allied facilities, a conducive environment of ‘air mindedness’ and above all, created a viable fund of trained manpower.
Despite its defeat, Germany was again the first to introduce a commercial service between Berlin and Weimar on 5 February 1919. Soon a company called DLR (Deutsche Luft Reederei) was founded by a syndicate of AEG, Zeppelin and other companies; Farman operated air services in France with Goliath aircraft which provided a cabin to protect its passengers from the elements of nature. In 1920, KLM appeared on the aerial map with a service between London and Amsterdam. By 1924, Imperial Airways had been formed in

Britain by the merger of Hendley Page, Daimler and other companies. In short, there was a mushrooming of air carriers all over Europe.

Undoubtedly, "the Germans started the first sustained, scheduled passenger service in the world; the French quickly established a wide network easily heading the field in the volume of infrastructure; the British set new standards of concentrated service, regularity and punctuality. All this happened within a few months during 1919, the first year of Air Transport."[77] Indeed, the aviation developments reached such as crescendo that the year 1919 witnessed the emergence of the first international convention on civil aviation, namely the Paris Convention, for the Regulations of Aerial Navigation. Soon commercial air traffic increased considerably and led to the adoption of another convention on liability for air accidents or for the Unification of Certain Rules Relating to International Carriage by Air, generally known as the Warsaw Convention, 1929.

In the United States, however, there was an initial hesitation in recognizing the aeroplane as a potential passenger transport vehicle since the speed of aircraft provided scant advantage over luxury express trains like the American Pullman. Therefore, in the U.S., air carrier services, and the carriage of passenger air traffic was treated purely incidental and no incentives were received from the Government.

Influence of the Second War: During the two decades since the WW I, the development of aeronautics made rapid strides in aircraft technology, avionics and operation of international airlines. The aircraft construction had changed from an open-air stick-and-string biplane to comfortably cabined all-metal monoplanes. The multi-engine configurations provided improved performance, greater safety and increased dependability. On the economic front, continued reliance of the airlines on state subsidies was resented by the managers of exchequers so that this economic dependence had to be minimized, if not completely eliminated.

Then started another war in September 1939, which gave still greater fillip to the aviation industry but conscripted all resources towards military uses. During the war nearly all private and commercial flying closed, except for a few civil air services operated by British Overseas Airways Corporation over neutral territories. In this long-drawn war of attrition, the Air Forces, however, played a decisive role and over the years, the brood of aircraft and supporting manpower increased almost exponentially. Small wonder that at the end, the war left behind for the civil aviation a benign and rich legacy of a wide variety of aircraft, number of airfields, skilled aviators and vastly developed infrastructure facilities.

The accrued benefits were fully exploited by the industry and airline route map of the globe took on a bold and definite shape reflecting maturity and density of operations. The civil aviation became a matter of national prestige and almost every nation endeavored to own a flag carrier fleet. Operating an airline became a status symbol.[78] Aviation industry became self-sustaining and a short while later even a profitable commercial business. On the other hand, air travel had since become a popular mode of transportation and an accepted necessity for commuting long distances; 'airmindedness' was fast becoming a compusion. The carriage by air became truly international consequent to the introduction of intercontinental flights.

[77] Davies, Ibid, p. 11.
[78] Davies, Ibid, p. 398.

And thus came in sharp relief the problem concerning lack of uniformity and standardization in the international carriage by air and in the concomitant liability regime with vivid focus on the inadequacies of the Warsaw Convention.

This period also witnessed the emergence of several international organizations exclusively in the field of international civil aviation. The International Air Transport Association coordinated and nurtured inter-line co-operation. The International Civil Aviation Organization was established under the Chicago Convention of 1944. This regulates aerial traffic management, flight safety and stipulates navigational standards. Besides, a few regional organizations were also formed in Europe and the American continent to monitor and co-ordinate localized commercial aspects of aviation.

<u>The Jet Revolution:</u> The development in rocketry initiated during WW II culminated in the late fifties in the jet revolution represented by a crop of fast and sophisticated breed of airliners like Boeings, Caravelles and DC versions which were relatively faster, luxuriously comfortable and incredibly commodious.[79] Transportation by air became a competitive alternative and attractive mode of international travel. Airmindedness was steadily growing and so also was the traffic for carriage of goods by air. To meet the spiraling demands for airliners, manufacturers designed and produced efficient combinations of power, speed and payload with the jet breed of engines and wide-bodied airframes. Hence, aircraft of the day came to be jumbos in capacity and high in speed. The Aero-Spatiale's Concorde (an Anglo-French venture) and TU 144 (Supersonic Transport) of the Soviet[80] have operated and gone for their own reasons and problems of noise, boom and pollution.

<u>The Future Aircraft:</u> Over the years, aircraft advanced in cruising speed, flight safety, all-up payloads, manoeuvrability, avionics and military punch. The Jet Revolution has come to stay and to advance into scramjets with greater thrust and speed and altitude. As a result, combat as well as commercial aircraft came to be designed and produced with judicious combinations of power and aerodynamics by blending refined jet engines to suitable airframe structure whether wide-bodied for airlines or sleek aero-dynamic delta wings and swing-wings for the supersonics.

The desire to achieve greater speed for faster travel does not appear to be satiated still. Aerospace travel in reusable space vehicles may soon become a reality, but common-use transport aircraft of the future may have better cruising speeds, with bigger payload, greater fuel efficiency and longer range. The cargo liners for the new millenium are being designed to take off with over 4,53,000 kg of AUW (all-up-weight) and gross payload of 1,54,000 kg to fly non-stop over a range of 6800 km coupled with capability for in-flight refueling.[81]

Similarly, the future passenger aircraft will be, literally, sky trains carrying hundreds of passengers. However, a trend is also apparent to develop aircraft of greater economic viability and better passenger comfort. Therefore the future airliners may carry variable configurations of passengers and cargo to achieve an optimum mix of both for optimal profits.

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[79] Pan-American Airways was the first airline to introduce Boeng 707 jet aircraft in 1958.

[80] The US also, in the mid sixties of the last century, commenced development of SST, but this project was abandoned in 1971 for "political, environmental and socio-economic reasons." See Nawal K Taneja, *The Commercial Airline Industry*, (Lexington, 1976), p. 15.

[81] *ICAO Bulletin*, December, 1958.

On the technology front also a quiet revolution has been brewing, particularly in the fields of aircraft materials and transmission system. The new types of aircraft will be black birds manufactured with materials consisting of carbon fibre re-inforced plastics and graphite-epoxy composites. Further, the pilots of tomorrow will not fly-by-light (i.e. controls operated by radio transmission) but fly mostly on auto with inputs from space satellites.

The future aircraft may even be propelled by nuclear energy.[82] This possibility is becoming acute in view of world-wide oil crisis. New alternative energy sources are under development but with no spectacular break through. Even hybrid carrier of rocket and aircraft is aerodynamically feasible and operationally conceivable. In fact, the U.S has already achieved successful flights by a reusable space-shuttle vehicle and private enterprise has taken over. Trials have been successful and shown tremendous promise. The future of aviation is unfolding fast.

Genesis of Air Regulations

Isolated instances and incumbent exigencies have led to the birth of Air Regulations which as composite corpus constitute Air Law. This development has neither been systematic nor planned nor holistic but sporadic and need-based to address the challenges faced like issue of sovereignty in airspace, law on hijacking and terrorist threats or liability regimes to harmonise airline-passenger relationships and so on. Even today, Air Law faces the same dilemma. This section researches the genesis of various air regulations and their ultimate culmination into treaty law of international standing and binding nature. This effort is illustrative and not comprehensive. It sure needs attention of dedicated scholars.

<u>The First Air Law:</u> The earliest known regulation of aerial activity dates back to 1783 AD. That was the era of hot-air balloons and these had become particularly popular and promiscuous in France. The fashion for hot-air balloons spread to the extent of being used as an alternative to other modes of transportation, apart as an hobby sport. For example, Alberto Dumont, a Brazilian business magnate, settled in Paris was accustomed to using his air balloon to commute to his club in promiscuous display of wealth.

Thus hot-air balloons became a common sight in France and particularly in the Paris skies. These came to be used for adventure and sport as well as for scientific experiments and military uses. The congestion in the airspace became acute for safety of all; and crowds of watchers so disturbing to smooth traffic and public order. As a precaution to curb reckless flying and unsafe experimentation, the Paris Police issued a Decree in 1794 mandating to procure a permit or so called license for flying of a Montgolfier balloon.[83] This was, sort of a first air law to regulate and control aerial activity in public interest and for the safety considerations.

<u>The First Passport:</u> A document resembling in purpose and object of the passport was first created in the US in 1793. It so happened that the fashion of balloon flying soon spread to the British, American and Russian enthusiasts. Blanchard, a well known flyer, decided to undertake a cross country flying expedition in a hot-air balloon. For his safety and credentials, he was issued a letter by the US Government addressed to the people of the United States of America declaring his identity and urging them not to harm him. It had

[82] Joseph L Nocholson, *The Air Transport Management-Its Practice and Policies,* (New York, 1951), P. 2.

[83] CN Shawcross, KM Beaumont and PRE Brown, *Shawcross and Beaumont on Air Law* (London, 2nd Edition, 1951), vol. I, p. 3.

become necessary because of a recent balloon crash in rural-side England where the local farmers took the heaving balloon as devil and beat it up. In the bargain, the aerostat (pilot) also sustained injuries. This letter was signed by George Washington, the then the President of the USA.[84] Incidentally, this was to be the first letter flown by air on 9 January, 1793.

Regulation of Aerial Navigation: The experience of crowded skies of Paris was scaring for accidents and law and order. But apart from regulation through permits to mitigate the menace, no serious effort was made at effective management of aerial navigation. In fact the problem subsided with licensing curbs and was forgotten till commercial aviation took to skies and ventured into international destinations. Sovereignty in the air became an important issue.

Sovereignty in the air has changed hands. From times immemorial the right to airspace customarily vested in the land owner in respect to superjacent air over his fields. This customary norm has been based on the maxim, "*cujus est solum, ejus debet esse usque ad coelum*" meaning the owner of land rightfully owns his sky.[85] This maxim was accorded judicial approval in the case of *Bury vs. Pope* (1586 AD) where this norm constitutes the *ratio* of the judgment.[86] This view, however, changed, in public interest policy, when aircraft started using airspace.[87]

The French jurist, Paul Fauchille was the first to draw attention to this concern and suggested to frame regulations for aerial navigation in early twentieth century. As commercial international air carriage had started taking roots, he along with continental colleagues, suggested of Free Air Theory where there was freedom to navigate in airspace without let or hindrance. But in contrast, the scholars of British Empire like Coke and Blackstone stressed on property rights and advocated national sovereignty over national airspace.[88]

The First World War: The argument was rationalised for reasons of safety, security and national defence because the experience of WW-I was still fresh in their minds. During World War One few civil aircraft flew while all kinds of military aircraft were developed by the belligerent parties. Aircraft were used in massive numbers and in all sorts of roles, such as aerial combat, reconnaissance, bombing, ground attacks and naval warfare. After the First World War 1914-18 the aerial technology development had undergone major changes and improvements. The thinking had also developed during this time and there was an awareness about the connection between national security and national sovereignty of the airspace. Scheduled air services began slowly to emerge from the ashes in Europe. The first service was established between Paris and London in February of 1919 and between Paris and Brussels in March the same year. This need for the already existing agreements to be gathered into a convention led to a second Paris Convention in 1919.

The Paris Convention of 1919: Meeting in Paris was natural since the World War I post war peace conference was held there with all major parties of the world community assembled.

[84] Lynn Poole, Ballooning in the Space Age, (New York, 1958), p.440. Incidentally, in the US, the first ascent in a balloon was made in 1784 by Edward Warren, a 13-year old boy, at Baltimore, Maryland. Refer CN Shawcross at n. 27 supra, p. 15.

[85] A Mc Nair, *The Law of the Air*, (London, Stevens & Sons, 1964), p. 395.

[86] Ibid. p. 396

[87] For a detailed analysia on the historical aspect refer GS Sachdeva, "Sovereignty in the Air" in IJIL, Vol 22, No 3&4, July-December, 1982.

[88] DHN Johnson, *Rights in Air Space*, (Manchester, Manchester University Press, 1965), p. 14.

The Convention became the first legal instrument to enter into force in the field of air law, although it took years to implement it in an efficient manner. Ratified by 32 states, the outcome of the Convention showed an even stronger support for complete and exclusive sovereignty of the air space. Though successful in this way, it was never adopted by the United States and most of the South American republics. They were to adopt their own convention nine years later, in Havana. The Convention's first article recognized the complete and absolute sovereignty over the air space of the underlying state. This article confirmed what had become customary law and thereby was also applicable to states not parties of the 1919 Convention. The Convention discussed the issue of freedom of innocent passage but there is nothing about the freedom of civil aviation, i.e. it does not include the right to land in a foreign country. In all, the Convention contained and established a system with rules overseeing the use and flight of aircraft over the territories of and between the Member States. There was also a permanent committee established to administer the Convention. Annexes were added regarding, among other things, standards of airworthiness and certificates of competency for crewmembers. Furthermore, the Convention also established the International Commission of Air Navigation (ICAN). ICAN was given a wide range of supervisory powers in the technological area. The Convention also included the very first generally accepted definition of the term 'aircraft'. The definition was overtaken by the 1944 Chicago Convention and did not change until 1967 when the ICAO produced a new definition. Civil aviation was practically non existent at the time of the Paris Convention and the only major branches of flying were either military or postal.

<u>Passenger Liability in Air Accidents:</u> Count von Zeppelin, a German crusader and visionary for air travel, was the first to form an airline called DELAG in 1909. The airline operated scheduled services between Friedrichshafen and Dusseldorf by self-propelled dirigibles, albeit lighter than air.[89] These huge German airships were too unwieldy and difficult to control in strong winds. But a still bigger danger arose from inflammability of hydrogen gas. Over the years a lot of accidents happened to blimps (another name for airships) but the worst happened to "Hindenberg" at Lakehurst, New Jersey in which 36 lives were lost. The liability claims turned DELAG and Zeppelin bankrupt.

Following the German lead, airlines mushroomed in Europe and America. Almost each airline had its own ticketing format and contractual conditions. Though liability was unlimited but passenger was harassed for claims and carriers most often succeeded in evading compensation. Passenger protection was necessary and efforts resulted in IATA Common Code of 1919 and Paris Convention of 1925. The IATA Code was an eye wash and still carried pro-carrier bias leaning on risk factor and the peculiarities of carriage by air vis a vis other modes of transportation.

Another blow to the passengers came from the traditional view of the British courts which had accepted the plea of common carriers to contract out liability obligations almost to the limit of unconscionable and arbitrary. The case in question is Nicolson vs. William.[90] On the contrary, the US courts were more inclined towards public interest and have been equally favourable to a public policy to limit the quantum of damages to a reasonable determinate

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[89] Zeppelin's LZ-13, *HANSA,* was a passenger carrying airship.
[90] 102 ER 1164 (KB 1804)

ceiling or limitation.[91] This seemed necessary for calculation of risk and for insurance purposes. This aspect has been later embodied in the Warsaw Convention.

Then came the Warsaw Convention, 1929. This almost equalised the interest of both parties and stood on equity. This Convention unified rules of procedure and standardised contract documents. It put a ceiling on global liability per passenger to provide air carriers certainty on quantum of compensation payable and thus seek underwriting of their risk. Lastly, it simplified evidentiary procedure under the principle of *res ipsa loquitur*.[92] The Warsaw Convention has been amended and updated resulting in an improved version called Montreal Convention. 1999.

In Between Wars: In the following years a few more conferences were held regarding the development of civil aviation. The stipulations resulting from the 1926 Madrid Conference bore close resemblance to those of the Paris Convention. Of importance, though, was that these stipulations were recognized by several Latin-American states. The result came to be the Ibero-American Convention. Following this, the 1928 Havana Conference composed a small step forward. In comparison with the 1919 Paris Convention the former did not contain any technical annexes. Neither did it produce a measure of uniformity in air traffic regulations or arrange for something equal to the ICAN. Replacing the 1926 Convention with the Havana Pan-American Convention on Civil Aviation, the latter's article 4 spoke of the freedom of innocent overflight but did not contain any regulation restricting the freedom of regular airlines. It was the equivalence of the Paris Convention for the United States and a number of South American states, though.

While the political situation stabilized in Europe the potential of aviation was obvious to many governments. A new epoch of productivity in the development of aircraft was entered upon. The flying machines became bigger and faster and grew largely in number. For example, the annual international competition between countries for the Schneider Trophy had since 1913 occupied the minds of many of the European and American aircraft constructors. It continued after World War One and the British winner of the competition in 1931, which brought the trophy permanently to Great Britain, after winning three consecutive races, was built by Supermarine and was the forerunner of the famous Spitfire fighter of World War Two. The first functional jet engine was developed in 1933 but was not yet ready to supersede the propeller engine.

There were only a few passenger planes developed during this period of peace but as the new conflict broke out in Europe and Asia, the need for bigger strategic bombers and transporters became necessary for the allied powers and their counterparts. These were later to stand model for pure passenger aircraft or were simply rebuilt after the war to serve as such. After 1939, it became possible to cross the oceans for the first time. Because of the Second World War, all efforts to find a common legal basis for international civil aviation were put forward indefinitely. Only when victory for the allied powers seemed secure, the future was worthwhile planning for. The world stage was set for a new convention that would replace all the parallel conventions above.

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[91] Georgette Miller, *Liability in International Air Transport*, (New York, 1977), p. 177. Cited from JC Batra, *International Air Law*, (New Delhi, Reliance Publishing House, 2003), pp.31-2.

[92] For a detailed analysis on the subject, refer GS Sachdeva, *International Tranportation:law of Carriage by Air*, (New Delhi, Deep & Deep Publications, 1987).

Liability for Third-Party Damage on the Surface: Aerial activity is hazardous by inherent nature of flying and dependent upon the skill of the pilot or subject to external circumstances of meteorological conditions and technical failures. Therefore, accidents, however minimal, are almost inevitable due to one reason or the other. This dictum gets support from one of the earliest recorded accident that occurred in 1822. It was a case of bad landing by an air balloon that crashed onto the standing crop causing much loss and distress to the owner of the field.

The case went to the Court for judgment on liability and compensation of loss suffered by the farmer. The Judge "imposed absolute and unlimited liability on the unfortunate aviator."[93] The judgment disregarded mitigating circumstances pleaded by the flyer and strict third-party liability was upheld and damages awarded as per principle of "*restitutio in integrum*."[94] In a way, this was the harbinger of liability regime of aviation and direct ancestor of the Rome Convention, 1952.[95]

Laws of Offences against Aviation: In the beginning aircraft was a sight of excitement and admiration. Air travel was highly expensive and an elitist mode of travel for the rich and sophisticated. The air travellers commuted in style, etiquette and for snob value. Therefore, crime on-board was unthinkable. But human nature being what it is, the passengers in the cabin needed to be reminded of their duty to fasten seat belt and otherwise needed to be disciplined many times in the tenure of flight.

To meet this necessity, apart from help and hospitality, air hostess was recruited as a cadre of cabin crew that has grown in purpose and responsibilities. The first one was Ellen Churchil appointed in 1930. In the early years of transport flying, the passengers were from respectable layer of rich persons strata and generally their behaviour was decent towards all and highly impeccable.

Then with serving of drinks in flight and general transformation in attitudes, air passengers grew conscious of fare paid and started expecting *quid pro quo* for their money. Indiscipline seeped in and turned into mischief and to misdemeanour. As a result, some powers were conferred on the Commander of the Aircraft to ensure order in flight for passenger, crew and aircraft safety. In a recent incident, a maniac passenger tried to bite an air hostess but was overpowered by fellow passengers.[96]

In fact it was for such exigencies that the Commander of Aircraft was bestowed with legal powers to restrain and overpower a rowdy or unruly air passenger, posing risk to safety of flight, with the help of cabin crew or even passengers, if necessary. These powers and legal immunities are contained in Article 10 of Chicago Convention, 1944 and reiterated in Tokyo Convention, 1963. But the worst followed in hijackings of aircraft, damages at airports, parked aircraft and cyber-crimes.

Today safety of aviation is threatened in many ways in the air as well as on ground and significantly by terrorist groups around the world. Thus, it is this innocuous clause on powers of the commander which has grown into a large corpus of law of offences against aviation

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[93] Aleksander Tobolewski, *Monetary Limitations of Liability in Air Law,* (Montreal, 1986), p. 72.

[94] A Kocourek, *Sources of Ancient and Primitive Laws, Part III,* (Boston, 1915), p.123. Cited from JC Batra, *International Air Law,* (New Delhi, Reliance Publishing House, 2003), p. 29.

[95] *Convention on Damage caused by Foreign Aircraft to Third-Parties on the Surface*. Signed at Rome on 7 October, 1952.

[96] *The Times of India*, (Chandigarh Edition), November 4, 2011

security comprising the Hague Convention, 1970, the Montreal Convention, 1971, the Montreal Protocol, 1988 and the Convention on Marking of Explosive Material and the Beijing Convention, 2014.

Regulation of Military Uses of Aircraft: Aerial vehicles right from the era of kites and balloons have been used for offensive and defensive military purposes. Such strategic deployment of balloons has generally met with no great success and has often caused more collateral damage than to the targeted objects. This was because the bombs were dropped manually without the aid of optical telescopic devices and these fell by the speed determined by gravity. This was quite often disturbed by weather conditions like wind speed, clouds and rain etc.

The unintended damage to civil property and death of or injuries to non-combatants were not acceptable and there was public outcry at such gross misuse of weapons that were primitive and inaccurate. This led to The Hague Peace Conference in July, 1899 that deliberated an International Declaration prohibiting the discharge of projectiles and explosives from air balloons. Subsequently many more prohibitions, like ban on napalm bombs, from aircraft have been promulgated leading to a considerable corpus on the laws of Air Warfare yet the Hague Declaration remains the seed for regulation of military uses of aircraft.

The Chicago Convention on International Civil Aviation: On November 1 in 1944, with the allied powers slowly moving closer to victory both in Europe and in Asia, the American president Franklin D. Roosevelt invited all the allied powers together with some neutral governments to a conference in Chicago regarding civil aviation. The purpose of the conference was to come together for the future and make the use of the air space as efficient as possible. In his message to the Conference, Roosevelt described the need for a global air communication net as immediately necessary and announced that a large number of transport planes would be made available as soon as the enemy in Europe and Japan had been defeated. Because of the global extent of the conflict, trained pilots and airports were already in existence by the numbers. He further urged the participating States to create mutual trust between themselves and avoid dominance over each other. This was, according to Roosevelt, the key issue for the creation of a new convention. A little more than a month later, on December 7, 52 states signed the Convention, along with two other agreements supplementing it. The Convention needed 26 ratifications to enter into force and on the 4th of April 1947 it became functional. The Convention and its two annexing agreements meant that the contracting states recognized each other's right to fly through national air space and to use certain areas of their sovereign territories as landing sites.

Forecasting transatlantic commercial air traffic the United States and Great Britain made an agreement in 1935 on aerial navigation on international flights everywhere in the British Empire, except Commonwealth territories, and the American territory. Similar agreements were subsequently made between the United States and Eire, South Africa and Canada. On the same day the Convention became functional, its administrative organization also came into being.

UNDERSTANDING AVIATION LAW

Aviation law is the branch of law that concerns flight, air travel, and associated legal and business concerns. Some of its area of concern overlaps that of admiralty (marine) law and, in many cases, aviation law is considered a matter of international law due to the nature of air travel. The business aspects of air operators (airlines etc) and their regulation also fall under aviation law. Aviation law governs (nearly all individuals) connected to the operation of aircraft and the maintenance of aviation facilities. International Air Law covers the rules that apply to both domestic and international aviation. These rules govern the complex relationship between States, Service Providers and Passengers. The rules also govern the impact of aviation on the environment and on individuals affected by aircraft operations. It is a very broad subject of relevance to most involved in civil aviation.

This highly specialized field of law encompasses most facets of air travel, as well as the operation and regulation of business issues relating to air travel, which requires a comprehensive knowledge of FAA regulations, specific laws regarding flight, and an in depth understanding of aviation. Aviation law pertains to nearly all individuals connected to the operation and maintenance of aircraft. The practice of Aviation law can include litigation on behalf of families who are suffering from loss or injury due to an aircraft tragedy and the defense of an aviation professional accused of violating Federal Aviation Regulations.

Most aspects of aviation law fall under the oversight of the Federal Aviation Administration (FAA). Although, air traffic regulation polices, laws and administrative agencies have been created by both federal and state government, with certain restrictions preventing states from regulating routes, services, or the rates of all air carriers authorized to provide interstate air transportation by the Federal Aviation Act. States may alter existing remedies and enact state laws consistent with federal mandate, though. Additionally, Federal law does not preempt state products liability law, and more often than not, in most defective product cases, aviation manufacturers may be held strictly liable.

SOURCES OF AVIATION LAW

Air law has taken on its international character and emerged on an international plane almost from the very beginning, that is, the first flights between Paris and London, the Paris Convention was concluded in 1919, the year in which that flight took place. Due to the rapid developments in aviation and with the lawmakers attempting to keep pace, custom has largely been bypassed as a source of law, but the result that Air Law is mainly consisting of written law. Treaty Law encompasses all international treaties in which multilateral conventions are the primary source of air law. As a matter of fact that subject participants like the state, the owner, the operator, the passengers, the owner of the on-board goods, the mortgage holders, etc, their rights are properly safeguarded by the achievement of the most important elements of Air Law. The implementing measures are found in international agreement and conventions. Another classifications relevant for Air Law are bilateral instruments, such as national Law, contracts between states and airline companies or contracts between airlines companies, and general principle of International Law . International Custom, in practical, constitutes an important source of international law applicable in the absence of an agreement or complementing it. But in the view of the development of treaty laws, the application of International Custom is not much in use in the domain of aviation as time goes by. Litigation between national and international law, or it between private and public law is applicable in Air Law. Private International Law, in its context means the series of rules pertaining to the relations between private persons involved in the operation and use of aircraft, whereas Public International Law is the corpus of legal norms pertaining to the relations involving states and international organizations in respect of those activities in aviation among problems of political, technical, economical, financial, social or legal nature. In the phase of my paper, military aviation is departed from my focus.

SCOPE AND LIMITATION OF AVIATION LAW

State Sovereignty is a fundamental principle of international law. International law is based on the concept of the state. The state in its turn lies upon the foundation of sovereignty, which expresses internally the supremacy of the governmental institutions and externally the supremacy of the state as a legal person. But sovereignty itself, with its retinue of legal rights and duties, is founded upon the fact of territory. Without territory a legal person cannot be a state. It is undoubtedly the basic characteristic of a state and the one most widely accepted and understood.

There are currently some 200 distinct territorial units, each one subject to a different territorial sovereignty and jurisdiction. However, the term is very often used in a political sense, with differing interpretations depending on context and intention. The notion of sovereignty is dynamic, evolving with the development of the global institutional environment. In aviation, sovereignty refers to the ownership of airspace. In other words, to the exclusive competence of a State to exercise its legislative, administrative and judicial powers within its national airspace.[97]

The central role of territory in the scheme of international law may be seen by noting the development of legal rules protecting its inviolability. The principle of respect for the territorial integrity of states is well founded as one of the linchpins of the international system, as is the norm prohibiting interference in the internal affairs of other states.

A number of factors, however, have tended to reduce the territorial exclusivity of the state in international law. Technological and economic changes have had an impact as interdependence becomes more evident and the rise of such transnational concerns as human rights and self-determination have tended to impinge upon this exclusivity. The growth of international organisations is another relevant factor, as is the development of the „common heritage" concept in the context of the law of the sea and air law.

The essence of territorial sovereignty is contained in the notion of title. This term relates to both the factual and legal conditions under which territory is deemed to belong to one particular 2 authority or another. In other words, it refers to the existence of those facts required under international law to entail the legal consequences of a change in the juridical status of a particular territory.[98]

Air Law is a series of rules governing the use of airspace and its benefits for aviation, the general public and the nations of the world. Definition of which is plenty but it cannot be applied indiscriminately or without exceptions. Like, the terms of Aviation Law and, or Navigation Law are become out-dated, the designation of Air Transportation Law has been employed on occasions, but the areas it covers are only conveying a narrow interpretation. In presence, the term of Aeronautical Law is currently being used especially in Romance languages, while Air Law is practically adopted in the rest regimes.

THEORIES OF AIRSPACE SOVEREIGNTY

[97] International Civil Aviation Organization "Worldwide Air Transport Conference (ATCONF) Sixth Meeting" Montréal, 18 To 22 March 2013.

[98] Malcom Shaw, 2008, *International Law* 6th Edition .Pg 490.

Efforts to ascertain the breadth of the layer of air comprised within the air territory so as to establish a consensus and acceptable principle of sovereignty over the air space had generated a lot of controversy amongst jurists. This controversy had given rise to theories propounded on a stage by stage basis which subsequently led to the birth of the principle of sovereignty over the air space.

The theories of sovereignty over the air space propounded by the jurists were initially grouped in to two main schools of thought. These are the theory which maintained that the air space is by its nature free and that which maintained the theory of sovereignty of the subjacent state in the air space above its territory. Notwithstanding the various theories and inspite of the existing uncertainty as to where the air space, that is, the atmosphere of our planet ends and the outer space begins, the basic and fundamental principle of air law is that every state has complete and exclusive sovereignty over the air space above its territory. By this principle, no air craft of one state can enter the air space of another state without the permission of that other state sought and obtained. The theories on the legal status of the airspace may be summarized as follows:

a) *Theory Of The Unlimited Freedom*: this theory is supported by those who, having seen the advantages that the absolute freedom of the seas have brought to the International community, thought that the same criteria could be applied to the air navigation.

b) *Theory Of The Absolute Sovereignty:* completely opposed to the previous one: it refused the principle of freedom and conversely claimed the State sovereignty over the atmosphere. It also inherited the idea that the Roman Law had applied to the land property in order to define its unconditional character and to reject any claim from the other States (the already mentioned principle ***dominus soli est dominus usque ad sidera et usque ad inferos***).

c) *Intermediate Theories*: it tried to combine the States‟ claims with the creation of an efficient International air navigation system. One of the most famous theories was formulated in 1901 by the French jurist Paul Fauchille, who claimed that the air is free, and its freedom may only be limited by strictly defined rights belonging to the State underneath. According to this scholar the sovereignty of the land owner over the air space was limited to the maximum height of the buildings it could build; beyond this limit the atmosphere was free and freely exploitable.

d) *Theory Of The Limited Sovereignty*: it stemmed from the principle that the atmosphere is subject to the State power, but it introduced some limitations in favour of the air traffic of adequate means whose airworthiness could be proved by specific international certifications. This theory anticipated the following regime which was based upon a functional and not just spatial idea of the air navigation.

THE PRINCIPLE OF SOVEREIGNTY OVER THE AIRSPACE

State sovereignty over its territorial airspace is the basic principle underlying the whole system of International Air Law. Irrespective of whether the airspace can be regarded as a part of a state’s territory, it generally recognized that it is a sovereign right over the airspace above its land and territorial waters. After the collapse of the short lived concept of freedom of the air in the first decade of 19th century, air law theory is based on the concept of air sovereignty as airspace is regarded as an extension of state’s land and maritime territorial or its complementary element.

States have exercised sovereignty over the space above land at least as far back as the Roman Empire. Roman law (and the law of succeeding States) recognized, regulated, and protected private rights in space above the surface. Because a State cannot impose its will within the territory of another State, these States therefore all claimed territorial sovereignty above their surface territory. Although writers generally agree that Roman law recognized private rights in air space, the writers do not agree on the extent of the right recognized.
At the beginning of the twentieth century *"international flight was practically unregulated."* In 1902, Paul Fauchille of France, Rapporteur for the Institute of International Law on the subject of the legal status of the airships, proposed that States should only have exclusive rights in the airspace immediately over their territory up to an altitude of 1,500 meters (4,920 feet). Some of Fauchille‟s proposals were translated by Professor John C. Cooper as:
"the air is free—States having only rights necessary for their self-preservation, such rights relating to the prevention of spying, to the customs, to the sanitary police, and to the necessities of defense; subject to certain exceptions, air navigation is prohibited in a "security" zone extending 1500 meters up from the surface territory of a State; only public aircraft of a State are permitted to fly freely in the security zone of that State; the subjacent State may also regulate landing and departure through the security zone above its territory . .. "[99]
The opposite view was expressed in 1906 by Professor John Westlake of the United Kingdom who advocated no upward limit of State sovereignty.11In the air the higher one ascends, the more damage the fall of objects will cause on the earth. If there exists a limit as to the sovereignty of the State over the oceanic space, none exists for the sovereignty of the State over the air space. The right of the subjacent State remains the same whatever may be the distance.12
The first concerted attempt at codification on an international scale took place before 1910, when German balloons repeatedly made flights above French territory.13 The French Government was of the opinion that for safety reasons it would be desirable for the two governments involved to try to reach an agreement to resolve the problem. As a result the Paris Conference of 1910 was convened. The tendency of the conference did not adopt the idea of „freedom of the air‟ but was in favor of the sovereignty of states in the space above their territories, which was reflected on the draft convention at the plenary session of the conference.
Although the diplomatic conference adjourned without signing a convention, it had completed most of the clauses of a draft convention. The 1910 conference "first evidenced general international agreement that usable space above the lands and waters of a State is part of the territory of that State" and that no general right of innocent passage through the usable space above a State existed for aircraft. The conference did not set a vertical limit on State sovereignty. After the 1910 Paris conference ended without agreement, many European States asserted absolute vertical sovereignty.
After WWI, the Aeronautical Commission of the Peace Conference in Paris met to examine fundamental principles for air navigation. The Commission consisted of delegates from many

[99] ohn Cobb Cooper, A Study on the Legal Status of Aircraft [hereinafter Cooper, A Study], reprinted In Cooper, Explorations In Aerospace Law, supra note 18, at 205, 218.

European States as well as Japan, Cuba, Brazil and the U.S. The Commission drafted the Convention Relating to the Regulation of Aerial Navigation, known as the Paris Convention. Article 1 of the Convention recognized the exclusive sovereignty of all States over the air space above their territory, including above territorial waters. The Paris Convention did not define the term "air space." After the Paris Convention entered into force, an annex was adopted which defined aircraft as "all machines which can derive support in the atmosphere from reactions of the air."

However, according to Professor Cooper, this did not limit a State‟s vertical sovereignty, "*the Paris Convention is not to be construed as meaning that in international law States have territorial rights only in this airspace. The airspace was accepted as part of State territory but no international determination was made as to the regions of space above.*"

The Paris Convention did not provide for a right of innocent passage, but it did encourage States to allow innocent passage, saying *"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." (Article 2)* However, apparently the idea of innocent passage was not looked upon favourably; **Article 15** which provided in part that *"every aircraft of a contracting State has the right to cross the air space of another State without landing"* was amended in 1929 to make this right conditional. The new paragraph 4 of article 15 said,

"Every contracting State may make conditional on its prior authorisation the establishment of international airways and the creation and operation of regular international air navigation lines, with or without landing on its territory."

The right of innocent passage provided for by **Article 2** [was] thus largely limited to civil aircraft used for pleasure or occasional commercial flights. The Paris Convention was ratified by most European States and its statement of airspace sovereignty became an accepted part of international law.

The 1944 Convention on International Civil Aviation (known as the Chicago Convention) also reaffirms in its **Article 1** that all States have complete and exclusive sovereignty over the airspace above their territory. A State's territorial airspace includes the area above its territorial waters, there exists no right of innocent passage and scheduled international air services are only allowed with special permission of the contracting States. Accordingly, the international law rules protecting sovereignty of states apply to the airspace as they do to the land below. As the International Court noted in the *Nicaragua case*, '*The principle of respect for territorial sovereignty is also directly infringed by the unauthorised overflight of a state's territory by aircraft belonging to or under the control of the government of another state.*' The Court noted in the *Benin/Niger case* that *'a boundary represents the line of separation between areas of state sovereignty, not only on the earth's surface but also in the subsoil and in the superjacent column of air'.*

PROBLEMS OF NATIONAL JURISDICTIONS REGARDING AIRSPACE SOVEREIGNTY

There is no system of general rules of international law for the definition of the scope of national laws and jurisdictions. In the view of the basic rules of international law recognizing complete and exclusive sovereignty of states over state-territorial airspace involving prohibition of unauthorized flights and obligation to conform to territorial laws and

regulations by the foreign aircrafts, the implementation of these rules by the state becomes most important. As experienced, international law does not provide immediate measure to protect territorial airspace and to cease the violation. The mentioned „freedom of the air", like the „sovereignty" itself in the basic rule of international law, cannot be considered solely to be absolute and unrestricted.
A state sovereignty in territorial airspace and its legal consequences cover:

1. freedom of air navigation in non-territorial airspace;
2. nationality of aircraft involving control, responsibility;
3. right of protection assigned to the registered state[100] of the flag;
4. use of lawful means to suppress unlawful use of aircraft;
5. recognition either of exclusive jurisdiction of the territorial state or of state of the aircraft's nationality; and
6. concurrent jurisdictions in other areas of civil aviation activities.

The fundamental rules of customary international law underlie the regulatory system of international civil aviation, the major part of which is formed by treaty law. Although customary rules had been provided a basic premise for the application of treaty obligation, state practice also seems to be indicative of the direction in which the development of international air law is likely to go.
The fundamental rules of customary international law underlie the regulatory system of international civil aviation, the major part of which is formed by treaty law. Although customary rules had been provided a basic premise for the application of treaty obligation, state practice also seems to be indicative of the direction in which the development of international air law is likely to go.
Bilateral air agreement, using the notion of airline nationality associated with its ownership and effective control, recognition of transfer of responsibility from the registration state to the state of aircraft operator, refraining from interference by the territorial state with its internal order prevailing onboard the foreign aircraft. As a result of the pressures of the continuing technological revolution and expanding international and extra-terrestrial activities, there will also be a potential conflict of states jurisdiction in the matter of certain cases.

Penal Law and Aviation
In the past few years, the development of new rules and sanctions were tensed as to the criminal offence happening in flight became more frequent. There are three international conventions governing the provision of penal law in the aspect of aviation. They are:

1. The Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963 (Tokyo Convention)

[100] Art 1(2) of Tokyo Convention stating that „this convention shall apply in respect of offences committed or acts done by a person on board any aircraft registered in a contracting state, while that aircraft is in flight or on the surface of the high seas or of any other area outside the territory of any state.

2. The Convention for the Suppression of Unlawful Seizure of Aircraft, signed at the Hague on 16 December 1970 (Hague Convention)31
3. The Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971 (Montreal Convention)

It is necessary to determine, in the basic concept of the international character of aviation and air law, which state is competent to exercise jurisdiction in case of criminal offences happened on board aircraft. In 1910 the Paris Convention was expressed the principle of law that state sovereignty over the airspace above its territory where was also indicated in 1944 the Chicago Convention. However, we may face a situation in which complication arises when a state other than the state in which an aircraft is registered attempts to exercise its jurisdiction with regards to offences committed on board such aircraft, due to the offence is committed above territories not subject to sovereignty of any particular state, like high sea, or when the place cannot be distinguished precisely. We may find number of occasions discussed and recorded on the agenda of the International Law Association, the draft convention was worked out by the ICAO legal committee in Munich 1959 and Rome1962 and other cities. The final text of Tokyo Convention was concluded at the Diplomatic conference held in Tokyo in 1963.

According to the various draft conventions and materials as above mentioned, an analysis of the following theories regarding jurisdiction to which is resorted:

1. **The Territorial Theory** – the law of the state in whose airspace the offence has taken place will be applied by its national courts. Clearly it is not always possible to determine the exact position of the aircraft at the time the offence was committed; for that reason is impracticable for a state to base its jurisdiction solely on this principle.

2. *The National Theory* – according to this theory the law of the state where the aircraft is registered is always applied.

3. *The Mixed Theory* – side by side with the law of the aircraft"s nationality and the law of the state over which the aircraft passes is enforceable whenever the security or public order of such state is threatened by offences committed on board.

4. The theory of the *law of the state of departure.*

5. The theory of the *law of the state of landing.*

Conclusion

Extensive researches are being undertaken to establish the existence of flying and aerial vehicles in ancient times, yet aviation as visible today appears to be a recent phenomenon and a remarkable feat of modern science and technology. Aviation has travelled a long way in a short span of almost a century. From the primitive lumbering flying machine of the Wright brothers to the supersonic jet fighters, with armament loads disastrously lethal, of the developed air forces. Further, aerospace reusable vehicles, which cruise at many times the speed of sound at altitudes incredibly high or near-earth orbits, with avionics highly sophisticated are at technical demonstration stage.

On the air transport front also advances have indeed been spectacular. From a humble beginning of inconvenient gondolas attached to balloons, diminutive machines of remote ancestry, and doubtful reliability, the international civil aviation has grown dynamically into a gigantic international transport industry participated by nearly 300 companies belonging to over 100 nations, which to-day possess and operate a great armada of aircraft flying over 1000 billion passenger kilometers and about 40 billion ton-kilometers of freight annually across the territories of about 180 sovereign states. Indeed the world has shrunk, the horizons have drawn closer and international air travel is here to stay as a necessity, as a habit and as a time-saver.

The science of aeronautics is still rapidly advancing and harmoniously maturing into astronautics. The future aero-space vehicles may be relatively different from those conventionally known so far, yet air travel and air combat seem inseparable from our present civilization. Thus the story of flight may be complete, yet the tale of aviation and aero-space flight continues, because the saga of development and advancement is unending and continues to march ahead. The snippets on Air Regulations are just illustrative of the genesis of air regulations that have culminated into improved versions and binding laws through obligatory conventions and protocols. This aspect deserves a lot more interest and needs serious further research.

MODULE III

Chicago Conference, Annexes & Aviation Dispute Settlement

EVENTS LEADING TO THE CHICAGO CONFERENCE

The idea of freedom to fly over other countries is based on a principle published in 1609 by Hugo Grotius defending the right of the Dutch India Company to trade in the Far East. Called *Mare Librium* (freedom of the seas) it stated that any country could sail on the seas without restrictions by other nations. The question of national air space first arose when balloons were used during the Franco-Prussian war in 1870-71. After the war, opinion was divided as to whether the air should be treated like the high seas, free for the use of all, or whether a nation should be able to control who used it. The issue became relevant to powered flight in 1909, when the French pilot Louis Blériot crossed the English Channel to England.[101] The Paris Air Navigation Conference of 1910, diplomats failed to reach an agreement on the question.

In 1911, the British Parliament passed the Aerial Navigation Act, giving Britain the power to close British airspace, including parts of the English Channel, to all foreign aircraft[102]. At that time, Europe was preparing for war and many European countries passed similar legislation. After World War I, 26 countries met in Paris in 1919 and drew up the Convention Relating to the Regulation of Air Navigation and a number of basic principles governing aviation were laid down. They voted to give each nation "*complete and exclusive sovereignty over the airspace above its territory*". Neither the United States nor Russia signed the agreement.[103] The delegates also established the International Commission on Air Navigation (ICAN) as a forum to discuss the rules for allowing foreign aircraft to use sovereign airspace. Subsequently, the Havana Convention on Civil Aviation was drawn up in 1928 and ratified by 21 Western Hemisphere countries; the convention guaranteed the right of innocent passage of aircraft and formulated the rules for international air navigation between the contracting states relating to aircraft identification, landing facilities, and standards for pilots. It also stated the right of each country to set the route to be flown over its territory.

In 1929, delegates to the Warsaw Convention, which included the United States, agreed to limit passenger compensation for loss of property or harm to a passenger by an airline to $8,300.[104] This amount was measured using gold based on the value of the French franc. Needless to say that the aviation made during World War II not only resulted in horror and human tragedies but that its utilization also significantly advanced the technical and operational possibilities of air transport in a world which had finally found peace again. In fact, for the first time large numbers of people and goods had been transported over long distances and ground facilities had been developed to permit this in an orderly and expeditious manner. It was for this reason that, in 1943, the US initiated studies of post-war civil aviation problems which, once more, confirmed the belief that they either were to be tackled on an international scale or it would not be possible to use it as one of the principal elements in the economic development of the world and the first available means to start

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[101] Anthony Sampson, Empires of the Sky: The Politics, Contests and Cartels of World Airlines , 1984,65.
[102] Ibid.
[103] www.icao.int
[104] Tory A. Weigand, Accident, Exclusivity, and Passenger Disturbances Under the Warsaw Convention, 16 Am. U. Int'l L. Rev,2001, 891

"healing the wounds of war" as President Roosevelt put it.[105] As part his efforts, President Roosevelt invited representatives to conference on international civil aviation in Chicago. In response to the invitation of the United States Government, representatives of 54 nations met at Chicago from November 1 to December 7, 1944.[106]

On November 1994, in response to the British initiative, US President invited the allied powers and few of the neutral governments to convene a conference at Chicago regarding regulation of civil aviation. Given the background work done by the Paris Peace conferences and other regional conferences in the last two decades, the countries had very high expectations from this conference. During the conference there were four crucial theories or rather schools of thought prevailing on the regulation of civil aviation. First was the American school of thought which advocated for complete freedom of competition in air transport. Second was the British school of thought which suggested creation of an international organization to coordinate air transport and assume the duties of apportioning the world's air routes and making decisions on frequencies and tariffs. Third was the Canadian trend which supported the proposal put forth by the British but it suggested a more elaborate version of the same. Last was school of thought led by Australia and New Zealand and they proposed internalization of major airlines under the direction of a single authority in which all the states involved would participate. Unfortunately, none of the proposals could sail through the conference for long and ultimately the Chicago Convention which resulted from the Chicago Conference adopted the principle of complete and exclusive sovereignty over the air space above its territory which had been articulated in the Paris Peace Conferences.

SIGNIFICANCE OF CHICAGO CONFERENCE

The International Civil Aviation Conference turned out to be one of the most successful, productive and influential conferences ever held, and the Stevens Hotel in Chicago had been its host. As a result, ICAO became the sole universal institution of international public aviation rights, superseding the Paris Convention of 1919 and the Havana Convention of 1928. For the first time in the history of international aviation, an authority would facilitate the order in the air, introduce maximum standardization in technical matters to unify the methods of exploitation and settle any differences that may occur.

The Convention on International Civil Aviation, was established to promote cooperation and "create and preserve friendship and understanding among the nations and peoples of the world." Known more commonly today as the 'Chicago Convention', this landmark agreement established the core principles permitting international transport by air, and led to the creation of the specialized agency which has overseen it ever since – the International Civil Aviation Organization (ICAO).

[105] History of Civil Aviation, Encarta Encyclopedia, www.enacarta.com
[106] Ibid.

OUTCOMES OF CHICAGO CONFERENCE

Among the major achievements of the Conference were the drafting, adoption and opening for signature of one major convention, three Agreements, a standard form of bilateral for provisional air routes and the text of 12 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". In fact, the Chicago constitution became a viable constitution for post-war global air world. The Final Act of the Chicago Conference was adopted and signed by 52 States. The Final Act contained 12 Resolutions and the following Six appendices.

- The interim agreement on the international Civil Aviation
- The convention on the international Civil Aviation
- The international air service transit agreement (Two Freedoms Agreement)
- The international air transport agreement (Five Freedoms Agreement)
- Drafts of Technical Annexes
- A standard form of Bilateral Agreement

The Interim Agreement on the International Civil Aviation: The interim agreement on international civil aviation mentioned above provided for the salting up of a Provisional International Civil Aviation Organization (PICAO) and established rules for international aviation in the period before the commencement of ICAO. It became effective on 6th June 1945 and expired on 4th April 1947. PICAO had organs similar to those of ICAO : the interim Assembly, the interim Council, the Secretary-General and the Canadian Headquarters.

The Convention on International Civil Aviation: The convention on International Civil Aviation is the substantial result of the Conference and generally referred to as the Chicago Convention 1944. The most significant result of the conference was the drafting and adoption of the convention, signed by 35 states participating in the conference on 7th December, 1944. The Convention came into force on 4th April 1947, after ratification of 26 states. At present there are 185 parties to the Chicago Convention and these states also form the membership of the ICAO. The Convention has been one of the most widely ratified international multilateral instruments. The Chicago Convention, 1944 has been divided into four parts through 22 chapters and 96 articles. Part I on air navigation, Part II, is devoted to the International Civil Aviation Organization, Part III on International Air Transport and Part IV devoted to the Final Provisions.

***Part I on Air Navigation has sub divided into 6 chapters from article 1-42*:** Chapter I General Principles and Application of the Convention (From 1-4) discussed above the state sovereignty, territory, civil and state aircraft and use of civil aviation. Whole air law is developed on the concept of state sovereignty in civil aviation. According to Article I the contracting states recognises that every state has complete and exclusive sovereignty over airspace above its territory.

Chapter II Flight over territory of contracting states Article (5-16) discussed issues relating to the scheduled and non-scheduled air services, cabotage, pilotless aircraft, prohibited areas, landing at custom airports, air rules and regulations, airport charges etc. According to Article 6 "No scheduled international air services may be operated over or into the territory of a contracting state, except with the special permission or authorization of that state, and in accordance with the terms of such permission or authorization." Nationality of the Aircraft is important issue in international civil aviation, which is covered in Chapter III from articles 17-21 of the convention. According to Article 17 Aircraft have the nationality of the state in which they are registered. Other important provisions of nationality of the aircraft includes dual registration, national laws governing registrations, display of marks and Reports of registration.

Chapter IV from articles 22-26 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 Standards and Recommended Practices (SARPs) in respect of airports, radio services, meteorological services and other air navigation facilities, standard communication procedures, codes, markings, signals, lighting and publication of charts & maps. Conditions to be fulfilled with respect to aircraft including documents carried in aircraft, aircraft radio equipment, certificate of airworthiness, licences of personnel, recognition of certificates and licences, journey log books, cargo restriction and photographic apparatus are covered in Chapter V from articles 29-36 of the convention.

Adoption and implementation of International Standards and Recommended Practices (SARPs) in international civil aviation is very essential because of technical nature of civil aviation. These international Standards and recommended practices are covered in Chapter VI from articles 37 to 42 covered the adoption and departures of international standards, procedures, endorsement of certificates and licences and their validity, recognition of airworthiness etc are covered in this Chapter.

The Chicago Convention has also established principles, structures and procedures for the International Civil Aviation Organization (ICAO) has been covered in Part II from Articles 43 to 66 of the Convention: The ICAO has been responsible for establishing guidelines and standards for navigational aids, technical rules for landing areas, aircraft certification, licencing of pilots and other specialized personnel. As it already mentioned the Chicago Convention laid the foundation for the development of international civil aviation and established principles, structures and procedures for the working of the ICAO. Under Article 44 of the convention, the ICAO aims to develop the principles and techniques for international air navigation and air transport.

Various Provisions relating to International air transport are covered in part III from articles 67 to 79 of the Chicago Convention: Under Chapter XIV, the contracting states have to file their reports with council. Chapter XV covered various airport and air navigation facilities including designation of routes and airports, financing & improvement of air navigation facilities, acquisition and use of land, expenditure and assessment of revenues etc. Joint operating organizations and pooled services are covered in Chapter XVI of the convention.

Part IV the Financial Provisions of the convention from articles 80-96 are covered other aeronautical agreements and arrangements including the Paris and Habana Conventions, registration of existing agreements, abrogation of inconsistent arrangements and registration of new arrangements. Settlements of disputes through arbitration, etc are covered in XVIII of the convention. Other provision relating to settlements of disputes including the appeals, penalty for non-conformity of airlines and non-conformity states etc.

The adoption and Amendment of Annexes are covered in Chapter XX. The ICAO Annexes, most of which aim to maintain and improve safety, security etc cover personnel licensing, airworthiness of aircraft, air craft operations, ATS, aeronautical information, telecommunications, meteorological services etc. They collectively ensure the highest degree of air safety on a world-wide basis. These technical specifications are kept up-to-data in the 18 annexes of the Chicago Conventions; cover all the specialized sectors of air navigation. Chapter XXI of the convention covers the ratification, adherences, amendments, and denunciation. Chapter XXII (Article 96) of the Chicago convention defines Air Services, Airlines, International air services, stop for non-traffic purposes etc.

The International Air Service Transit Agreement: This agreement is popularly known as the “two-freedom agreement”, which grants: The privilege to fly across the territory of a State without landing (right of transit), and The privilege to land for non-traffic purposes (right to stop for refuelling, repairs, etc).

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: The right to discharge passengers, mail and cargo taken on the home ports; The right to pick up passengers, mail and cargo to be taken to the home ports, and The right to pick up and discharge passengers, mail and cargo to or from any other contracting states.

The Drafts of Technical Annexes: The fifth appendix to the Final Act of the Chicago Convention contains the drafts of technical Annexes. It did not require signature. It covers 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 standardized the 18 technical aspects of aviation.

The Chicago Convention, the ICAO and the Development of International Standards and Recommended Practices (SARPs)

Recommended practices dealing with a wide range of matters concerned with the safety, regularity and efficiency of air navigation. The current standards and recommended practices are published by ICAO as Annexes to the Chicago Convention. This list also shows the agency responsible for each Annex. A standard, as defined by the first ICAO Assembly, is "any specification for physical characteristics, configuration, material, performance, personnel, or procedures, the uniform application of which is recognized as *necessary* for the safety or regularity of international air navigation and to which member states *will conform.*" Standards may thus include specifications for such matters as the length of runways, the materials to be used in aircraft construction, and the qualifications to be required of a pilot flying an international route. A recommendation is any such specification, the uniform application of which is recognized as “desirable in the interest of safety, regularity, or efficiency of international air navigation and to which member states will *endeavor to conform."*

Preparing and revising these standards and recommendations is largely the responsibility of ICAO's Air Navigation Commission, which plans, coordinates, and examines all of ICAO's activities in the field of air navigation. The commission consists of 15 persons, appointed by the council from among persons nominated by member states. If the council approves the text, it is submitted to the member states. While recommendations are not binding, standards automatically become binding on all member states, except for those who find it impracticable to comply and file a difference under Article 38 of the Chicago Convention.

The various standards and recommendations that have been adopted by ICAO are grouped into 18 annexes to the Chicago Convention. The aim of most of the annexes is to promote progress in flight safety, particularly by guaranteeing satisfactory minimum standards of training and safety procedures and by ensuring uniform international practices. The 18 annexes are the following:

1. Personnel Licensing—licensing of flight crews, air traffic controllers, and aircraft maintenance personnel.
2. Rules of the Air—rules relating to the conduct of visual and instrument flights.
3. Meteorological Services—provision of meteorological services for international air navigation and reporting of meteorological observations from aircraft.
4. Aeronautical Charts—specifications for aeronautical charts for use in international aviation.
5. Units of Measurement—dimensional systems to be used in air-ground communications.
6. Operation of Aircraft. Part I: International Commercial Air Transport; Part II: International General Aviation; Part III: International Operations–Helicopters. These specifications will ensure in similar operations throughout the world a level of safety above a prescribed minimum.

7. Aircraft Nationality and Registration Marks—requirements for registration and identification of aircraft.
8. Airworthiness of Aircraft—certification and inspection of aircraft according to uniform procedures.
9. Facilitation—simplification of customs, immigration, and health inspection regulations at international airports.
10. Aeronautical Telecommunications—standardization of communications equipment and systems and of communications procedures.
11. Air Traffic Services—establishment and operation of air traffic control, flight information, and alerting services.
12. Search and Rescue—organization and operation of facilities and services necessary for search and rescue.
13. Aircraft Accident Investigation—uniformity in the notification, investigation, and reporting of aircraft accidents.
14. Aerodromes—specifications for the design and equipment of aerodromes.
15. Aeronautical Information Services—methods for the collection and dissemination of aeronautical information required for flight operations.
16. Environmental Protection. Vol. I: Aircraft Noise—specifications for aircraft noise certification, noise monitoring, and noise exposure units for land-use planning; Vol. II: Aircraft Engine Emissions—standards relating to vented fuel and emissions certification requirements.
17. Security—specifications for safeguarding international civil aviation against acts of unlawful interference.
18. Safe Transport of Dangerous Goods by Air—specifications for the labeling, packing, and shipping of dangerous cargo.
19. Safety Management System

The Relationship between the Convention and its Technical Annexes: Many of the American republics, including the United States, have strict constitutional and legislative provisions applicable to the ratification of a treaty and of any amendment to it before the same can become effective. One of the major objectives of the Chicago Convention is, as stated in the preamble, to agree on "certain principles and arrangements in order that international civil aviation may be developed in a safe and orderly manner . . . ." To meet similar objectives the Paris Convention had contained technical annexes designed to assure uniform regulations wherever the Convention was in effect. These annexes were parts of the Convention, but nevertheless could be modified by the internal machinery provided in the Convention without the amendments going back to states for formal ratification. A weakness of the Havana Convention was that it had no adequate machinery for the adoption of uniform regulations.

One of the major problems behind the scenes at Chicago was how to provide practical international uniformity of flight regulations without infringing on the constitutional procedures of those states which require formal ratification of treaty amendments. A compromise was finally adopted which I believe has worked well. Article 37 contains a statement that each contracting state undertakes to collaborate in securing the highest practicable degree of uniformity in regulations, standards, procedures, and organization in relation to aircraft, personnel, airways and auxiliary services in all matters in which uniformity will facilitate and improve air navigation. ICAO is then directed to adopt and amend from time to time international standards and recommended practices and procedures dealing with such matters as communications systems and air navigation aids, characteristics of airports, rules of the air and traffic control practices, licensing of operating and mechanical personnel, air worthiness of aircraft, registration and identification of aircraft, meteorological information, maps, customs and immigration procedures, aircraft in distress and investigation of accidents and "such other matters concerned with the safety, regularity and efficiency of air navigation as may from time to time appear appropriate."

Article 38 requires member states of ICAO to notify it when any state finds it impracticable to comply with such standards or to bring its own regulations or practices into full accord therewith. Article 54 directs the Council of IACO to adopt such international standards and recommended practices and "for convenience designate them as annexes to this Convention." It was fully understood at Chicago, and is apparent from the test of the Convention, that the annexes when adopted do not thereby become parts of the Convention. But in practice, so I understand, wide uniformity of regulations has nevertheless resulted. At the same time the convention has been ratified by many states which would have had difficulty in accepting it with a delegation of power to ICAO which might have resulted in modifying the annexes as parts of the Convention without re-ratification. I believe that the compromise arrived at in Chicago was wise and has been successful.

In the Department of State Bulletin of March 11, 1945, published shortly after the Chicago Conference, Mr. Stephen Latchford, then air law adviser in the aviation division of the State Department and one of the advisers to the United States delegation at Chicago, wrote:

> Although it is evident from the proceedings and Final Act of the Chicago Aviation Conference that it is expected and urged that all the countries becoming parties to the Convention shall cooperate with a view to attaining the highest degree of uniformity with reference to the application of international standards and practices, it was realized by the delegates at Chicago that there might be some exceptional cases where a particular country would find it highly desirable and necessary to adopt some departure from an international standard. This, it is believed, will not constitute any serious impediment to the general acceptance and application of uniform international standards and practices and it is thought that the various states will accept and apply them to the greatest extent possible. After twenty years I am convinced that Mr. Latchford's statement was sound.

ANNEXES TO THE CHICAGO CONVENTION

The Convention on International Civil Aviation, signed in Chicago on 7 December 1944 (the Chicago Convention), came into force on 4 April 1947. The Convention established certain principles and arrangements so international civil aviation can develop in a safe and orderly manner, and that international air transport services be established on the basis of equality of opportunity and operated soundly and economically. Recommended practices dealing with a wide range of matters concerned with the safety, regularity and efficiency of air navigation. The current standards and recommended practices are published by ICAO as Annexes to the Chicago Convention. This list also shows the agency responsible for each Annex.

A standard, as defined by the first ICAO Assembly, is "any specification for physical characteristics, configuration, material, performance, personnel, or procedures, the uniform application of which is recognized as *necessary* for the safety or regularity of international air navigation and to which member states *will conform.*" Standards may thus include specifications for such matters as the length of runways, the materials to be used in aircraft construction, and the qualifications to be required of a pilot flying an international route. A recommendation is any such specification, the uniform application of which is recognized as “desirable in the interest of safety, regularity, or efficiency of international air navigation and to which member states will *endeavor to conform."*

Preparing and revising these standards and recommendations is largely the responsibility of ICAO's Air Navigation Commission, which plans, coordinates, and examines all of ICAO's activities in the field of air navigation. The commission consists of 15 persons, appointed by the council from among persons nominated by member states. If the council approves the text, it is submitted to the member states. While recommendations are not binding, standards automatically become binding on all member states, except for those who find it impracticable to comply and file a difference under Article 38 of the Chicago Convention. The various standards and recommendations that have been adopted by ICAO are grouped into 19 annexes to the Chicago Convention. The aim of most of the annexes is to promote progress in flight safety, particularly by guaranteeing satisfactory minimum standards of training and safety procedures and by ensuring uniform international practices.

ANNEX 1: Personnel Licensing: Standards and Recommended Practices for the licensing of flight crew members (pilots, flight engineers and flight navigators), air traffic controllers, aeronautical station operators, maintenance technicians and flight dispatchers , are provided by Annex 1 to the Convention on International Civil Aviation. Related training manuals provide guidance to States for the scope and depth of training curricula which will ensure that the confidence in safe air navigation, as intended by the Convention and Annex 1, is maintained. These training manuals also provide guidance for the training of other aviation personnel such as aerodrome emergency crews, flight operations officers, radio operators and individuals involved in other related disciplines.

Annex 1 and ICAO training manuals describe the skills necessary to build proficiency at various jobs, thereby contributing to occupational competency. The medical standards of the Annex, in requiring periodic health examinations, serve as an early warning for possible incapacitating medical conditions and contribute to the general health of flight crews and controllers. ICAO's objective is to improve safety in aviation by making States more aware of, and responsive to, the importance of human factors in civil aviation operations. To accomplish this task, Annex I is regularly amended to reflect the rapidly changing environment.

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. The rules developed by ICAO - which consist of general rules, visual flight rules and instrument flight rules 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 an aircraft is responsible for compliance with the rules of the air. Flight in accordance with visual flight rules is permitted if a flight crew is able to remain clear of clouds by a distance of at least 1 500 m horizontally and at least 300 m (1 000 ft) vertically and to maintain a forward visibility of at least 8 km. For flights in some portions of the airspace and at low altitudes, and for helicopters, the requirements are less stringent. An aircraft cannot be flown under VFR at night or above 6 100 m (20 000 ft) except by special permission. Balloons are classified as aircraft, but unmanned free balloons can be flown only under specified conditions detailed in the Annex. As interceptions of civil aircraft are, in all cases, potentially hazardous, the Council of ICAO has formulated special recommendations in Annex 2 which States are urged to implement through appropriate regulatory and administrative action. These special recommendations are contained in Attachment A to the Annex. All these rules, when complied with by all concerned, help make for safe and efficient flight.

ANNEX 3 : Meteorological Service for International Air Navigation : Meteorological Service for International Air Navigation Pilots need to be informed about meteorological conditions along the routes to be flown and at their destination aerodromes. The object of the meteorological service outlined in Annex 3 is to contribute to the safety, efficiency and regularity of air navigation. This is achieved by providing necessary meteorological information to operators, flight crew members, air traffic services units, search and rescue units, airport management and others concerned with aviation. Close liaison is essential between those supplying meteorological information and those using it. Telecommunications between the meteorological office and control towers or approach control offices should be such that the required points may normally be contacted within 15 seconds. Aerodrome reports include surface wind, visibility, runway visual range, present weather, cloud, air and dew-point temperature and atmospheric pressure, and are issued either half-hourly or hourly.

To provide aircraft in flight with information about significant changes in weather, meteorological watch offices are maintained. They prepare warnings of hazardous weather conditions, including thunderstorms, tropical cyclones, severe squall lines, heavy hail, severe turbulence, severe icing, mountain waves, sandstorms, dust storms and volcanic ash clouds. Moreover, these offices issue aerodrome warnings of meteorological conditions that could adversely affect aircraft or facilities on the ground: for example, warnings of expected snowstorms. They also issue warnings for wind shear for the climb-out and approach paths. Furthermore, aircraft in flight are required to report severe weather phenomena encountered en route. These reports are disseminated by the air traffic services units to all aircraft concerned. In order to provide for the observation and reporting of volcanic ash clouds and the issuance of warnings to pilots and airlines, ICAO, with the assistance of other international organizations, has established an international airways volcano watch (IAVW).

ANNEX 4: Aeronautical Charts: Aeronautical charts not only provide the two dimensional information common in most maps, but also often portray three dimensional air traffic service systems. Almost all ICAO States produce aeronautical charts and most segments of aviation make reference to them for planning, air traffic control and navigation purposes. Without the global standardization of aeronautical charts it would be difficult for pilots and other chart users to effectively find and interpret important navigation information. The safe and efficient flow of air traffic is facilitated by aeronautical charts drawn to accept ICAO Standards. The goal is to satisfy the need for uniformity and consistency in the provision of aeronautical charts that contain appropriate information of a defined quality. When a published aeronautical chart contains "ICAO" in its title, this indicates that the chart producer has conformed to both general Annex 4 Standards and those pertaining to a particular ICAO chart type. The ICAO series of aeronautical charts now consists of twenty-one types, each intended to serve specialized purposes. The World Aeronautical Chart — ICAO 1 : 1 000 000 charts provide complete world coverage. The Aeronautical Chart — ICAO 1:500 000 series supplies more detail and provides a suitable medium for pilot and navigation training. Type of charts are- The Enroute Chart, the Plotting Chart, the Plotting Chart, Standard Departure Chart, The Instrument Approach Chart, The Aerodrome/Heliport Chart, Aerodrome Obstacle Chart. Annex 4, Chapter 20 Electronic Aeronautical Chart Display — ICAO provides basic requirements aimed at standardizing electronic aeronautical chart displays while not unduly limiting the development of this new cartographic technology's.

ANNEX 5: Units of Measurement to be used in Air and Ground Operations: A special committee was established to look into the question and as a result the First Assembly of ICAO in 1947 adopted a resolution (A1-35) recommending a system of units to be issued as an ICAO Standard as soon as possible. the first edition of Annex 5 was adopted in 1948. This contained an ICAO table of units based essentially on the metric system, but it also contained four additional interim tables of units for use by those States unable to use the primary table.

Annex 5 was initially applicable only to those units used in communications between aircraft and ground stations. 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 communications. It also introduced the International System of Units, known as SI from the "*Système International d'Unités*", as the basic standardized system to be used in civil aviation. In addition to the SI units the amendment recognized 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. Amendments 14 and 15 to Annex 5 introduced a new definition of the metre, and references to temporary non-SI units were deleted.

ANNEX 6: Operation of Aircraft (Parts I, II and III): The essence of Annex 6, simply put, is that the operation of aircraft engaged in international air transport must be as standardized as possible to ensure the highest levels of safety and efficiency. Standards and Recommended Practices for the operation of aircraft engaged in international commercial air transport are the basis of Part I of Annex 6. a second part to Annex 6, dealing exclusively with international general aviation, became applicable in September 1969. Similarly, a third part to Annex 6, dealing with all international helicopter operations, became applicable in November 1986. Part III originally addressed only helicopter flight recorders, but an amendment completing the coverage of helicopter operations in the same comprehensive manner as aeroplane operations covered in Parts I and II was adopted for applicability in November 1990. Another development has been the introduction of provisions (generally referred to as ETOPS) to ensure safe operations by twinengined aeroplanes operating over extended ranges, often over water. This type of operation has arisen because of the attractive economics of the large twin-engined aeroplanes now available.

ANNEX 7: Aircraft Nationality and Registration Marks: How are aircraft classified and identified, and how can you tell aircraft nationality? These are but two of the questions answered in the briefest ICAO Annex, which deals with aircraft nationality and registration marks, and, in a separate table, classifies aircraft by how they maintain sustained flight in the air. The Annex is based on Articles 17 to 20 of the Chicago Convention. Since Article 77 of the Convention permits joint operating organizations, Amendment 3 was introduced to define "Common Mark", "Common Mark Registering Authority" and "International Operating Agency", to enable aircraft of international operating agencies to be registered on other than a national basis. The determining principle of the related provisions is that each international operating agency must be assigned a distinctive common mark by ICAO, this being selected from a series of symbols included in the radio call signs allocated by the International telecommunication Union (ITU).

ANNEX 8: Airworthiness of Aircraft: In the interest of safety, an aircraft must be designed, constructed and operated in compliance with the appropriate airworthiness requirements of the State of Registry of the aircraft. Consequently, the aircraft is issued with a Certificate of Airworthiness declaring that the aircraft is fit to fly. Annex 8 is divided into four parts. Part I includes definitions; Part II deals with procedures for certification and continuing airworthiness of aircraft; Part III includes technical requirements for the certification of new large aeroplane designs; Part IV deals with helicopters. Article 33 of the Convention on International Civil Aviation places the burden on the State of Registry to recognize and render valid an airworthiness certificate issued by another Contracting State, subject to the condition that the airworthiness requirements under which such a certificate is issued or rendered valid are equal to or above the minimum standards which may be established by ICAO from time to time pursuant to the Convention.

ANNEXE 9: Facilitation: The Standards and Recommended Practices (SARPs) on Facilitation (FAL) are derived from several provisions of the Chicago Convention. Article 37 obliges ICAO to adopt and amend from time to time international standards and recommended practices and procedures dealing with, inter alia, customs and immigration procedures. Article 22 obliges each Contracting State to adopt all practicable measures to facilitate and expedite navigation by aircraft between the territories of Contracting States, and to prevent unnecessary delays to aircraft, crews, passengers, and cargo, especially in the administration of the laws relating to immigration, quarantine, customs and clearance. Article 23 of the Convention expresses the undertaking of each Contracting State to establish customs and immigration procedures affecting international air navigation in accordance with the practices established or recommended pursuant to the Convention. A number of other articles have special pertinence to the provisions of the FAL Annex and have been taken into account in its preparation. These include: Article 10, which requires all aircraft entering the territory of a Contracting State to land at, and depart from, an airport designated by that State for customs and other examination; Article 13, which require compliance of a Contracting State's entry, clearance, immigration, passports, customs and quarantine laws and regulations, by or on behalf of passengers, crew or cargo; Article 14, which obliges each Contracting State to take effective measures to prevent the spread by means of air navigation of communicable diseases; and Article 24 (customs duty), Article 29 (documents carried in aircraft) and Article 35 (cargo restrictions).

ANNEX 10: Aeronautical Telecommunications (Volumes I, II, III, IV and V)
Three of the most complex and essential elements of international civil aviation are aeronautical communications, navigation and surveillance. These elements are covered by Annex 10 to the Convention. Annex 10 is divided into five volumes:
Volume I — Radio Navigation Aids
Volume II — Communications Procedures including those with PANS status
Volume III — Communication Systems
    Part 1 — Digital Data Communication Systems
    Part 2 — Voice Communication Systems
Volume IV — Surveillance Radar and Collision Avoidance Systems
Volume V — Aeronautical Radio Frequency Spectrum Utilization
The five volumes of this Annex contain Standards and Recommended Practices (SARPs), Procedures for Air Navigation Services (PANS) and guidance material on aeronautical communication, navigation and surveillance systems.

Volume I of Annex 10 is a technical document which defines for international aircraft operations the systems necessary to provide radio navigation aids used by aircraft in all phases of flight. The SARPs and guidance material of this volume list essential parameter specifications for radio navigation aids such as the global navigation satellite system (GNSS), instrument landing system (ILS), microwave landing system (MLS), very high frequency (VHF) omnidirectional radio range (VOR), non-directional radio beacon (NDB) and distance measuring equipment (DME). The information contained in this volume includes aspects of power requirements, frequency, modulation, signal characteristics and monitoring needed to ensure that suitably equipped aircraft will be able to receive navigation signals in all parts of the world with the requisite degree of reliability. Volumes II and III cover two general categories of voice and data communications that serve international civil aviation. They are the ground-ground communication between points on the ground and the air-ground communication between aircraft and points on the ground. An important element of the ground-ground communication is the aeronautical fixed telecommunications network (AFTN), a worldwide network organized to meet the specific requirements of international civil aviation Volume IV of Annex 10 contains SARPs and guidance material for secondary surveillance radar (SSR) and airborne collision avoidance systems (ACAS), including SARPs for SSR Mode A, Mode C and Mode S, and the technical characteristics of ACAS. Volume V contains information on the assignment planning of individual aeronautical radio stations operating or planned to operate in different frequency bands.

ANNEX 11: Air Traffic Services: The world's airspace is divided into a series of contiguous flight information regions (FIRs) within which air traffic services are provided. The prime objective of air traffic services, as defined in the Annex, is to prevent collisions between aircraft, whether taxiing on the manoeuvring area, taking off, landing, en route or in the holding pattern at the destination aerodrome. The Annex also deals with ways of expediting and maintaining an orderly flow of air traffic and of providing advice and information for the safe and efficient conduct of flights and alerting service for aircraft in distress. To meet these objectives, ICAO provisions call for the establishment of flight information centres and air traffic control units. All aircraft fly in accordance with either instrument flight rules (IFR) or visual flight rules (VFR). Under IFR, the aircraft fly from one radio aid to the next or by reference to self-contained airborne navigation equipment from which the pilot can determine the aircraft's position at all times. VFR flights also receive information on weather conditions which would make visual flight impractical. Annex 11 also contains specifications for operational flight information service (OFIS) broadcasts, including automated terminal information service (ATIS) broadcasts.

ANNEX 12: Search and Rescue: The Annex, which is complemented by a three-part Search and Rescue Manual dealing with SAR organization, management and procedures, sets forth the provisions for the establishment, maintenance and operation of search and rescue services by ICAO Contracting States in their territories and over the high seas. Three distinct phases categorize emergency situations. The first is the "Uncertainty Phase" which is commonly declared when radio contact has been lost with an aircraft and cannot be re-established or when an aircraft fails to arrive at its destination. During this phase the Rescue Coordination Centre (RCC) concerned may be activated. The RCC collects and evaluates reports and data pertaining to the subject aircraft. Depending on the situation, the uncertainty phase may develop into an "Alert Phase", at which time the RCC alerts appropriate SAR units and initiates further action. The "Distress Phase" is declared when there is reasonable certainty that an aircraft is in distress. In this phase, the RCC is responsible for taking action to assist the aircraft and to determine its location as rapidly as possible. In compliance with a predetermined set of procedures, the aircraft operator, State of Registry, air traffic services units concerned, adjacent RCCs and appropriate accident investigation authorities are informed; a plan for the conduct of the search and rescue operation is drawn up and its execution is coordinated.

ANNEX 13: Aircraft Accident and Incident Investigation: the Annex spells out which States may participate in an investigation, such as the States of Occurrence, Registry, Operator, Design and Manufacture. It also defines the rights and responsibilities of such States. The ninth edition of Annex 13 consists of eight chapters, an appendix and four attachments. The first three chapters cover definitions, applicability and general information. Chapter 3 includes the protection of evidence and the responsibility of the State of Occurrence for the custody and removal of the aircraft. It also defines how that State must handle requests for participation in the investigation from other States. All States that may be involved in an investigation must be promptly notified of the occurrence. Procedures for this notification process are contained in Chapter 4. Chapter 5 addresses the investigation process. Chapter 6 contains the Standards and recommended practices dealing with the development and publication of the final report of an investigation. Chapter 7 addresses the reporting requirements of the ADREP system which is by means of Preliminary and Accident/Incident Data Reports. Chapter 8 deals with accident prevention measures.

ANNEX 14: Aerodromes (Volumes I and II): It extends from the planning of airports and heliports to such details as switch-over times for secondary power supply; from civil engineering to illumination engineering; from provision of sophisticated rescue and firefighting equipment to simple requirements for keeping airports clear of birds. Volume I dealing with aerodrome design and operations and Volume II dealing with heliport design. In recent years more attention has been given to the operation of airports. The current edition of Annex 14, Volume I, includes specifications on maintenance 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. Of critical importance to the operation of any airport is the rescue and firefighting service which, according to Annex 14, all international airports are required to have. The Annex sets forth the agents to be used, their amounts and the time limits in which they must be delivered to the scene of an aircraft accident.

Provisions for heliports are included in Volume II of Annex 14. These specifications complement those in Volume I which, in some cases, are also applicable to heliports. The provisions address the physical characteristics and obstacle limitation surfaces required for helicopter operations from surface level and elevated on-shore heliports and helidecks, under both visual and instrument meteorological conditions. Material dealing with the marking and lighting of heliports, as well as rescue and firefighting requirements for heliports, also has been included in Volume II. Although specifications on marking and lighting of heliports are only applicable to operations in visual meteorological conditions, work is under way on the development of appropriate visual aids for helicopter operations in instrument meteorological conditions.

ANNEX 15: Aeronautical Information Services: The object of the aeronautical information service is to ensure the flow of information necessary for the safety, regularity and efficiency of international air navigation. Annex 15 defines how an aeronautical information service shall receive and/or originate, collate or assemble, edit, format, publish/store and distribute specified aeronautical information/data. The goal is to satisfy the need for uniformity and consistency in the provision of aeronautical information/data that is required for the operational use by international civil aviation.

ANNEX 16: Environmental Protection (Volumes I and II): 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: procedures for describing 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. The noise evaluation measure is the effective perceived noise level, expressed in EPNdB. In Volume I, different aircraft classifications form the basis of noise certification. These classifications include subsonic jet aeroplanes for which application for the certification of the prototype was accepted before 6 October 1977; for those accepted on or after that date; for propeller-driven aeroplanes over 5 700 kg; for those not exceeding this mass; for supersonic aeroplanes for which application for certification of the prototype was accepted before 1 January 1975; and for helicopters for which the application for certification of the prototype was accepted on or after 1 January 1980. In Volume II of Annex 16, there are Standards which prohibit the intentional venting of raw fuel to the atmosphere from all turbine engine powered aircraft manufactured after 18 February 1982.

Annex 17: Security - Safeguarding International Civil Aviation against Acts of Unlawful Interference: Annex 17 is primarily concerned with administrative and co-ordination aspects, as well as with technical measures for the protection of the security of international air transport, requiring each Contracting State to establish its own civil aviation security programme with such additional security measures as may be proposed by other appropriate bodies. The Annex is maintained under constant review to ensure that the specifications are current and effective. Because this document sets minimum standards for aviation security worldwide, it is subjected to careful scrutiny before undergoing any changes, additions or deletions. Since its publication, Annex 17 has been amended ten times in response to needs identified by States and is kept under review by the Aviation Security (AVSEC) Panel. This group of experts appointed by the Council includes representatives from Argentina, Australia, Belgium, Brazil, Canada, Ethiopia, France, Germany, Greece, India, Italy, Japan, Jordan, Mexico, Nigeria, the Russian Federation, Senegal, Spain, Switzerland, the United Kingdom and the United States, as well as international organizations such as the Airports Council International (ACI), the International Air Transport Association (IATA), the International Federation of Airlines Pilots Association (IFALPA) and the International Criminal Police Organization (ICPO-INTERPOL). The aviation security specifications in Annex 17 and the other Annexes are amplified by detailed guidance material contained in the Security Manual for Safeguarding Civil Aviation against Acts of Unlawful Interference which was first published in 1971.

ANNEX 18: the Safe Transport of Dangerous Goods by Air: Annex 18 specifies the broad Standards and Recommended Practices to be followed to enable dangerous goods to be carried safely. The Annex contains fairly stable material requiring only infrequent amendment using the normal Annex amendment process. The Annex also makes binding upon Contracting States the provisions of the Technical Instructions, which contain the very detailed and numerous instructions necessary for the correct handling of dangerous cargo. These require 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 Instructions to be revised and reissued regularly to keep up with new products and advances in technology. The nine hazard classes are those determined by the United Nations Committee of Experts and are used for all modes of transport.

ANNEX 19: Safety Management Systems (SMS): Performance based approaches to management of safety are best exemplified by Safety Management Systems (SMS) and the maturity achieved by the SMS concept allows for its implementation on global basis.Certain approaches for the management of safety are set in motion only after some triggering event, such as an accident, incident or reportable event, discloses a safety concern. For this reason, such approaches may be considered outcome-driven and reactive. They need an outcome in order to react and engage the safety management process. In these approaches, responsibility for monitoring outcomes and the remedial action to the safety concerns that are underlying such outcomes may be scattered within the organization, depending on the sector(s) involved (flight operations, maintenance, ramp, cabin and so forth) in the event leading to the outcome. Furthermore, lines of accountability for safety monitoring and safety responses may not always be clearly articulated and, if they are, safety accountability generally stops at the middle management. SMS, on the other hand, involve the on-going and routine collection and analysis of safety data during the course of the activities that an organization must pursue every day while conducting its core business functions, in addition to reacting to outcome data. For this reason, SMS may be considered process-driven and proactive. They continuously collect and analyze big volumes of data that provides for a principled basis to the definition of activities and the allocation of resources to address safety concerns in a proactive manner. The term system conveys the notion of an integrated set of processes aimed at managing safety that crosses departmental boundaries, thus addressing safety concerns from an integrated, broad perspective. An SMS is thus a systemic approach to the management of safety, that includes the necessary organizational structure, accountabilities, policies and procedures. In order to reinforce the notion of safety management being a managerial business process, SMS requirements include provisions for an organization to establish lines of safety accountability throughout the organization, as well as at the senior management level. IATA is an active participant of the ICAO Safety Management Panel and was involved in the drafting of the newest ICAO Annex, namely Annex 19 – Safety Management, which became applicable on 14 November 2013.A Safety Management System (SMS) is a systematic approach to managing safety, including the necessary organizational structures, accountabilities, policies and procedures. As per ICAO requirements, service providers are responsible for establishing an SMS, which is accepted and overseen by their State.

Types of service providers

- Approved training organizations that are exposed to safety risks during the provision of their services
- Aircraft operators
- Approved maintenance organizations
- Organizations responsible for type design and/or manufacture of aircraft
- Air traffic services providers
- Certified aerodromes

Under the requirements, the service provider must implement an SMS accepted by their State that, as a minimum

- Identifies safety hazards
- Ensures that remedial action necessary to maintain an acceptable level of safety is implemented
- Provides for continuous monitoring and regular assessment of the safety level achieved
- Aims to make continuous improvement to the overall level of safety

Alongside the ICAO requirements, SMS requirements have been incorporated into the IATA Operational Safety Audit (IOSA). Industry has been implementing the Safety Management System (SMS) framework elements for a number of years. As demonstrated through IOSA audit results, there are varying degrees of implementation to date. Recognizing the need to progress the implementation of SMS by Industry, in April IATA introduced the IOSA SMS Strategy. This Strategy provides

Bilateral Air Transport Agreements

Bilateral regulations is regulation undertaken jointly by two parties or, most typically by two states in international civil aviation. The main objective of bilateral agreement is the conclusion, implementation or continuance of some kind of intergovernmental agreement or understanding concerning air services between the territories of the two parties. A significant amount of intergovernmental bilateral regulatory activity involves formal consultations undertaken to conclude, interpret, expand or amend, or resolve a dispute under an intergovernmental agreement, arrangement or understanding concerning international air services. Unlike national and multilateral regulation, the bilateral regulation of international air transport has no organizational structure. However, it does have an extensive legal regulatory structure composed of several thousand bilateral agreements and understandings.

Evolution of the Bilateral Regulations: Although international air transport services were first developed in the early 1920s, few bilateral intergovernmental agreements were concluded in those early decades due to the small volume of international air transport activities and then to the virtual cessations of many commercial flights during the 1939-1945 (World War I) period. Bilateral agreements now in force, largely date from after the 1944 Chicago Convention. The Chicago Convention established the rules under which international aviation operates. It also established the International Civil Aviation Organization (ICAO), the United Nations organisation responsible for fostering the planning and development of international air transport. In the aftermath of war, with many nations struggling to rebuild their shattered economies, it is easy to understand why protectionist elements were incorporated into the drafting of the Chicago Convention. The treaty determined that no scheduled international air service may be operated over or into the territory of a contracting state without their express permission. Over the following years, ICAO developed a series of traffic rights, known as freedoms of the air. These freedoms continue to form the basis of rights exchanged in air services negotiations today. Governments must continually negotiate new treaties to allow international aviation to grow and to expand their carriers' access to new and emerging markets. This type of trade arrangement does not exist in any other sector. The Australian Government is working to move beyond the bilateral system through multilateral organisations including ICAO, the World Trade Organization and APEC (Asia Pacific Economic Cooperation). This is a long term goal, but an important one.

In the meantime, many countries are working within the bilateral system to liberalise air services arrangements and progressively remove restrictions on routes, capacity and airline ownership. The bilateral system has its weaknesses, but it can also be flexible and allow rapid change, where parties agree. Despite its limitations, the bilateral system has allowed international aviation to grow into the vibrant industry we have today.

Why Bilateral Agreements? Article 1 of the Chicago Convention which states that states have complete and exclusive sovereignty over above their territory. Agreement on the requirement for special permission or other authorization to operate schedule international air services over or into the territory of a contracting state. Lack of success of efforts to establish a multilateral regulatory regime for the commercial aspects of international air transport.

The Bermuda I Agreement of 1946 between UK &USA: This agreement was the result of a compromise between the two broad approaches to the regulation of international air services that had emerged at the Chicago Conference and been let unresolved.

i) At one extreme it was held that there should be no regulation of capacity or tariffs nor narrow definitions of routes.

ii) The opposite view was that capacity should be pre-determined, tariffs regulated by an international agency and routes specified.

iii) Under the compromise agreement, tariffs were to be established by the Airlines through IATA, subject to the approval of both parties. Capacity was to be determined by the Airlines and routes were specified.

Typical Provisions of Bilateral Air Transport (Services) Agreements

1. The **Preamble**, which is the initial part of the agreement, identifies the **contracting parties** or simply **parties** (the two involved governments), presents their reasons for entering into the agreement, and declares that they have agreed to what will follow in subsequent parts of the agreement.
2. A **definitions article**, often the first article of the agreement, assigns meanings for the purposes of that agreement to terms used in the text, typically those used more than once.

3. A **grant of rights article** expresses the main purpose of the agreement, that of the grant by each contracting party to the other contracting party of rights specified in that article or elsewhere, such as in the Route Schedule(s), to operate the agreed air services.
4. A **fair and equal opportunity article** (or some variant thereof such as "fair and equitable" or "fair") sets forth a general principle which each party to an agreement may rely upon to ensure against discrimination or unfair competitive practices affecting its designated carrier(s). Alternatively, the principle may be stated in a clause in the capacity article or elsewhere in the agreement. The article is sometimes expanded to specifically require consideration of the interests of the other party and its air carrier(s). The opportunity provided is for the designated carrier(s) of each party and may be stated as "to compete" or "to operate."
5. A **designation and authorization article** grants the right to name an air carrier, or more than one air carrier, to operate the agreed services and establishes the limited conditions under which the other party may deny an operating authorization to such carrier(s). The conditions for denying (including withholding) of an operating authorization are typically those of substantial ownership and effective control not being vested in the designating party or in its nationals, and/or an insufficient disposition to conform to the laws and regulations of the receiving party and/or an inability to meet airworthiness standards.
6. A **revocation or suspension of operating authorization article** grants each party a right to revoke or suspend the operating authorization already granted to an air carrier of the other party if the carrier no longer meets a specified condition, usually one of the same conditions established for the grant of such authorization.
7. A **capacity article** lays down the agreed principles or method for regulation of the amount(s) of services offered or to be offered under the agreement. Detailed models of a pre-determination type capacity article, a Bermuda I type capacity article, and a free-determination type article were developed by ICAO to provide guidance on three alternative regulatory approaches to capacity clauses and may be found in ICAO Doc 9587.
8. A **tariff article** establishes procedures for the establishment and regulations of prices on the agreed air services. Detailed models of a double approval clause, a country of origin clause and a dual disapproval clause were developed by ICAO to provide guidance on three alternative regulatory approaches to tariff clauses or articles and may be found in ICAO Doc 9587, along with discussion of further alternative approaches to tariff regulation, such as "tariff zone" and "country of designation."
9. A **statistics article** typically provides for exchange of airline traffic data related to the agreed services, either periodically or as needed for the regulation of capacity, for route evaluations, or for other purposes.
10. A **Commercial operations article** or **commercial opportunities article** (or articles) specifies the rights granted to each party's designated air carries(s) to carry out commercial activities in the territory of the other party. These rights are sometimes referred to as "**doing business rights**" or "**soft rights**" and are likely to include the establishment and extent of foreign staffing of airline offices, sales in local or

convertible currency, ground handling options, currency conversion and remittance of funds by airlines, and in some cases, access to landing and take-off slots at airports and/or use of computer reservation systems (CRS). **An airport slots article** and/or **a computer reservation systems article** are sometimes used to cover the latter two "soft rights" separately. "**Hard rights**" has come into some use as a collective term of contrast to include route, traffic, operational and capacity rights which are considered more valuable and enduring, hence "hard". Pricing rights are sometimes in the other. In some agreements, one or more of the "doing business rights" listed above are given their own distinct articles.

11. An **airworthiness article** typically provides for the mutual recognition by the parties of each other's certificates of airworthiness, certificates of competency and licences.
12. An **aviation security article**, an addition in recent years to many bilateral air transport agreements, sets forth procedures for co-operation between the parties to avoid or deal with situations involving acts or treats of unlawful interference with the security of civil aviation. In 1996 the Council of ICAO adopted a model bilateral aviation security clause for the use of Contracting States (see Appendix I to the manual).
13. A **customs duties and taxes article** requires each party to exempt from duties, taxes and charges, the aircraft fuel, spare parts and supplies used by the other party's air carrier(s) (see also ICAO's Policies on Taxation in the field of International Air Transport, Doc 8632).
14. A **taxation article** (in the absence of a separate tax agreement) exempts from taxation the corporate earnings of the air carriers(s) of the other party and may, in some cases, extend to cover the earned incomes of air carrier employees (see also ICAO Doc 8632).
15. A **user charges article** sets forth agreed principles regarding charges for the use of airports and route air navigation facilities by the designated air carrier(s) of the other party (see Statements by the Council to Contracting States on Charges for Airports and Air Navigation Services, ICAO Doc 9082).
16. An **application of laws article** establishes that the national laws of one party related to the operation, navigation, and admission and departure of aircraft apply to the air carriers(s) of the other party.
17. A **consultation article** sets forth the agreed procedures for consultation between the parties or their aeronautical authorities (often with a time requirement for the consultation to take place) and may include an **amendment clause** (sometimes a separate **amendment article**) which establishes procedures for amending or modifying the agreement.
18. A **settlement of disputes article** sets forth agreed measures for resolving disputes between the parties. Such measures routinely include consultation and sometimes arbitration.
19. A **termination article or denunciation article** specifies how a party may end its commitments under the agreement, typically one year after receipt by the other party of a formal notice to that effect. Some agreements provide for a shorter notice period,

such as six months, or in exceptional cases, allow for denunciation or termination of only parts of the agreement.

20. A **multilateral agreement article** provides that if a multilateral agreement accepted by both parties, concerning any matter covered by the agreement, enters into force, the agreement shall be amended so as to conform with the provisions of the multilateral agreement.
21. A **registration article** reiterates the obligations of the contracting parties (when both are Contracting States of ICAO) to register the agreement with ICAO, as required under Articles 81 and 83 of the Chicago Convention.
22. An **entry into force article** establishes how and when the agreement will take effect, typically upon the conclusion of an exchange of diplomatic notes. It may specify provisional effectiveness and may or may not anticipate a process of ratification by either or both parties.
23. The **signature provisions** at the end of the agreement indicate the date and place of signature and specify the language versions. Although most agreements having more than one language version provide that each version is equally authentic, agreements can provide that in the event of conflict between the language versions, the text of one specified language will prevail.

INTERNATIONAL CIVIL AVIATION AND DISPUTE SETTLEMENT

'Dispute' means disagreement on a point of law or fact, a conflict of legal views or of interests between two persons. The term international disputes has a wider connotation that covers within its ambit interstate disputes as well as disputes between states and individuals, corporate bodies and non-state entities which are subject to international regulations. 'Settlement' means, the act or instance of being settled or settlement made.

Dispute settlement is an ambiguous term, in that it may refer to settlement in the sense that the disputing parties agree to end their quarrel, possibly with the assistance of a third party, or alternatively that it may refer to a mechanism for decision by a court, arbitral tribunal or comparable body. Therefore international disputes has a wider connotation that covers within its ambit interstate disputes as well as disputes between states and individuals, corporate bodies and non-state entities which are subject to international regulations.

Under International law it is a mandate that settlement should be by peaceful means. Article 2(3), the UN Charter enjoins the members to settle their international disputes by peaceful means. The peaceful means are enumerated in Art.33 of the Charter as negotiations, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements or other peaceful means.

International disputes related to aviation have been mostly settled through Arbitration. This chapter covers a discussion on various disputes that have arisen under various bilateral and multilateral international agreements including the Chicago Convention.

Aviation laws and regulations govern national and international issues affecting the operation of aircraft, flights, air travel, maintenance of aviation facilities and airport matters. Aviation laws and regulations monitor the duties, rights, and liabilities of commercial businesses and private individuals. The settlement of international aviation disputes generally takes place under the multiple umbrellas of the Convention on International Civil Aviation (the Chicago Convention) and multilateral and bilateral agreements between states, including bilateral air services agreements. Wherever a framework for trade exists, the potential for conflict arises. In no other industry is this assertion more obvious than that of international transport by air, where government regulation has traditionally been severe and all-encompassing and trade relations are based on a web of bilateral agreements rather than one homogenous multilateral treaty.

Prior to 1970 aviation disputes were relatively few and far between. During the first 30 years of international aviation the aviation industry, both domestically and internationally, was subsidized and regulated to such a degree that disputes rarely occurred. Several pieces of legislation successfully deregulated the US's domestic aviation market and prompted it to seek deregulation internationally. Bermuda I, a bilateral air services agreement, transacted in 1946 between the United States and Great Britain, provided the model for most bilateral air services agreements that the US subsequently negotiated. While most states sought to apply these agreements conservatively by designating only one carrier per route, in most cases the Carter administration used them to designate many new carriers for routes. This approach allowed existing operators to expand their routes and facilitated the opening of markets to many new operators.

Aviation disputes may be classified as either:

- Commercial, that is arising out of the application and interpretation of bilateral agreements.
- Non-commercial, that is, between states and involving interpretation of obligations under the Chicago Convention.

Non-commercial aviation disputes

Non-commercial air transport disputes generally involve the application and interpretation of the Chicago Convention with Articles 9 (prohibited zones) and 15 (airport and similar charges) generating inter-state disputes Maniatis suggests that conflicts involving Article 15 of the Chicago Convention often result from revenue generating actions, with the state whose designated airline is subjected to increased charges objecting on the grounds that they are discriminatory. Sometimes these kinds of disputes have political differences at their core. Commercial aviation disputes Major commercial aviation disputes revolve around the bilateral air transport agreements which themselves incorporate provisions from the Chicago Convention. While many of these agreements are very similar in important respects, there may be differences in how they handle dispute resolution. Back in 1952 'the Secretariat of the International Civil Aviation Organization (ICAO) analysed over two hundred such agreements and classified them according to their provisions on dispute settlement'. While some failed to address dispute resolution at all, others provided for recognition of the competence of an arbitral tribunal or provided for the exclusive competence of the ICAO in the event of a dispute. Subsequently, in 1962, the eminent scholar Bin Cheng found that 'almost all contained dispute settlement provisions, principally providing for arbitration.' The Bermuda II Agreement, which is the current Air Services Agreement between the US and the UK, provides an example of dispute resolution under a bilateral agreement structure. In the event of a disagreement it provides for

(1) Formal consultations or
(2) If formal consultations fail, arbitration by a tribunal of three arbitrators.
If arbitrators are not appointed then either party may request the President of the International Court of Justice (ICJ) to make such appointment. The approach embodied in the Agreement is one of negotiation and if that fails, arbitration.
Parties to aviation disputes: states carrying the interests of national carriers Although the formal parties to disputes relating to bilateral agreements may be two states, it is quite possible that the dispute may have initially existed between an airline of one state (a private entity) and an airport authority, which possesses appropriate regulatory powers, including power to increase airport fees. Where informal settlement attempts fail, the airline involved may request that its government involve itself in the dispute. In this way what begins as a private dispute becomes an inter-state dispute, 'a dispute between sovereign authorities'. Whether or not that dispute is resolved according to the procedures laid down in Bermuda type bilateral agreements is very much in the hands of the disputing states. In practice, states may resort to a number of approaches. In the absence of a universal mandatory approach they may, for example, resort to using
(1) Unilateral coercive means; or
(2) Political means; or
(3) Legal means to resolve the dispute.
Arguably, some states demonstrate a preference for political/diplomatic means of settlement. This tends to preserve the relative power relationship between the parties to a dispute and is often preferred by the more powerful states because it advances their interests. Where unilateral or political means of resolution are not employed, states may engage in a variety of dispute resolution techniques when faced with bilateral aviation disputes.
The significant disputes arisen under Bilateral Air Transport Agreements are:

- United States v. France (1963)
- United States v. Italy (1965)
- United States v. France (1978)
- Belgium v. Ireland (1981)
- United States v. United Kingdom (1992)
- Australia v. United States (1993)

The significant disputes placed before the ICAO Council as per the provisions of the Chicago Convention are:

- India v. Pakistan (1952)
- United Kingdom v. Spain (1969)
- Pakistan v. India (1971)
- Cuba v. United States (1998)
- The United States v. The European Union (2000)

The significant disputes placed before The International Court of Justice

- Libya v. United States (1992)
- Iran v. United States (1996)
- Pakistan v. India (2000)

International Aviation Disputes have been resolved by primarily two methods i.e.

- Political means of Dispute Resolution; and
- Legal Means of Dispute Resolution

Alternate means to Dispute Resolution under Chicago

Negotiation: Negotiation is the most commonly used dispute resolution technique. Notably, states are placed under an obligation to negotiate by the Chicago Convention's Article 84, which requires them to do so prior to commencing judicial proceedings before the ICAO Council. In point of fact, most bilateral air transport agreements also expressly stipulate that the parties should first negotiate before taking the next step. A characteristic of negotiation is that it is restricted to the parties involved in the dispute. There is no recourse to either a third party neutral or a third party at all.

The apparent disadvantage of negotiation is that it can prove to be very time consuming with parties becoming bogged down in entrenched positions. Where parties wish to achieve the optimum outcome there is also a temptation for negotiators to exaggerate and overstate positions. Further, the large volume of trade disputes and the detail associated with each dispute renders protracted negotiation between states an impractical and expensive approach for each dispute. Where states are involved on behalf of carriers, and negotiations do not go well, there is also the possibility of certain disputes (eg, airport access or additional charges placed on flag designated carriers) widening to encompass the broader bilateral relationship between the two states.

Fact-finding: Fact-finding provides a preliminary mechanism for the subsequent resolution of disputes using other dispute resolution techniques. Fact-finding, through Commissions of Inquiry, paves the way for such resolution by correctly identifying the relevant facts in dispute.

A standard approach for employing fact-finding is for the parties to the dispute to agree on the formation and composition of a panel of individuals whose role it is to make enquiries to identify the relevant facts surrounding the dispute or incident. This panel does not make recommendations or suggestions; it merely identifies the salient facts. The notion is that this process speeds up the resolution process with the facts no longer subject to dispute. While accident investigation of an aircraft disaster, under Article 26 of the Chicago Convention, may be conducted by the state where the disaster took place, or the state of registry of the aircraft if the disaster did not occur within a particular state's territory, there is at least one major example of ICAO becoming involved in a major air crash by way of completing not one but, eventually, two fact finding enquiries into the event. I refer to the infamous incident in which a Soviet jet fighter shot down a Korean Airlines flight (KE007) over the Sea of Japan in 1983. Against the backdrop of a situation where the Republic of Korea could not avail itself of Article 26 to launch an investigation because 'the Soviet Union insisted that the aircraft had invaded, and was shot down inside Soviet airspace,' ICAO initiated its own investigation.

While the ICAO role in relation to Article 26 is limited to laying out the procedure to be followed by the contracting state taking jurisdiction, in the light of this dispute, the ICAO Council adopted a resolution empowering the Secretary- General 'to institute an investigation to determine the facts and technical aspects' associated with the KAL flight and its destruction. The ICAO Council, in empowering the Secretary- General to investigate, relied on Article 55(e) of the Chicago Convention which permits ICAO investigation to take place where there is an 'avoidable obstacle to the development of international air navigation'. Due to the uncooperativeness of Soviet authorities, the 1983 ICAO investigation has been described by Tompkins and Harakas as 'cursory at best and deficient in many respects'. Critical evidence was not available to the ICAO, such as wreckage lost at sea and cockpit and control tower voice recordings. Although the Secretary-General's investigative team presented two possible explanations for the course deviation taken by Flight KE007, each of the two scenarios presented in the 1983 report, despite being ostensibly findings of fact, lacked the certainty that could only be provided by the missing data.

A feature of the ICAO investigation was that, although ICAO possesses the authority to mandate that parties to the Chicago Convention empower the investigative process, ICAO has no such investigative procedures of its own. For example, it lacked the power to subpoena documents, require individuals to testify or obtain state compliance. The novel situation encountered in this instance was not a situation envisaged by the founders of ICAO or the drafters of the Chicago Convention. Subsequently the ICAO Council referred the Secretary-General's report to the Air Navigation Commission (ANC), 'the highest technical body of ICAO'. The subsequent report prepared by the ANC noted the 'incomplete and contradictory elements' of the 1983 report, its reliance on 'unverified facts and assumptions', especially relating to its flight path, and the ANC failed to endorse the findings of the 1983 report. As a consequence the ICAO Council did not adopt the 1983 report of the Secretary-General.

Although ICAO never adopted the 1983 report, the disintegration of the old Soviet Union led to the eventual availability of the Cockpit Voice Recorder (CVR) and DFDR tapes. On the recommendation of representatives of the Republic of Korea, the Russian Federation, the United States of America and Japan, and on receipt of the original CVR and DFDR tapes ICAO undertook, in 1992, to complete its investigation into the crash of Flight KE007. The 1993 ICAO report that resulted, given its access to evidence concealed in 1983, did contain findings of fact relating to this air crash. Tompkins and Harakas remained critical of aspects of the 1993 report, suggesting that assumptions were still made in it that were not explained. Given the essential fact-finding brief, it would seem necessary for any assumptions made to be supported by findings of fact. Arguably, from a structural point of view, the KE007 fact-finding investigations of ICAO lay bare more deficiencies, in the processes and procedures surrounding these investigations, than strengths. How then, can the system be improved? Or should ICAO not take up the challenge of such investigations? Is there a need to empower some other body in like circumstances? Given that ICAO may again meet a similar challenge a minimum reform would be for member states to confer full authority on ICAO to 'search out all of the relevant factors' so that the complete record is scrutinized and provides a sound basis for fact-finding. An argument could be mounted that the Chicago Convention ought to be amended to decree the mandatory cooperation of states involved in the disaster, placing upon them the obligation to invest the ICAO investigative team with such powers. Another related lesson to be learned is that international politics do not mix well with meaningful aircraft accident investigation, which has as its goal the search for the ultimate truth so as to prevent, as far as humanly possible, a recurrence. Although even the ICAO Council has lamented the sluggish movement of states when it comes to reform of the Chicago Convention, the need for reform to deal better with KE007-like circumstances remains.

Good offices: Good offices has been characterized as a moderately valuable ADR technique that is sometimes employed by, among others, ICAO. It involves the use of a third party to improve communication between the parties. The third party may, for example, encourage the parties to the dispute to communicate in a more constructive manner than they had prior to the third party's involvement. Generally, this role has occurred where there is a clear need to improve communication prior to engaging in mediation or negotiation to resolve the dispute.

While ICAO has been infrequently involved in the settlement of 'commercial disputes between states trading in air services' it has exercised its good offices on a number of occasions in the context of disputes falling under the umbrella of the Chicago Convention. First, where ICAO is performing its judicial role in respect of a dispute its own Rules of Procedure for Settlement of Differences (Article 14) permit it to provide its good offices to states in dispute to expedite settlement. Despite the fact that ICAO has only exercised its good offices on three occasions in this judicial context it has received credit for using its good offices, along with mediation, to bring India and Pakistan to the point where settlement of their 1952 dispute regarding the erection of a 'prohibited zone' took place. Maniatis suggests46 that Articles 54(j) and 54(k) of the Chicago Convention may provide a basis for ICAO exercising its good offices where there is a dispute between two member states of ICAO.

Mediation: Mediation has been variously described as (1) a process in which 'the participants, together with the assistance of a neutral person or persons, systematically isolate disputed issues in order to develop options, consider alternatives and reach a consensual settlement that will accommodate their needs' and as (2) a structured negotiation in which a neutral third party, the mediator, uses a number of techniques to assist the parties to the dispute to frame their own agreement to resolve the dispute'. Court-ordered or court-annexed mediation in the context of private international air law disputes, most often between individuals (passengers) and airlines, occurs in a number of common law jurisdictions. Court ordered mediation has been defined as 'a process by which disputants pursuant to an order of the court engage the assistance of a neutral accredited mediator to help them resolve their dispute by negotiated agreement without adjudication'.

As mentioned above, along with negotiation, mediation played a role in the settlement of the 1952 India–Pakistan dispute. As mediation is generally voluntarily entered into by states it is indicative of a desire to resolve the impasse or differences between states. It complements negotiations in particular and may be 'needs based' (i.e. it focuses on the real needs of each party to the dispute as against 'positional based' negotiation) and the parties themselves play a pivotal role in shaping a resolution as against having a solution imposed upon them by an arbitral tribunal or third party expert.

There are different types of mediation with the following types most likely to draw scrutiny in the context of international aviation disputes:

(1) Facilitative mediation, where the dispute is defined in terms of the parties' underlying interests;
(2) Settlement mediation (or 'compromise mediation') in which a 'high status' mediator determines the parties' 'bottom line' and attempts to achieve compromise; and
(3) Evaluative mediation, where the mediator provides additional information and advice to the parties in attempting to influence the parties in their negotiations through the use of his/her professional expertise.

Advantages of mediation include:

(1) Speedy settlement of disputes with reduced costs;
(2) Flexibility in the shaping of a settlement that is not found in litigation;
(3) Elimination of the chance of an unacceptable and unpredictable result;
(4) Avoidance of public disclosure of private information;
(5) Facilitation of a real understanding of the 'other' party's position and promotion of a reasonable compromise in structuring an agreement for resolution of the matter in dispute;
(6) Retention by the parties of some control over the process which, of itself, promotes ownership over the process; and
(7) Elimination of the opportunities for coercion and nullification of power imbalances between the parties.

It has been argued that there are five elements that are common to all forms of mediation. They are, its voluntariness, its confidential nature, that it involves negotiation to reach a consensus, its involvement of a neutral third party, and that the mediator acts as a facilitator, encouraging the parties to reach agreement but not adjudicating on the dispute. While mediation has been widely adopted in many situations and by many legal systems and is generally seen as a valuable additional means of seeking a speedy and cost effective resolution to disputes, it has been infrequently employed in the 'big picture' aviation disputes. Is there then a need to build in a mediation phase prior to ICAO or ICJ involvement?

Such an early dispute procedure would match those practiced in a number of common law jurisdictions where court annexed or court referred mediation is widely practiced.

Because ultimately the success of mediation is based on the voluntariness of states it will only ever be practically activated where states are prepared to compromise. If state parties are not really prepared to submit their dispute to mediation, that is, to accept the process, then the mediator will make the appropriate recommendation and the dispute will rapidly move to the next stage. At present asking the question, 'Will you submit the dispute to mediation?' is not built into the 'big picture' systems or conventions. While mediation is an extremely valuable tool, it is by no means a panacea to all aviation disputes, in particular aviation disputes between states. It should be acknowledged that

Mediation is least effective where:

(1) There is intense hostility and distrust between parties to the dispute;
(2) The parties refuse to assume responsibility for a negotiated resolution; or
(3) There is an extreme power imbalance.

Where extreme hostility exists between the parties this severely limits the possibilities for rational and honest discussion between them. In order for a mediation to lead to an acceptable outcome there is a clear need for parties to assume responsibility for an acceptable outcome.

Conciliation: Conciliation has been defined as 'a method of alternative dispute resolution in which a third party attempts to facilitate an agreed resolution of a dispute in accordance with relevant legal principles, and as a process in which a conciliation commission 'proceeds to the impartial examination of the dispute and attempts to define the terms of settlement susceptible to being accepted by them'.

A conciliation commission actively enquires into the facts of the dispute and advances proposals for its resolution. Although conciliation has occasionally been employed in the context of Chicago Convention disputes its use has been infrequent. However, in 1958 conciliation was selected as the settlement option for an incident in which France diverted an aircraft carrying leaders of the Algerian revolt. The aircraft was, at the time of interception, flying in international airspace (and, thus, subject to the provisions of the Chicago Convention) en route from Morocco to Tunis. Maniatis observes that conciliation 'plays a greater role in politically motivated disputes'. Despite its acceptability as a dispute settlement mechanism in 'big picture' disputes with political content, conciliation, nevertheless, has certain drawbacks that make it less appealing in a commercial context, such as its costliness and its 'time-consuming formal process'. While conciliation may have had a very limited role in resolving aviation law disputes it still enjoys significant support in the trade law context of complex, multiparty disputes with the United Nations Commission on International Trade Law (UNCITRAL) recently producing a Model Law on International Commercial Conciliation. One feature of the UNCITRAL Model Law on Conciliation is its preservation of confidentiality at the request of parties in respect of sensitive information provided to the Conciliation Commission through its Articles (Disclosure of Information) and (Confidentiality).

Arbitration and the Chicago Convention: As previously referred to, the Chicago Convention it-self provides a unique procedure for the handling of disputes. Article 84 provides a procedure for settlement of disputes between two or more contracting states relating to the interpretation and application of the Chicago Convention. Under this provision the Council of the International Civil Aviation Organization (ICAO) performs an adjudicative function. However, such decision by the ICAO Council may be appealed either to an ad hoc arbitral tribunal or the Permanent Court of International Justice (ICJ). Article 85 uniquely provides for this appeal. If a member state involved in a dispute does not accept the Statute of the International Court of Justice and the contracting parties are unable to reach an agreement as to the choice of the arbitral tribunal, each of the disputing states names a single arbitrator from a list of arbitrators maintained by the ICAO Council. If the disputing parties cannot agree on someone from this list the President of ICAO chooses an 'umpire' from the list. The arbitrators and the umpire then constitute the arbitral tribunal hearing the appeal.

Significantly, Article 84 decrees the binding nature of the decision of the ICJ or the arbitral tribunal. Because of the binding nature of this process it carries with it the advantage of traditional legal processes in the certainty of the result achieved. The decisions rendered are also likely to be rule based and so it serves to equalize power imbalances between states.

There is a disadvantage in this equalizing effect for the more powerful states that may not wish to lose their relative strength in negotiation. To further endorse the binding nature of the decision the Convention addresses the issue of enforcement in Article 88, with the ICAO Assembly having the right to suspend the recalcitrant state's voting rights. Balfour notes the silence of the Convention as to the procedure when both parties agree to ICJ jurisdiction but cannot agree on the forum. He notes also the silence of the Convention on the issue of the scope of the appellate review; for example, whether or not new matters may be introduced. These arguably minor issues point to the need for the 'system' to be further refined and developed.

Arbitration under bilateral air services agreements Balfour reports that a 1952 ICAO study of more than 200 such agreements revealed significant differences in their dispute resolution provisions.

The Secretariat found ten major variants, ranging from agreements which recognized the exclusive competence of the ICAO Council, through agreements which recognized the competence of another arbitral tribunal, to those which contained no provisions concerning dispute resolution. Subsequently, a study by Buergenthal indicated a shift away from providing the ICAO Council with exclusive competence. Bin Cheng, in his seminal study of air law, indicates the significant role that arbitration plays under a range of bilateral air services agreements. The reality of the current structure is that there is, at ICAO level, a significant emphasis on the resolution of disputes through negotiation prior to their reaching the point that arbitration is necessary.

Although arbitration is a favoured source of dispute resolution by virtue of its inclusion in the bilateral agreements, in practice it is used relatively infrequently. Thus far arbitration under the bilateral agreements has only been used five times, in the following disputes:

The issue in the 1963 arbitration was whether or not a US carrier could rightfully operate between the US and Turkey via Paris and whether or not it could carry non-US originating or destined passengers between Paris and Turkey. Specifically, the question to be resolved was did the words 'Near East' in the France/US Air Services Agreement of 1946 include Istanbul, Beirut and Tehran. While each party appointed an arbitrator there was no agreement as to who should be the third arbitrator. A referral to the President of ICAO took place, in accordance with the procedure outlined in the bilateral agreement between the disputing parties, and the President of ICAO then appointed the third arbitrator who was Professor Robert Ago of Italy.

The final outcome of the arbitration was a unanimous decision that favored the US on many, but not all, issues. However, the path to this final decision was circuitous. It was initially ruled that the French were correct in arguing that the intention of the parties to the 1946 Agreement was not to include Istanbul and Tehran in the Near East. However, Professor Ago held that the US had acquired rights through 'uscapio', because of the belated protest and because France had allowed Pan Am to operate nonetheless. The arbitral tribunal ruled that Pan Am, the US carrier involved, could continue to fly to Turkey via Paris 'as a result of French consent to the service, confirmed by an exchange of notes'.

The 1965 dispute between Italy and the US resulted from US attempts (again involving Pan Am) to operate an all-cargo service between the two countries. The Italian concern was for the position of its carrier, Alitalia, and its inability to cope with the increased competition represented by the all-cargo service.23 The Italian view was that the bilateral agreement between the two countries, the US–Italy Air Transport Services Agreement 1948, did not permit such a service. Once again, negotiations in 1964 failed to resolve the disagreement.
In this instance the parties agreed on the third arbitrator. The arbitration resulted in a favorable outcome for the United States with the tribunal considering 'that the Agreement was intended to govern all kinds of scheduled air transport between the two countries in a flexible manner and that the Bermuda Agreement does not contain any express provision excluding all-cargo services.' However, after the then Civil Aeronautics Board (CAB) authorized a third carrier to provide an all-cargo service in 1966, Italy reacted by denouncing the bilateral agreement between the two countries. Only after rounds of negotiation, during which strictly limited services between the two countries were maintained, was a new bilateral between the two states transacted.
The 1978 dispute, between France and the US, once again involved a Pan Am service, this time between San Francisco and Paris via London. Pan Am wanted to change gauge in London, that is, to change the type of aircraft in London, offloading B747 passengers onto a B727 aircraft for the final leg of the journey. France objected to this change of gauge on the basis that it was contra the bilateral air services agreement between the two states. The US argued that it was permissible under the bilateral. At issue also was the US right to take retaliatory measures when France imposed a restriction on Pan Am's service. In fact, France had seized Pan Am's B727 at Paris Orly Airport in May 1978. In subsequent events the US had threatened to suspend Air France's Los Angeles service in order to pressure France into arbitration proceedings to resolve the dispute. Once again, the outcome of the arbitration was favorable to the US with the tribunal holding that a change of gauge was permitted as long as the continuous service was maintained.
It also held that retaliatory measures were justified, as long as they were proportionate. Both parties to the dispute then requested the arbitral panel to clarify the meaning of the ruling. Was the confirmation of Pan Am traffic rights with (the French view) or without (the US view) limitation of the frequency of the services? The arbitrators' ruling was that this meant 'with capacity limitation', which resulted in the parties resuming negotiations. In delivering the decision, Dutch arbitrator Rifkind opined that 'all that is not prohibited is permitted' instead of 'all that is not permitted is prohibited'. It is ironic that, subsequent to this favourable decision, Pan Am did not take advantage by way of resuming its service until some years later. And when they did resume this service it was without change of gauge in London.
This is not an example of arbitration operating at its most effective. At least one commentator described the process as 'lengthy, cumbersome and expensive' and noted that the drafting of the
Arbitration Compromise to refine the issues between the parties takes weeks.
The 1981 dispute between Belgium and Ireland concerned interpretation of the capacity clauses in the bilateral air services agreement between the two countries, the issue being whether the Brussels-Dublin route was suffering from excess capacity 'and whether

Sabena enjoyed fair and equal access to the market'. A single arbitrator, Mr Henry Winberg, elected by the parties in accordance with the bilateral, conducted the arbitration and determined that there was excess capacity on the route, ordering Sabena to discontinue one weekly round trip service and Aer Lingus to discontinue two weekly round trips. This was a very successful arbitration with both parties accepting the conclusions of the arbitrator.

The 1992 arbitration involved a dispute between the US and the UK, specifically that user charges imposed by the British Airports Authority on US airlines were in breach of the bilateral air services agreement between the two countries. In this instance, in accordance with the procedure outlined in the bilateral, each state nominated an arbitrator and then the arbitrators themselves agreed on the third arbitrator. The decision of the arbitral tribunal was that the UK had 'infringed certain obligations under the bilateral in respect of airport charges'.

Overview of use of arbitration procedure under the bilateral agreements

Although the bilateral agreements grasp at achieving a uniform approach, attested to by the prevalence of arbitration clauses, the use of arbitration tends to be the last recourse and variations in procedure for choosing the third arbitrator, for example, persist. Balfour writes of 'the great variety of models which appear, both in multilateral agreements and in bilateral agreements … This would seem to suggest that no particular preferable formula has yet evolved, and that there are certainly many options from which to choose.'

There is an ongoing debate in respect of the role of arbitration in resolving disputes under the bilateral agreements. One view is that the bilateral agreements focus heavily on self-enforcement, which is achieved through consultation between aeronautical authorities. Where disputes escalate through the negotiation/consultation stage, states can act to terminate the bilateral agreement in question. A referral to arbitration, in the context of a particular dispute, may simply not occur. The political dimension of bilateral air services agreements, in that they also represent an aspect of the relations between states, is ever present and appears to be the only explanation for overlooking the possibilities for arbitration in the context of many disputes.

The route from the consultation phase to the point of termination of the agreement leaves, in fact, no room for arbitration … Mr Balfour explains this on the basis that states are reluctant to risk a breakdown in their relations. It would seem that the sensitive nature of the bilateral agreements stands in the path of more widespread use of arbitration. Although arbitration has been used infrequently under the bilateral agreements, it has demonstrably been successful in each case at fashioning an acceptable outcome.

The 1981 Belgium/Ireland dispute exemplifies arbitration at its most effective in the context of bilateral air services agreements. Belgium argued over-capacity and for equal distribution of opportunities for capacity and the avoidance of undue effect on the other carrier's services, while Ireland argued that there was no over-capacity and that a reduction in capacity was against the public interest. Given the respective positions of the parties, the subsequent arbitral award was timely, in that it was delivered within two months.

The decision, which held that each airline should reduce its capacity with the least possible effect on the other's services, was based upon the concepts of passenger capacity and profitability of airline services. The issue of 'acceptable load factor' was dealt with on the basis of evidence of traffic potential. Thus, the decision did not limit future capacity or its distribution, but established platforms so that a balance could be achieved gradually.

The outcome was, as **Naveau** asserts, extremely pragmatic. An issue of considerable importance is the role of ICAO. To date the arbitrations conducted under the bilateral agreements have mostly been on an ad hoc basis, which inevitably result in a lack of legal certainty in terms of their non-binding effect on subsequent ad hoc arbitral tribunals. While greater certainty would result if ICAO exercised its arbitration function under the bilateral agreements it has been quite reluctant to embrace this role, preferring to emphasize the political/diplomatic solution of disputes through negotiation and its own brand of mediation. Not all commentators agree that the approach of ICAO on this issue is the best one:

The best interests of international civil aviation are not served by the Council's generally negative attitude towards the arbitral functions assigned to the ICAO by various multilateral and bilateral agreements. … The present practice, which puts a premium on negotiated settlements that often leave the underlying legal issues unresolved, is certainly far from satisfactory …Perhaps both ICAO and those who are critical of ICAO over its reluctance to use arbitration as a dispute resolution mechanism are right. Mediation, properly used, tends to structure a win-win outcome around the parties' willingness to compromise. The best arbitrations also achieve a pragmatic outcome, as the 1981 Belgium/Ireland arbitration demonstrates. Most significantly, as already noted, this arbitration involved but one arbitrator. Perhaps the diplomatic window dressing that is the three member panel approach needs to be dropped in favor of one person arbitration. Concurrently, the ideal of a uniform approach is not evident in practice.

CONCLUSION

In disputes between states we have noted a clear preference for political and diplomatic means of settlement, for negotiated settlement without recourse to a neutral third party. Nevertheless the ICAO Council possesses certain fact finding and dispute resolution powers under Article 84 of the Chicago Convention. Further, ICAO's own rules of Procedure for Settlement of Differences, Article 14, permits it to exercise its good offices to expedite the settlement of differences between states.

Arbitration is perhaps the most frequently used form of ADR in the context of aviation related disputes between states and it is sanctioned under both Article 84 of the Chicago Convention and under the bilateral air services agreements between states. However, the requirement for three adjudicators to sit on the bench of arbitral tribunals is a wasteful exercise where each state involved in the dispute makes its own appointment. In effect, the decisive views then become those of the third, and only independent, panel member. Under these circumstances it may be argued that the state-appointed representatives are no longer necessary.

One of the little really successful arbitration was in the Irish/Belgium dispute in the 1970s where the states parties chose, by common agreement, a high ranking Scandinavian civil aviation official resulting in resolution of the matter within weeks and in both parties accepting the conclusions. One observer of this dispute argued that 'in order to be accepted, arbitration must be quick, cheap and … the most important thing is that both parties trust the Arbitrator.' Under this view a single arbitrator would provide an effective, less expensive and timely approach – all outcomes that are acceptable to states. Further, the formal dispute resolution system for dispute resolution of these big picture disagreements between states allows no recourse to other additional or alternative dispute resolution techniques, such as mediation or early case appraisal. ICAO itself needs to realise there is a need to develop this underdeveloped part of the governing regime.

Module-IV

ICAO and International Air Law

INTRODUCTION

The International Civil Aviation Organization (ICAO) is a UN specialized agency, established by States in 1944 to manage the administration and governance of the Convention on International Civil Aviation (Chicago Convention). Article 43-65, Part II of the Chicago Convention deals with the provisions relating ICAO, its organization and functions. ICAO works with the Convention's 192 Member States and industry groups to reach consensus on international civil aviation Standards and Recommended Practices (SARPs) and policies in support of a safe, efficient, secure, economically sustainable and environmentally responsible civil aviation sector. These SARPs and policies are used by ICAO Member States to ensure that their local civil aviation operations and regulations conform to global norms, which in turn permits more than 100,000 daily flights in aviation's global network to operate safely and reliably in every region of the world.

In addition to its core work resolving consensus-driven international SARPs and policies among its Member States and industry, and among many other priorities and programmes, ICAO also coordinates assistance and capacity building for States in support of numerous aviation development objectives; produces global plans to coordinate multilateral strategic progress for safety and air navigation; monitors and reports on numerous air transport sector performance metrics; and audits States' civil aviation oversight capabilities in the areas of safety and security.

THE HISTORY OF ICAO AND THE CHICAGO CONVENTION

The Second World War was a powerful catalyst for the technical development of the aeroplane. A vast network of passenger and freight carriage was set up during this period, but there were many obstacles, both political and technical, to evolving these facilities and routes to their new civilian purposes. Subsequent to several studies initiated by the United States, as well as various consultations it undertook with its Major Allies, the U.S. government extended an invitation to 55 States to attend an International Civil Aviation Conference in Chicago in 1944. These delegates met at a very dark time in human history and travelled to Chicago at great personal risk. Many of the countries they represented were still occupied. In the end, 54 of the 55 States invited attended the Chicago Conference, and by its conclusion on 7 December, 1944, 52 of them had signed the new *Convention on International Civil Aviation* which had been realized. Known then and today more commonly as the 'Chicago Convention', this landmark agreement laid the foundation for the standards and procedures for peaceful global air navigation. It set out as its prime objective the development of international civil aviation "…in a safe and orderly manner", and such that air transport services would be established "on the basis of equality of opportunity and operated soundly and economically."

The Chicago Convention also formalized the expectation that a specialized International Civil Aviation Organization (ICAO) would be established, in order to organize and support the intensive international co-operation which the fledgling global air transport network would require. ICAO's core mandate, then as today, was to help States to achieve the highest possible degree of uniformity in civil aviation regulations, standards, procedures, and organization. Because of the usual delays expected in ratifying the Convention, the Chicago Conference presciently signed an Interim Agreement which foresaw the creation of a *Provisional* ICAO (PICAO) to serve as a temporary advisory and coordinating body. The PICAO consisted of an Interim Council and an Interim Assembly, and from June 1945 the Interim Council met continuously in Montreal, Canada, and consisted of representatives from 21 Member States. The first Interim Assembly of the PICAO, the precursor to ICAO's triennial Assemblies in the modern era, was also held in Montreal in June of 1946.

On 4 April 1947, upon sufficient ratifications to the Chicago Convention, the provisional aspects of the PICAO were no longer relevant and it officially became known as ICAO. The first official ICAO Assembly was held in Montreal in May of that year. During this march (2018) to the modern air transport era, the Convention's Annexes have increased in number and evolved such that they now include more than 12,000 international standards and recommended practices (SARPs), all of which have been agreed by consensus by ICAO's now 192 Member States. These SARPs, alongside the tremendous technological progress and contributions in the intervening decades on behalf of air transport operators and manufacturers, have enabled the realization of what can now be recognized as a critical driver of socio-economic development and one of humanity's greatest cooperative achievements – the modern international air transport network.

Civil Aviation pre ICAO: Few people are aware that ICAO had a precursor. The International Commission for Air Navigation (ICAN) was created by the Paris Convention on October 13, 1919 as part of a vast post-World War I international re-organization. France should also be recognized for having formed the very first aviation-related federation of any kind: the Fédération Aéronautique Internationale was established in 1905 as a non-governmental and non-profit organization to promote aeronautical and astronautical activities worldwide, particularly in the field of air sports, as well as to encourage related skills, proficiencies and safety measures. There is general acceptance, however, that 1919 was the year when the international air transport industry was born, even despite the fact that the first scheduled air service had operated across Tampa Bay, Florida (U.S.A.) during the first four months of 1914.

1919 also marked the year when the precursor to the current International Air Transport Association (IATA, representing world scheduled airlines) was established, when representatives of five air transport companies from Denmark, Germany, Great Britain, Norway and Sweden meet at The Hague, Netherlands, to sign an agreement to form the International Air Traffic Association. Up until 1919, and for many years afterwards, much of the world's commercial air transport activity was focused upon the carriage of airmail. These early, pioneering days for civil aviation were immortalized by the passionate pilot Antoine de Saint-Exupéry in his novel Vol de Nuit, which captured the world's imagination.

From 1919 through to 1944, a number of additional and important civil aviation developments were realized which helped to create a strong foundation from which the Chicago Convention could later be realized. In 1925 for instance, the First International

Conference of Private Air Law was convened in Paris to examine airline legal obligations and to undertake the immense work of codifying private air law. The final protocol of this Conference called for the creation of a special committee of experts, la Comité International Technique d'Experts Juridiques Aériens, or CITEJA. In 1926, an Ibero-American Convention was developed under the leadership of Spain, with Portugal and the States of Latin America, while the United Stated and United Kingdom each passed regulations relating to governance of air commerce in their territories. In 1929, the Convention for the Unification of Certain Rules Relating to International Carriage by Air was signed at Warsaw. It entered into force in early 1933. The Warsaw Convention established the conditions of international air transport with respect to the documents used for such transportation and of the liability of the air carrier (at that time about $10,000 for each passenger and about $20 per kilogram of checked baggage or goods).

Also in 1933, the Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface of 1933 was signed in Rome Italy. This later amended by the Brussels Protocol of 1938 to permit some basic defenses for insurers. Also in 1933 the first International Sanitary Convention for Aerial Navigation was signed at The Hague (without a conference) to protect communities against diseases liable to be imported by aircraft, as well as flying personnel against diseases due to flying. The 1930s in general also cooperation amongst world airlines advance rapidly under IATA, with many new technical standards and commercial air transport regulations being developed. This included the technical standardization of cockpits, fire prevention, marine airports, and ice accumulation, as well as standards governing revenue accounting and traffic management. While this accelerating civilian air transport development was interrupted by the Second World War from 1940-1945, the advances made during this period were instrumental to the realization of the eventual global framework now managed through ICAO.

ICAO and the United Nations: At the Chicago Conference, the drafters of the Convention on International Civil Aviation had anticipated the emergence of a United Nations type of post-war organization. Accordingly, they wrote into the Convention a provision covering the possibility of ICAO becoming a constituent of such organization as follows: **Article 64:** *The Organization may, with respect to air matters within its competence directly affecting world security, by vote of the Assembly, enter into appropriate arrangements with any general organization set up by the nations of the world to preserve peace.*

At the first ICAO Assembly held in May 1947, Resolution A1-2 was adopted by unanimous vote of the 32 Contracting States represented at the 3rd Plenary Meeting. This approved the agreement of relationship with the United Nations (UN) and authorized the President of the Council to sign a protocol bringing into force the agreement concerning such a relationship between the UN and ICAO. President Warner signed the protocol on 3 October 1947 and ICAO became a UN specialized agency. By this agreement, each organization undertakes to fulfill certain requirements whereby the other may participate in its work in the measure required for fulfilment of certain articles of the Chicago Convention and the Charter of the UN. While ICAO remained an independent and autonomous agency, its acquisition of constituency status in the United Nations Organization was a major step, which greatly benefited many of its Contracting States in the years which followed, mainly through the United Nations Programme of Technical Assistance.

As a Specialized Agency of the UN, ICAO works closely with the UN, and particularly with the Economic and Social Council. In light of its technical mandate, ICAO also works closely with other UN Specialized Agencies and International Organizations, such as:

1. The International Telecommunications Union (ITU);
2. The International Atomic Energy Agency (IAEA);
3. The International Labour Organization (ILO);
4. The International Maritime Organization (IMO);
5. The Universal Postal Union (UPU);
6. The World Meteorological Organization (WMO);
7. The World Health Organization (WHO); and
8. The World Tourism Organization (UNWTO).

International Civil Aviation Conference: In response to the invitation of the United States Government, representatives of 54 nations met at Chicago from November 1 to December 7, 1944, to "make arrangements for the immediate establishment of provisional world air routes and services" and "to set up an interim council to collect, record and study data concerning international aviation and to make recommendations for its improvement." The Conference was also invited to "discuss the principles and methods to be followed in the adoption of a new aviation convention."

PURPOSE AND OBJECTIVES OF ICAO

The Convention on International Civil Aviation set forth the purpose of ICAO:

"WHEREAS the future development of international civil aviation can greatly help to create and preserve friendship and understanding among the nations and peoples of the world, yet its abuse can become a threat to the general security; and

WHEREAS it is desirable to avoid friction and to promote that co-operation between nations and peoples upon which the peace of the world depends;

THEREFORE, the undersigned governments having agreed on certain principles and arrangements in order that international civil aviation may be developed in a safe and orderly manner and that international air transport services may be established on the basis of equality of opportunity and operated soundly and economically;

Have accordingly concluded this Convention to that end."

Apart from its purpose ICAO also retains certain important objectives for the development of international air law. Article 44 of the convention states “The aims and objectives of the

Organization 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 arts 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 right 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."

LEGAL CAPACITY OF THE ORGANIZATION (ARTICLE 47)

The Organization shall enjoy in the territory of each contracting State such legal capacity as may be necessary for the performance of its functions. Full juridical personality shall be granted wherever compatible with the constitution and laws of the State concerned.

ADMISSION AND MEMBERSHIP TO ICAO (ARTICLE 92 – 94)

Chicago conference was convened at a time when the World War II was in its last stages with the result of the war largely known to the entire world. Given the strategic position United States was at during that time it convened the conference and the allied powers dictated most of the terms of the conference. It is to be noted that the first phase of the so-called members of UN were mostly from the group of allied power. Hence in order to gain and retain power over civil aviation, the membership of ICAO was open to only the members of either the UN or any of their associated members or those states which remained neutral during the war. These states could adhere to the convention and become its member states without following any special admission procedure. On the other hand, if there are any other states apart from the states mentioned above, i.e. essential belonging to the Axis Power Group, can be admitted as members but subjected to a rigorous admission procedure.

The rules regarding membership to ICAO are indirectly laid down under the Chicago Convention from Article 92 to 94.
Under Article 92, a general privilege is given to the members of UN and their associated member states to adhere to the provision of the convention. Such a privilege of adherence is also extended to those states who are although not the members of UN but had nevertheless remained neutral during the world war II. Thus in effect ICAO only allows either the members of United Nations or neutral states to become its member. Hence it can be said that ICAO began with closed membership. Another point to be noted here is that the provision talks about adherence and refrains from using the term 'membership'. Therefore the question arises as to whether adherence to the provision of the convention is equivalent to accepting the position of member in ICAO. This question is sought to answered in the second part of the provision according to which adherence is a process effected by a notification addressed to the Government of the United States of America and shall take effect as from the thirtieth day

from the receipt of the notification by the Government of the United States of America, which shall notify all the contracting States.
United States being the host of the Chicago Conference and that too at such a crucial time where the World War II was almost on the verge of ending reserved the right and authority of being a depository for the ratifications of the Chicago Convention.
Article 93 provides for clear provision on admission of other states and lays down that those states apart from the states classified in the previous provisions can be admitted as members but subject to such approvals by any general international organization set up by the nations of the world to preserve peace. However the conditions do not end there. Such nominated states should thereafter get four-fifths vote of the Assembly in support of their membership application. Apart from these two mandatory requirement the state which has so applied to the Assembly for membership to ICAO should fulfill any other reasonable conditions which the ICAO requires it to fulfill. If such a state has invaded or attacked any state during the then on-going world war, then the assent of such invaded or attacked state was also necessary for the said member state.
However Article 93 bis clearly lays down as to which categories of states or barred from membership to ICAO. These states are:

- 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;
- A State which has been expelled from membership in the United Nations shall automatically cease to be a member of the International Civil Aviation Organization unless the General Assembly of the United Nations attaches to its act of expulsion a recommendation to the contrary.

A State which ceases to be a member of the International Civil Aviation Organization as a result of the provisions of previous paragraph, after approval by the General Assembly of the United Nations, be readmitted to the International Civil Aviation Organization upon application and upon approval by a majority of the Council.
Members of the Organization which are suspended from the exercise of the rights and privileges of membership in the United Nations shall, upon the request of the latter, be suspended from the rights and privileges of membership in this Organization.
Several Members States issued stamps and first day covers to commemorate their admission to ICAO. In addition to that, two States issued covers to commemorate their admission to ICAO, that is the Republic of Albania and the Democratic Republic of Korea.
On 6 June 1945, the required 26 States, including each of the 20 States elected to the Council, had accepted the Interim Agreement on International Civil Aviation. Thus, as per Article 1 - Section 1 of the latter Agreement, the Provisional Organization (PICAO) was born, within six months after the closing of the Chicago Convention.
On 5 March 1947, Spain was the 26th state to deposit, with the Government of the USA, its instrument of ratification to the Chicago Convention. Consequently, this Convention came into force on 4 April 1947 (i.e. 30 days later), among the states having thus ratified.

However it is to be noted that the additional conditions clause which the 'other states' have to fulfill in order to secure membership to ICAO has been put under a lot of criticism primarily due to lack of transparency. For instance, in 1947, Italy a former ally of Germany was admitted without any conditions.
ICAO's success is evidenced by the dynamic and sustained increases in the number of States adhering to its Convention on International Civil Aviation. The following table shows a summary of progress in terms of submitted instruments of ratification of this Convention.
However, two factors contributed largely to ICAO's growth in terms of Member States: The emancipation in Africa, especially between 1960 and 1962. New countries were created by the decolonization; in a few years, 23 new States joined ICAO; and The breakup of the Socialist Federal Republic of Yugoslavia (in the 1990s) and the dissolution of the Soviet Union (starting from December 1991) led to the emergence of new States, which joined ICAO. South Sudan became an independent state on 9 July 2011 and became the 191st member of ICAO on 10 November 2011, 30 days after South Sudan's notification of adherence was received, on 11 October 2011.

ORGANIZATIONAL STRUCTURE OF ICAO (ARTICLE 43)

ICAO is the standing body in charge of implementing the principles of the Convention so as to ensure the safe and orderly development of global civil aviation. The constitution of ICAO is the Convention on International Civil Aviation, drawn up by a conference in Chicago in November and December 1944, and to which each ICAO Contracting State is a party.

Article 43 of the Convention states "*An organization to be named the International composition Civil Aviation Organization is formed by the Convention. It is made up of an Assembly, a Council, and such other bodies as may be necessary.*" It could be therefore inferred from the provision that, the Organization is made up of an Assembly, a Council of limited membership with various subordinate bodies and a Secretariat. The chief officers are the President of the Council and the Secretary General. Such a tripartite structure has been a common organizational format of invariably all the international assemblies that have been established since the end of the nineteenth century. In 1947, United Nations Organization recognized ICAO as a specialized agency of UN.
The Assembly (Article 48-49): The Assembly, composed of representatives from all Contracting States, is the sovereign body of ICAO. It meets every three years, reviewing in detail the work of the Organization and setting policy for the coming years. It also votes a triennial budget.
Every member state has one vote in the assembly, and decisions are made by a simple majority vote unless otherwise specified by the Chicago Convention. Sessions have been held in many different cities. An extraordinary meeting of the Assembly may be held at any time upon the call of the Council or at the request of not less than one-fifth of the total number of contracting States addressed to the Secretary General.
A majority of the contracting States is required to constitute a quorum for the meetings of the Assembly. Unless otherwise provided in this Convention, decisions of the Assembly shall be taken by a majority of the votes cast.

Powers and Duties of the Assembly (Article 49): The powers and duties of the Assembly shall be to:

a. Elect at each meeting its President and other officers;
b. the contracting States to be represented on the Council, in accordance with the provisions of Chapter IX;
c. Examine and take appropriate action on the reports of the Council and decide on any matter referred to it by the Council;
d. Determine its own rules of procedure and establish such subsidiary commissions as it may consider to be necessary or desirable;
e. Vote annual budgets and determine the financial arrangements of the Organization, in accordance with the provisions of Chapter XII;
f. Review expenditures and approve the accounts of the Organization;
g. Refer, at its discretion, to the Council, to subsidiary commissions, or to any other body any matter within its sphere of action;
h. Delegate to the Council the powers and authority necessary or desirable for the discharge of the duties of the Organization and revoke or modify the delegations of authority at any time;
i. Carry out the appropriate provisions of Chapter XIII;
j. Consider proposals for the modification or amendment of the provisions of this Convention and, if it approves of the proposals, recommend them to the contracting States in accordance with the provisions of Chapter XXI;
k. Deal with any matter within the sphere of action of the Organization not specifically assigned to the Council.

The assembly makes policy recommendations, reviews the work of ICAO, offers guidance to other ICAO bodies, elects the council, and determines the budget. The assembly may amend the ICAO constitution by a two-thirds majority vote, and it has done so on several occasions. But amendments come into force for the states that ratify them only after they have been ratified by at least two-thirds of the ICAO member states as specified by the assembly. In other words, the assembly may feel that it would not be fair to introduce a particular innovation in international civil aviation unless certain states would abide by it. On the other hand, the assembly possesses a rather unusual prerogative to induce wide ratification of an amendment it has adopted: if a member state does not ratify a particular amendment within a given period of time, the assembly has the right to revoke that country's membership in ICAO. However, this provision (Article 94[b]) has never been invoked.

The first meeting of the ICAO assembly was held by the Interim Council of PICAO in accordance with Article 46 of the Convention. It met at Montreal within a month of its establishment. The frequency of the Assembly Session is governed under Article 48(a) of the Chicago Convention. However this provision has been amended twice. Initially the provision mandated the assembly to meet annually and be convened at a suitable time and place. However extraordinary meetings could be held at any time upon the call of the council or at the request of the ten contracting states addressed to the Secretary General.

These annual session was extremely useful as it brought together the contracting states on one platform on a regular basis and allowed them to control the program and budget of the council and manage the affairs of the Council.

However in its eighth session the above mentioned provision calling for annual meetings was amended and replaced by triennial sessions of the Assembly. This was done keeping in regard to the expenses borne by the state parties for sending their national delegates to attend the session and thus it was intended to limit the same. However no changes were made to the requirement of the Extra-ordinary General Meetings.

Gradually even the duration of these sessions were reduced from more than three weeks to some twelve calendar day. All this was done for the sake of economy. As a result, the pertinent issues were not addressed properly and gradually the role of assembly weakened. As far the extraordinary sessions are concerned, in the history of ICAO, there have been merely nine such sessions and have been convened for a very short duration. These sessions were primarily concerned with either amending the convention or filling up the vacancy on the council.

In light of the expanding membership of the ICAO, the provision on extraordinary sessions was also amended. In 1962, in the fourteenth session of the Assembly, this provision was amended according to which prior to calling of an extra-ordinary general meeting, the approval of at-least one-fifth of the member states was required. Hence with the current membership of 190 states, the consent of at least 38 states were required to call such a meeting.

The Council (Article 50-55): The Council, the governing body which is elected by the Assembly for a three-year term, is composed of 36 States. The Assembly chooses the Council Member States under three headings: States of chief importance in air transport, States which make the largest contribution to the provision of facilities for air navigation, and States whose designation will ensure that all major areas of the world are represented. In the event of a vacancy in the council the same shall be immediately and as soon as possible be filled by the Assembly and the contracting state so elected shall hold the office for the unexpired portion of its predecessor's term of office. In order to avoid conflict of interest the provisions also require that No representative of a contracting State on the Council shall be actively associated with the operation of an international air service or financially interested in such a service. Decisions in the Council shall be approved by a majority of the council members.

<u>Composition of Election Council (Article 50):</u> (a) The Council shall be a permanent body responsible to the Assembly. It shall be composed of twenty one contracting States elected by the Assembly. An election shall be held at the first meeting of the Assembly and thereafter every three years, and the members of the Council so elected shall hold office until the next following election.

(b) In electing the members of the Council, the Assembly shall give adequate representation to (1) the States of chief importance in air transport; (2) the States not otherwise included which make the largest contribution to the provision of facilities for international civil air navigation; and (3) the States not otherwise included whose designation will insure that all the major geographic areas of the world are represented on the Council. Any vacancy on the Council shall be filled by the Assembly as soon ns possible; any contracting State so elected to the Council shall hold office for the unexpired portion of its predecessor's term of office.

(c) No representative of a contracting State on the Council shall be actively associated with the operation of an international air service or financially interested in such a service.

<u>President of the Council (Article 51)</u>: The President shall be elected for a period of three years and can be re-elected as well. However the President shall not have a right to vote. However when a Vice-President is acting in the capacity of the President while the latter's office is lying vacant, then the Vice-President can retain its voting power.

The duties of the President shall be to:

a. Convene meetings of the Council, the Air Transport Committee, and the Air Navigation Commission;
b. Serve as representative of the Council; and
c. Carry out on behalf of the Council the functions which the Council assigns to him.

<u>Voting in Council (Article 52):</u> Decisions by the Council shall require approval by a majority of its members. The Council may delegate authority with respect to any particular matter to a committee of its members. Decisions of any committee of the Council may be appealed to the Council by any interested contracting State.

<u>Participation without a vote (Article 53):</u> Participation Any contracting State may participate, without a vote, in the consideration by the Council and by its committees and commissions of any question which especially affects its interests. No member of the Council shall vote in the consideration by the Council of a dispute to which it is a party.

<u>Mandatory Functions of the Council (Article 54):</u> The Council shall -

a. Submit annual reports to the Assembly;
b. Carry out the directions of the Assembly and discharge the duties and obligations which are laid on it by this Convention;
c. Determine its organization and rules of procedure;
d. Appoint and define the duties of an Air Transport Committee, which shall be chosen from among the representatives of the members of the Council, and which shall be responsible to it;
e. Establish an Air Navigation Commission, in accordance with the provisions of Chapter X;
f. Administer the finances of the Organization in accordance with the provisions of Chapters XII and XV;
g. Determine the emoluments of the President of the Council;
h. Appoint a chief executive officer who shall be called the Secretary General, and make provision for the appointment of such other personnel as may be necessary, in accordance with the provisions of Chapter XI;
i. Request, collect, examine and publish information relating to the advancement of air navigation and the operation of international air services, including information about the costs of operation and particulars of subsidies paid to airlines from public funds;
j. Report to contracting States any infraction of this Convention, as well as any failure to carry out recommendations or determinations of the Council;
k. Report to the Assembly any infraction of this Convention where a contracting State has failed to take appropriate action within a reasonable time after notice of the infraction;

l. Adopt, in accordance with the provisions of Chapter VI of this Convention, international standards and recommended practices; for convenience, designate them as Annexes to this Convention; and notify all contracting States of the action taken;
m. Consider recommendations of the Air Navigation Commission for amendment of the Annexes and take action in accordance with the provisions of Chapter XX;
n. Consider any matter relating to the Convention which any contracting State refers to it.

<u>Permissive Functions of the Council (Article 55):</u> The council may -

a. Where appropriate and as experience may show to be desirable, create subordinate air transport commissions on a regional or other basis and define groups of states or airlines with through which it may deal to facilitate the carrying out of the aims of this Convention;
b. Delegate to the Air Navigation Commission duties additional to those set forth in the Convention and revoke or modify such delegations of authority at any time;
c. Conduct research into all aspects of air transport and air navigation which are of international importance, communicate the results of its research to the contracting States, and facilitate the exchange of information between contracting States on air transport and air navigation matters;
d. Study any matters affecting the organization an operation of international air transport, including the international ownership and operation of international air services on trunk routes, and submit to the Assembly plans in relation thereto;
e. Investigate, at the request of any contracting State, any situation which may appear to present avoidable obstacles to the development of international air navigation; and, after such investigation, issue such reports as may appear to it desirable.

As the governing body, the Council gives continuing direction to the work of ICAO. It is in the Council that Standards and Recommended Practices are adopted and incorporated as Annexes to the Convention on International Civil Aviation. The Council is assisted by the Air Navigation Commission (technical matters), the Air Transport Committee (economic matters), the Committee on Joint Support of Air Navigation Services and the Finance Committee, Legal Committee. The council is entrusted with numerous duties of technical, economic and legal nature.

<u>Legal Committee:</u> ICAO legal committee is entrusted with the functions of studying and preparing the draft conventions which it then submits to the Assembly in plenary session for approval. In the next stage the convention has to be approved by a Diplomatic Conference.

The Comité International Technique d’Experts Juridiques Aériens (CITEJA) was created pursuant to a recommendation adopted at the First International Conference on Private Air Law, held in Paris in 1925, to develop a code of private international air law through the preparation of draft international conventions for final adoption at periodic international conferences on private air law. Four International Conferences on Private Air Law were held until the war interrupted the work of CITEJA and further unification of private air law.

In pursuance of the recommendation made by the delegates to the Chicago Conference held in 1944 with regard to the resumption of the work of the CITEJA and the desirability of coordinating the activities of CITEJA with those organizations within the field of public international law, the 14th Plenary Session of CITEJA, i.e. the first session to be held since the outbreak of the war, was convened in Paris from 22 to 29 January 1946; thirty-two countries were represented at that session. It adopted several resolutions taking into consideration the creation of the Provisional International Civil Aviation (PICAO) in 1945, and agreed in principle to a liaison and cooperation with PICAO and to transmit to the Council of PICAO the drafts on international air law conventions. However, CITEJA wished to remain with its own secretariat, annual budget, rules of procedure, and Contracting States.

The 1st Interim Assembly of PICAO, held at Montreal from 21 May to 7 June 1946, adopted Resolution 31 foreseeing the establishment of a Permanent Committee on International Air Law (i.e. a Legal Committee) after the creation of ICAO. CITEJA fully agreed with the view of PICAO Assembly and held its last working meeting (i.e. the 15th Plenary Session) at Cairo from 14 to 19 November 1946, where it recommended that a Committee on International Air Law be established within ICAO. The 1st Session of the ICAO Assembly, held in Montreal from 6 to 27 May 1947, adopted Resolution A1-46 creating the Legal Committee as permanent body of the Organization replacing the CITEJA. At the same time of the 1st Assembly, CITEJA held its final meeting and decided on its dissolution. Thus, the permanent Legal Committee came into being on 23 May 1947; it was a committee of the Assembly, but operated largely under the direction of the Council and its duties were rather straightforward: to study any legal matters referred to it by the Council. It was comprised of legal experts appointed by the Member States. The Legal Committee held its first full session in Brussels from 10 to 25 September 1947.

Any draft convention which the Legal Committee considers as ready for presentation to States as a final draft is be transmitted to the ICAO Council. Such drafts, after comments and circulation to States, are considered with a view of approval by a Diplomatic Conference or International Conference on Air Law. The resulting legal instrument is then open for signature at the close of such conference. ICAO has been very productive in international law-making and the Legal Committee since 1947 has prepared many drafts which led to the adoption of air instruments.

Since 1947, the Legal Committee has considered questions of both private and public international air law. Its constitution has been amended slightly since 1947, and its annual sessions rarely coincide with the meetings of the ICAO Assembly. The Legal Committee, along with the Air Navigation Commission and the Air Transport Committee became the central permanent committees of ICAO.

Secretariat: The Secretariat, headed by a Secretary General, is divided into five main divisions: the Air Navigation Bureau, the Air Transport Bureau, the Technical Co-operation Bureau, the Legal Bureau, and the Bureau of Administration and Services. In order that the work of the Secretariat reflects a truly international approach, professional personnel are recruited on a broad geographical basis.

The ICAO Council appoints a Chief Executive Officer of the Secretariat who shall be called Secretary General. The Secretary General is appointed for a period of three years, a term of office that may be renewed once for the same period of time.

In almost 70 years of existence of the Organization, the Secretariat has been run by 11 Secretaries General. The first Secretary General of ICAO was Albert Roper from France.

Air Navigation Commission (Article 56-57): The Air Navigation Commission is comprised of sixteen members who are appointed by the Council from among the persons nominated by the contracting state. These persons are required to possess suitable qualifications and experience in the field of science and practice of aeronautics. The President of the Commission shall be appointed by the Council.
The functions of the Commission are as follows:

a. Consider, and recommend to the Council for adoption, modifications of the Annexes to this 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

Air Transport Commission: The Committee on Air Transport (or Air Transport Committee, ATC) was established by the Interim Council on 28 August 1945. Two technical sub-committees or working groups (named Division by decision of the Council on 30 November 1945) were established under the authority of the ATC: Facilitation of International Air Transport (FAL) and Statistics (STA). It is to be reminded that a Customs Sub-committee was initially established under the aegis of the Air Navigation Committee; it was transferred on 21 November 1945 to the Air Transport Committee and changed its name to Sub-committee on Facilitation of International Air Transport. The FAL Division met for the first time in Montreal from 24 January to 2 February 1946 and established a set of provisional standards designed to standardize procedures and minimize government documentary requirements for aircraft entering foreign territories. In 1945, the ATC of the Provisional Organization set up a statistical reporting system by which each Contracting State would report on the activities of its international airlines on a monthly and annual basis by means of standardized forms; this reporting system was partly based on statistical tables used by the International Commission for Air navigation (ICAN) before the war.

External Relations Bureau: The Bureau is responsible for reviewing, advising on and coordinating ICAO's relations with member and non-member States, the Organizations of the United Nations Common System and with other international organizations.

The Bureau monitors activities of the international system which are of mutual interest to ICAO, the United Nations and other international organizations, directs attention to international affairs and political developments which may affect ICAO, and makes arrangements for the representation of the Organization at meetings of other organizations.

The Bureau also provides policy guidance and advice on matters relating to the privileges and immunities granted to the Organization, national representatives and staff of the Secretariat. It acts as the focal point for ICAO's relations with the Host States of the Organization's Headquarters and of the Regional Offices, and is responsible for arranging and supervising the ICAO Familiarization Course.

Legal Affairs Bureau: The Bureau provides advice and assistance to the Secretary General and through him to Council and other bodies of the Organization and to ICAO Member States on constitutional, administrative and procedural matters, on problems of international law, air law, commercial law, labour law and related matters. The Bureau also conducts research and studies in the field of private and public international air law, prepares documentation for, and serves as the Secretariat of the Legal Committee: relevant bodies of the Assembly; and Diplomatic Conferences which adopt multilateral treaties on international air law. The Bureau is responsible for the depositary functions of ICAO under several treaties, as well as the registration of agreements or arrangements pursuant to Articles 81 and 83 of the Chicago Convention. The functions of the Legal Bureau also include cooperation and coordination in legal activities with the United Nations and other international organizations, including the implementation of ICAO's Policy on Regional Cooperation involving Regional Organizations and regional civil aviation bodies.

ICAO works in close cooperation with other members of the United Nations family such as the World Meteorological Organization (WMO), the International Telecommunication Union (ITU), the Universal Postal Union (UPU), the World Health Organization (WHO), the World Tourism Organization (UNWTO) and the International Maritime Organization (IMO). Non-governmental organizations which also participate in ICAO's work include the Airports Council International (ACI), the Civil Air Navigation Services Organisation (CANSO), the International Air Transport Association (IATA), the International Business Aviation Council (IBAC), International Coordinating Council of Aerospace Industries Associations (ICCAIA), the International Council of Aircraft Owner and Pilot Associations (IAOPA), the International Federation of Air Line Pilots' Associations (IFALPA) and the International Federation of Air Traffic Controllers' Associations (IFATCA).

CHIEF ACTIVITIES OF ICAO

Standardization: One of ICAO's chief activities is standardization, the establishment of International Standards, Recommended Practices and Procedures covering the technical fields of aviation: licensing of personnel, rules of the air, aeronautical meteorology, aeronautical charts, units of measurement, operation of aircraft, nationality and registration marks, airworthiness, aeronautical telecommunications, air traffic services, search and rescue, aircraft accident investigation, aerodromes, aeronautical information services, aircraft noise and engine missions, security and the safe transport of dangerous goods. After a Standard is adopted it is put into effect by each ICAO Contracting State in its own territories. As aviation technology continues to develop rapidly, the Standards are kept under constant review and amended as necessary. In keeping pace with the rapid development of international civil aviation, ICAO is conscious of the need to adopt in its specifications modern systems and techniques. In recent years, extensive work has been undertaken by ICAO in the areas of reporting aircraft accident and incident data, all-weather operations, automation of air traffic services, the application of computers in meteorological services, aircraft noise, engine emissions and the carriage of dangerous goods by air. ICAO has dealt with the subject of unlawful interference with civil aviation and with questions regarding aviation and the human environment.

CNS/ATM: Among ICAO's more recent significant achievements has been the development of a satellite-based system concept to meet the future communications, navigation, surveillance/air traffic management (CNS/ATM) needs of civil aviation. CNS/ATM, formerly known as the future air navigation systems (FANS) concept, is essentially the

application of today's high technologies in satellites and computers, data links and advanced flight deck avionics, to cope with tomorrow's growing operational needs. It will make obsolete much of today's expensive ground-based equipment, which uses line-of-sight technology and has inherent limitations.[107] It will also produce economies, efficiencies and greater safety. But it is not these characteristics that make it a new frontier for aviation. It will be its impact as an integrated global system with consequential changes to the way air traffic services are organized and operated.[108] The CNS/ATM systems concept, which has received the endorsement of ICAO Member States, is now in its implementation phase. This major task includes the development of standards, recommended practices and guidance material which will be applied well into the 21st century.
Regional planning: Not all aviation problems can be dealt with on a world-wide scale and many subjects are considered on a regional basis. ICAO, therefore, recognizes nine geographical regions which must be treated individually for planning the provision of air navigation facilities and services required on the ground by aircraft flying in these regions.[109] In each of the regions, keeping in mind the objective of producing a seamless global air traffic management system, careful planning is necessary to produce the network of air navigation facilities and services upon which the aeroplanes depend the aerodromes, the meteorological and communications stations, the navigation aids, the air traffic control units, the search and rescue bases the thousands of facilities to be established and operated and the services to be rendered. This planning is done at ICAO regional air navigation meetings, held from time to time for each of the regions, where the need for facilities and services is carefully considered and decided upon.[110] The plan which emerges from a regional meeting is so designed that, when the States concerned implement it, it will lead to an integrated, efficient system for the entire region and contributes toward the global system.

When States require assistance in this regard, help is available through ICAO's seven regional offices each one accredited to a group of Contracting States. These offices have, as their main function, the duty of encouraging, assisting, expediting and following up the implementation of the Air Navigation Plans and maintaining them up to date. In addition, regional planning and implementation groups have been established in ICAO regions to assist the regional offices in keeping the regional plans up-to-date and in fostering their implementation.

As financial and technical resources vary widely between nations, and as air transport's demands involve some complex and costly equipment and well-qualified personnel for staffing and maintaining the facilities, there may be uneven implementation of parts of the Air Navigation Plans. ICAO can assist States through its technical assistance activities (described in the following pages). It has succeeded, also, in a few cases, in arranging for "joint financing" certain facilities in the North Atlantic are financed by the States whose airlines make use of them: communication systems for transmitting messages of interest to

[107] Thomas Burgenthal, Law Making in the International Civil Aviation Organization,1st ed., 1969, p.111
[108] Ibid.
[109] Ministry if Civil Aviation (South Africa), Report of National Aviation Safety Committee, 1998, p.21.
[110] Herbert V. Morais, Compliance & Enforcement In International Law: Achieving Global Uniformity In Aviation Safety, 30 N.C. J. Int'l L. & Com. Reg. 1,2004,p.62.

aviation, and air navigation aids and meteorological and air traffic control facilities in Greenland and Iceland.[111]

Facilitation: The obstacles placed by customs, immigration, public health and other formalities on the free and unimpeded passage of passengers and cargo across international boundaries have been a particularly serious impediment to air travel. The problem is inherent in the speed of air travel itself; if, for example, formalities at each end of a trans-oceanic flight of six hours take up one hour, this means that the passenger's trip time has been increased by one third, while the same formalities add only about two per cent to a five-day sea voyage across the same ocean. For the past two decades ICAO has tried to persuade its Contracting States to reduce red tape, and International Standards on facilitation have been adopted to place an upper limit on what States may demand. In addition to reducing procedural formalities, ICAO's efforts are also aimed at providing adequate airport terminal buildings for passengers and their baggage as well as for air cargo, with all related facilities and services.[112]

Economics: The Convention on International Civil Aviation requires that international air transport services be established on the basis of equality of opportunity and operated soundly and economically. In fact, ICAO's basic objective is the development of safe, regular, efficient and economical air transport. To assist States in planning their air transport services, ICAO collects and publishes comprehensive world aviation statistical data, and undertakes extensive economic studies in line with Resolutions of the ICAO Assembly and Recommendations of worldwide conferences. ICAO also produces manuals for the guidance of States in such areas as statistics, air traffic forecasting, airport and air navigation facility tariffs, the economic regulation of air transport and the establishment of air fares and rates.[113] Workshop meetings are conducted in various regions to provide States with information and advice on ICAO activities and to exchange pertinent information and views.

Technical Co-Operation for Development: From the beginning man has lived in communities connected to or separated from one another by surface conditions. Jungles and swamps, mountains and rivers and deserts have in the past presented almost insurmountable obstacles to his movement a condition which is characteristic even today in so many developing countries where road and railway networks are insufficient or non-existent. The aeroplane's advantage here is obvious: it moves along a boundless highway in the sky and the only actual roadway it needs is that which is necessary for take-off and landing. By the creation of an airstrip remote towns and villages can be linked quickly to the modern world, whereas surface connections could take years or even generations to build. ICAO therefore pays special attention to promoting civil aviation in developing countries. An important instrument in this work has been the United Nations Development Programme. So far most of the Organization's work in this area has been directed toward the development of the ground services required for civil aviation and, in particular, toward aerodromes, air traffic control,

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[111] ICAO Secretariat, ICAO Technical Work, ICAO Bulletin, 24th April, 2000, p.21.
[112] R.I.R. Abeyratne, Facilitation and the ICAO Role--A Prologue for the Nineties, 15 Annals of Air & Space L. 3, 1990,p.13.
[113] John Saba, Worldwide Safe Flight: Will the International Financial Facility for Aviation Safety Help It Happen?, 68 J. Air L. & Com., 2003, p.537

communications and meteorological services; in the past few years, and with the advent of larger and more complex aircraft, requests for assistance in the more sophisticated fields of aviation, including airports operations, have been increasing in number. In response to the alarming incidents in recent years of acts of unlawful interference against aircraft and airports, ICAO also provides assistance to States in order to improve their aviation security facilities and procedures. [114]Assistance in general has consisted of advising on the organization of government civil aviation departments and on the location and operation of facilities and services, and particularly in the recruitment and administration of experts, fellowships training and procurement of equipment. Many large civil aviation training centres have been created or assisted by ICAO in, for example, Egypt, India, Indonesia, Jordan, Kenya, Morocco, Nigeria, Pakistan, Thailand and Tunisia; in most cases these are regional training centres which take students of many nationalities and for which the local governments pay a large share of the costs and take over complete operation of the projects after a set time.[115] Smaller national training centres have also been established by ICAO technical co-operation missions, and nationals of many countries have received ICAO fellowships for study abroad.

ICAO technical co-operation missions consisting of one or more technical experts have gone to nearly one hundred States all over the world. Over 100,000 students have attended training schools registered with ICAO. The promotion of civil aviation in developing countries which includes the provision of assistance to states in order to improve their aviation security facilities and procedures. This has involved the creation or assistance of many large civil aviation training centres.

Law: Within the more than one hundred and eighty Contracting States of ICAO there are many legal philosophies and many different systems of jurisprudence. There is need, therefore, for a unifying influence, in certain areas, for the development of a code of international air law. It is a function of ICAO to facilitate the adoption of international air law instruments and to promote their general acceptance. So far international air law instruments have been adopted under the Organization's auspices involving such varied subjects as the international recognition of property rights in aircraft, damage done by aircraft to third parties on the surface, the liability of the air carrier to its passengers, crimes committed on board aircraft, the marking of plastic explosives for detection and unlawful interference with civil aviation.[116]

ICAO'S CONTRIBUTION TO INTERNATIONAL AIR LAW

It has been seen that in the field of quasi-legislation ICAO has done useful work in promoting international uniformity in aeronautical regulations, procedures, standards and practices. These are being followed even by non-members. ICAO is also forging ahead in the pre-legislative field developing private air law conventions, although the leisurely pace adopted by the States in accepting these conventions has severely restricted their effectiveness. ICAO's work in joint financing schemes for the improvement of the infrastructure of

[114] www.icao.int/facilitiation_2.htm
[115] www.icao.int/technical_coop.html
[116] Paul Stephen Dempsey, Aviation Security: The Role of Law in the War Against Terrorism, 41 Colum. J. Transnat'l L., 2003, 649.

international civil aviation, albeit unspectacular, provides scale models of potential achievements in this field through international co-operation. It is really only in the judicial sphere that ICAO could be said to be found seriously wanting. ICAO has never been able to gain sufficient support to successfully sponsor a multilateral convention for the exchange of commercial rights in air navigation. Instead, States have had to base their dealings on bilateral agreements between them. These treaties are a problem in international law because they serve as instruments of economic discrimination. It has been said that bilateral agreements in this field 'sectionalize the world and make air transport both more expensive and less convenient than it should be'.

The fact that ICAO has made the contribution it has to the law of international organizations and to practice in general international law is sufficient justification for its existence. These material contributions plus the fact that ICAO and its promulgated regulations and other practices are in existence and operation provide a point of reference to all States, members or not, when they are ordering their affairs as regards international civil aviation. They may or may not always follow the direction ICAO indicates or would prefer, but it is submitted that they are more likely to do so if they can see these indications and also know that the vast majority of international air transport is regulated by them. Perhaps this is ICAO's most important contribution to international law. Following are few notable contribution of ICAO towards the development of International Aviation Law:

A. International Legislative Process: The feature that differentiates international 'legislation' from municipal enactments is that treaties and international agreements in international law can bind only their signatories and no other international legal persons (though in time adherence to a principle originally enunciated in an international compact by many non-signatory States may engender it international customary law, and so binding on all subjects of international law). This distinction should be borne in mind during the discussion that follows.

ICAO's legislative powers are subject to a two-fold classification. The first, 'quasi-legislative' functions, are so called because, although they are law in the making, they do not bind members against their will. These consist basically of technical regulations promulgated by the ICAO Council. 'Pre-legislative' functions are tasks performed with a view to further legislation, though at that stage no actual change in the legal situation is achieved, as in the drafting of multilateral conventions. However, it seems that in performing these latter functions ICAO is actually creating law in the making, for though such law will not take effect until sufficient States ratify, the terms of the future law as laid down in the convention have been determined by ICAO.

<u>ICAO and SARPs:</u> ICAO adopts under article international standards and recommended practices and procedures in relation to aircraft, personnel, airways and auxiliary services. Under this article the Organization is to adopt and amend standards and practices as and when necessary, dealing with the eleven matters listed in paragraphs (a) to (k). In the main these matters concern navigational aids, flight regulation in the air, personnel licensing, airworthiness of aircraft, the collection and exchange of information, the simplification of procedures, and the safety of aviation. ICAO may also adopt standards, practices or procedures for such other matters concerned with the safety, efficiency and regularity of air navigation as may arise. It is for the Council to adopt these standards and practices under

article 54, paragraph (1). For convenience they are to be designated as Annexes to the Convention. The Council also amends the Annexes.
Adoption of Annexes requires a two-thirds vote by the Council at a meeting called for the purpose. 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 prescribed by the Council. It is open to the majority of notified States to register their disapproval with the Council, which may prevent the Annex taking effect. Article 90 does not refer to Annexes in its first sentence so Professor Cheng has argued that 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. This same sentence refers back to article 54, paragraph (I), which also omits mention of amendments. The second sentence of article 90 does however refer to amendments so that they become binding three months after notified to contracting States unless a longer period is specified by the Council or unless a majority of contracting States register disapproval with the Council, in which case the amendment fails to take effect.
States may depart from international standards and procedures, or amendments thereto, by article 38. A State which finds it impracticable to comply with any standard or procedure 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 to notify ICAO immediately of such differences. This notification may be given at any time, not necessarily before the Annex is effective under article 90.
Article 38 also governs a State's departure from amended international standards. The State may do this by failing to bring its own regulations or practices into full accord with any amended standard or procedure. 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 differences existing between that standard and the State's practice. A literal interpretation of article 38 prevents States departing from an amendment if they fail to notify an intention to do so within 60 days. That 60 days begins to run when the Council adopts the amendment, not when contracting States are actually notified. Article 90 makes immediate notification a necessity only where an Annex is adopted. When an Annex is amended the Council may notify whenever it wishes. The Council could therefore adopt an amendment and, by failing to notify contracting States for more than 60 days, preclude contracting States from validly notifying differences. If it were to do this the Council would be exercising
ICAO has also contributed to the legal aspect of the promulgation of standards and practices by defining their status for the guidance of members. PICAO framed definitions but ICAO adopted its own in the first Assembly de facto power of binding legislation, not mere quasi-legislation.
<u>ICAO & PANS:</u> ICAO also formulates Procedures for Air Navigation Services (PANS) which are approved by the Council for universal application. Somewhat related are the Region Supplementary Procedures (SUPPS) approved by the Council for application in specific regions. Neither PANS nor SUPPS are issued directly under a 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 'shall' in their texts? 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. The Council does not see fit to elevate them to the status of standards or practices because they consist of operating procedures not regarded as having sufficient maturity for such official adoption, or because material of a more permanent nature is too detailed for incorporation into an Annex or is susceptible to frequent amendment for which the process of the Convention is too elaborate.

ICAO & Multilateral Treaties: There are a number of multilateral treaties and conventions that have been sponsored by ICAO, and which represent a major contribution to international air law such as:

THE HAGUE PROTOCOL ON INTERNATIONAL AIR CARRIAGE RULES: The Hague Protocol32 has its roots in the Warsaw Convention which had been drafted by The CIDPA[117] and the *Comité International Technique d'Experts Juridiques Aériens* (CITEJA)[118] and, and was the only multilateral convention to gain almost universal acceptance before the Second World War. It established uniform rules governing the rights and liabilities of international air carriers, passengers, consignors and consignees of goods in States parties to the Convention.

THE GUADALAJARA CONVENTION ON INTERNATIONAL AIR CARRIAGE RULES: While the Warsaw Convention provided for damage by successive carriers, each compensating for the damage occurring during his part of the carriage, it did not cover 'sub-contracting' by the agreed carrier to a second carrier. The need for certainty increased as the hire and charter of aircraft became more common so ICAO intervened to have the Guadalajara Convention drafted and presented for signature.

GENEVA CONVENTION ON THE INTERNATIONAL RECOGNITION OF RIGHTS IN AIRCRAFT: After the Second World War it was found that the growth of the aviation industry brought with it much importing of aircraft. In many cases these aircraft were obtained on credit terms. The creditors had to be protected where the aircraft and other equipment were situated abroad or where registration was transferred. The ICAO Legal Committee presented a final draft of a convention to deal with this problem to the ICAO Assembly, not a specially convened diplomatic conference. This was the Geneva Convention. The draft was designed to secure that where an aircraft is registered in a State party to the Convention and rights in that aircraft are recorded in a public record in the State of registration, and such rights are valid in that State, other parties to the Convention will recognize those rights and give priority to them over all other rights except salvage claims.6

ROME CONVENTION ON SURFACE DAMAGE CAUSED BY FOREIGN AIRCRAFT: Following meetings between the ICAO Legal Committee and the Legal Commission of the ICAO Assembly between 1948 and 1950 final draft of a convention on damage caused by foreign aircraft to third parties on the surface was concluded and submitted to a conference on air law in Rome. The Rome Convention of 1952 aims to adequately compensate persons

[117] The International Private Air Law Congress (CIDPA) was a product of ICAN's 1925 session in Paris. ICAN could work in only the field of public international law and it contained as members only parties to the Paris Convention. CIDPA was formed to £ill the need felt by many States for a uniform code of private air law. In its turn CIDPA formed an International Technical Commission of Juridical Experts in Air Law (CITEJA) which was to draft conventions. Between 1925 and 1938 CITEJA provided several draft conventions for CIDPA to consider in the few sessions it held.

suffering damage and at the same time reasonably limit the operators' liability. It also aims to unify the rules as to liability incurred for such damage in different States.

TOKYO CONVENTION ON INFLIGHT OFFENCES: The ICAO Legal Committee prepared a draft convention on the issues relating to aviation crimes and other acts committed on board aircraft. This draft was submitted to a diplomatic conference in Tokyo in 1963. This Conference adopted the present text and the Convention, known as the Tokyo Convention. The Tokyo Convention covers acts which are penal offences and acts which, though not offences, may or do jeopardize good order and discipline on board.

DRAFT CONVENTION ON AERIAL COLLISIONS: The draft convention to have emerged from the ICAO Legal Committee is the Draft Convention on Aerial Collisions (1964). This draft was presented to the ICAO Assembly. The Convention aims to provide rules and establish limits for the liability of operators of aircraft involved in a collision for damage caused to the other aircraft and passengers and goods thereon.

B. Definition of Scheduled and Non-scheduled Flight: The effect of article 5 of the Chicago Convention is to give the aircraft of contracting States not engaged in scheduled international air services the right to fly into or over the territory of other contracting States and to make stops for non-tra£6c purposes (that is, for the setting down or taking up of passengers, mail or cargo) without having to obtain prior permission. This right is subject to the observance of the terms of the Chicago Convention, to the right of the subjacent State to require a landing or to prescribe routes and require prior permission if the aircraft is to fly over inaccessible regions or regions without adequate air navigation facilities. Article 5 goes so far as to allow the taking on or discharging of passengers, mail or cargo in any contracting State but that is subject to the right of the State of embarkation or discharge to impose such regulations, conditions or limitations as it considers desirable.

Article 6 denies any such privileges to scheduled international air services unless the State to be flown over gives its permission or authorization. The International Air Services Transit Agreement (1944) was drafted to provide some type of similar exchange for scheduled international air services. Thus the privileges to be accorded an aircraft depend on whether it is engaged in scheduled or non-scheduled air services. The Convention does not define what is a scheduled or non-scheduled air service. The ICAO Council set out to arrive at some definition of these terms for the guidance of members. The definition was published in 1952. A scheduled international air service is a series of flights that possesses all the following characteristics: (a)it passes through the airspace above the territory of more than one State; (b) it is performed by aircraft for the transport of passengers, mail or 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 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 recognizable systematic series. This definition was plainly needed and, even if not binding, provides a reference point for parties interested in ascertaining whether a given service is scheduled. Knowledge of this fact is important in the determination of privileges exchanged by the Chicago Convention as well as to the interpretation of provisions of other international agreements such as the International Air Services Transit Agreement (1944), the International Air Transport Agreement (1944), and the Multilateral Agreement on Commercial Rights in Non-Scheduled Air Services in Europe (1956) .

C. Nationality of Aircraft-Joint Operating Organizations - International Operating Agencies-Pooled Services: Chapter I of the Chicago Convention regulates the nationality of aircraft of ICAO member States. Under article 17 registrations governs the nationality of an aircraft. Article 18 prohibits dual registration but sanctions the transfer of registration of aircraft. Article 19 provides that the 'registration or transfer of registration of aircraft in any contracting State shall be made in accordance with its laws and regulations'.

Article 20 requires every aircraft engaged in international air navigation to bear appropriate nationality and registration marks. ICAO and contracting States are empowered under article 20 to demand information on the registration and ownership of any aircraft registered in any contracting State. ICAO may also make regulations under which contracting States are to furnish reports giving such pertinent data as may be available concerning the ownership and control of aircraft registered in those States and habitually engaged in international air navigation.

The prohibition on dual registration in article 18 is perhaps difficult to reconcile with provision in article 77 for joint operating organizations, international operating agencies and pooled services in which two or more States are involved and where registration in one State alone would appear impossible. ICAO has gone far in its study of the problem of international operating agencies and their validity under the Chicago Convention. The ICAO Council's Legal Committee has adopted a consensus, reached by its Sub-committee that the second sentence of article 77 of the Chicago Convention, without amendment, gives the Council full power to determine how the provisions of the Convention relating to nationality will apply to the aircraft of an international operating agency even though they do not have a nationality. This somewhat daring consensus runs counter to the long-held concept that if civil aircraft are to fly internationally, they must have a nationality.

SETTLEMENT OF DISPUTES AT ICAO

This section examines the provisions of the Chicago Convention with respect to the settlement of disputes, the procedures currently in force regarding the presentation of an application before the Council, the scope of the jurisdiction of the ICAO Council for the settlement of disputes, as well as the previous cases brought before the Council.

Chicago Convention Provisions for the Settlement of Disputes

The dispute settlement provisions are set out in Chapter XVIII (Articles 84 to 88) of the Chicago Convention. Article 84 provides that if any disagreement between two or more contracting States relating to the interpretation or application of this Convention and its Annexes it shall, on the application of any State concerned in the disagreement, be decided by the Council. This provision also stipulates that no member of the Council shall vote in the consideration by the Council of any dispute to which it is a party. A party to a dispute can appeal to the International Court of Justice (ICJ) a decision taken by the ICAO Council. Article 85 provides for the situation that a State party to a dispute which wishes to appeal a decision of the Council is not a party to the ICJ Statute. Currently, this provision seems to be no longer relevant since all 191 ICAO Member States are also members of the United Nations and therefore parties to the UN Charter and have accepted *de facto* the Statute of the

ICJ.6 Moreover, Article 86 stipulates that any decision of the Council on whether an international airline is operating in conformity with the provisions of the Chicago Convention shall remain in effect unless reversed on appeal and that the decisions of the Council, if appealed, shall be suspended until the appeal is decided. The decisions of the ICJ or an arbitral tribunal shall be final and binding. In order to ensure compliance with decisions under Chapter XVIII, the Chicago Convention sets out two distinct types of sanctions: one for individual airlines and the other for States. The first is set out by Article 87 which provides that each contracting State undertakes not to allow the operation of an airline of a contracting State through the airspace if the Council has decided that the airline concerned is not conforming to a final decision rendered in accordance with Article 86. With respect to the sanction for States, Article 88 stipulates that the ICAO Assembly shall suspend the voting rights in the Assembly and in the Council of any contracting State that is found in default under the provision of this chapter. These sanctions have encountered a certain number of critics over the years.

The Rules of Procedures for the Settlement of Differences

The provisions of the Chicago Convention with respect to disputes are supplemented by the *Rules of Procedure for the Settlement of Differences* (the Rules) adopted by the Council. These Rules set out the procedures for a State to introduce an application to the Council. Under these Rules, the Council functions as a judicial body. The Council takes its decisions on the basis of the submission of written documents by the parties (memorials and counter memorials) as well as on the basis of oral hearings. Another important aspect of the Rules is the importance given to mediation and conciliation either before or during the proceedings. For instance, it is provided at Article 14 of the Rules that any contracting State submitting a disagreement to the Council for settlement shall demonstrate that negotiations to settle the disagreement have taken place between the parties but were not successful. Also, at any stage of the proceedings, the Council may invite the parties in dispute to engage in direct negotiations in order to settle the dispute or to narrow the issues. Moreover, in order to facilitate the negotiations, the Council may designate an individual or a group of individuals to act as conciliators between the parties.

Another interesting aspect of the Rules is the fact that they are closely aligned with the *Rules of the Court of International Justice*. This similarity may to some extent create certain problems, as the ICJ is a judicial body and operates strictly as a tribunal. Therefore, the Rules adopted by the Council may not be adapted for a political body that does not operate according to the traditions of a court of justice. The Rules were first adopted in 1957 and subsequently amended in 1975, but have not been modified since then. To this end, some have recently argued in favour of a review of these Rules by the Council, which could potentially be a good opportunity to take into account the political specificity of this organ.

Jurisdiction of the ICAO Council over the Settlement of Disputes

The Council can adjudicate legal disputes concerning the interpretation and the application of the Chicago Convention. Since the entry into force of the Chicago Convention, they have been five disputes under Article 84. Apart from its mandate for the settlement of disputes, the

Council, by virtue of Article 66 of the Chicago Convention, has also jurisdiction over the settlement of disputes under the *International Air Services Transit Agreement* and the *International Air Transport Agreement*. Moreover, the Council has been entrusted by the Assembly, during its First Session in 1947, to act as an arbitral body for disputes arising among contracting States relating to international civil aviation matters, when expressly requested to do so by all parties to such dispute. A number of early bilateral agreements designated the ICAO Council as their dispute settlement body in case of any infringement by a party to such agreement. Today, bilateral air agreements have largely abandoned any reference to the ICAO Council in its capacity of adjudicatory forum; Most disputes under bilateral agreements are now resolved through arbitration. The Council also has the duty to report to the Assembly any violation of the Chicago Convention as well as to consider any matter relating to the Convention which any contracting State refers to it. Finally, at the request of any contracting State, the Council may investigate any situation which may appear to present avoidable obstacles to the development of international air navigation.

Cases Referred to the ICAO Council

Five cases have been brought to the attention of the Council under Article 84 of the Chicago Convention. The first dispute occurred in 1952 and was between Indian and Pakistan with respect to the interpretation and application of the Chicago Convention. India made an application before the Council but the dispute was eventually settled by negotiation between the parties. The second dispute between the United Kingdom and Spain took place in 1967 and dealt with the Spanish ban on overflight of the approaches to Gibraltar. The case was brought to the Council but the parties subsequently requested the Council in 1969 to defer the dispute *sine die*.

The third case arose in 1971 and involved again Pakistan and India following the suspension by India of all overflight of Indian territory by Pakistani aircraft. India submitted preliminary objections to the Council denying its jurisdiction. Following their rejection by the Council, India lodged an appeal to the ICJ, which confirmed the Council's decision. This case was finally settled in 1976 following a joint statement by the parties announcing the discontinuance of the proceedings. The fourth case was brought to the Council in 1998. At that time, the United States denied Cuban aircraft the right to fly over its territory towards Canada. After the hearings of the parties, the President of the Council acted as Conciliator and the parties reached an agreement. The most recent dispute brought to the Council occurred in 2000 and was between the United States and fifteen EU member States. The issue related to the application of an EU Directive on the noise of aircraft engines, also known as the "hushkit Regulation". The application of this regulation would have had the consequence of denying almost all US carriers to fly their older aircraft into the EU. The fifteen EU States submitted a preliminary objection concerning the jurisdiction of the Council. This objection was rejected by the Council and the parties proceeded with the hearing on the substance. The Council then decided to appoint the President as a Conciliator and the case was finally settled when the EU repealed its initial Regulation and adopted a Directive which satisfied both Parties.

The Council has never issued a decision on the merits. It seems that at every occasion, mediation as well as the use of the good offices of the President of the Council contributed to resolving the dispute. The fact that the machinery set out in Chapter XVIII of the Chicago Convention has not been able to produce over the years a decision on the merits is certainly one of the main reasons why many authors believe that this mechanism is a "failure". On the contrary, other authors believe that the incapacity of the Council ever to render a final adjudication does not necessarily indicate that the machinery under Chapter XVIII of the Chicago Convention is inefficient. According to these authors the inability for the Council to render decisions on the merits demonstrates that States prefer to settle their aviation disputes through the channel of diplomacy rather than adjudication. In fact, it is probably more advantageous for States to settle their dispute through negotiation rather than letting the Council decide for them.

Also, except for the "hushkit case", the disputes brought to the Council under Article 84 of the Chicago Convention were bilateral in nature and concerned rights of overflight in restricted areas. Moreover, as pointed out by Professor Milde, even if those disputes were related to overflight rights, their "centre of gravity" was in fact political in nature and their nature was often external to aviation. In fact, the "hushkit case" was the only one clearly dealing with environmental protection and is the only one which may provide guidance on how the ICAO Council would deal with a comparable dispute arising in the future.

The Performance of Quasi-Judicial Functions by the ICAO Council

In theory, when the Council is performing the duties set out under Chapter XVIII of the Chicago Convention, it "must consider itself an international judicial organ and act in accordance with rules of international law governing judicial proceedings. Thus, *inter alia*, members of the Council, even though they may be national representatives nominated by Governments must, […] act in an impartial and judicial capacity." However, it seems that in practice, the Council does not act as impartially and judicially as the statement above suggests. Since the signature of the Chicago Convention in 1944, a number of authors have raised concerns with respect to the judicial functions of the ICAO Council. These concerns are related to the fact that Council Members are neither necessarily independent nor always qualified in order to perform a judicial duty. The Council is composed of thirty-six sovereign States elected by the Assembly. The Representatives are nominated by their States as diplomatic agents rather than independent experts - unlike the Air Navigation Commissioners. Therefore, Council Members are not independent *per se*.

In opposition to ICJ judges, who are bound by their oath of office to act independently, the Council Members, when they adjudicate disputes decide on the basis of the interests of their own State and most likely following precise instructions. For example, during the hearing of the second case *Pakistan* v. *India* (1971) a number of Representatives requested the postponement of a vote, in order to seek instructions from their respective administrations. Council Members are appointed by their governments based on their expertise in the field of civil aviation. The Chicago Convention itself only stipulates that no Representative shall be actively associated with the operation of an international air service or have any financial interest in such service. Consequently, the academic and professional background of the representatives is diverse and most of them are not necessarily lawyers by trade nor have exercised any judicial functions prior to their appointment. The ability of the Members of the

Council to fully assume their judicial functions and render proper decisions based on the applicable law is therefore questionable.

Nevertheless, we should mention that despite its apparent lack of independence, the Council has not faced any serious criticism caused by its absence judicial capacity over the years. One explanation given by an author is that most cases brought before the Council were very specific, localized and they concerned bilateral disputes. Consequently, the Council was able to be seen as neutral and, to a certain extent, able to preserve its independence. Finally, considering the appeal mechanism that exists at the ICJ, a decision apparently unreasonably taken by the Council could be reversed on appeal.

Clearly any decision taken by the Council following a demand under Article 84 of the Chicago Convention would most likely be based largely on political grounds. We can certainly question whether such a method of adjudicating disputes is fit for our purpose in the present context. In fact, the first president of the ICAO Council, Dr. Edward Warner was already of the opinion in 1945 that “no international agency composed of representatives of States could be expected to bring judicial detachment to the consideration of particular cases in which large national interests were involved.”

MODULE V

Recent Developments in International Air Law

GLOBALIZATION, PRIVATIZATION AND LIBERALIZATION OF CIVIL AVIATION

The liberalization of international air transport regulation continued to evolve at various levels since the 1980s. Today, the forces of globalization have posed significant challenges for airlines as the world moves towards greater liberalization of the world economy. With the emergence of powerful trading blocks such as the European Union, the North American Free Trade Association and by extension, the Free Trade Area of the Americas as well other regional economic groupings, there has been an increasing reliance on international air transport as an instrument of economic and social development particularly in developing countries. Within the Caribbean Community, plans are well-advanced with respect to the establishment of the Caricom Single Market and Economy which is expected to come into effect by the end of 2005.

Within this new political and economic landscape, there is the increased threat of marginalization of developing states. Therefore, in order to protect the interests of developing states such as Jamaica, there must be the establishment of safeguards and safety nets in the aviation industry so as to enable national airlines to have sustained participation in international air transportation and to have access to the global market place.

The fact is that liberalization will gain acceptance only if it is based on fair and equal opportunity for all states to compete on a level playing field. The reality however is, there are great disparities in:

- The size of countries
- The level of economic development
- Technology,
- Financial resources
- The size of airlines.

All these issues must be considered and addressed if air transport liberalization is to be accepted by developing countries as a fair system which will support their objectives of participating in international air transport.

National liberalization policies. In addition to the progress of liberalization at the bilateral, regional and multilateral levels, there has been a shift of regulatory approach taken at the national level, from detailed regulation of airline operations to relying more on market forces. Liberalization policies and measures adopted by States vary widely in terms of their coverage and application. Recent examples include:

a) air service negotiations – for example, the Government of Canada announced a new international air policy called "Blue Sky" in 2006, envisaging a change from the previous gradual reduction of restrictions of bilateral air services agreements to negotiations of "open skies" agreements;

b) market access for foreign airlines – so-called "open skies" policies were adopted on a unilateral basis by Bahrain, Cambodia, Chile, China, Ecuador, Guatemala, Honduras, India, Kuwait, Lebanon, Morocco, Pakistan, Philippines, Sri Lanka, Tunisia, and the United Arab Emirates, some of them are applied only to specific airports and/or for limited durations. In 2007, Japan liberalized foreign airlines' access to 23 regional airports to strengthen the country's gateway position;
c) airline pricing – for example, the United Kingdom Civil Aviation Authority discontinued in 2006 its remaining airfare regulation from all routes other than the routes to the United States on a unilateral basis;
d) designation of airlines – Bangladesh, India, Kuwait, and Nigeria each allowed privately-owned airlines to operate in certain international markets; and
e) domestic air transport – further progress of liberalization of the domestic markets was reported in Brazil, China, India, Japan, Indonesia, Mozambique, Saudi Arabia and Thailand.Air Transport is one of the world's most vital resources. Its development as an industry and its technical and service achievements rank air transports as one the greatest contributors to the advancement of modern society. Since the first jet airliner flew in 1949, use of commercial aviation has grown more than seventy-five fold. This is a rate of progress unmatched by any other major form of transport. Air Transport is essential to economic progress.1 In an increasingly global community and marketplace, air transport makes possible the rapid movement of millions of people and billions of dollars' worth of goods to markets around the world. With regarding to regulations, the International aviation was highly regulated till mid-1970s. However, late seventies and early eighties, global aviation is undergoing the most dramatic changes in its history.

Since the passing of the De Regulation Act of 1978 in the USA, the international air transport is undergoing the dramatic changes in its history. Globalization, deregulation, liberal bilateral air transport agreements, international alliances, privatization of airlines and airports, and economic constraints are some of the factors challenging established management and business practices2. In this process each region plays variations on a common theme. In North America, air travel is the normal way of moving people, mail and increasingly, freight. In the European Union, we have liberalization, consolidation, concentration and decentralization. Civil aviation in Eastern Europe and the Former Soviet Union is being restructured and needs strengthening –while adjusting to a free market economy. Impressive Aviation expansion is seen in India, China and ASEAN. Latin America shows promise. Everywhere, these regional trends co-exist with an intensification of global ties across the Atlantic, the Pacific and the Eurasian Continent.

Deregulations in USA: The deregulation process in the United States of America stared first in air cargo sector in 1977, followed by the passenger deregulation in November 1978, when U.S. Congress passed the Airline Deregulation Act. The aim of the above act was that the market place should determine the airlines business decisions in the future. This fundamental change in policy meant that the U.S. Government's role in the new regulatory environment would be to protect the competitive process, not individual competitors. However, it is important to note that the scope of regulatory reform was limited essentially to commercial meters, such as pricing (which include fares, rates, and charges) market entry, capacity and frequencies, but did not include any relaxation of government controls over such matter as safety, air traffic control, airworthiness, personnel licensing and aircraft maintenance4.As a result of deregulation in the United States, many new airlines entered the market and a substantially lower and wider range of new promotional and special fares were introduced. However, the cut-throat competition faded fast and the focus of competition shifted to the control of airport departure gates and take-off and landing slots. Today, the airline industry in the United States is concentrated in fewer hands than ever before and it can be expected that this trend will continue the future. While many supporters of 1978 legislation expected that it would reduce the concentration of market share among the larges airlines, the opposite has occurred. For instance, in the 1990s we can see five larges U.S. airlines controlled over 80per cent of total passenger business.

Deregulations in other parts of the world: Under the influence of deregulation in the United States, other industrialized countries, such as Australia, Canada, European Union (EU) countries and Japan adopted policies to liberalize the aviation industry and to bring about a more competitive environment. The structural changes in the Canadian airline industry bear a great similarity to developments in the US. In a period of de facto deregulation, starting in 1984, the airline industry in Canada moved rapidly toward a high degree of market concentration, before the new National Transportation Act came into effect in 1987. The liberalization in the air transport regulatory structure in the European Union ranks second to those in the United States and Canada in their significance for the international airline industry. Initially, developments were slow as a more cautious approach was taken considering that most of the major international airlines were owned by their governments. It was only in 1987 that important moves were made toward a common air transport policy6. A major landmark was the decision of the European Court of Justice in the Nouvelles Frontieres case in April 1986, that air transport agreements are subject to the competition rules of the Treaty of Rome, Signed in 1957 by six European Countries. This meant that airlines may be prosecuted for violation unless exemptions have been granted to them under policies agreed upon by the Council of Ministers. The implications of this judgment put considerable pressure upon the European Community (EC), presently European Union (EU, to develop and agree upon an air transport policy. In December 1987, the Council of Ministers adopted a package of legal instruments put to them by the Commission and thus took the first step toward a general liberalization of the European air transport industry7.

In addition, the European Civil Aviation Conference (ECAC), currently comprised of thirty-three European States, developed two International Agreements on intra-European airfares and capacity sharing. The EC and ECAC liberalization measures adopted in 1987 were followed by other regulatory changes, covering further reductions in capacity and tariffs control and additional provisions for freer market process, prior to the completion of a single European market by the end of 1992. The EU third package on air transport regulations became effective on 1 January 1993. There are three different regulations: Regulation NO. 2407—the licensing regulation, dealing with the requirements for the issue and revocation of operating licenses to air carriers established in the Community: Regulation No. 2408—the access regulation, giving access to intra-Community routes to Community air carriers, and Regulation No. 2409—the fares regulations, whose purpose is to abolish government intervention in the determination of fares on intra-Community routes8. As a result, all air services within EU countries may be regarded as having a special status under the EU third aviation package a domestic traffic and thus providing EU-based airlines with the opportunity to open new routes, whereas non-EU airline services within EU-countries may be considered cabotage traffic. This could bring about a new dimension in future negations concerning air service agreements.

The Developments in the Asia/Pacific Region and in India: The Asia/Pacific region offers abundant opportunities as the fastest growing aviation region in the world. The reasons for this optimism includes the strong economic expansion, significant ethnic ties with various countries, increase in leisure time, moves towards air transport liberalization and vigorous efforts to promote tourism to/from the region. The size and economic potential of the region has acted as a catalyst for development of new aircraft types, and manufacturers foresees a big market for future new aircraft. Within this region, India is a long-term potential giant. The most serious impact of deregulation and liberalization of the aviation industry is being felt by airlines in developing countries. This may well lead to the formation of regional airlines from a number of small carriers in order to improve efficiency and productivity, to reduce cost and to maintain market share. Alternatively, airlines could greatly benefit from combined operations and joint projects, such as joint scheduling, sharing of equipment, crews and ground facilities, pooling of aircraft parts and support equipment, and cooperative arrangements for aircraft overhaul and maintenance.

The rapidly changing environment of world air transport makes it essential that governments of developing countries and airline management should be very clear about their objectives and the need for close cooperation and sharing of scarce national resources. Increasingly, governments around the world are viewing privatization of government-owned and controlled companies as an important factor in attaining broad economic and public policy objectives, and airlines are no exception. The Main reasons for this trend are: To act as a catalyst for deregulation and liberalization of important industries; to raise finance through the sale of state enterprises and to reduce the cash drain on public funds by privatizing government-owned companies; to free government enterprises from political interference and civil service constrains so that they can become economically viable and profitable; and to introduce and encourage competition with a view to optimizing resources. The size and importance of India's potential market is not matched by the size of its national carriers due to a variety of factors, an important one being the low priority that was attached to Civil Aviation in a resource constrained economy. The basic thrust of India's aviation policy is two-fold, firstly, to widen air links through negotiation of new agreements and review of existing ones and secondly to formulate a comprehensive approach to obtain increased opportunities for its national carriers abroad.

Regulatory Development: The liberalization of international air transport regulation continued to evolve at various levels since the 1980s. Bilateral air services agreements remain the primary vehicles for liberalizing international air transport services for most States. During the past decade, about one thousand bilateral air services agreements (including amendments and/or memoranda of understanding) were reportedly concluded. Over 70 per cent of these agreements and amendments contained some form of liberalized arrangements, such as expanded traffic rights (covering Third, Fourth and in some cases Fifth Freedom traffic rights), multiple designation with or without route limitations, free determination of capacity, a double disapproval tariff or free pricing regime, and broadened criteria of airline ownership and control. As the airline business evolves, some of the recent bilateral air services agreements have included provisions dealing with computer reservation systems (CRSs), airline code sharing, leasing of aircraft and intermodal transport. One notable development is the considerable increase in the number of bilateral "open skies" air services agreements, which provide for full market access without restrictions on Third, Fourth and Fifth Freedom traffic rights, designation, capacity, frequencies, code sharing and tariffs. The first such Regional and plurilateral liberalization- The adoption of group approaches to liberalization has been an alternative means to regulatory change and adjustment for many States, as attested by the conclusion of a substantial number of agreements and arrangements on a regional basis or in a plurilateral form (i.e. an agreement amongst a few like-minded States but open for others to join). All are at different stages of development and implementation, but have the common objective of liberalizing the market amongst the member States concerned. Some agreements also begin to build legal and institutional regulatory frameworks to govern the group market as a whole.

At the regional level, the following agreements or arrangements for liberalization of intra-regional air transport services (eight of which provide for instant or phased-in liberalization leading to full market access) are currently in operation:

a) the Single Aviation Market within the European Union (EU, then European Community) (1987, 27 States)2;
b) the Decision on Integration of Air Transport of the Andean Community (CAN, then Andean Pact) (1991, four States);
c) the Banjul Accord for an Accelerated Implementation of the Yamoussoukro Declaration (1997, six States; the Multilateral Air Services Agreement for the Banjul Accord Group was signed amongst seven States in 2004);
d) the Agreement on the Establishment of Sub-regional Air Transport Cooperation among Cambodia, Lao People's Democratic Republic, Myanmar and Viet Nam (CLMV) (1998; the Multilateral Agreement on Air Services was signed in 2003);
e) the Multilateral Air Services Agreement (MASA) of the Caribbean Community (CARICOM) (1998, nine States);

The first liberalization package was started in 1987 within 12 member States, followed by the second package in 1990 and the third package in 1993 with a single market completed in 1997. The number of member States increased to 15 in 1995, to 25 in 2004, and to 27 in 2007. The liberalization package has been applied also to three member States of the European Free Trade Association (EFTA) belonging to the European Economic Area (EEA) since 1994 as well as Switzerland through a bilateral agreement on air transport since 2002. The Single Aviation Market was further developed to the European Common Aviation Area (ECAA) involving 35 States in 2006 (see paragraph 2.11).

The Regulations for the implementation of Liberalization of Air Transport Services of the Common Market for Eastern and Southern Africa (COMESA) (1999, 12 States);

The Decision relating to the implementation of the Yamoussoukro Declaration concerning the liberalization of access to air transport markets in Africa (Yamoussoukro II Ministerial Decision) of the African Union (AU) (2000, 52 States); j) the Agreement on the Liberalization of Air Transport of the Arab League States (2007, six States; this agreement formalized the Intra-Arab Freedoms of the Air Programme devised in 2000 by the Arab Civil Aviation Commission (ACAC)); k) the Pacific Islands Air Services Agreement (PIASA) of the Pacific Island Forum (2007, six States); and l) the Air Transport Agreement of the Association of Caribbean States (ACS, 2008, seven States and two territories).

Multilateral initiatives- Although most international air services operate under bilateral or regional regimes, the International Air Services Transit Agreement (IASTA), which entered into force in 1945, provides for the multilateral exchange of rights of overflight and non-traffic stops for scheduled air services among its Contracting States. The Agreement is a cornerstone of multilateralism in air transport. The number of States which are parties to IASTA was 129 as of March 2009 (112 a decade ago), but about one third of ICAO Contracting States, including several with large land masses, remain outside the Agreement.

There has been an attempt to liberalize air transport services through the multilateral trading mechanism under the World Trade Organization (WTO). WTO was established in 1995 with a broad mandate to liberalize and expand all service sectors through the General Agreement on Trade in Services (GATS). Trade rules and principles contained in GATS are obligations on most-favoured-nation (MFN) treatment (i.e. the principle of not discriminating between one's trading partners) and transparency, as well as commitments to national treatment (i.e. the principle of giving others the same treatment as one's own nationals) and market access. The Annex on Air Transport Services to GATS applies such rules and principles to three specific air transport activities: aircraft repair and maintenance services; selling and marketing of air transport services; and CRS services. It specifies that GATS shall not apply to measures affecting traffic rights or services directly related to the exercise of traffic rights.

Pursuant to a ministerial decision, in 2000, WTO launched the first mandatory review of the operation of the Annex covering developments in the air transport sector for the period 1995–2000. During the review, there was some support to extend the Annex to include additional "soft rights" (for example, ground handling) as well as some "hard rights" (for example, air cargo, non-scheduled and intermodal transport), but there was no consensus on whether or how this would be pursued. In 2003, WTO decided to end the first review process with the conclusion that the Annex remains unchanged.

In 2005, the second mandatory review of the Annex commenced with the assessment of the developments in the air transport sector and the operation of the Annex for the period 2000–2005. Discussions on the second review are ongoing with a view to identifying services that could benefit from a clarification and even extension of the scope of the Annex so that the Annex can accommodate the dynamics of the air transport system.

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d. Designation of airlines – Bangladesh, India, Kuwait, and Nigeria each allowed privately-owned airlines to operate in certain international markets; and
e. Domestic air transport – further progress of liberalization of the domestic markets was reported in Brazil, China, India, Japan, Indonesia, Mozambique, Saudi Arabia and Thailand.

Competition policies- As liberalization spreads, the question of how to maintain and promote fair competition in air transport is increasingly becoming an issue. One indication is a marked rise in the adoption of competition laws by States. About 90 States now have competition laws of some sort with a number of bilateral antitrust enforcement cooperation agreements particularly between developed countries. The use of competition laws for the air transport sector has occurred not only with more frequency but also has encompassed a variety of issues, ranging from abuse of dominant position such as capacity dumping and predatory pricing, collusive behaviours including price-fixing, inter-airline coordination and alliances (see paragraph 3.6), consolidation through mergers and acquisitions (see paragraph 3.8), vertical business relationships in product distribution (see paragraph 3.21), to State aid4 (see paragraph 3.18 for start-up aid). One of the fundamental problems here is how to distinguish between unfair and normal competitive behaviours, and reliance has been placed on analyses and development of

Consumer protection policies- Protection of consumer interests covers many elements, including air passenger rights and the contractual relationship between airlines and their users. There may exist some instances where competition does not necessarily guarantee a minimum level of service levels that customers can expect, mainly because of the lack of information available to them and their weak negotiating position. Certain elements might not even be a matter of competition between airlines. Concerns about the limits of competitive response have induced a number of States to ask the industry to develop voluntary commitments (non-legally binding self-regulation) and/or to take some direct regulatory measures that address consumer interest issues such as denied boarding compensation, flight cancellations and access for incapacitated passengers.

With respect to regulatory measures, although most States apply general consumer protection laws/rules, if any, to airlines' commercial practices, aviation-specific rules/regulations were introduced in some States and regional groups. For example, the United States DOT has adopted rules, inter alia, on misleading price advertising, airline oversales, baggage liability limit, a report on consumer-related statistics, and passengers with disabilities, and has been in the rule-making process for long delays since 2007. China, Colombia and Thailand also have specific rules on certain aspects of air passenger rights. At the regional level, EU strengthened air passenger rights by adopting a regulation establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, which became effective in 2005. EU also adopted, in 2006, a regulation concerning the rights of disabled persons and persons with reduced mobility when travelling by air. LACAC adopted a recommendation, in 2000, on a consumer protection code for airlines, while COMESA has been developing policy guidelines on consumer protection.

Privatization- Privatization of government-owned airlines has been one of the pre-eminent transformations in air transport. The motives for privatization have been highly diverse, ranging from purely economic considerations, to try to improve operating efficiency and competitiveness, to a more pragmatic desire to reduce the heavy financial burden for governments for financing capital investment in new equipment. Whatever the reasons, the privatization of government-owned airlines has accompanied a more commercially oriented outlook within a liberalized competitive environment.

Airline business models- In recent years, successful low-cost carriers (LCCs) have been challenging the full service network model of traditional major airlines as well as the holiday package business of charter airlines. The common features of the business model of LCCs are, with some variations: point-to-point network focussing on short-haul routes, high frequencies, simple low fare structures, high-density single class with no seat assignment, simple in-flight services, staffing flexibility and minimal overheads, and intensive use of electronic commerce (e-commerce) for marketing and distribution. To sustain low-cost structures, these airlines usually operate a single aircraft type with higher daily aircraft utilization. They also use less-congested secondary airports to ensure short turn-rounds and high punctuality and to save airport related costs. It is the low operating costs that enable LCCs to allocate a large portion of their seats to low fares.

This low-cost formula is not new but has been adopted by many new entrants in the United States following domestic deregulation in 1978. Although only few of the earlier entrants survived, successful LCCs have established sustainable significant cost advantages, and grown rapidly not only at the national level (for example, Southwest Airlines, jetBlue Airways and Virgin America in the United States, Westjet in Canada, GOL in Brazil, Virgin Blue Airlines in Australia, Skymark Airlines in Japan, Spring Airlines in China, IndiGo and SpiceJet in India, Nas Air and Sama in Saudi Arabia, and 1Time in South Africa) but increasingly internationally (for example, Ryanair and easyJet in Europe, AirAsia in South East Asia, and Air Arabia and Jazeera Airways in Middle East). The low-cost phenomenon has been spreading quickly with some successful LCCs investing in airlines in neighbouring countries. For example, AirAsia established its affiliate airlines in Indonesia and Thailand, while Virgin Blue Airlines established Pacific Blue Airlines (New Zealand) and Polynesian Blue Airlines (Samoa).

Facing growing cost and competitive pressures, major network airlines and charter airlines have been forced to change their business priorities towards redesigning their business concepts and developing alternative models for their operations. One of the models chosen by the major network airlines is to set up separate organizations or subsidiaries to handle operations on short-haul routes to be able to compete with LCCs and to avoid the potential threat of new entrants. This low-cost “airline within an airline” strategy, despite limited success of earlier attempts, tries to combine key ingredients of LCCs’ approach with the reputation and quality of their own brand. Again, an “airline within an airline” is a formula that is developed mainly for domestic services (for example, Click Mexicana of Mexicana, Jetstar of Qantas, Nok Air of Thai Airways International, Kulua of Comair, and Mango of South African Airways) but is also extended to international services (for example, Jetstar Asia minority owned by Qantas Airways, Tiger Airways minority owned by Singapore Airlines, Air India Express of Air India, bmibaby of bmi British Midland, Atlas Blue of Royal Air Maroc, and Clickair minority owned by Iberia). Furthermore, Aer Lingus, Flybe and Meridiana transformed themselves into LCCs.

The emergence and growth of LCCs prompted mixed regulatory reactions among States. In 2005, the Government of Indonesia announced that it would limit foreign LCCs’ landing rights at four major airports. In the same year, the Government of China adopted more flexible regulatory measures in treating service provisions and pricing for newly-established domestic LCCs. The European Commission adopted in 2005 guidelines on financing of airports and start-up aid to airlines, especially LCCs, departing from regional airports where the public authorities do not act as would a private investor working in a market economy. The guidelines reflect the Commission’s decision of February 2004 on the establishment of Ryanair at Charleroi Airport (Belgium).

Privatization of Airports in India: After liberalization and globalization policies entered in to the commercial aviation market in India consumer demands and constraints for national carriers started increasing. India for the first time introduced the open skies policy in cargo services and chartered flights for domestic and foreign carriers. This policy has facilitated the emergence of all cargo-airlines in India. Thus India's new economic policy way back in 1990s has triggered far-reaching fiscal, trade, industrial and economic reforms aimed at accelerating growth, employment, productivity and technical innovations.

As far as the aviation infrastructure is concerned, the Airports Authorities Act 1994 established the airports across the nations. It was formed by merging the international airport authority and the national airport authority in order to promote integrated development of airports across nations and ensuring adequate safety standards. It is also responsible for managing the entire airspace and adjoining areas.

GOI thereafter in 1997 also adopted the Airport Infrastructure Policy for the purposes of utilizing foreign and domestic capital for airport development. In 2003 the government also passed the Airports Authority of India (Amendment) Act 2003.

India's open skies policy in cargo services as well as its liberalization of tourist charters has not only given considerable boost to exports and imports but also promoted tourism. In the exchange of traffic rights under the bilateral agreements India is adopting a more flexible approach by negotiating fresh entitlements or reviewing the existing ones.

ENVIRONMENTAL CONCERNS IN AVIATION

Aviation is a critical part of our national economy, providing for the movement of people and goods throughout the world, enabling our economic growth. In the last 35 years there has been a six-fold increase in the mobility provided by the U.S. air transportation system. At the same time there has been a 60% improvement in aircraft fuel efficiency and a 95% reduction in the number of people impacted by aircraft noise.

Despite this progress, and despite aviation's relatively small environmental impact in the United States, there is a compelling and urgent need to address the environmental effects of air transportation. Because of strong growth in demand, emissions of some pollutants from aviation are increasing against a background of emissions reductions from many other sources. In addition, progress on noise reduction has slowed. Millions of people are adversely affected by these side effects of aviation. As a result of these factors and the rising value being placed on environmental quality, there are increasing constraints on the mobility, economic vitality and security of the nation. Airport expansion plans have been delayed or cancelled due to concerns over local air quality, water quality and community noise impacts.

Military readiness is challenged by restrictions on operations. These effects are anticipated to grow as the economy and demand for air transportation grow. If not addressed, environmental impacts may well be the fundamental constraint on air transportation growth in the 21st century. When the Chicago Convention was singed way back in 1944, it was considered as unnecessary to make any reference to global environment as the impact on the environment was negligible. Air routes were and so were the dimensions of the aircraft.

There were hardly any airports or aviation hubs except in London, Frankfurt, Chicago, Bombay, Tokyo, etc.

The need to protect the environment was first expressed in the Stockholm Declaration in 1972 in the UN Declaration on Human Rights in Stockholm. It called upon the member states of the UN to create new laws and institutions for protection and safeguarding of the national environment on which depends the continued survival of human beings.

In response to this global concern so raised, the ICAO established a Committee on Aviation Environmental Protection (CAEP). Its main function was to assist the ICAO in formulating new policies and adopting new Standards and Recommended Practices (SARPs) related to aircraft noise and emissions, and more generally to aviation environmental impact. Apart from this the CAEP also undertook specific studies, as requested by the Council. Its scope of activities encompasses noise, air quality and the basket of measures today considered for reducing international aviation CO2 emissions, including aircraft technology, operations improvement, market-based measures and alternative fuels. It further keeps the Council and the Assembly updated on the latest aviation environmental trends assessment including future air traffic projections and impact assessment of proposed policies and developments.

The Council reviews and adopts CAEP recommendations, including amendments to the SARPs, and in turn reports to the ICAO Assembly where the main policies on environmental protection are ultimately defined. ICAO thereafter produced Annex 16 for the purpose of control of aircraft noise and aircraft engine emissions. Annex 16 is thus an international standard and by virtue of being a part of the Chicago Convention is binding upon the member states. Environmental Concerns in aviation operations were also recognized by Dr. Phillipe Rochert, the then Secretary General of ICAO in 1995 who noted that the objective of ICAO in the protection of environment was to minimize the environmental impact of international civil aviation in a manner that is acceptable on a global basis. Annex 16 has been explained in the previous module.

<u>2004 Report of CAEP:</u> In 2004, ICAO modified the terms of reference of CAEP in the sixth meeting and the committee was asked to consider the latest developments that have taken place in associated fields like land use planning, noise abatement operation procedures, and emission control through operational practices. It further included a program for research for control of aircraft noise and gaseous emissions from aircraft engines. In the program of CAEP the Council had asked the committee to monitor the works of UN inter-governmental panel on Climate Change and keep UNFCCC informed of CAEP activities. Besides CAEP is to review the environmental aspects of the global air navigation plan for the CNS/ATM and provide inputs for ICAO.

As a result of growth in air transportation, emissions of many pollutants from aviation activity are increasing against a background of reductions from many other sources. In addition, progress on noise reduction has slowed. Although it depends on the metric used, estimates suggest that millions of people are adversely affected by these side effects of aviation. Because of these factors and the rising value placed on environmental quality, there are increasing constraints on the mobility, economic vitality and security of the nation. Airport expansion plans have been delayed and cancelled due to local air quality, water quality and community noise impacts.

Although noise is the primary environmental constraint on airport operations and expansion, many airports either put local air quality concerns on equal footing with noise or anticipate they will be on equal footing soon [GAO 2000c]. Emissions of nitrogen oxides (NOx), carbon monoxide (CO), unburned hydrocarbons (UHC) and particulate matter (PM) from a variety of airport sources contribute to local air quality deterioration, resulting in human health and welfare impacts. There are physical and chemical phenomena that make it more challenging to reduce NO_x emissions from aircraft engines that employ high temperatures and pressures to reduce fuel consumption.

The topic of greatest uncertainty and contention is the climate change impact of aircraft. In Europe, this is considered the single most important environmental impact from aviation [SBAC 2001], while in the United States many still regard it as less important and less urgent than community noise and local air quality. It is a fact that aircraft emit chemical species and produce physical effects (like condensation trails, or contrails) that most scientists believe affect climate. Scientific assessments also suggest that the resulting chemical and physical effects due to aviation are such that aviation may have a disproportionate effect on climate per unit of fuel burned when compared to terrestrial sources. In 1999, a special aviation study, conducted by the Intergovernmental Panel on Climate Change (IPCC) estimated that aviation was responsible for approximately 3.5% of the anthropogenic forcing of the climate in 1992. These estimates reflect a finding that per unit of fuel burned, radioactive forcing from aircraft is expected to be approximately double that of land-based use of hydrocarbon fuels [IPCC 1999]. Since the IPCC study, the scientific understanding of some of the chemical and physical effects (particularly contrails and the cirrus clouds they may induce) has evolved. A recent report by the UK Royal Commission on Environmental Protection (RCEP) stated that the net effect of contrail and aviation-induced cirrus is expected to be three to four times the radioactive forcing due to the CO2 emitted from aircraft, although further changes in these estimates are likely [RCEP 2002].

If the estimates are correct and the aviation growth projections used by the IPCC are realized, aviation may be responsible for between 3% and 15% of anthropogenic forcing of climate change by 2050 [IPCC 1999].

Because of the uncertainty in understanding the impacts of aviation on climate, appropriate technological, operational and policy options for mitigation are also uncertain. As a result most mitigation options currently being pursued focus on reducing fuel burn.

Noise, local air quality and climate effects of aviation result from an interdependent set of technologies and operations, so that action to address impacts in one domain can have negative impacts in other domains. For example, both operational and technological measures to reduce noise can result in greater fuel burn, thus increasing aviation’s impact on climate change and local air quality [SBAC 2001]. Emissions interrelationships make it difficult to modify engine design as a mitigation strategy since they force a trade-off among individual pollutants as well as between emissions and noise [FAA 2004a].

Modern aviation has made airports huge industrial and economic centres. The vicinity of the airports in subjected to the impact of noise and air pollution. The ecology around the airport is disturbed and wild life, land use and water resources are adversely affected.

Thus the Council of ICAO suggested preparation of the guidance material in order to help the states in developing and planning the expansion of existing international airports and for construction of new ones to help meet the environmental goals. The airport manuel so prepared consisted of brief ICAO parameters of work involving airport planning for environmental protection. The goals of the master airport planning are thus as follows:

a. To provide for orderly development of the airport to meet the present and future airport transportation needs
b. To ensure that aviation is seen in proper perspective for balanced multi-model transport system for the region or for national purpose, protect the environment through location of aviation facilities, promote and establish an effective organization for implementing the master plan, ensure coordination of government aviation departments and ICAO and IATA, etc.
c. To coordinate the airport master plan with State airport system and regional transport plans
d. To provide a basis for overall airspace management
e. To involve public bodies in airport management
f. To develop long range airport plans
g. To optimize land use around the airport
h. To consider air transport to help area and regional plans for economic uses and ask planning organization to involve the affected political entities to participate in the planning of the airport.

Although the Chicago Convention is silent on the issue of aviation environmental regulation, ICAO has nevertheless since 1972 adopted and continually updated International Standards and Recommended Practices (SARPs) on Aircraft Noise and subsequently on Aircraft Engine Emissions and designated them as Annex 16 Vols. I & II. respectively to the Chicago Convention.

Under the Chicago Convention, SARPs are only to be designated as Annexes to the Chicago Convention for the sake of convenience (See Art. 54(l) of the Chicago Convention). As such, the provisions of SARPs do not have the same legal effect as the substantive provisions of the Chicago Convention. Once SARPs are adopted (or amended) by ICAO and enter into force, all contracting states have the discretion to determine whether or not to apply them, and those states which find it impracticable to apply the requirements of the SARPs or deem it necessary to adopt regulations different from the requirements of the SARPs are only obliged to give immediate notification of this to ICAO. (See Art. 38 of Chicago Convention). By and large, the majority of contracting states apply SARPs not because of their binding effect but for fear of being ostracized from the international aviation community. The SARPs contained in Annex 16 only address Aircraft Noise and Aircraft Engine Emissions (i.e., vented fuel and gaseous emissions), basically through certification of aircraft engines on an LTO cycle. They do not address other equally important aviation-related environmental issues such as surface and groundwater contamination by aviation fuel and de-icing chemicals etc.

States may either implement ICAO's SARPs at the national (domestic) level or, within the time limited for doing so, simply file differences notifying ICAO of the impracticability of doing so (or of their desire to adopt different regulations). Depending on the domestic legal system, national implementation of SARPs may require executive and/or legislative action on the part of the contracting states. Beyond the foregoing, ICAO has no means of verifying whether contracting states which have not filed any differences are actually implementing the SARPs domestically. There is also no mechanism for following up on those States which do file differences with ICAO.

With regard to Safety-related SARPs, ICAO has since 1998 established a Universal Safety Oversight Audit Program (USOAP) by virtue of which the organization is able to assess contracting states' implementation of the relevant Annexes on a first hand basis and to remedy any deficiencies. The same applies to Security-related SARPs, in respect of which a Universal Security Audit Program (USAP) has been established. With regard to Annex 16, however, there is no audit program by which ICAO is able to assess whether contracting states are implementing the SARPs or not

Like any other form of public mass transport that relies on finite planetary resources, aviation cannot (in its present form) be considered sustainable in the very long term. Because of the finite nature of the resources upon which aviation relies, it is more realistic in the medium term to think how best to improve the sustainability of air transport rather than it achieving sustainable development.

Demand for air transport is continually growing and, if this demand is to be met with all the attendant benefits, society must also accept the costs (noise, pollution, climate change, risk, resource use etc). Whilst it is not possible to make aviation sustainable (in its present form) in the very long term, much can be and is being done to improve aviation’s sustainability including:

- ensuring safety and security;
- efficiently optimising available capacity;
- collaborating to achieve a shared vision for more sustainable aviation;
- making decisions based on optimising the balance between social, economic and environmental imperatives;
- serving the need for mobility in a manner where the greatest overall benefit will arise, meeting the needs of stakeholders;
- taking every opportunity to minimise adverse impacts and resource use by creating and operating more efficient ATM systems, equipment and technology;

- targeting efforts where they will produce the greatest improvement in our citizen's quality of life;
- investing in adequate research, training, education and awareness;
- being transparent and honest about both the good and bad aspects of air transport;
- avoid conflicting policy and regulations.

ROLE OF INTERNATIONAL ORGANIZATION IN AVIATION LAW AND MANAGEMENT

WTO and Air Transport Industry: There has been an attempt to liberalize air transport services through the multilateral trading mechanism under the World Trade Organization (WTO). WTO was established in 1995 with a broad mandate to liberalize and expand all service sectors through the General Agreement on Trade in Services (GATS). Trade rules and principles contained in GATS are obligations on most-favoured-nation (MFN) treatment (i.e. the principle of not discriminating between one's trading partners) and transparency, as well as commitments to national treatment (i.e. the principle of giving others the same treatment as one's own nationals) and market access. The Annex on Air Transport Services to GATS applies such rules and principles to three specific air transport activities: aircraft repair and maintenance services; selling and marketing of air transport services; and Computer Reservation System services. It specifies that GATS shall not apply to measures affecting traffic rights or services directly related to the exercise of traffic rights.

The regulatory process based on bilateral agreements, conceived in 1944, is under pressure as it tries to cope with the pace of change in the industry. The predominant regulatory response to this pressure has been to maintain the bilateral system, but to relax many of the provisions in these agreements. This process has been widely welcomed and the debate will continue as to whether or not the bilateral process is sufficient to meet the needs of the industry. A number of countries have concluded that the answer is no and complemented their network of bilateral agreements with Plurilateral agreements. Market access in the air transport sector is unique in its treatment within the WTO. To date, WTO Members have largely excluded the issue from the GATS agreement, but are continuing to seek a better understanding of how multilateral cooperation and rules can best serve the industry.

Since then the system has evolved to the point where by June 2004, more than 3,500 bilateral agreements have been signed involving more than a 100 countries.

In addition, in 1995 the General Agreement on Trade in Services (GATS), which is administered by the World Trade Organization (WTO) came into effect. As a result, a number of different bilateral, regional and multilateral instruments exist today, creating a complex system of governance. The purpose of this Section is to review the different approaches to market access and identify a set of issues facing policy makers at the international level.

Regulating international air transport has traditionally involved policies covering market access, pricing and capacity. Recent bilateral agreements, however, have liberalized many aspects of pricing and capacity, leaving market access as one of the principal issues that is still heavily regulated. The next Subsection reviews market access issues. This is followed by an examination of the trend by countries to sign bilateral agreements and how air transport is treated in the GATS.

(a) Bilateral 'Open Skies' and
(b) regional agreements

As explained above, the international air transport system is governed by a system of bilateral agreements.

WTO Members have simply used the flexibilities offered by the GATS to maintain these agreements as exceptions to the most favoured nation principle.41 In the case of aviation however, Members chose a different route. They decided to exclude from the purview of GATS the core of commercial air transport – the "hard rights" or traffic rights and the services directly related to the exercise of traffic rights. Members nevertheless decided that the GATS shall apply to measures affecting three services relevant to air transport – namely:

(a) aircraft repair and maintenance services;
(b) the selling and marketing of air transport services; and
(c) computer reservation system (CRS) services.

Between 25 and 45 original Members of the WTO – depending on the service and the modes of delivery concerned – have undertaken commitments for these services, while relatively numerous MFN exemptions have been listed, in particular in the area of computer reservation systems (16) and of the selling and marketing of air transport services (17). Accessions of new Members to the WTO since 1995 have only marginally changed this picture. In addition, even in the services covered by the scope of the GATS, Members have agreed on a "grandfathering" provision whereby any specific commitment or obligation assumed under the GATS shall not reduce or affect a Member's obligations under bilateral or multilateral agreements that are in effect on the date of entry into force of the WTO Agreement. Furthermore, they have agreed on a provision regarding the exhaustion of pre-existing dispute settlement provisions, such that the dispute settlement procedures of the WTO may be invoked only where obligations or specific commitments have been assumed by the concerned Members, and where dispute settlement procedures in bilateral and other multilateral agreements or arrangements have been exhausted. These two provisions have no equivalent in any other services sector. They have not been tested, since so far no dispute settlement cases on air transport services have arisen. Neither have they been the subject of any discussion among members since the entry into force of the Agreement. The question of the coverage of air transport services by the GATS has been the subject of many controversial discussions and diverging views. The parameters of this discussion are the following:

Paragraph 1 of the Annex on Air Transport Services (which has the same legal value as the GATS agreement itself), stipulates that the Annex "applies to measures affecting trade in air transport services, whether scheduled or non-scheduled, and ancillary services". While "measures affecting trade in services" have been widely defined by subsequent dispute settlement cases, "trade in air transport services" is not defined and nor are "ancillary services";

Paragraph 2 of the Annex stipulates that the Agreement, including its dispute settlement procedures, shall not apply to measures affecting: (a) traffic rights, however granted; or (b) services directly related to the exercise of traffic rights. While traffic rights are extensively and precisely defined by the Annex, "services directly related to the exercise of traffic rights" have not been defined at all.

The divergence of views among Members on approaches to the coverage of air transport services by the GATS arises from this absence of definitions. The problem is further complicated by the absence of a clear distinction between the general exclusion (traffic rights and services directly related to the exercise of traffic rights) and the exception to that exclusion (the three covered services), as well as by the lack of any link between the classification of the Annex and the classification generally used for all other services. These inconsistencies are reflected in the schedules of Members' commitments. An analysis of the commitments undertaken by Members shows that some of these go beyond the three services listed in the Annex. Some of the scheduled services appear in the air transport part of the non-compulsory classification used by most Members in most sectors – the Central Product Classification of the United Nations (CPC) and its abbreviated version in GATS document MTN/GNS/120. Wet leasing is one such example.

Other commitments in the schedules cover services not listed in the CPC under air transport services, such as ground handling (services auxiliary to all modes of transport), freight forwarding (ibidem), storage and warehousing (ibidem), financial leasing (financial services), dry leasing (business services), franchising (distribution services) and catering (hotels and restaurants services). In other instances, Members have excluded from their commitments the air transport part of a given service, such as aerial advertisement from advertisement, flight training school from adult education, or catering from hotels and restaurants. Finally, some Members have felt it necessary to list MFN exemptions on some of these services, such as ground handling. So far, no dispute has arisen regarding these commitments. The text of the Annex was heavily negotiated, particularly regarding its coverage. An agreement could only be achieved at the time on this question through the inclusion of a review clause contained in paragraph 5 of the Annex. This review clause stipulates that "[T]he Council for Trade in Services shall review periodically, and at least every five years, developments in the air transport sector and the operation of this Annex with a view to considering the possible further application of the Agreement in this sector."

The first of these reviews was held between September 2000 and November 2003, essentially during four dedicated meetings of the regular session of the Council for Trade in Services. These extensive debates have led to no consensus with regard to any possible clarification of the existing scope of the Annex, or with regard to any possible extension of the scope of the GATS to the air transport sector.

On the one hand, several Members contended that since the Annex only excluded the "services directly related to the exercise of traffic rights", services not directly related to the exercise of traffic rights were already included in the scope of the GATS. This was termed the "grey area" concept, whereby a range of services would neither fall into any of the three explicitly covered services (aircraft repair and maintenance services, the selling and marketing of air transport services, computer reservation systems services) nor be included in traffic rights or services directly related to the exercise of traffic rights.

In the absence of a definition of what constitutes a "service directly related to the exercise of traffic rights" those Members suggested a functional test: was retaining traffic rights necessary to undertake the activity concerned? From this test, they concluded that services such as catering, leasing, ground handling, airport management services, and freight forwarding services for air transport were not related to the exercise of traffic rights and therefore already covered by the GATS. These Members therefore called for commitments in such areas as ground handling services and airport management services in the context of the Doha negotiations.

In order to address the problem of MFN and traffic rights these Members suggested approaches such as transition periods, conditional MFN (as in the WTO Plurilateral Agreement on Government Procurement) and plurilateral agreements.

On the other hand, in the review exercise many other Members invoked the negotiating history and argued that the GATS only applied to the sectors explicitly listed by paragraph 3 of the Annex. In their view, there was no space for a "grey area," since the three covered sectors were an exception to the general exclusion of traffic rights and of services directly related to the exercise of traffic rights ("except as provided in paragraph 3 of the Annex"). In this view, there was therefore no point in clarifying the scope of the Annex. An even greater number of Members opposed any extension of the scope of the GATS on the grounds that the rationale of its existing scope had not changed and that liberalization was occurring anyway in a bilateral, regional and plurilateral context. It was further argued that because of its universality and links that would be made with other subjects in the negotiations, multilateral liberalization would act as a brake on the ongoing autonomous process of liberalization. Those inclined to this view also considered that the ICAO was the proper forum to discuss these questions. They added that the GATS had not had any discernible effects on liberalization in regard to the three covered services, whereas liberalization was taking place outside the purview of GATS for hard rights. This was one more reason not to extend the scope of GATS.

The only agreed conclusion of this review was "to decide that the formal commencement of the second review would take place at the last regular meeting of the Council for Trade in Services of 2005 [and that this should not prejudge Members' interpretation of paragraph 5 the review clause of the Annex."

The International Air Transport Association [IATA]

IATA occupies a very important position in the realm of air transport and its management. Unlike ICAO, IATA is not an intergovernmental body bt a private organization of scheduled airlines. It was originally set up by six airline companies on August 28^{th}, 1919 as the International Air Traffic Association. IATA's aims and objectives are clearly set out in its incorporating act where they are described as follows:

i. To promote safe, regular and economical air transport for the benefit of the people of the world, to foster air commerce and, to study the problems connected therewith;
ii. To provide means for collaboration among the air transport enterprises engaged directly or indirectly in international air transport services;
iii. To cooperate with the International Civil Aviation Organization and other international organizations;
iv. To provide a common platform for travel agencies/tour operators'
v. To promote and develop international tourism.

The main purpose of IATA lies in the technical and commercial sector. Its technical duties are designed from the beginning to achieve safer, more regular and more economical air traffic, in the commercial sector. Its activities were expected to create the best possible conditions for all categories of customers. An important function is performed by the IATA clearing house which operates under the Financial Committee. It acts a clearing institute for accounts between airlines including those accumulated from the ticket sales and other sources.

Practically speaking all the airline companies who are involved in scheduled air transport have a seat in the organization, which maintains close ties with the government authorities of the member states. Notwithstanding airline deregulation, some companies are supported by public funds while many are completely owned by the states. Hence the recommendations of IATA to various governments are often well received.

The International Air Transport Association (IATA) has an ongoing interaction with ICAO, i.e. the Air navigation Bureau, the Air Navigation Commission (ANC – IATA and the International Federation of Air Line Pilots' Associations (IFALPA) are the only organizations granted permanent observer status to the ICAO ANC), and the Regional Affairs Office; IATA contributes to various ICAO Technical Panels. In drafting standards and practices for civil aviation, the cooperation between ICAO and IATA is vital. IATA's Legal Committee has maintained close links with ICAO, presenting the airline industry's views on international conventions. To ensure that cooperation between IATA (representing the international airline operators) and ICAO (representing the various national governments) would be simple and effective, and that they work closely together to further the development of international civil aviation, both Organizations are located in the same city from their inception in 1945.

IATA gave particular attention to the major source of business for the airlines in the 1920s, i.e. the carriage of air mail. Called by the official initiative of the Postal Office of the USSR, the first International Air Mail Conference, held at The Hague in September 1927, established the airlines as officially recognized mail carriers. This was a true achievement, as there was considerable reluctance at that time on the part of many postal administrations to entrust their mail to the new mode of transport. Further to the creation of the Postal Committee at IATA, direct consultations were held with the Universal Postal Union (UPU) on many questions of mutual interest. In the 1930s, attention was given to the organization of night mail services and year-round links among countries.

As regards the conditions of carriage, the airlines faced a vast array of differing national laws concerning passenger and cargo transportation. It appeared essential for this situation to be covered by an international treaty; the Warsaw Convention was born in October 1929 which, although subsequently modified by a number of Protocols, had set an effective world pattern, i.e. an internationally accepted upper limit to airline liability in case of passenger fatality and also the basic procedures and practices for conditions of carriage and for traffic documents. This convention was followed by the Rome Convention of 1933 which established liabilities between airlines for damage to aircraft on the ground or in the air, and damage to third parties on the ground. The IATA Legal Committee was actively involved in the development of those international legal instruments.

Through regular meetings among the IATA members, considerable progress was made in coordinating timetables, a subject of great importance at a time when flight frequencies were relatively low and when each airline served only a limited number of destinations. Although establishing fares and rates was not within the purview of IATA, voluntary measures for adjusting tariffs were proposed by the airlines interested in a given route during their group discussions. In the operational and technical areas, a great deal of progress was made in establishing industry standards and operating procedures with a view to increasing performance, reliability and security.

The old IATA was able to start small and grow gradually and was also limited to a European dimension until 1939, when Pan American Airways joined. It had developed a remarkably extensive and firm foundation on which further expansion could be based. With the outbreak of hostilities in 1939, civil air transport in the accepted sense virtually came to a halt and the activities of IATA were put in cold storage. However, events gathered momentum in the late 1944 when the allied and non-belligerent governments held the International Civil Aviation Conference in Chicago; the presence of a number of international air transport enterprises in Chicago was considered an opportune time to hold a meeting looking towards the organization of a new association.

A meeting of international operators was held at the Stevens Hotel in Chicago on 7 December 1944 at 9:30 to appoint a drafting committee to prepare the draft of the organization and articles for an international air transport association. This committee met at the Carlton Hotel, Washington, D.C. from 11 to 14 December 1944; during the course of this meeting, Dr. Luis Machado, of the Cuban Expreso Aero Inter-Americano, extended an invitation, on behalf of his country, to hold the organization meeting at Havana in the spring of 1945. Forty-one airlines from 31 countries met there from 16 to 19 April 1945 for the International Air

Transport Operators Conference and founded the new IATA (named International Air Transport Association), with the mission to promote safe, regular and economical air transport, to provide means of collaboration among the air transport enterprises, and to cooperate with ICAO; they adopted the Articles of the Association. The aims and objectives of the old IATA were thus broadened to include an active role in the establishment of fares, rates and charges for the carriage of passengers, baggage and cargo. The Havana Conference unanimously elected Mr. H.J. Symington (President of Trans-Canada Air Lines) as the first President of the Association and also decided that the first annual meeting be held at the Windsor Hotel in Montreal in October 1945; 300 representatives from the aerospace, aviation and aircraft industry met from 16 to 19 October for the first IATA Annual General Meeting. The meeting adopted the original version of the Provisions for the Regulation and Conduct of the IATA Traffic Conferences and elected Sir William P. Hildred, Director General of Civil Aviation in Great Britain, as Director General of IATA, effective April 1946; the ICAO Council bestowed the "1965 Edward Warner Award" on Sir Hildred, a few month before his retirement from IATA in 1966.

Advertisement published in the newspaper The Gazette on 15 October 1945, welcoming the first Annual General Meeting held at the Windsor Hotel in Montreal.

Article II of the IATA 1945 Statutes states that "The Head Office of this Association shall be maintained in the city in which the headquarters of the International Civil Aviation Organization is located."; this article was later amended to leave an opening for a possible other place as determined by the General Meeting. When ICAO moved in 1949 to its new headquarters at 1080 University Street, IATA used office space for its quarters in the same Terminal Centre Building as ICAO, at 1060 University Street. The current Head Office of IATA is located in the Quartier International of Montreal and Executive Offices are in Geneva.

In 1934, the old IATA replaced a preliminary emblem with a new one, representing more adequately the aeronautical, peaceful and international character of IATA's work. This emblem was retained by the new IATA and replaced in the early 1950s by a newer one.

During the Chicago Convention in 1944, no general agreement could be reached as to the manner in which international fares and rates were to be established; it became apparent that some kind of inter-airline machinery would be required for this purpose. The Bermuda Agreement reached on 11 February 1946 (at the end of the Civil Aviation Conference held in Bermuda from 15 January to 11 February 1946; this Agreement was expanded in 1977) by the American and British negotiators, was an early bilateral air transport agreement regulating civil air transport; it was rapidly followed by a number of very similar agreements between other pair of states, making it clear that that the airlines were responsible for the first instance for agreeing fares and rates and related conditions.

Although the Articles of Association of the new IATA made no provision for Traffic Conferences, it became obviously necessary that such conferences be established, at which fares and rates could be discussed and agreements be reached for submission to the interested governments.

A Clearing House was established in 1947 at IATA for interline billing and settlement. Of crucial significance for the worldwide system were the measures taken over the years by IATA for standardization and simplification of tickets, air waybills and other documents used by passengers, cargo, airports and travel agencies. IATA's technical work is supervised by its Technical Committee, whose activities can be grouped under several headings, such as avionics and telecommunications, engineering and environment, airports, flight operations, medical, facilitation, security, etc.

There is no doubt that IATA fulfills a vital role for the airline industry. Although individual priorities have changed considerably as time has passed, there is a growing demand for the Association's services; international air transport system has grown to a highly sophisticated and global business.

Several countries issued stamps or postmarks either to commemorate the IATA Annual General Meeting (AGM) held in their country or to highlight the international cooperation between IATA and ICAO.

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