

INTRODUCTION TO INTERNATIONAL AIR LAW

Dr. V. Balakista Reddy

Professor of International Law and Registrar

Head, Centre for Air & Space Law

NALSAR University of Law, Hyderabad

E-mail- balakista@gmail.com

Civil Aviation Regulations: An Overview

What is Regulation?

Kinds of Aviation Regulations

1. National
2. Bilateral
3. Regional and
4. Global or International Regulations

National Aviation Regulations

- The aims & objectives of national regulation includes:
- to provide better transport requirements of Country
- To promote tourism sector
- to provide employment and earn foreign exchange
- to meet the needs of the postal system
- to create the conditions for a viable, healthy air transport sector
- to aid in national development
- to serve national defence.
- to meet disaster assistance needs etc.
- **Legislative component** (making of laws, policies, rules and regulations, and these rules for granting or denying of permission etc. Civil Aviation Authority of Srilanka Act No. 34 of 2002 and the Civil Aviation Act, No. 14 of 2010)
- **Organizational Component**, Ministry of Transport & Civil Aviation, The Department of Civil Aviation (DCA) entrusted to undertake all regulatory, operational and commercial functions which included operating air services, airports and air navigations service.

Bilateral Aviation Regulations

- Bilateral regulations are regulations 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 two countries.
- why bilateral Agreements?
- Failures of Multilateralism
- Art.1 of the Chicago convention.
- Development of bilateral agreements
- The Chicago convention.
- Bermuda I of 1946 bilateral Agreement
- Liberal and open skies type of bilateral agreement

Model Bilateral Agreement

- Salient features of bilateral agreement or
- Bilateral Agreement Consist of
- The Preamble, A definitions article, A grant of rights, A fair and equal opportunity, A designation and authorization, Revocation or suspension of operating authorization, Capacity,
- A tariff, Statistics, Commercial operations or commercial opportunities , An airworthiness, Aviation security, Customs duties, Taxation, User charges
- A consultation , Settlement of disputes , Termination or denunciation etc. are part of the bilateral agreement.

Regional Aviation Regulations

- Growing Importance of Regionalism
- Regionalism and International Law
- Growing Importance of Regionalism in Civil Aviation
- African Civil Aviation Commission (AFCAC)
- Agency for Air Navigation Safety in Africa and Madagascar (ASECNA)
- Arab Civil Aviation Commission (ACAC)
- Central American Corporation for Air Navigation Services (COCESNA)
- European Civil Aviation Conference (ECAC)
- European Organisation for the Safety of Air Navigation (EUROCONTROL)
- Latin American Civil Aviation Commission (LACAC)
- Civil Aviation Regulations in the SAARC Region

Aviation Regulations in EU

- A major landmark was the decision of the European Court of Justice in the *Nouvelles Frontières* 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.
- 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 industry
- 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.

EU Regulations Cont...

- 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:
 - Carriers from the European Union are now free to operate any route within the Union, without restriction on price or capacity, including cabotage.
 - In addition, all restrictions on airline ownership have been removed for its citizens (e.g. an air carrier operating from France can be 100% owned by investors from the UK; however, investment by non-EU citizens is restricted to 49%).
 - Open Skies agreements also allow partner carriers to coordinate airline operations, including pricing, scheduling, market strategy, fleet structure, and networks.

Global Aviation Regulations- Definition, Sources and Dev.

- Definition: Air law may be defined as “the body of rules governing the use of airspace and its benefits for aviation, general public and nations of the world”
- Sources: Sources of International Law, (art.38)
- Sources of International Air Law
- Multilateral Convention, Bilateral Agreements, National Laws, Contracts between States and Airline Companies, Contracts between airline companies ; General Principles of Law

Global Aviation Regulations

Development of Int. Air Law or Aviation Regulations can be Categorized into three parts or three PPPs :

- A. Chicago Regime- General and Technical Regulations- Paris convention 1903, Paris Convention 1910 and 1919, Chicago convention 1944 and other related conventions dealing with the above regulations
- B. Warsaw Regime or The Liability Regime- the Warsaw convention 1929 and other related conventions and protocols dealing with Liability of Civil Aviation
- C. Criminal Air Law Regime or Air Safety and Security Regime, including various International conventions relating to aviation safety and aviation security.

History & Development of Global Aviation Regulations

- **Philosophy of Air Law-** Concept of state Sovereignty in the airspace or Roman Law maxim- *Cujus est solum ejus est usque ad coelum* (Who owns the land owns the skies)
- **Customary Law:** In the early times the questions arose over the rights of balloons to cross national borders safely. Example Paris police regulations on balloons of 1783 and the Hague conferences of 1899 & 1907, which prohibited the discharge of projectiles and explosives from balloons
- **Theories:** Scholars propond theories on Sovereignty and Jurisdiction- Free Air Theory, Complete Sovereignty Theory, Restrictive Sovereignty Theory and Complete Sovereignty but innocent passage.

Int. Air Law Conventions before the Chicago Regime

- 1903 conference discussed the threat posed by the cross-border balloons to consider international aspects of flight across state boundaries
- 1910 Paris Convention (21 states) state sovereignty in the air space and prohibition of flights across some states.
- 1919 Paris Convention (38 states) discussed the use and misuse of world war I, and laid down concept of state sovereignty in airspace, Issues of Nationality, air worthiness, air safety, licenses to personnel etc.,
- Regional and Private Air Law Conventions: Ex, Ibero-American Convention 1926, Havana Convention of 1928 and the Warsaw Convention of 1929.

Chicago Conference 1944 and Air Law

- Background of Chicago Conference or events led to the emergence Chicago conference
- developments in technology and absence of effective legal regime
- Deliberations of the Chicago conference
- Outcome of the conference includes
- (1) Interim agreement on Int. civil aviation (2) the convention on Int. civil aviation or popularly known as Chicago convention, 1944 (3) Int. Air Service Transit Agreement, (4) Int. Air Transport Agreement, (5) A Standard form of bilateral agreement and (6) A Draft of 12 Technical Annexes

Chicago Conference contd.

- Interim Agreement: Set up PICAO and worked from 6th June 1945 to 4th April 1947 and it also set up Interim assembly, council and secretariat.
- International Air Services Transit Agreement (IASTA) or Two Freedoms Agreement:
 - (1) the privilege to fly across the territory and (2) the privilege to land for non-traffic purposes
- IASTA or Five Freedoms Agreement (3) the right or privilege to discharge passengers, mail or cargo taken on the home ports (4) the right or privilege to pick up passengers, mail or cargo to be taken to the home ports (5) the right to pick up and discharge passengers mail or cargo to or from any other contracting states

Contd..

- Failures of the Multilateralism which led to the emergence of Standard form of Bilateral Agreement
- Draft of 12 technical annexes and now 19 ex. Personnel licensing, rules of the air, metrological services, aeronautical charts, units of measurements in air and ground, operation of aircraft, aircraft nationality and registration, airworthiness of aircraft, facilitation, aeronautical telecommunications, ATS, search & rescue, aircraft accidents, aerodromes, AIS, environment, security, safe transport of dangerous goods and Safety Management Systems
- Advantages of Technical Annexes
- SARPS and Annexes

Chicago Convention 1944

Chicago convention has been divided into four parts, 22 chapters and 96 articles.

- Part 1 Air navigation art. 1-42 Covering six chapters including the schedule and non-schedule flights
- Part II International Civil Aviation Organization (ICAO) Structure, powers and functions of the ICAO are covered under articles 43-66
- Part III Int. Air Transport regulations and their implementations are covered under articles 67-79
- Part IV Final Provisions including the authentic languages, signature, ratification, amendments etc. are covered under articles 80-96.

Part I on Air Navigation

6 Chapters from Article 1 - 42

■ CHAPTER-I

- General Principles and Application of the Convention (From 1-4) discusses 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) discusses 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.
- 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.”

CHAPTER-III

- Chapter-III discusses about the Nationality and Registration of Aircraft 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

- The articles 22-26 of the Chicago Convention deal 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.

CHAPTER-V

- Articles 29-36 deal with 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.

CHAPTER-VI

- Articles 37-42 deal with Adoption and implementation of International Standards and Recommended Practices (SARPs) in international civil aviation.
- 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.

PART-II (From Chapter VII-XIII ARTICLES: 43-66)

- CHAPTER-VII (THE ORGANISATION-ICAO)
- CHAPTER-VIII (THE ASSEMBLY)
- CHAPTER-IX (THE COUNCIL)
- CHAPTER-X (AIR NAVIGATION COMM.)
- CHAPTER-XI (PERSONNEL)
- CHAPTER-XII (FINANCE)
- CHAPTER-XIII (OTHER INTL.
ARRANGEMENTS)

ICAO

- The Chicago Convention has also established principles, structures and procedures for the International Civil Aviation Organization (ICAO) have 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, licensing of pilots and other specialized personnel.
- ICAO is responsible of Development of Int. Air Law

The OBJECTIVES OF ICAO

- Art.44 Objectives-
- ensure a safe and orderly growth of international civil aviation throughout the world;
- Encourage the arts of aircraft design and operation for peaceful purposes;
- Encourage the development of airways, airports, and air navigation facilities for international civil aviation;
- Meet the needs of the peoples of the world for safe, regular, efficient and economical air transport;
- Prevent economic waste caused by unreasonable competition;
- Insure that the rights of contracting states are fully respected and that every contracting state has a fair opportunity to operate international airlines;
- Avoid discrimination between contracting states;
- Promote safety of flight in international air navigation;
- Promote generally the development of all aspects of international civil aeronautics.

ICAO Assembly

- The ICAO has Assembly, Council, the Secretariat, Air Navigation Commission, and other organs to run day-to-day activities.
- The Assembly meets once in every three years.
- All contracting states shall have an equal rights and each contracting state has one vote in the Assembly.

ICAO Council

- The Council is the permanent body responsible to the Assembly. It shall be composed of 33 contracting states elected by the Assembly. In electing the members of the council, the Assembly shall give adequate representation to
 - the states of chief importance in air transport
 - the states which makes largest contribution to the international civil aviation and
 - the major geographic areas of the world are to be represented.

ICAO Secretariat

- Headed by Sec. General and other staff to run the day to day functions.
- It also has various commissions and Burios including Air navigation commission and legal bureau, Air transport bureau, Tech. cooperation bureau, Admin. Services bureau.
- It also has aviation security and facilitation services

Part III Int. Air Transport

- Chapter XIV- information & Reports
- Art. 67 – File report with Council
- Each contracting state shall file its int. airlines report with the Council traffic reports, cost statistic and financial statements

Chapter XV

Airports & other air navigation facilities

- Articles 68- 76
- 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.

CHAPTER-XVI

JOINT OPERATING ORGS. & POOL SERVICES

- Articles 77-79
- Deals with joint operating organizations permitted and pooling their air services on any route or in any regions with council permission, advisory function of council on the matters, states may participate in joint operating organizations.

Part IV- final provision
Chapter XVII
Other Aeronautical Agreements & Arrangements

- Articles 80-83
- States will give notice to council whether they are parties to the Paris and Habana Conventions, all pervious agreements between states shall be forthwith registered with the Council, abrogation of inconsistent arrangements and registration of new arrangements with council.

Chapter-XVIII

Disputes & Default

- Articles 84-88
- Council will settle the dispute between the states, against the decision of the council the state can appeal to CJI, it also deals with arbitration procedure, apples and penalty for non –conformity of airline and by state.

Chapter XIX

War

- In case of war the provision of this Convention shall not affect the freedom of action of any states whether the belligerents or as neutrals.
- In national emergency state will notifies the fact to the Council.

Chapter XX

Annexes

- Article 90 Adoption & amendment of Annexes
- Adoption of the Annexes by council will be by vote of 2/3 of the council – Art 54 (1)
- Council shall immediately notify all contracting states of coming force of any Annexes or amendment thereto.

Chapter XXI

Ratifications, Adherence, Amendments & Denunciations

- Articles 91-95
- Deals with the Ratifications, Adherence, admission of other states, Amendments & Denunciations

Chapter XXII

Definitions

- Article 96
- Air Services
- International Air Services
- Airlines
- Stop for non-traffic purpose

Warsaw System on Aviation Liability

- Warsaw system consisting of -
- The Warsaw Convention 1929
- The Hague Protocol, 1955
- Guadalajara supplementary convention of 1961
- The Guatemala City Protocol in 1971
- The Montreal Protocols of 1975
- IATA Inter-carrier Agreement (IIA) 1996
- IATA Measures of Implementation Agreement (MIA) 1996
- The Montréal Convention 1999

Aviation - Liability

- Airlines liability
- ATC Liability
- Air Navigation Service Liability
 - Ground / Satellite based
- Third Party Liability - Rome convention
- Product liability - Aircraft and other systems

Warsaw Convention 1929

■ Historical Background

- 1920s commercial aviation started
- After 1st world war- air power effects
- Sovereignty concept w.r.t air space
- Limitation of the liability of the carrier: law of the Sea

■ Risk involved with the new industry

- Safety risks, financial risks
- Insurance argument – easy if liability is limited
- Speedy settlement - in case of limited liability
- Burden of proof- If limited liability, reversal of burden of proof

The Warsaw Convention 1929

- The Primary objectives of the Warsaw Convention:
 - a) To create and limit the liability of air carriers
 - b) To define and establish uniform rules arising out of international air transportation.
- The Warsaw Convention is one of the most Widely adhered and litigated treaties in the world.
- The convention made a unique attempt in the international arena mainly to deal with uniform rules regarding traffic documents,
- The liability of the air carrier,
- Notification of damages and
- Jurisdictional issues

The Warsaw Convention 1929

- The Warsaw Convention of 1929, formally known as the Convention for the "unification of certain rules relating to international carriage by air", was signed in Warsaw on 12 October 1929 and came into force on 13 February 1933.
- This convention established the international liability of air carriers and the monetary limits of damage, delay or loss.
- The legal regime governing the liability of air carriers in the carriage of passengers, baggage and cargo comprised a number of international instruments.

The Warsaw Convention 1929

- The Warsaw Convention of 1929 is a basic document on an air carrier's liability, although it has been amended by other subsequent treaties too.
- According to Article 17, an air carrier is liable to death or injury sustained in an accident on board the aircraft, A condition precedent to the carrier's responsibility to the passengers is that the damage must take place on board the aircraft, or in the course of any of the operations of embarking or disembarking [Article 17(1)].

The Warsaw Convention 1929

- Under Article 21, if the carrier proves that the damage has been caused by or contributed to by the negligence of the injured person, Court may, in accordance with the provisions of its own law, exonerate the carrier wholly, or partly, from liability.
- The central underpinning of the Warsaw Convention is Article 22, which places a maximum ceiling on the damages recoverable from an air carrier when a passenger has been injured, or killed, in an international air travel.

The Warsaw Convention 1929

- The internationally established rule is that subscribing air carriers are liable to damage sustained by a passenger during the course of international transport up to an amount not exceeding 1,25,000 princare francs (at that time equal to about \$ 8,300).
- The wilful misconduct exception to the liability limitation, under Article 25 of the Warsaw Convention, has been a cause of concern and extensive debate since its promulgation.
- Special contracts, ticket conditions or other provisions designed to reduce or limit this liability were declared void by Article 23.
- Under Article 24 all sanctions arising out of the convention, were subject to the terms of the convention.

The Hague Protocol, 1955

- The Hague Protocol, 1955, has changed those provisions of the Warsaw Convention which were found incompatible with the changed situation of international air transport, or were unclear or subject to different interpretations.
- It doubles the original Warsaw limits of liability by amending Article 22, to increase the gold franc limit from 1,25,000 to 2,50,000 (approximately \$ 16,000 in 1955). This was accompanied by a revision of Article 25.

The so-called Montreal Agreement of 1966

- The so-called Montreal Agreement of 1966, which is not an intergovernmental agreement but only an arrangement on liability among air carriers operating passenger transport, to, from or with an agreed stopping place in the United States, was adopted on 13 May 1966.
- This was necessitated by the withdrawal of the denunciation of the Warsaw Convention by the US which was to take effect on 16 May 1966.
- By this agreement, the parties have *de facto* amended the application of the Warsaw Convention as changed by the Hague Protocol, 1955, by providing for a limit of liability for each passenger in the case of death, or bodily injury, of **US\$ 75,000**, inclusive of legal fees and costs and **\$ 58,000** exclusive of legal fees and costs.

The Four Montreal Protocols of 1975

- The 1975 'diplomatic conference on air law' drafted and adopted four protocols to the Warsaw Convention.
- The protocols did not raise the limit of liability, but changed the expression from Poincaré francs to special drawing rights (SDRs) as defined by the International Monetary Fund (IMF).
- Additional Protocol No. 1 establishes the liability limit at 8,300 SDR, or 1,25,000 monetary units (MU) per passenger.
- Additional Protocol No. 2 limits the liability at 16,600 SDR, or 2,50,000 MU, per passenger.
- Additional Protocol No. 3 establishes 100,000 SDR, or 1,50,000 MU, per passenger in the case of injury or death.
- Additional Protocol No. 4 revises various provisions relating to air cargo regulations.

Montreal Convention 1999

- In May 1999 following decades of discussion about achieving a new comprehensive Intergovernmental regime, ICAO convened a Diplomatic Conference in Montréal attended by 118 states.
- The purpose of this conference was to consider a new convention to modernize and replace the existing Warsaw System of Liability
- General Provisions (Articles: 1-2)
- Documentation and Duties of the Parties relating to the Carriage of Passengers, Baggage and Cargo (Articles: 3-16)
- Liability of the Carrier and Extent of Compensation for Damage (17-37)
- Combined Carriage (Articles 38)
- Carriage by Air performed by a Person other than the Contracting Carrier (Articles 39-48)
- Other Provisions (Articles 49-52)
- Final Clauses (Articles 53-57)

Exception to Art. 21

Carrier will not be liable for damages arising under Art. 17 (1) to the extent that they exceed for each passenger 100000 SDR if the Carrier proves that:

1. such damage was not due to the negligence or other wrongful act or omission of the Carrier or its Servants or Agents; or
2. such damage was solely due to the negligence or other wrongful act or omission of a third party.

■ **Liability Limit for Delay, Baggage and Cargo Art. 22**

■ Liability of Carrier towards Delay to each Passenger: 4150 SDR

■ Liability of Carrier towards Baggage destruction,

Loss, Damage or delay to each Passenger : 1000 SDR

■ Liability of Carrier towards Cargo destruction,

Loss, Damage or Delay to each Passenger : 17 SDR/Per Kg

Art. 33 – Fifth Jurisdiction and Insurance Art. 50

- The Convention created an additional ‘Fifth’ Jurisdiction to the four retained from the **Warsaw Convention**.

Principal & permanent residence of the passengers residence or home land

1. Domicile of the Carrier
2. Principal Place of Business of the Carrier
3. Where ticket was purchased
4. Passengers Destination

Insurance

- The Convention imposes the a duty upon the contracting states to require their air carriers to maintain adequate insurance covering their liability under the convention.
- The determination of what constitutes adequate insurance appears to be left to each contracting state.

Summary

- Strict Carriers Civil Liability for damages- 100 000 SDRs
- Advance payments
- Possibility of victims to bring suits before the passengers residences jurisdiction
- Increase carriers liability for delay, loss /damage
- Modernization of transport documents
- Clarification with respect to contractual carriers and actual carriers
- Improved adequate insurance provisions
- Introduction of so called regional clause etc.....

Domestic Implementation of International Law

1. Why Domestic Implementation of International Law
2. How Domestic Implementation of IL happens?
3. Customary Principles and International Law
4. Domestic Implementation of International Treaties
5. Domestic Implementation of IL in India
6. Indian Constitution and International Law
7. Indian Judiciary and International Law

Domestic Implementation of Int. Air Law in India

1. Aviation Regulation before 1934 Act
2. Aircraft Act, 1934 and various recent Amendments
3. Aircraft Rules, 1937
4. The Aircraft (Demolition of obstructions caused by Buildings and Trees etc.) Rules, 1994
5. Air Corporations Act 1994
6. The Aircraft (Carriage of Dangerous Goods) Rules, 2003
7. Air Corporations Act 1994
8. Civil Aviation Regulations

Domestic Implementation of International Air Law relating to Aviation Liability, Safety and Security

1. Carriage by Air Act, 1972
 2. The Carriage by Air (Amendment) Act, 2009
 3. Notification regarding application of the Carriage by Air Act, 1972, to carriage by air which is not international
- Air Safety and Security
4. Tokyo Convention 1975
 5. Anti-Hijacking Act, 1982
 6. Unlawful Seizure against the Safety of Civil Aviation 1982
 7. 1994 Amendments to the above Acts
 8. Recent Developments
 9. Civil Aviation Regulations (CAR)

Contemporary Issues in Aviation Sector in India

1. Globalization, Liberalization and privatization (GLP) of aviation sector and Indian Responses
2. Liberalization and open skies policy
3. Airport Privatization Legal Issues
4. The Airports Authority of India Act, 1994 (55 of 1994)
5. Privatization of AAI 2003
6. Airport Infrastructure Policy 1997
7. Joint Ventures, PPP and FDI in Airports
8. Airports Economic Regulatory Authority of India Act, 2008
9. Airlines Privatization Legal Issues
10. Mergers and Acquisition: Legal Issues
11. Competition Issues in Aviation Issues
12. Leasing and Financing in Airlines
13. FDI in Aviation Sector
14. Scope and Opportunities in Aviation Consultancy Issues

Thank you