

Aviation Law

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Introduction

The Requirement for Regulation

Understanding the Framework

Sovereignty and Territory

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Standards and Recommended Practices

Regional Supplementary Procedures and Other Manuals

The International Air Services Transit Agreement

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Cabotage

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The Basis for International Legislation

Introduction

Aviation law is not an easy subject to learn because a great deal of information has to be absorbed and committed to memory. We've tried to make it as easy as possible by including many illustrations and, in the multimedia edition, a number of video sequences. But there is a lot to learn and you must study carefully.

For European students the other confusing factor is that European regulation is currently in a state of flux as the change-over from the Joint Aviation Authority to the new European Aviation Safety Authority continues. So don't be surprised if you see references to JAA and EASA documents throughout this course.

The good news is that you will already be familiar with some of the rules and law because they will have been mentioned in other sections of the syllabus. And if you have some flying experience you will also be familiar with some of the basic rules of the air and air traffic procedures. But for the rest, you must concentrate hard on what's being presented and revise it frequently.

Finally, before we start, we need to sound a small note of caution. To make the subject more understandable we have in many places translated ICAOs dense legal wording into plain English. So this manual is our *interpretation* of the law. It is certainly not an authority on the law. If you have any doubt, refer to the original legal texts covered in ICAO, JAA and EASA documents.

The Requirement for Regulation

As the Second World War drew to a close it became very obvious that aviation was going to play a major part in the post war economies of all nations; but only if the usual barriers to growth could somehow be overcome.

For example, how could it be agreed that the aircraft of one state could over-fly the airspace of another without infringing its sovereignty or having to ask permission every time? Or, how could states agree a common set of standards for navigation so that aircraft could use the same procedures regardless of which part of the world they would be flying in?

The traditional method of achieving this would have been to create a series of bilateral agreements between states. But, with so many interested parties, this would have been hugely difficult and complex and may have led to considerable variation between states.

Recognising this potential problem, the United States convened a conference in Chicago in November of 1944. Delegates from 52 nations attended with the declared purpose to:

“foster the future development of international civil aviation, to help to create and preserve friendship and understanding amongst the peoples of the world, so as to prevent its abuse becoming a threat to the general security”.

Understanding the Framework

The outcome of the convention was a document known as the Convention on International Civil Aviation - commonly referred to as the "1944 Chicago Convention".

The document comprised 96 articles which laid the foundation for modern international aviation and gave authority to establish ICAO: the International Civil Aviation Organisation.

ICAO was charged with administering the principles of the convention and putting into practice the rules and regulations that would underline them. These are contained in annexes to the convention and in other more detailed supplementary documents written since 1944.

One of the key principles of the convention is that each state must create its own national legislation which puts into national law the standards laid down by ICAO. For some countries this is still the case but for those of us in the European Union the situation isn't quite so simple.

In our case the EU has taken some responsibility for regulation. In the first instance this was implemented through the Joint Aviation Authorities but this is rapidly being superseded by the new European Aviation Safety Authority or EASA for short. The upshot is that each European State still produces its own national legislation but this now also has to take into account European regulations as well as ICAO standards.

Not surprisingly, the original 1944 Convention didn't think of everything so, since then, there have been a number of other conventions to establish international agreement on a variety of aviation issues notably terrorism.

We'll look at each of these elements in detail through the next couple of chapters.

The Concept of International Law

Before we go any further, we need to be clear about international law, and the concepts of sovereignty and territory.

Because there is no such thing as a world governing body with the power to make laws governing all states there isn't, in the strictly legal sense, any such thing as international law. But the phrase is used usefully to describe a system of implicit and explicit agreements that binds together nation-states. These agreements usually come about as the result of conventions such as the Chicago Convention.

Most international law only becomes real law when each of the agreeing states creates its own national laws which enact the agreed points.

Bearing this important point in mind you need to be aware of three types of international law:

- **Public International Law** refers to the process which binds states to agreements. The Chicago Convention, the Geneva Convention and some international maritime conventions are all good examples of public international law.
- **Private International Law** concerns conventions in which states agree on where an individual's case can be heard; and whose law will apply to it. The Tokyo Convention governing unlawful acts committed on aircraft is a good example of private law.
- **Supranational Law.** This is law which is imposed with legal force by a higher body, on one or more states. The laws made by the EU are an example of supranational law.

Sovereignty and Territory

Now that we better understand the principle of international law we also need to be clear about sovereignty and territory in the context of international aviation.

- **Sovereignty** is the right of a state to impose its national law on users of its airspace.
- **Territory** is the airspace over and within a state's territorial borders. Territorial airspace has no vertical limit but it does have the same lateral limits as the state.

For states which have sea boundaries, territorial airspace extends out beyond the land as far as the internationally agreed limit of territorial waters.

Beyond territorial waters are the high seas, in which all ships, and over which all aircraft, are allowed, in theory at least, to pass unhindered. This right was first established by the Geneva Convention on the High Seas and later updated in the UN Convention on the Law of the Sea.

The Convention of International Civil Aviation

The fount of modern aviation legislation is the 1944 Convention of International Civil Aviation. It is often more popularly known as The 1944 Chicago Convention.



Figure 1.1

The original Chicago Convention document

The Convention culminated in a formal document which outlined the methods and structures for regulating and standardising international aviation. This document, also known as the Chicago Convention, comprises 96 articles outlining general principles and providing authority for international aviation structures. The Document is supported by 18 annexes which detail *Standards and Recommended Practices* covering all aspects of aviation.

The Convention also produced two other agreements:

- The International Air Services Transit Agreement
- The International Air Transport Agreement

We will discuss these in greater detail later.

Since the 1944 Convention there have been a number of other conventions, notably in The Hague, Tokyo and Warsaw. These conventions have added further guiding principles for signatory states.

The Articles of the Chicago Convention

The 96 articles of the Chicago Convention:

- Establish the privileges and restrictions of all Contracting States
- Provide for the adoption of International Standards and Recommended Practices regulating air navigation
- Recommend the installation of navigation facilities by Contracting States
- And suggest the facilitation of air transport by the reduction of customs and immigration formalities.

The Convention accepts the principle that every State has complete and exclusive sovereignty over the airspace above its territory and provides that no scheduled international air service may operate over or into the territory of a Contracting State without its previous consent. The Chicago Convention and the Annexes to it are the source documents for all national aviation law. Some countries adopt this law completely, others notify variations to it.



Figure 1.2

A page of the Chicago Convention showing the Articles

The International Civil Aviation Organisation

Of the 96 articles stemming from the original convention one, Article 43, authorised the formation of an international body to “develop the principles and techniques of international air navigation and to foster the planning and development of international air transport”.

Thus was born the International Civil Aviation Organisation (ICAO); headquartered in Montreal, Canada.



Figure 1.3

Almost all states involved in international aviation are members of ICAO

The Structure of ICAO

ICAO comprises 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.

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 Organisation and setting policy for the coming years. The Council, the governing body which is elected by the Assembly for a three-year term, comprises 36 delegates. 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 in technical matters, the Air Transport Committee in economic matters, the Committee on Joint Support of Air Navigation Services and the Finance Committee.



Figure 1.4

The Assembly elects the Council every 3 years

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.

ICAO Geographical Regions

ICAO recognises nine geographical regions which are treated individually for planning the provision of air navigation facilities and services required on the ground by aircraft flying in these regions.

ICAO has seven regional offices, each one accredited to a group of Contracting States. These offices are established to encourage and assist the implementation of the Air Navigation Plans.

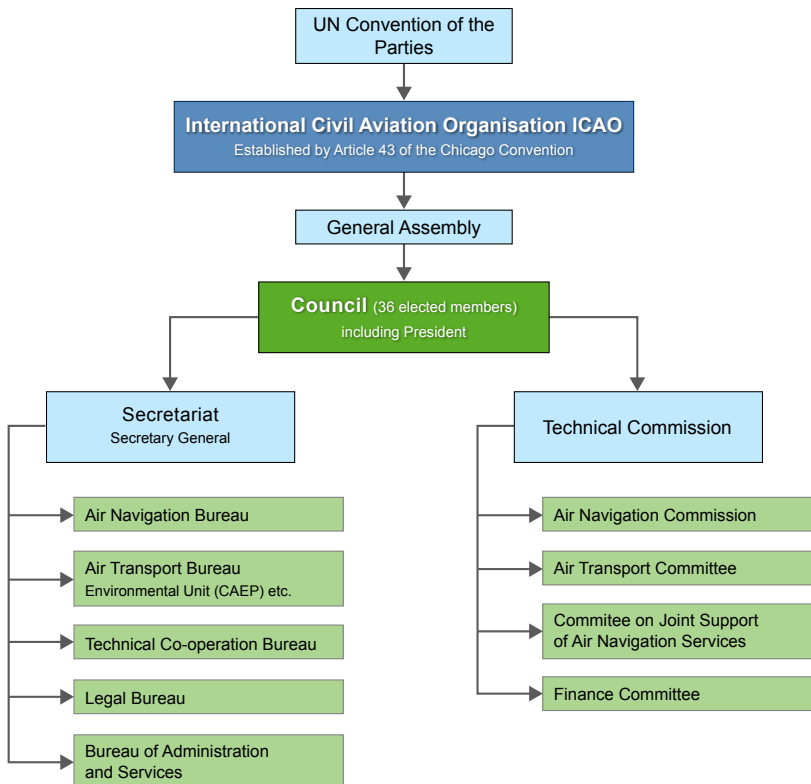


Figure 1.5

The organisational structure of ICAO

ICAO's Legislative Function

One of ICAO's responsibilities is to develop and modify the Annexes to the Convention. The revised Standards and Recommended Practices (SARPs) detailed in the Annexes effectively provide the overarching framework for national legislation in each of the member countries.

The Annexes provide the detail for the agreements made under the Chicago convention.

So, an organisation set up under the articles of the Convention is empowered to change the details of the annexes which support the Convention.

The graphic shows the legal relationship between the Chicago Convention and ICAO.

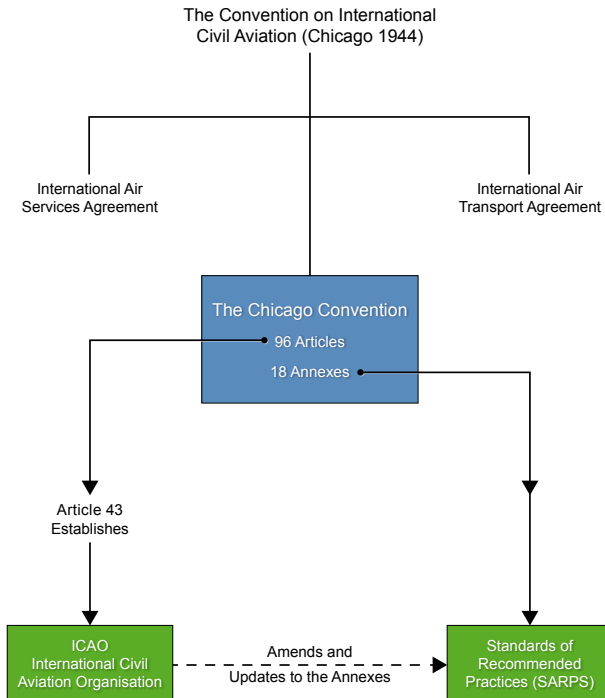


Figure 1.6

The legal relationship between the Chicago Convention and ICAO

Standards and Recommended Practices

Most of the detail of international air law is contained in the eighteen annexes to the Convention. These contain *Standards* and *Recommended Practices* (SARPs). There is a distinction in the name:

- **Standards:** all member states are expected to incorporate Standards into their aviation law.
- **Recommended Practices:** procedures which States are recommended to adopt.

Deviations from SARPs must be notified to ICAO who publish the deviation in a supplement to the relevant annex. Deviations are often notified in the form of an Aeronautical information publication (AIP). Where ATC regulations differ from SARPs the producers of flight guides often notify the differences in their publications.

Procedures for Air Navigation Services (PANS)

ICAO produces more detailed guidance known as the *Procedures for Air Navigation Services* (PANS). Although these don't carry quite the same status as the SARPs they are nevertheless seen as the definitive worldwide standard operating procedures. Procedures for Air Navigation Services are divided into three sections:

- **PANS-ABC** ICAO abbreviations and codes
- **PANS-OPS** Aircraft Operations
 - Vol 1 Flight Procedures
 - Vol 2 Construction of Visual and Instrument Procedures
- **PANS-ATM** Rules of the Air and procedures for establishing Air Traffic Services

PANS have a lower status than SARPs so member states do not have to notify ICAO if they do not accept the recommendation.

Regional Supplementary Procedures and Other Manuals

Regional Supplementary Procedures (SUPPS) augment the PANS and modify the SOPs contained in PANS to cater for the specific requirements of various regions in the world.

ICAO also publishes some forty or so other manuals and circulars for guidance and information. Including, for example, detailed regulations covering the carriage of dangerous goods.

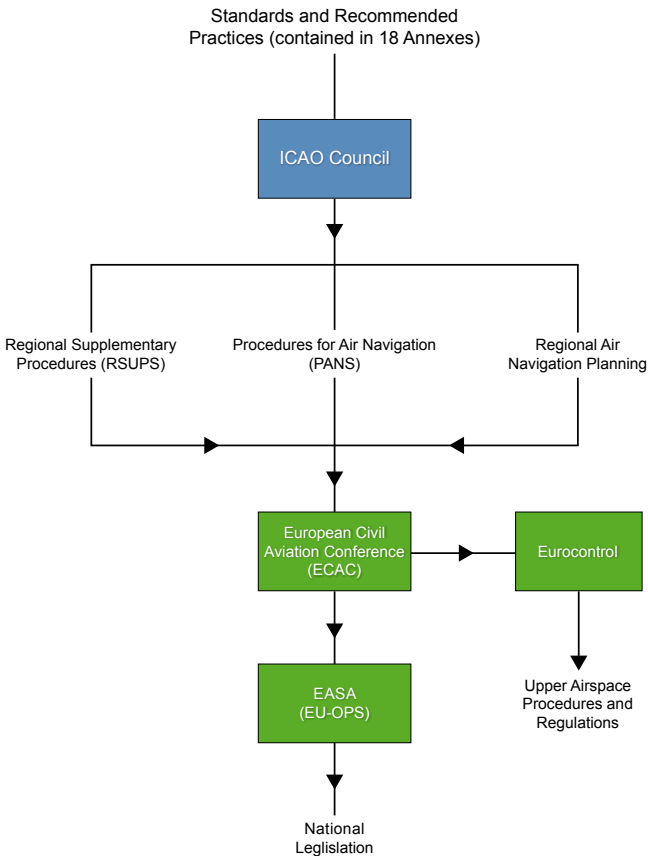


Figure 1.7

The relationship between the various elements of regulation

The International Air Services Transit Agreement

The Chicago Conference also set up two supplementary agreements: the The International Air Services Transit Agreement and The International Air Transport Agreement.

The International Air Services Transit Agreement allows aircraft of any signatory power to fly over or to land for technical reasons in the territory of any other signatory, these are known as the first and second freedoms of the air respectively.

- **First Freedom:** The right of aircraft from State A to overfly State B without landing.
- **Second Freedom:** The right of aircraft from State A to land in State B for technical reasons.

These two freedoms are collectively known as the *technical freedoms*.



Figure 1.8
The technical freedoms

The International Air Transport Agreement

The International Air Transport Agreement goes further, allowing the carriage of traffic between the State of registration of the aircraft and any other signatory State. The third freedom allows passengers and freight from the home state to be set down in the state of arrival, the fourth freedom allows passengers and freight to be picked up for transport to the home state and the fifth freedom allows passengers to be picked up or set down from states other than the home state.

- **Third Freedom:** The right of aircraft from State A to accept paying traffic from State A and put it down in State B.
- **Fourth Freedom:** The right of aircraft from State A to pick up paying traffic in State B and put it down in State A.
- **Fifth Freedom:** The right of aircraft from State A to take paying traffic from State B to State C.

These freedoms are collectively known as the *commercial freedoms*.



Figure 1.9
The commercial freedoms

Cabotage

The two agreements containing the five freedoms effectively acknowledged that countries might need to land and overfly for technical and commercial reasons. But neither agreement specifically permits cabotage.

Cabotage is the transport of passengers and goods by State A within State B. It's a very sensitive subject and many states forbid it.

Unless specifically permitted to do so an aircraft of State A operating on domestic routes within State B is committing an offence known as unlawful cabotage.



Figure 1.10

Cabotage is not one of the technical or commercial freedoms

Summary of the Five Freedoms

It's important that you understand these five freedoms. They are the basis for almost all your rights to operate non-scheduled flights over and in another state's sovereign airspace.

Be aware that these "freedoms" are not actually rights. For a start they only apply to states who have signed up to the two agreements which cover them. And not all states will grant all five freedoms. Details of which freedoms are granted by which states can be usually be found in flight guides and other national publications.

The other essential point to understand is that the five freedoms relate only to non-scheduled flights. For example one-off charter flights which aren't repeated regularly are covered, but a regular air service between, for example, capital cities, is not.

Scheduled services have to be agreed between the states concerned usually as some form of bi-lateral agreement. There is certainly no obligation under the Chicago convention for states to accept scheduled service into or over their territory.

Another contentious issue is cabotage because cabotage is certainly not a right and nor is it one of the five freedoms. You can only operate services within another state if you have specific permission from that state to do so.

Supranational Legislation

For some states this is almost as far the international regulation goes. The ICAO SARPs, PANS and SUPPs are, to a greater or lesser extent, directly enshrined in their national law.

Many states have additional obligations arising from other conventions they have agreed to. (We will look at these in the next lesson).

For states belonging to the European Union, and for other non EU states who are JAA members, things are not that simple. A further layer of legislation fits between ICAO and national aviation legislation.

The EU and The ECAC

The European Community, primarily through the European Civil Aviation Conference (ECAC), guides the national legislation of its member states. For instance, under the Agreement of Paris, certain non-scheduled flights may be carried out within Europe between ECAC States without the need for the operator to request prior permission from the State concerned.

ECAC was founded in 1955 and works under the authority of the Council For Europe. Its purpose is to drive the formulation of aviation policy for all EU member states and some additional countries, notably Turkey and Iceland. Its ultimate aim is to develop a safe, sustainable and efficient European air transport system.

Initially, regulation and its oversight was performed by the Joint Aviation Authority (the JAA). However, the functions and authority of the JAA are being steadily superceded by the European Aviation Safety Authority (EASA).



Figure 1.11
ECAC member states

The JAA

The Joint Aviation Authorities is an associated body of ECAC. It used to represent the civil aviation authorities of all EU member states but this function has now largely been taken over by the EASA. Some non European countries however, do still adhere to JAA standards. The JAA's original purpose was to implement common standards for safety, regulation and operational procedures.

The JAA is controlled by a committee comprising a representative from each member state. The committee works under the authority of the ECAC and reports to a board of directors.

The JAA published a number of regulatory documents called Joint Aviation Regulations - or JARs for short. These documents effectively harmonised procedures and standards across all member states. The JAA documents of most relevance to pilots operation under the JAA regime are:

- **JAR 145:** specifies the requirements for the Approved Maintenance Organisations (AMOs) that issue JAA certificates of airworthiness.
- **JAR-FCL:** (Flight Crew Licensing) details the requirements for qualifying for licences and the privileges associated with each licence. A pilot's licence gained in accordance with the JAR-FCL regulation will be acceptable to all JAA member states.
- **JAR-FTL:** (Flight Time Limitations) have not yet been finalised. When accepted by member states JAR-FTL will lay down the requirements for flight time limitations.

The European Aviation Safety Agency (EASA)

We said earlier that the JAA used to operate by the joint agreement of the national authorities.

In the EU context this is an unacceptable state of affairs because it doesn't allow the EU to regulate and oversee aviation in its own right. As a result the European Aviation Safety Agency was formed.

EASA is an organ of the EU and carries the full weight of legislative authority with it. Under the new regime the national authorities of EU states have ceased to have any competence for creating regulations. They instead have become agencies of EASA charged only with ensuring compliance with EASA regulations.

Some functions, such as aircraft certification, previously carried out by the JAA, have already been transferred to EASA. Others will follow. When all functions have been transferred the JAA will cease to exist.



Figure 1.12

EASA is based in Cologne, Germany

EASA Regulations

We saw that EASA is steadily assuming responsibility for certain areas of regulation. The first role it took from the JAA was the certification of aircraft. Consequently, two documents which were originally JAA regulations have now been renamed and re-branded as EASA regulations.

- **CS 23** and **25** are the new names for what used to be JARs 23 and 25. CS stands for Certification Specification.

These two documents cover the regulations applying to small and large aircraft respectively. These are pan-European standards so an aircraft certified under either of these specifications is automatically acceptable to all European member states.

EASA also has responsibility for commercial aircraft operations. The rules are covered in:

- **EU-OPS**: this document specifies the rules and regulations governing commercial air transportation.

Eurocontrol

Eurocontrol was founded in 1960. Eurocontrol is an international organisation originally established to oversee and execute air traffic control in the upper airspace regions of Member States. Its Air Traffic Control Centre (ATCC) is located in Maastricht.

However, since 1986 this role has expanded to include Air Traffic Flow Management (ATFM). This additional function is carried out by the European Central Flow Management Unit (CFMU).



Figure 1.13

Eurocontrol's ATCC is based in Maastricht, Netherlands

IATA

The final organisation we need to know something about is the International Air Transport Association (IATA).

IATA is not a legal body but is effectively the air transport industry's global trade association. It's purpose is to represent, lead and serve the airline industry.

IATA has 240 airlines in its membership, representing over 94% of scheduled international air traffic.

Since its founding in 1945 IATA has steadily built up a body of knowledge and operating expertise which has evolved into a series of published commercial standards to which all its members must adhere.

One of its latest initiatives is the International Operational Safety Audit (IOSA). IOSA uses internationally recognised quality audit principles to assess the operational management and control systems of an airline.



Figure 1.14

IATA membership tends to include only the very largest airlines

Chapter Summary

The 1944 Chicago convention gave the authority to set up ICAO.

ICAO comprises an assembly of delegates from all member states and a governing council of 33 elected delegates from member states. The assembly meets every three years and elects a new council for the next three. ICAO has various committees advising on technical matters as well as nine regional offices.

Remember that ICAO sets out two forms of regulation: Standards which ought to be adopted by all member states and Recommended Practices which are recommendations only.

Rules and regulations are published in a series of 18 Annexes to the Chicago convention. As well as these annexes, ICAO publishes some forty other documents covering such things as air navigation, and procedures for the transport of dangerous goods.

The Chicago convention also established two other agreements which set out the five principal freedoms for non-scheduled flight. You need to remember these:

- The first freedom allows aircraft of one state to overfly another.
- The second freedom allows aircraft of one state to land in another for technical reasons.
- The third freedom allows the aircraft of one state to accept its own paying traffic and set it down in another state.
- The fourth freedom allows an aircraft to pick up paying traffic and set it down in its own state.
- The fifth freedom allows an aircraft to pick up traffic from one state and set it down in another.

Cabotage is a commercial flight in which an operator of one state picks up and sets down paying traffic within another state. Cabotage is not one of the five freedoms and is not a right. Unless you have specific authorisation from that state to operate on its domestic routes you could be committing an unlawful act.

Beneath ICAO sits European and national legislation which is controlled and regulated by the European Aviation Safety Authority (EASA).