



WORKING PAPER

**FIRST UNASSIGNED HIGH SEAS AIRSPACE SPECIAL
COORDINATION MEETING (SCM/1)**

Lima, Peru, 22 to 24 July 2019

Agenda Item 2: ICAO provisions and policy concerning establishment of authority and the process for the amendment of Regional Air Navigation Plans (ANP)

**ICAO PROVISIONS, POLICY AND GUIDANCE MATERIAL ON THE
DELEGATION OF AIRSPACE OVER THE HIGH SEAS**

(Presented by the Secretariat)

SUMMARY

This working paper provides information on the main ICAO provisions, policy and guidance material that apply to the delegation of airspace over the high seas, and the delineation of ATS airspace boundaries.

Action by the meeting is in paragraph 4.

1. Introduction

1.1 This working paper provides information on the main ICAO provisions, policy and guidance material that apply to the delegation of airspace over the high seas. It also provides the high level considerations applicable to the delineation of air traffic services (ATS) airspace boundaries.

1.2 Such provisions, policy, guidance material and considerations have influenced previous delegation of high seas airspace, and, consequently, must also influence the development of any mature proposal for amendment to the applicable regional air navigation plan(s), as applied to that airspace known as the “Unassigned Airspace” – Figure 1 refers.

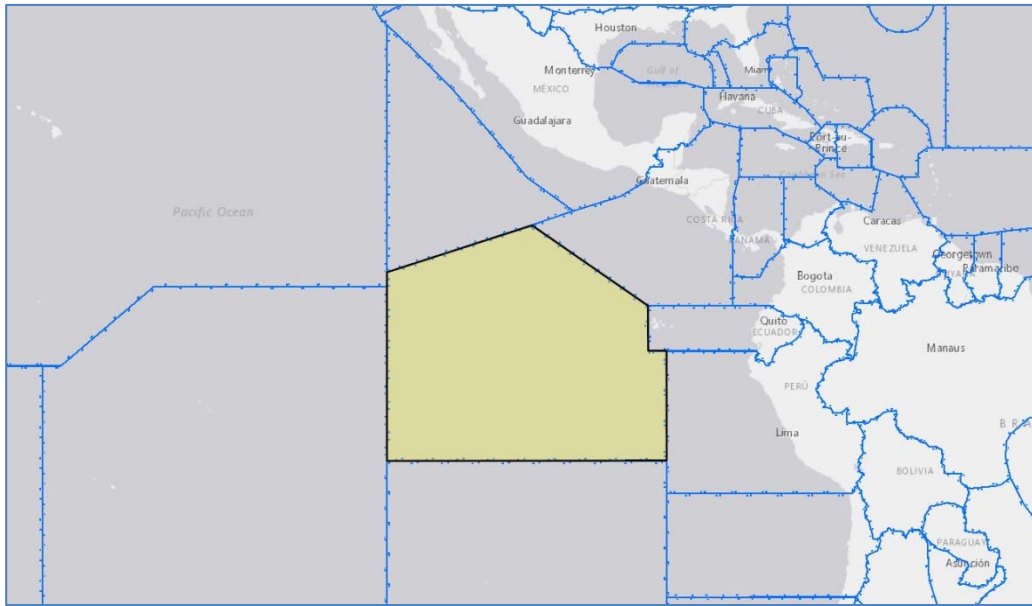


Figure-1: Unassigned Airspace

2. Discussion

Legal and Policy Framework of Air Navigation Planning over the High Seas

2.1 **Sovereignty and High Seas - The *Convention on International Civil Aviation*** (Chicago, 1944) (“the Convention”) recognizes in Articles 1 and 2 that every State has complete and exclusive sovereignty over the airspace above its territory, i.e. the airspace above its land areas and adjacent territorial waters. Conversely, for airspace over the “high seas” as referred to in Article 12 of the Convention, State sovereignty does not apply and “... the rules in force shall be those established under this Convention” (Annex 2 – *Rules of the Air* refers). This means that all waters beyond the territorial waters (12 NM) are considered as high seas, and that the airspace over the high seas is considered as international airspace from an aviation viewpoint.

2.2 **ICAO Air Navigation Plans** - The ICAO regional Air Navigation Plans (ANPs) are used as a repository of the responsibilities assigned to States for the provision of air navigation facilities and services for international air navigation, pursuant to Article 28 of the Convention and in accordance with regional air navigation agreements. The objective is that facilities and services furnished by States in accordance with the ANP form an integrated system.

2.3 **Annex 11 – Air Traffic Services** to the Convention refers to flight information regions (FIRs), which delineate the area for which a State is responsible for ATS. As such, FIRs may comprise not only sovereign airspace but also airspace over the high seas; paragraph 2.1.2 of the Annex states:

“Those portions of the airspace over the high seas or in airspace of undetermined sovereignty where air traffic services will be provided shall be determined on the basis of regional air navigation agreements. A Contracting State having accepted the responsibility to provide air traffic services in such portions of airspace shall thereafter arrange for the services to be established and provided in accordance with the provisions of this Annex.”

2.4 Annex 11 further states, under Section 2.11 Specifications for flight information regions, control areas and control zones:

“2.11.1 **Recommendation.**— The delineation of airspace, wherein air traffic services are to be provided, should be related to the nature of the route structure and the need for efficient service...”

Note 1.— Agreements to permit the delineation of airspace lying across national boundaries are advisable when such action will facilitate the provision of air traffic services (see 2.1.1). Agreements which permit delineation of airspace boundaries by straight lines will, for example, be most convenient where data processing techniques are used by air traffic services units.”

2.5 **Assembly Resolution A38-12:** - As a policy, the Assembly provided inter alia in Resolution A38-12: *Consolidated statement of continuing ICAO policies and associated practices related specifically to air navigation, Appendix G - Delimitation of air traffic services (ATS) airspaces:*

“2. ...established ATS airspaces should not be segmented for reasons other than technical, operational, safety and efficiency considerations;”

“5. ... any assignment of responsibility over the high seas shall be limited to technical and operational functions pertaining to the safety and regularity of the air traffic operating in the airspace concerned”.

As an ICAO policy, Resolution A38-12, Appendix G further conveys the following associated practice:

“1. Member States should seek the most efficient and economic delineation of ATS airspaces, the optimum location of points for transfer of responsibility and the most efficient coordination procedures in cooperation with the other States concerned and with ICAO.”

2.6 **ATS authority** - Each FIR is run by an appropriate ATS authority, which is the relevant authority designated by the State responsible for providing ATS in the airspace concerned, as per the ANP approved by the ICAO Council, while keeping with Annex 11 requirements. Furthermore, Article 12 of the Chicago Convention provides that the ICAO rules of the air fully apply above the high seas (Annex 2 — *Rules of the Air* refers). The Foreword of Annex 11 (Applicability) clarifies the following on the combined applicability of Annexes 2 and 11 in FIRs:

“Annex 11 pertains to the establishment of airspace, units and services necessary to promote a safe, orderly and expeditious flow of air traffic. A clear distinction is made between air traffic control service, flight information service and alerting service. Its purpose, together with Annex 2, is to ensure that flying on international air routes is carried out under uniform conditions designed to improve the safety and efficiency of air operation.”

Part I, Section 2, Chapter 1 of the *Air Traffic Services Planning Manual* (Doc 9426) specifies about such responsibility over the high seas:

“1.3.3 ... it should be noted that the assumption of such delegated responsibility by a State, by virtue of a regional air navigation agreement, does not imply that this State is then entitled to impose its specific rules and provisions in such airspace at its own discretion. In fact, conditions of operation therein will be governed by applicable ICAO provisions of a world-wide and supplementary regional nature and specific national provisions may only be applied to the extent that these are essential to permit the State the efficient discharge of the responsibilities it has assumed under the terms of the regional air navigation agreement.”

And

“3.2.3 With regard to the delineation of FIR boundaries over the high seas, these will, in any case, be subject to regional air navigation agreement and should be based on the existing and expected air route structure as well as on the ability of selected provider States to furnish the required services without undue efforts.”

2.7 **Annex 12**

It may be noted that Annex 12 — *Search and Rescue* contains the recommendation:

2.2.1.1 Recommendation.— Search and rescue regions should, in so far as practicable, be coincident with corresponding flight information regions and, with respect to those areas over the high seas, maritime search and rescue regions.

However there is no such equivalent recommendation that FIRs should be coincident with search and rescue regions (SRR). Consequently, the only effecting considerations with regard to lateral delineation of FIRs over the high seas is operational and technical as related to the nature of the route structure and the need for efficient service (as outlined above). Once the delineation of an FIR is determined, then the SRR can be determined.

Thereafter, Annex 12 applies, in that:

2.1.1.1 Those portions of the high seas or areas of undetermined sovereignty for which search and rescue services will be established shall be determined on the basis of regional air navigation agreements. Contracting States having accepted the responsibility to provide search and rescue services in such areas shall thereafter, individually or in cooperation with other States, arrange for the services to be established and provided in accordance with the provisions of this Annex.

Noting, also that:

Note 1 [to 2.2.1].— Search and rescue regions are established to ensure the provision of adequate communication infrastructure, efficient distress alert routing and proper operational coordination to effectively support search and rescue services. Neighbouring States may cooperate to establish search and rescue services within a single SAR region.

3. Action by the Meeting

3.1 The Meeting is invited to:

- a) Note the contents of the working paper;
- b) review the extent that the ICAO provisions, policy and guidance material that apply to the delegation of airspace over the high seas, and the considerations applicable to the delineation of ATS airspace boundaries influence the discussions of the SCM/1; and
- c) apply these provisions, as necessary, when developing a joint proposal for amendment to the applicable regional air navigation plan(s).