



ASSEMBLY - 42ND SESSION

EXECUTIVE COMMITTEE

Agenda item 22: Other high-level policy issues to be considered by the Executive Committee

NEED TO UPDATE THE CHICAGO CONVENTION

(Presented by Argentina)

EXECUTIVE SUMMARY

The 80th anniversary of the signing of the Chicago Convention fell on 7 December 2024, while 4 April 2025 marked the 78th anniversary of its entry into force. The purpose of this working paper is to invite the 193 ICAO Member States to initiate studies to evaluate and determine whether, after almost eight decades in force, the text of the Convention adequately reflects and can satisfactorily regulate the new demands on international civil aviation resulting from technological change, the progressive development of international law in general and international air law in particular, and the current state of “international regulatory law”, “global administrative law” (which relates to the legal status of the Annexes to the Chicago Convention) and the so-called “law of international organizations”.

The studies to be carried out will require a multi- and interdisciplinary exchange of ideas among the representatives of Member States, with the aim of submitting to the next Assembly a legal text for consideration by the States.

Action: The Assembly is invited to:

- a) Launch an analysis of the feasibility and advisability of updating the 1944 Chicago Convention; and
- b) Evaluate the relevance of setting up a working group to present preliminary analyses and studies.

<i>Strategic Goals:</i>	This working paper relates to all ICAO Strategic Goals.
<i>Financial implications:</i>	No upfront costs because the review will be conducted by the ICAO Legal Commission.
<i>References:</i>	A41-WP/125-LE/9 Doc 7300/9, <i>Convention on International Civil Aviation</i>

¹ Spanish version provided by Argentina.

1. INTRODUCTION

1.1 The *Convention on International Civil Aviation* (Chicago, 1944 - the “Chicago Convention”) compiles and codifies the main rules and customary practices accepted up to 1944 by the community of nations, focusing mainly on the safe, orderly and economic development of air transport worldwide on the basis of cooperation and equality of opportunity. For that reason, it is recognized as the Magna Carta of International Civil Aviation. It is also the founding document of the International Civil Aviation Organization (ICAO) which, years later, by virtue of Article 93, became one of the specialized agencies of the United Nations.

1.2 However, since the Convention predates the adoption of the Charter of the United Nations and the 1969 *Vienna Convention on the Law of Treaties*, there may be room for review and adjustment of its rules in light of the progressive development of public international law and of international air law in particular.

2. EVOLUTION AND PROGRESSIVE DEVELOPMENT OF INTERNATIONAL AIR LAW

2.1 In the 80 years since the signing of the Convention, public international law and international air law have evolved under the influence of technological developments, international relations and States’ practices.

2.1.1 The fact that ICAO has not been tasked with codifying the customary international air law practices or providing for their progressive development is one question that could be revisited if the Chicago Convention is reviewed. In practice, this task is largely carried out by IATA but, because of its nature and importance, it might be preferable for it to be done by a government-based body such as ICAO.

2.2 Evolution and Progressive Development

2.2.1 The Chicago Convention predates the adoption of the Charter of the United Nations and the consequent creation of the United Nations, as well as other constituent instruments of international organizations and of other United Nations specialized agencies. For this reason, the Convention does not include provisions for its own reform or for the adoption of amendments that would facilitate such procedures. The experience of other international organizations could be useful in a potential update of the Chicago Convention and any other aviation treaties that might be adopted in the future.

2.2.2 The Chicago Convention predates the adoption of the Charter of the United Nations in 1945 and the consequent creation of the United Nations. As a result, the Convention lacks two key tools, which makes it difficult to amend: a) amendments being binding on all States Parties if they are adopted and ratified by a two-thirds majority of members, including the permanent members of the Security Council (Article 94 of the Chicago Convention refers to the two-thirds rule as well, but provides that amendments are binding only on those countries that have ratified them); and b) States’ consent to revise or amend the Charter by holding a General Conference (see Articles 108 and 109). These gaps place ICAO at a regulatory disadvantage by depriving it of two useful legal provisions that are contained in the constituent treaties of other United Nations specialized agencies.

2.3 The IMO tacit acceptance rule and its application by analogy to ICAO

2.3.1 The tools provided under Articles 108 and 109 were adopted and reworked by other United Nations agencies. The experience of the International Maritime Organization (IMO), created under the Geneva Convention of 1948, is particularly relevant because its purpose (cf. Article 1(a)) is most similar to ICAO’s. The Geneva Convention of 6 March 1948 entered into force on 17 March 1958. Since then, IMO

has adopted a very wide array of treaties and protocols² and gained a great deal of empirical experience from which valuable lessons can be learned. Initially, amendments would enter into force after being ratified by a qualified two-thirds majority (i.e., IMO followed Articles 108 and 109 of the United Nations Charter), which was illogical because an amendment required more ratifications than had been necessary for the treaty to enter into force. This approach was abandoned and replaced by the tried and tested practice of tacit acceptance, whereby an amendment enters into force at a specified time unless, prior to that date, a specific number of Parties signify their objection.³ Article 94 of the Chicago Convention also invokes the two-thirds rule, with the difference that the amendment will be binding only on those countries that have ratified it. Given the empirical outcome of the tacit acceptance rule, it might be advisable to take this development in the “law of international organizations” into account in a future update of the Chicago Convention and any other air law treaties that may be adopted in the future.

2.4 A multi-speed Chicago Convention

2.4.1 The rule established in Article 94 had an unintended consequence, namely, that the Convention is now applied at multiple speeds. We can illustrate this with the following examples: Article 3 *bis* is binding on 164 out of the 193 Member States; Article 83 *bis* is binding on 182 countries (11 fewer than the total membership); and Article 93 *bis* is binding only on 119 States and not to the remaining 74. The asymmetries are even more glaring in respect of the multilingual texts: the 1968 Buenos Aires Protocol on the Authentic Trilingual Text of the Convention on International Civil Aviation has been in force since that very year for 154 countries, but not the same countries that accept the validity of the Authentic Quadrilingual Text of the Convention on International Civil Aviation adopted in 1977 (in force since 1999 for only 91 countries) or the 125 States that ratified the 1977 Protocol Relating to an Amendment to the Convention on International Civil Aviation [Final Paragraph, Russian Text]. This creates uncertainty around the interpretation of the treaty, since its texts are not deemed authentic by 39, 102 and 68 countries, respectively. The uncertainty increases when we see that the valid texts in five or six languages and the authentic Arabic and Chinese versions have never come into force. We leave for last the legal absurdity relating to the Montreal Protocol of 1954 amending Article 48(a) and in force since 1956, whereby the Assembly sessions cease to be annual and become triennial for the 148 States that ratified it, meaning that there are 45 countries for which this rule is unenforceable. There is thus a need to consider new rules with a view to resolving this uneven or multi-speed application.

2.5 Expanding ICAO’s powers and functions

2.5.1 Although the role of ICAO in ensuring the safe development of international civil aviation can be inferred from the Preamble and Articles 4, 12, 44, 55(c) and 55(e), the current geopolitical context and the rapid industrialization and neuro-technological advances around AI make it advisable to include under ICAO’s competences and objectives everything relating to the protection of civil aviation from terrorist acts, the seizure of and unlawful interference with aircraft, cyberattacks and any other crime that in theory or in practice puts the safety and security of civil aviation and air navigation at risk.

2.6 The Assembly is the paramount deliberative body

2.6.1 Given the senior level of representatives making up delegations to the Assembly and its essentially democratic nature, it is necessary to restore its role as the paramount deliberative body. In that light, an annual session may be too frequent and a triennial session not frequent enough, on account of the speed at which new events and critical situations arise and call for action. A longer biennial session, in turn,

² 53 treaties and protocols, with 240 amendments in force as of February 2025.

³ The rule of tacit acceptance was applied, for example, in COLREG 1972 (Convention on the International Regulations for Preventing Collisions at Sea), MARPOL 1973 (International Convention for the Prevention of Pollution from Ships) and SOLAS 1974 (International Convention for the Safety of Human Life at Sea).

would allow for more in-depth discussion and analysis enabling the Assembly to perform its inherent functions and duties and such others as may be assigned to it. Redefining the Assembly's role will require a comparative study of how Assemblies in other United Nations and non-UN international organizations operate.

2.7 Reciprocal granting of technical and commercial freedoms

2.7.1 States invited to the Diplomatic Conference in Chicago did not reach the necessary consensus to multilaterally grant each other traffic rights or commercial freedoms of the air under the 1944 International Air Transport Agreement, in force since 8 February 1945, which to date has only 11 States Parties, i.e., less than 6% of all ICAO members. This stands in contrast to the modest success of the 1944 International Air Services Transit Agreement, with 135 member countries, i.e., 70% of ICAO Member States, granting each other the first two technical freedoms for scheduled flights. At the Chicago meeting, the States did agree to multilaterally grant each other those two technical freedoms for non-scheduled flights only, under Article 5 of the Convention. Given the proliferation of bilateral and regional open skies agreements over the past 25 years, countries are invited to reflect on the desirability of including this subject in a future update of the 1944 Convention.

2.8 The binding nature of the Annexes to the Convention

2.8.1 The modernization of the Convention is the ideal time to conduct a meta-analysis of the binding nature of the Annexes, which, though technical, nonetheless enshrine numerous legal standards. Article 39 of the Paris Convention of 1919 resolved the issue by granting the annexes the same binding force as the treaty. The importance of this issue means it would be advisable to discuss it in any update of the Chicago text of 1944.

3. CONCLUSION

3.1 The widespread application of the Chicago Convention speaks to its success in regulating an activity that emerged with great vigour after the Second World War. These 80 years have revealed both its strengths and weaknesses. The factors described above are compounded by geopolitical and economic changes and the logarithmic advance, for better or worse, of technology that have given rise to new scenarios that are widely different from those in 1944. Reflection is therefore in order to determine when and if the Chicago Convention should be brought up in line with contemporary needs.

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