



Understanding the International Regulatory Framework (Convention on International Civil Aviation & ICAO)

Dr. Mohammad Al-Husban

Agenda

- ✓ Sources of Law
- ✓ Legal Structures NAA
- ✓ Chicago Convention
- ✓ NAA Legislation
- ✓ Functions of the NAA
- ✓ Safety Regulation – Principles & Practice
- ✓ Consequences of Breach/Failure
- ✓ Other Legal Issues

Law - Sources



International Law

International Law is the Body of Legal Rules which apply between Sovereign States and such other entities as have been granted International Personality



Public International Law

“The law of nations governing the relationship between states and other international persons.”

- There is no supreme legislative body to pass laws which are binding and enforceable by and against all states, e.g. UN Resolutions frequently ignored
- Article 38 of the Statutes of the International Court of Justice (ICJ) – provides a guide to sources of international law
- ICJ is an Agency of the UN

Sources of International Law

Article 38



- International conventions
- International customary law
- General principals of law recognized by Civilized Nations
- Judicial decisions

Treaties and Conventions

Most international laws the result of inter-governmental negotiations or deliberations of international organizations

e.g.:

- ❖ United Nations (UN)
- ❖ (WTO)
- ❖ GATT
- ❖ NATO



Sovereignty

- Key players in international law are Sovereign States
- Sovereign States may enter into agreements in form of Treaties and Conventions
- Once ratified treaties are binding on signatory States – known as Contracting Parties
- Become binding on individuals and organizations only when implemented into national law

Treaties & Conventions

- Agreements reached between States are embodied in a Treaty or Convention – these terms are interchangeable
- Other agreements made between individual States on a multilateral or bilateral basis may constitute basis of law



➤ Definitions

“Treaty (Convention) means an international agreement concluded between states in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation.” (Vienna Convention on the Law of Treaties –1969)

Vienna Convention 1969

- 85 Articles, 8 Parts and Annex
- Five principles
- Free consent and good faith
- Binding on parties
- Change of circumstances jeopardizes continuity
- Continuity / Maintenance essential

Ratification

- In order to come into force a treaty requires ratification –
- “Ratification, Acceptance, Approval and Accession mean in each case the international act so named whereby a State establishes on the international plane its consent to be bound by a treaty.”
- A “Contracting State” is a State which has consented to be bound by the treaty and for which the treaty is in force.

Elements of Aviation Legislation (ICAO Manual doc. 8335)

- State should enact a basic aviation law
- Development and promulgation of Code of Air Navigation Regulations
- Implementation of the Convention through national law
- Consistent with Annexes



Basic Law

- Establishment of a NAA/ DCA headed by a Director.
- Delegation of necessary authority and responsibility to NAA/DCA.
- Authority to issue operating regulations and rules based upon Annexes.
- Provisions for enforcement
- Obligation for all commercial air transport operations to be conducted under State authority

EU Legislation

- **Regulations**
- **Directives**
- **Commission decisions**
- **European Court of Justice(ECJ) decisions**

EU Legislation

- Regulations – three elements
- General application
- Binding in character
- Direct applicability in each member state
- Article 189 EC Treaty (as amended)

EU Legislation

- Directive – Has binding force in respect of result to be achieved for every member state to which it is addressed
- Member States – National Authorities have discretion and authority in choice of form and methods of implementation and enforcement
- in respect parties to whom they are addressed, e.g Government, Agencies, Organizations, Individuals

EASA

- European Union has now established the European Aviation Safety Agency EASA
- Now EASA responsible for aircraft certification and continuing airworthiness
- In future EASA will be responsible for adoption of rules for all operations, personnel licensing, aerodromes and air traffic services
- Where EU/EASA legislates and regulates the Member States cease to be legally competent to do so
- Member States apply and implement rules

CHICAGO CONFERENCE 1944



➤ Chicago Convention

- One Convention to which almost every state is a contracting party is the Chicago Convention
- Forms basis for development of civil aviation in post-war period
- This sets out the “Chicago Deal” and provides for the adoption and updating of safety regulatory Standards and Recommended Practices – SARPS
- UK is a contracting party and is obliged to comply with provisions of the Convention

➤ Chicago Obligations

- NAA must ensure in the Annexes to the Chicago Convention are mandated in NAA law – unless the NAA has filed a Difference
- Convention applies to international aviation by civil aircraft – does not apply to State aircraft

➤ The Chicago Deal

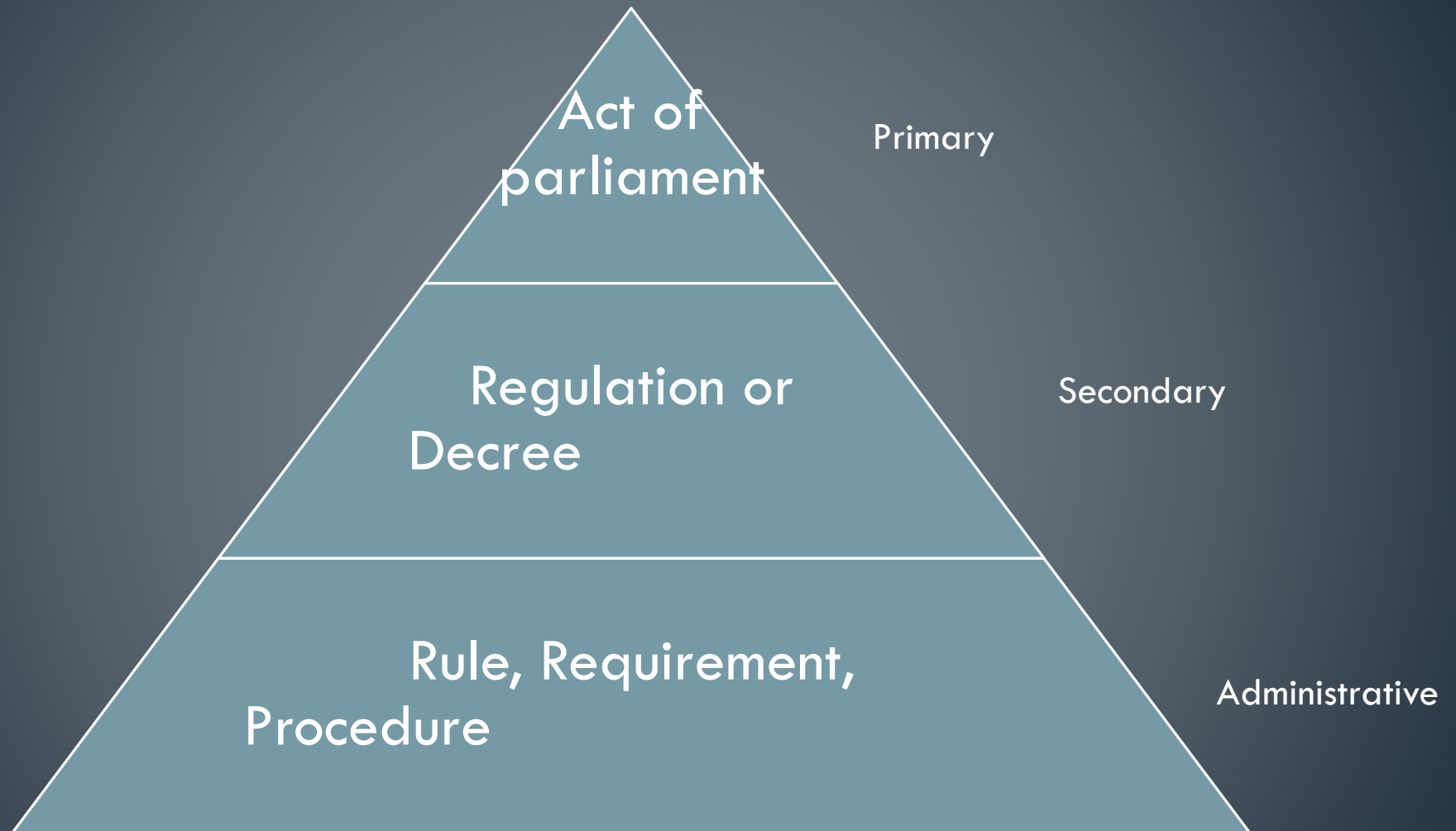
- State responsible for ensuring its aircraft meet ICAO Standards
- States accept foreign registered aircraft into their territory on the presumption that they meet ICAO minimum standards and will be overseen by State of Registry - in return for reciprocity
- Right of States to ramp-check foreign aircraft and to ground aircraft when unsafe
- ICAO audits States for compliance
- System is built on trust by States in each other

National Law

“Whereas International law applies to States, municipal (or national) law is the internal law of a state which governs the conduct of individuals and other legal bodies within its jurisdiction”



Hierarchy of Law



NAA Legislation:

- ✓ Act of Parliament – Statute
- ✓ Order in Council
- ✓ Statutory Instruments – Regulations
- ✓ Administrative Rules, Orders,
Directions
- ✓ Administrative Procedures, Bylaws

Legislation:

All binding legislation must either be made by Parliament in the form of an Act – Primary

Legislation

Or it must be made using enabling powers contained in an Act – Secondary or Subordinate

Legislation

Civil Aviation Act 1982 contains enabling power at section 60 to make an Air Navigation Order and Regulations - ICAO Annexes implemented

Principal NAA Legislation

- Civil Aviation Law 19xx
- Other laws (Airports , Air Navigation....
- Civil Aviation Authority Regulations 19xx
- Other regulations (Air Navigation, Dangerous Goods) Regulations

Structures in Other Countries

- Air Navigation Act or Civil Aviation Law – (enacted by Parliament / President)
- Air Navigation Code or Regulations – (implementing ICAO Standards - Parliament / Congress / Council of Ministers)
- Administrative Rules / Procedures (Ministerial Order / Decree)
- Directions/Instructions – (Regulatory/Competent Authority)

Implementation of International Standards

- Enactment of national law is required for effective implementation and enforcement of Convention obligations.
- Cannot rely on the Annex for enforcement only on provisions of national laws and regulations



Uniformity of Standards

- Articles 12 and 37 of Chicago Convention
- Uniformity and harmonization of rules by Contracting States
- Filing of differences under Article 38
- Particularly important for manufacturers of aircraft and components
- Need for certification by States of operation as well as
State of manufacturer

Functions of the CAA

Section 3 Civil Aviation Act 1982

General

- Airspace Policy – Directorate of Airspace Policy (DA))
- Consumer Protection - Licensing of air carriers and air travel organisers
- Economic Regulation - Airports and Air Traffic

Services

- Advice to Secretary of State

Air Navigation Orders

Functions conferred on NAA

- Registration, certification and airworthiness of aircraft
- Safety of air navigation and aircraft
- Certification of air operators
- Licensing or certification of aerodromes / ATS
- Licensing of flight crew and other personnel
- Maintenance approvals
- Production approvals

Primary Objective of Safety Regulations unit

To develop safety improvement concepts and a safety improvement action programme in partnership with industry to ensure that the frequency of fatal accidents does not increase in line with the forecast growth in traffic and a consequent loss of public confidence.

Safety Regulation ***“Safety Is No Accident”***

➤ Principles of Safety Regulation

- Operator of aircraft or provider of service retains primary responsibility for safety of operation or service
- Regulated organisation must be capable of demonstrating it achieves standards which it sets itself for purposes of maintaining safety and complying with requirements of regulator
- Regulator should seek to maintain adequate oversight of safety integrity of regulated organisation - but keep intervention at minimum practicable level consistent with pursuing regulatory duties

Example of Basic Requirements

“An aircraft must not fly unless there is in force for the aircraft a Certificate of Airworthiness duly issued or rendered valid under the law of the country in which the aircraft is registered or the state of the operator and any conditions, subject to which the certificate was issued or rendered valid, are complied with”

Airworthiness general

- Major changes to NAA as result of implementation of EASA Essential Requirements including Part M
- NAA deals with above and national requirements for non- EASA aircraft
- Somewhat confusing mixture for those not familiar with NAA system

Other Major Requirements under the CARs

- Technical log (EASA & article 27)
- Requirements for a certificate of release to service (EASA & article 28)
- Licensing of maintenance engineers (article 33)
- Aircraft equipment (article 37, schedule 4)
- Minimum equipment (article 41)
- Aircraft, engine and propeller log books (EASA & article 34)

Enforcement

- Any breach is criminal offence

NAA Safety Legislation part of criminal law

- NAA has responsibility for enforcement
- NAA employs team of investigation officers to investigate alleged offences/breaches and will prosecute in criminal courts where appropriate
- Otherwise NAA can apply sanctions, e.g. suspension or revocation of licence, certificate

Criminal - Enforcement

NAA Aviation Safety Legislation part of the criminal law

- Any breach may be a criminal offence
 - NAA given responsibility by LAW to enforce
 - NAA has team of investigation officers to investigate and
- NAA will prosecute where appropriate

➤ Regulatory enforcement

- NAA must be satisfied as to fitness and competence of licence/approval holders etc
- May provisionally vary or suspend and/or propose to substantively vary suspend or revoke
- Right to review of proposal – Regulations
- NAA cannot take away a licence/certificate in order to punish someone but only if NAA no longer satisfied holder is fit to hold

Regulatory

EASA not generally going to be in the business of issuing individual licences and approvals so it is likely to remain the responsibility of NAA or perhaps assessment bodies

NAA Regulatory powers (see law articles) :

- I. Power to detain/stop an aircraft from flying
- II. Power to enter aircraft or premises where aircraft is, e.g. hanger, for purpose of inspection
- III. Power to demand production of documents and other records and to inspect
- IV. SAFA Ramp Check programme in respect of foreign aircraft – linked to EU Blacklist of air carriers and/or States

Negligence

A person is negligent if he fails to exercise such care, skill or foresight as a reasonable man (of that profession) in his situation would exercise

“It is so easy to be wise after the event and to condemn as negligence that which was only misadventure”

“a mere error of judgement is not negligence.”



Negligence

The reasonable organisation

- **Develops a policy**
Reasonable, consult, publish, update
- **Establishes procedures**
Publish, train staff, update
- **Complies with the procedures**
- **Keeps records**
Everything relevant nothing irrelevant

Legal Consequences of Breaking the Rules

Refusal, suspension, revocation & the Regulation

Because NAA often exercises discretionary powers it must be prepared to offer a review to a disappointed applicant - that is the price of flexibility.

Review conducted under procedures

CAA's Discretionary Powers

- Air operator's certificate
- Flight crew license
- Air traffic control approval

NAA must be satisfied aircraft, individual or organization is competent - Civil Aviation Publications (CAPS)

EASA Essential Requirements & Implementing Rules and EU-OPS + Joint Aviation Requirements (JARs) where still applicable

Provisional Suspension

NAA may provisionally suspend any certificate, license etc issued under the order pending inquiry into or consideration of the case.

Differs from a (substantive) suspension

A provisional suspension is appropriate in two cases

❖ Other Legal Issues:

- Aircraft registration
- Transfers under article 83bis
- Security rights in aircraft
- Security of civil aviation
- The environment
- Product liability
- Consumerism
- Aviation health
- Air carrier liability

Aircraft Registration

- Act of registration imposes obligation upon State of Registry to ensure airworthiness of aircraft
- Aircraft cannot be registered in more than one State

Transfer – ICAO Article 83bis

- State of Registry can transfer all or some of its responsibilities to State of Operator
- Great care required – States must have compatible standards
- Only between States who have ratified Article 83bis
+
 registration with ICAO
- Annex 6 Part II requirement for coordination of oversight between State of Registry & State where aircraft normally operates

Security Rights in Aircraft:

- Concern of banks etc to protect their security interests in aircraft

- Laws often absent or unsatisfactory

- Judicial system ineffective or corrupt

- Cape Town Convention 2001 – security interests in mobile assets – system of international registration of security interests

Many States not yet ratified

Security of Civil Aviation

- Terrorism – measures for protection
- Tokyo Convention 1963, Hague Convention 1970, Montreal Convention 1971, Montreal Convention 1991
- Post 9/11 additional measures

Environmental Issues:

- Effect of civil aviation upon the planet
- Control of noise and emissions
- Kyoto Treaty and other measures
- Emissions trading
- Airports restrictions

Product Liability

- Manufacturer's liability for defective products
- Causal factors in accidents – compensation may be shared between operator and manufacturer
- Punitive damages in some jurisdictions

Consumerism

- Litigious world – consumer protection
- Human rights legislation
- Fair trade legislation – contracts
- Blacklisting of airlines and States
- Damages for delay and cancellation etc



Aviation Health

- Concern over cabin environment
- Seating configurations
- Emergency procedures
- WHO and CAA studies on aviation health

Air Carrier Liability

- *Montreal Convention 1999 now in force*
- *Absolute liability – personal injury or death resulting from accident on board an aircraft or in course of embarkation/disembarkation*

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Thank you

Questions?