

ICAO LEGAL SEMINAR BANJUL, THE GAMBIA

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International Framework for Air Navigation Safety

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ICAO



Outline

1. Chicago Conference - Convention - Safety
2. ICAO SARPs, PANS and SUPPs
3. Air Traffic Services
4. Air Navigation Plans
5. Certification of Crew, Aircraft and Operators
6. Key States Responsibilities – Air Navigation Safety
7. Article 83 bis

The Chicago Convention (1944)

- Adopted at Chicago Conference 1944 (before UN)
- Basis for the development of international civil aviation
- Constitution of ICAO
- Air Transport – Freedom(s) of the Air ...
- Technical aspects – Safety: Success !



Air Navigation – Principle of sovereignty

- **Airspace sovereignty**

- Article 1: State sovereignty in the airspace above its territory
- Article 2: land and territorial waters (12 NM)
- Beyond territorial waters = High Seas
- No freedom except overflight + technical stops for non-scheduled flights (Art. 5)

- **Article 11 – Sovereignty subject to:**

- non-discrimination v/v nationality of aircraft
- the provisions of the Convention

Chicago Convention – Safety

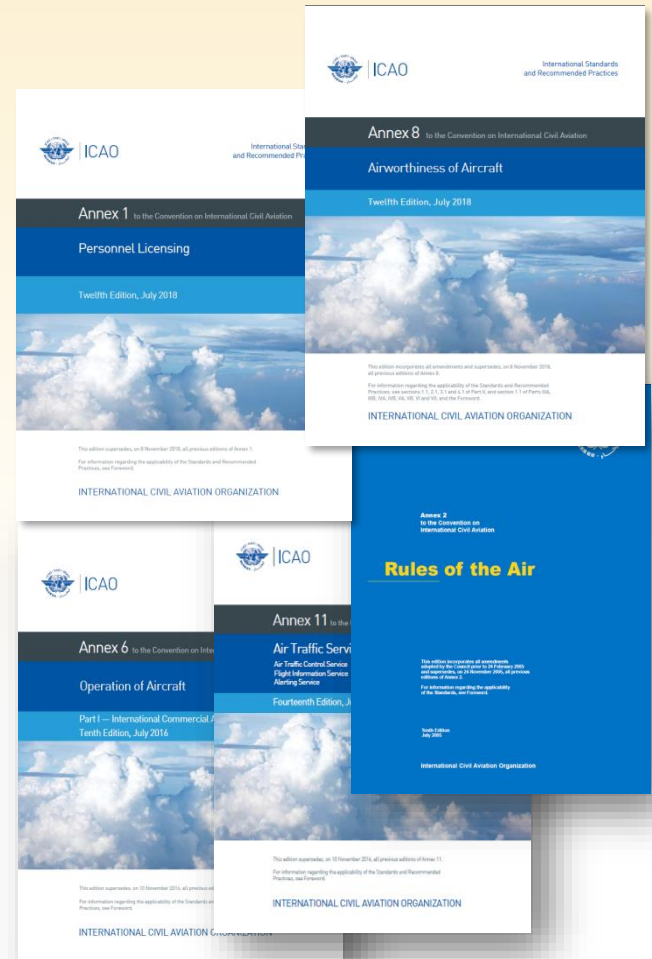


- **Preamble**
 - [...] the undersigned governments having agreed on certain principles and arrangements in order that international civil aviation may be developed in a **SAFE** and orderly manner
- **Article 44: Aims and objectives of the Organization:**
 - Ensure the **SAFE** and orderly growth of international civil aviation (a)
 - Meet the needs of the peoples of the world for **SAFE**, air transport (d)
 - Promote **SAFETY** of flight in international air navigation (h)
- **Exceptions to sovereignty: international regulations**
 - Article 12: Rules of the Air (+ Art. 23 and 25)
 - Article 28: Air navigation facilities and standards systems
 - Article 33: Recognition of certificates and licences
- **ICAO Standards and Recommended Practices (SARPs): Articles 37 and 54 I)**

State Obligations in Safety Regulation

Article 37 of the Convention attempts to achieve uniformity in air navigation, by requiring that every contracting State collaborate in securing:

“[...] the highest practicable degree of uniformity in regulations, standards, procedures, and organization in relation to aircraft personnel, airways and auxiliary services in all matters in which uniformity will facilitate and improve air navigation. To this end [ICAO] shall adopt and amend from time to time [...] international standards and recommended practices”.



Standards and Recommended Practices (SARPS)

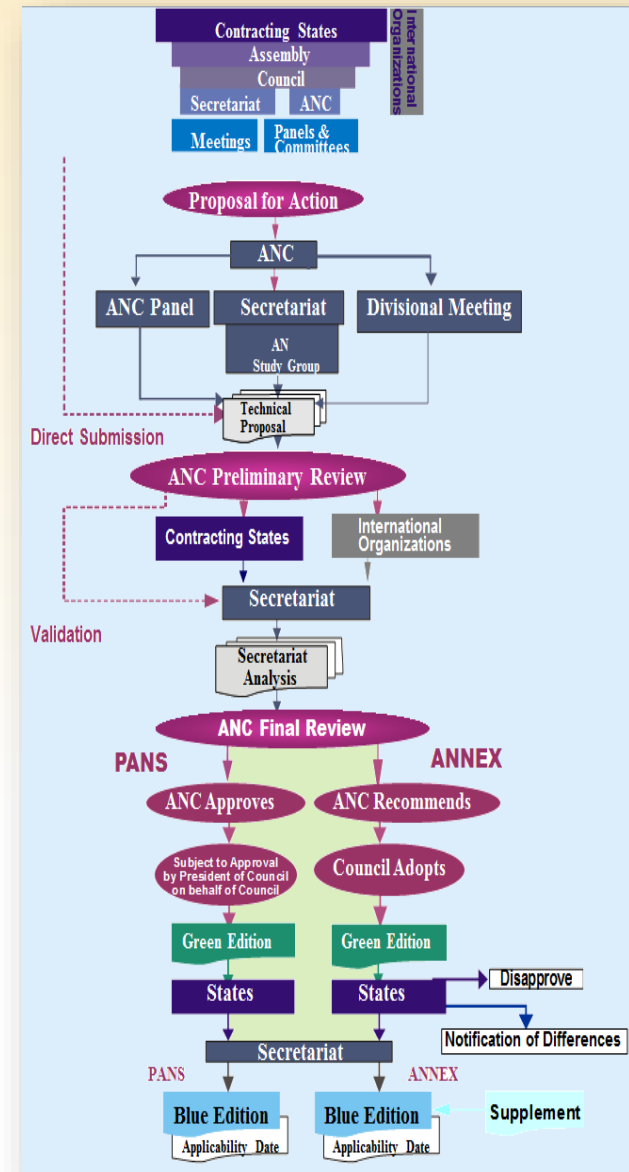
- **INTERNATIONAL STANDARD** - “any specification for physical characteristics, configuration, material, performance, personnel or procedure, the uniform application of which is recognized as necessary for the safety or regularity of international air navigation and to which contracting States will conform in accordance with the Convention” (Arts. 37, 38 and 54 of the Chicago Convention)
- **RECOMMENDED PRACTICE** - “any specification for physical characteristics, configuration, material, performance, personnel or procedure, the uniform application of which is recognized as desirable in the interest of safety, regularity or efficiency of international air navigation and to which contracting States will endeavour to conform in accordance with the Convention” (Arts. 37 and 54 of the Chicago Convention)

ICAO SARPs, PANS and SUPPs

- **Domestic implementation through enactment of domestic law**
 - SARPs need to be given legal effect - usually by Regulation (text in 6 languages)
- **Chicago Convention: *Pacta sunt servanda* = binding**
- **SARPs: special status/procedure**
 - Article 90: 2/3 Council and no disapproval by majority of States
 - Articles 37-38: “Comply or notify” a ‘difference’ to ICAO
 - Standard is binding Rule of Law IF no difference is notified
 - Assembly: notify also differences to Recommended Practices
- **Annexes : SARPs + Guidance material (Notes, Attachments, ...)**
- **PANS & SUPPS + Technical Instructions (Circulars and Manuals = Secretariat)**

Annexes to the Chicago Convention

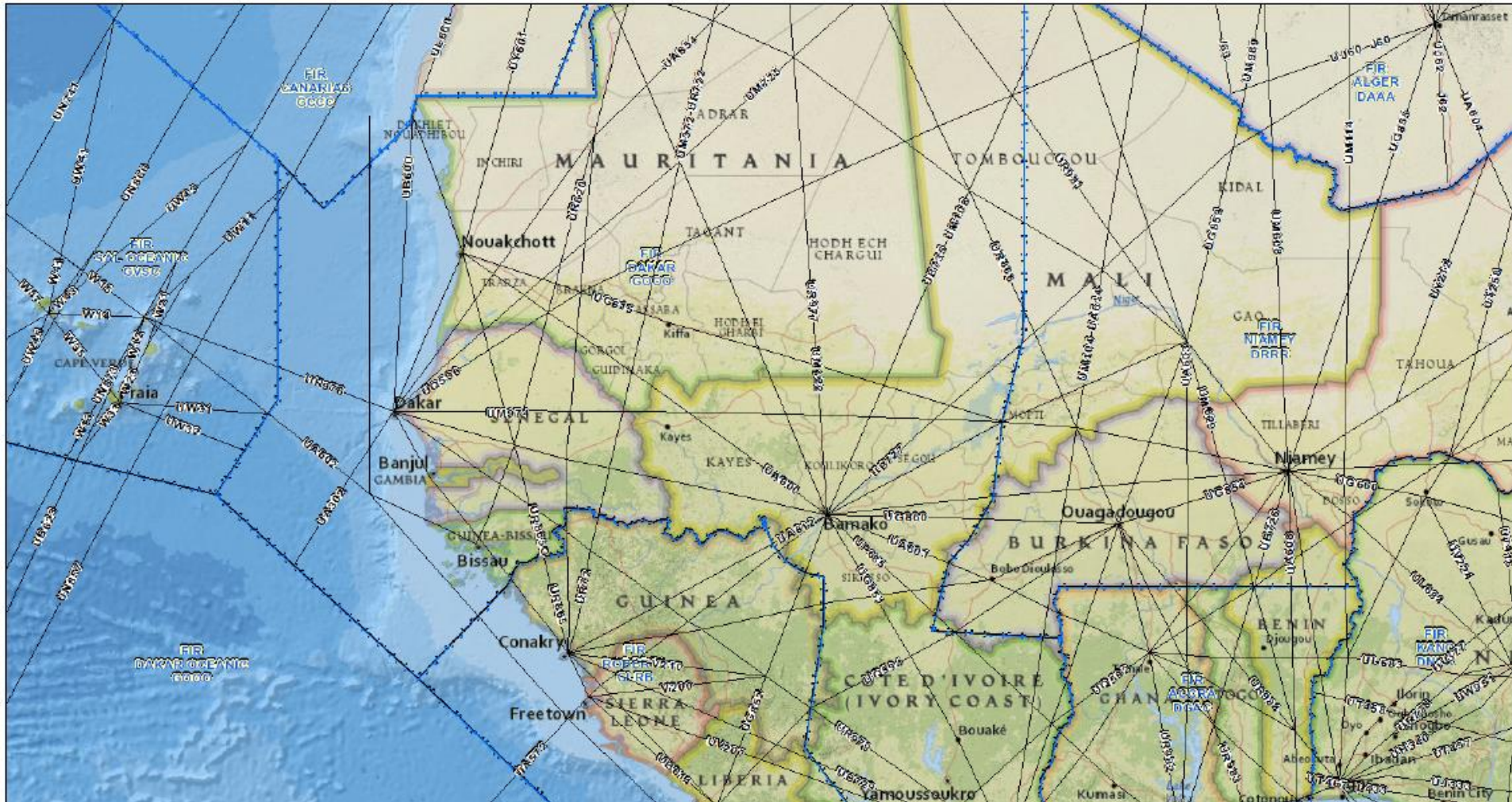
- Legislative power of ICAO under Articles 37 and 38 of the Chicago Convention to adopt Standards and Recommended Practices (SARPs)
- 19 Annexes containing over 12,000 SARPs
- States may depart from Standards by filing differences



Air Traffic Services

- SARPs & PANS → SUPPs & Air Navigation Plans ← States
 - Flight Information Regions (FIRs) & ATS authorities
 - Article 28 + regional air navigation agreements
 - Annex 2 (Rules of the Air): no difference over high seas
 - Annex 11 (ATS): same in national airspace & High Seas
 - Freedom of overflight over the high seas

FIR DAKAR and ATS Routes



Air Navigation Plans - ANPs

- Assembly: Resolution A40-4, App. E-F-G
- Technical and operational considerations
- ICAO Planning and Implementation Regional Groups (PIRGs)
- Amendment procedure through ICAO Regional Offices
- Mainly by correspondence (or Regional Air Navigation Meetings)
- Approval by Council (subject to sovereignty principle)
- Temporary deviations = Contingency: President of Council

Safety-Related Provisions

Certification: Crew/Aircraft/Operators

- Member States promulgate domestic laws and regulations to certify airmen, aircraft, and aircraft operators as airworthy and competent to carry out safe operations in international aviation:
 - State of Registry – **Annexes 1 and 8**: crew licences (Art. 32) and certificate of airworthiness (Art. 31)

Recognition of PEL + CofA

- **Article 33** : Mutual recognition of validity if issued under requirements meeting the 'minimum' ICAO standards.
- IF Standards in Annexes 1 or 8 not met:
 - Article 38: State shall notify a difference to ICAO
 - Article 39: Endorsement of Licence/Certificate
 - Article 40: Permission of State to be overflown (Art. 11)

Safety-Related Provisions

Air Operator Certificate (AOC):

- State of the Operator – Annex 6 (Operation of Aircraft)
- An operator shall not engage in commercial air transport operations unless in possession of a valid Air Operator Certificate issued by the State of the Operator (Parts I and III).
- Certified true copy carried on board (with documents under Article 29).
- Mutual recognition of validity if issued under requirements meeting the 'minimum' ICAO standards (Annex 6 and Annex 19).

Differences are not exportable

- **States to be overflowed:**
 - Article 11: local laws and regulations apply
 - Annex 6: pilots to check law of airspaces to be traversed
 - More stringent laws may apply except mutual recognition of validity
 - Article 32 (b): national crew subject to national laws
- **Verifications:**
 - Article 16: Ramp inspections (Art. 29 et al.)
 - EFOD: ICAO publication of differences from SARPs
 - Annex 15 - AIPs: 'significant' differences from SARPs & PANS
 - ICAO USOAP reports: including Significant Safety Concerns

Key Safety Responsibilities

- State of Registry (certification of crew and aircraft)
- State of the Operator (Certification of Operator)
- States overflowed: Oversight + Surveillance (A36-6)
- Appropriate ATS Authority: domestic/international
- Appropriate Authority over Aircraft: SR or ATS Authority
- ICAO: SARPs etc.; ANPs; Audits; EFOD; DAGMAR (Art. 83); Assembly Resolutions; (Quasi-) judicial functions of Council.

Protocol introducing Article 83 *bis*

- **Background**

- International Leasing: Different State of Registry and State of the Operator
Principal Place of Business (PPB)
- Remote oversight of crew and aircraft difficult
- Temporary transfer of Registry – Back ...?
- Delegation of authority – bilateral effect
- Multilateral effect – Transfer of responsibility

- **ICAO History of Article 83 *bis***

- Panel of Experts (1976) - Sub-C of the LC (1977)
- LC (1978): Chicago C. to be amended; No definition of L.C.I.; Articles 12, 30, 31 and 32 (a)
- Art. 83 *bis* : 6 Oct. 1980 (A23) – i.f. 20 June 1997
- First substantive amendment – 176 Parties
- Circular 295 (2003)
- TF - LC (2015) : Manual (2017) + 5 recommendations

Article 83 *bis*

Transfer of certain functions and duties

- a) Notwithstanding the provisions of Articles 12, 30, 31 and 32 *a)*, when an aircraft registered in a contracting State is operated pursuant to an agreement for the lease, charter or interchange of the aircraft or any similar arrangement by an operator who has his principal place of business or, if he has no such place of business, his permanent residence in another contracting State, the State of registry may, by agreement with such other State, transfer to it all or part of its functions and duties as State of registry in respect of that aircraft under Articles 12, 30, 31 and 32 *a)*. The State of registry shall be relieved of responsibility in respect of the functions and duties transferred.
- b) The transfer shall not have effect in respect of other contracting States before either the agreement between States in which it is embodied has been registered with the Council and made public pursuant to Article 83 or the existence and scope of the agreement have been directly communicated to the authorities of the other contracting State or States concerned by a State party to the agreement.
- c) The provisions of paragraphs a) and b) above shall also be applicable to cases covered by Article 77.

Mechanism and Safety Benefits

- **Mechanism**

- **WHEN?** International Lease of Aircraft
- **WHO?** State of Registry / State of the Operator
- **WHAT?** Transfer of certain SR duties and functions
- **HOW?** Agreement and publicity
- **EFFECT!** Multilateral recognition of transfer

- **Safety Benefits**

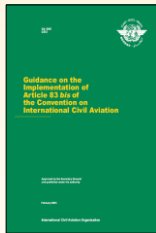
- Enhanced coordination of safety oversight
- Law of the SO applied by SO
- Harmonized qualification and training of crew
- Improvement of maintenance of aircraft
- Article 12 enforcement by SO facilitated
- Dry leases vs. wet leases
- Medium-term leases vs. short or long terms

Documentation



Assembly Resolutions

A23-2; A23-3; A23-13



ICAO Circular 295

13 Guidelines + Model Agreement



ICAO Website (LEB)

Treaty Collection + DAGMAR



Manual on implementation of Art. 83 bis

Doc 10059, published in 2017

What is next ?

1. Amendment to Rules of Registration:
Adoption at the 219th Session of the
Council
2. DAGMAR - online system : New self-
registration system
3. Annex 6: Summary A. on Board:
5 November 2020

Thank you.



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