

Due to the usual delays expected in ratifying the Convention, the Chicago Conference presciently signed an Interim Agreement which foresaw the creation of a *Provisional ICAO* (PICAO) to serve as a temporary advisory and coordinating body.

The PICAO consisted of an Interim Council and an Interim Assembly, and from June 1945 the Interim Council met continuously in Montreal, Canada, and consisted of representatives from 21 Member States. The first Interim Assembly of the PICAO, the precursor to ICAO's triennial Assemblies in the modern era, was also held in Montreal in June of 1946. On 4 April 1947, upon sufficient ratifications to the Chicago Convention, the provisional aspects of the PICAO were no longer relevant; and it officially became known as ICAO. The first official ICAO Assembly was held in Montreal in May of that year.

During this march to the modern air transport era, the Convention's Annexes have increased in number and evolved such that they now include more than 12,000 international Standards And Recommended Practices (SARPs), all of which have been agreed by consensus by ICAO's now 193 Member States.

These SARPs, alongside the tremendous technological progress and contributions in the intervening decades on behalf of air transport operators and manufacturers, have enabled the realization of what can now be recognized as a critical driver of socio-economic development and one of humanity's greatest cooperative achievements – the modern international air transport network.

2. Warsaw Convention

On 17 August 1923, the French government proposed the convening of a diplomatic conference in November 1923 for the purpose of concluding a convention relating to liability in international carriage by air. The conference was formally deferred on two occasions due to reluctant behavior of the governments of various nations to act on such a short notice without the knowledge of the proposed convention. Finally, between 27 October and 6 November, the first conference met in Paris to study the draft convention. Since most of the participants were diplomats accredited to the French government and not professionals, it was agreed unanimously that a body of technical, legal experts be set up to study the draft convention prior to its submission to the diplomatic conference for approval. Accordingly, the International Technical Committee of Legal Experts on Air Questions (Comité International Technique d'Experts Juridiques Aériens, CITEJA) was formed in 1925. In 1927–28 CITEJA studied and developed the proposed draft convention and developed it into the present package of unification of law and presented it at the Warsaw Conference, where it was approved between 4 and 12 October 1929. It unified an important sector of private air law.

The Convention was written originally in French and the original documents were deposited in the archives of the Ministry for Foreign Affairs of Poland. After coming into force on 13 February 1933, it resolved some conflicts of law and jurisdiction.

Between 1948 and 1951 it was further studied by a legal committee set up by the International Civil Aviation Organization (ICAO) and in 1952 a new draft was prepared to replace the convention. However, it was rejected and it was decided that the convention be amended rather than replaced in 1953. The work done by the legal committee at the Ninth Session was presented to the International Conference on Air Law which was convened by the Council of the ICAO and met at The Hague from 6 to 28 September 1955. The Hague Conference adopted a Protocol (the Hague Protocol) for the amendment of the Warsaw Convention. Between the parties of the Protocol, it was agreed that the 1929 Warsaw Convention and the 1955 Hague Protocol were to be read and interpreted together as one single instrument to be known as the Warsaw Convention as amended at the Hague in 1955. This was not an amendment to the convention but rather a creation of a new and separate legal instrument that is only binding between the parties. If one nation is a party to the Warsaw Convention and another to the Hague Protocol, neither state has an instrument in common and therefore there is no mutual international ground for litigation.

The Montreal Convention, signed in 1999, replaced the Warsaw Convention system.

3. Montreal Convention

The Montreal Convention 1999 (MC99) establishes airline liability in the case of death or injury to passengers, as well as in cases of delay, damage or loss of baggage and cargo. It unifies all of the different international treaty regimes covering airline liability that had developed haphazardly since 1929. MC99 is designed to be a single, universal treaty to govern airline liability around the world.

The global ratification of MC99 is an industry priority. MC99 gives consumers better protection and compensation and facilitates faster air cargo shipments, while airlines enjoy greater certainty about the rules affecting their liability. Universal ratification of MC99 by States will provide significant benefits to all parties:

- ✓ Passengers will benefit from fairer compensation and greater protection.
- ✓ Shippers and those involved in the air cargo supply chain will benefit from the ability to make claims without the need for expensive and time-consuming litigation. They will also be able to replace paper documents of carriage, such as Air Waybills, with electronic versions, thus facilitating faster and more efficient trade.
- ✓ Airlines also benefit from greater certainty about the rules governing their liability across their international route network. IATA is thus advocating for the urgent ratification of MC99 by all remaining states.

- ✓ Finally, MC99 also establishes the legal framework that allows airlines to make use of electronic documentation for shipments, thereby reducing costs and increasing efficiency.

However, only 132 of the 191 ICAO-contracting States, or 68% of the total members are parties to it. A number of fast-growing aviation markets in Asia, such as Bangladesh, Sri Lanka and Vietnam, have yet to sign up. This means that a patchwork of liability regimes continue exists around the world. The result is unfairness, confusion and complexity in determining which regime covers a particular passenger or cargo itinerary. Claims handling and litigation from accidents or incidents are unnecessarily complicated.

Recognizing the significant benefits that MC99 offers, the 39th Assembly of the International Civil Aviation Organization (ICAO) that took place in 2016 adopted Resolution A39-9. This urges all States that have not done so to ratify MC99 as soon as possible. IATA is supporting this Resolution and is working with governments to promote the benefits of MC99 and urge ratification.

6.6 FREEDOMS OF AIR

Traditionally, an airline needs the approval of the governments of the various countries involved before it can fly in or out of a country or even fly over another country without landing. Before World War II, this did not present too many difficulties since the range of commercial planes was limited, and air transport networks were limited and nationally oriented. In 1944, an International Convention was held in Chicago to establish the framework for all future bilateral and multilateral agreements to use international air spaces. Five freedom rights were designed, but a multilateral agreement went only as far as the first two freedoms (right to overfly and right to make a technical stop). The first five freedoms are regularly exchanged between pairs of countries in Air Service Agreements. However, the remaining freedoms are becoming more important.

Freedoms are not automatically granted to an airline as a right; they are privileges that have to be negotiated and can be the object of political pressures. All freedoms beyond the First and the Second have to be negotiated by bilateral agreements, such as the 1946 agreement between the United States and the UK, which permitted limited “fifth freedom” rights. The 1944 Convention has been extended since then, and there are currently nine different freedoms:

1. **First Freedom of the Air** - the right or privilege, in respect of scheduled international air services, granted by one State to another State or States to fly across its territory without landing (also known as a **First Freedom Right**).
2. **Second Freedom of the Air** - the right or privilege, in respect of scheduled international air services, granted by one State to another State or States to land in its territory for non-traffic purposes (also known as a **Second Freedom Right**).

3. **Third Freedom of The Air** - the right or privilege, in respect of scheduled international air services, granted by one State to another State to put down, in the territory of the first State, traffic coming from the home State of the carrier (also known as a **Third Freedom Right**).
4. **Fourth Freedom of The Air** - the right or privilege, in respect of scheduled international air services, granted by one State to another State to take on, in the territory of the first State, traffic destined for the home State of the carrier (also known as a **Fourth Freedom Right**).
5. **Fifth Freedom of The Air** - the right or privilege, in respect of scheduled international air services, granted by one State to another State to put down and to take on, in the territory of the first State, traffic coming from or destined to a third State (also known as a **Fifth Freedom Right**).

ICAO characterizes all "freedoms" beyond the Fifth as "so-called" because only the first five "freedoms" have been officially recognized as such by international treaty.

6. **Sixth Freedom of The Air** - the right or privilege, in respect of scheduled international air services, of transporting, via the home State of the carrier, traffic moving between two other States (also known as a **Sixth Freedom Right**). The so-called Sixth Freedom of the Air, unlike the first five freedoms, is not incorporated as such into any widely recognized air service agreements such as the "Five Freedoms Agreement".
7. **Seventh Freedom of The Air** - the right or privilege, in respect of scheduled international air services, granted by one State to another State, of transporting traffic between the territory of the granting State and any third State with no requirement to include on such operation any point in the territory of the recipient State, i.e the service need not connect to or be an extension of any service to/from the home State of the carrier.
8. **Eighth Freedom of The Air** - the right or privilege, in respect of scheduled international air services, of transporting cabotage traffic between two points in the territory of the granting State on a service which originates or terminates in the home country of the foreign carrier or (in connection with the so-called Seventh Freedom of the Air) outside the territory of the granting State (also known as a **Eighth Freedom Right** or "**consecutive cabotage**").
9. **Ninth Freedom of The Air** - the right or privilege of transporting cabotage traffic of the granting State on a service performed entirely within the territory of the granting State (also known as a **Ninth Freedom Right** or "**stand alone**" cabotage).

Check Your Progress 2

1. What are the roles and responsibilities of ICAO?

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2. Describe how ICAO codes are different than IATA codes.

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3. Which 5 things are controlled by ICAO?

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6.7 LET US SUM UP

ICAO acts as a mutual platform for collaboration on international aviation environmental protection. In the past years, the governments of different countries who participate collectively under the Chicago Convention, also usually referred to as ‘ICAO Member States’, have mutually agreed upon to focus their aviation environmental collaboration on below mentioned three core areas - Climate change and aviation emissions, Aircraft noise; and Local air quality

Countries are primarily pursuing these objectives via the development of new global aviation standards through ICAO. The member states have agreed to frame and achieve aspirational goals for international civil aviation, and have also prioritized ICAO’s Environmental Protection resources on - Airframe, propulsion, and other aeronautical and technological innovations, optimizing flight procedures to reduce fuel burn, Increasing the production and deployment of sustainable aviation fuels and clean energy; and Implementing the Carbon Offsetting Reduction Scheme for International Aviation (CORSIA).

ICAO was formed in the year 1944 as a expert organization of the United Nations, to encourage the safe and systematic expansion of international civil aviation across the globe. Amongst many other priorities, it formulates standards and regulations essential for aviation security, safety, capacity, efficiency and environmental protection. ICAO serves as the platform for cooperation in all verticals of civil aviation between its 192 Member States.

Aviation development pertains to a wide array of infrastructure, manpower, guidance, and related skill development activities. The critical goal of all these efforts is to comprehend a safe and efficient air transport establishment in a given State, which is in parity with ICAO’s

Standards and Recommended Practices (SARPs) and tactical objectives for the world air transport system.

Once ICAO-compliant air transport network is developed, it starts supporting extended tourism and many other local and regional social and economical development goals for the member states and their regions. Opportunities for the local people, traders and creators to access foreign supplies and markets gets significantly multiplied, and further important benefits in medical transport, emergency response and cultural exchange are realized for the governments and societies. Understanding the magnitude of aviation development to ICAO's global mandate and the new UN Sustainable Development Goals (SDGs), ICAO has started to more actively engage States and donor/development stakeholders and map its works being carried out against SDG deliverables. ICAO does so not just by serving the prominent coordinating role, but also through providing member states with the planning and monitoring tools they require to build up practical and effective business cases helping steady socio-economic returns on investment.

The Strategic Objectives laid down by ICAO are robustly linked to 15 of the 17 United Nations Sustainable Development Goals (SDGs). ICAO is fully dedicated to work in close cooperation with member States and other United Nations bodies to hold up related targets.

6.8 FURTHER READINGS

- Ruwantissa Abeyratne , Springer (2019) Law and Regulation of Air Cargo
- Steven Truxal, Routledge (2018) Economic and Environmental Regulation of International Aviation: From Inter-national to Global Governance (Routledge Research in International Commercial Law)
- ICAO, McGraw Hill Education (2017) Emergency Response Guidance for Aircraft Incidents Involving Dangerous Goods
- Ruwantissa Abeyratne , Springer (2012) Strategic Issues in Air Transport: Legal, Economic and Technical Aspects
- ICAO (2011) Air Traffic Services: Annex 11 to the Convention on International Civil Aviation

6.9 CLUES TO CHECK YOUR PROGRESS EXERCISES

Check Your Progress 1

1. A (ii)
B (ii)
2. A (i)
B (ii)
3. See section 6.1.1 and frame your own answer

4. See section 6.2. and frame your own answer

Check Your Progress 2

1. See section 6.2 and frame your own answer
2. See section 6.5 and frame your own answer
3. See section 6.2 and frame your own answer

6.10 CLUES TO CHECK YOUR PROGRESS EXERCISES

Activity 1

Compare the roles of ICAO with other tourism organisation you know. Identify the differences.

Activity 2

Find out about freedom of air and its implication for the Indian aviation industry.

Activity 3

Read news articles from newspapers/ travel magazines regarding new development in the aviation industry