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# OVERVIEW OF INTERNATIONAL AVIATION LAWS AND INTERNATIONAL AVIATION LIABILITY

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## ABSTRACT

This Article projects an overview of international aviation laws and international civil aviation liabilities of the carriers. It covers both the ends of aviation law from the origin or fundamental cause of the development of international civil aviation laws. Further, it explains the various types of aviation liabilities in Public international law and describes how these laws are governed and implemented through international organizations formed by United Nations to govern the international Airspace peacefully after World War II. Further, this Article mainly covers all the regulatory framework which is formed through various conventions and resolutions of international organizations with its briefed information about the international regulatory body associated with it. The term "Air Law" refers to a set of agreements that the countries have made. Let us talk more about the law governing aviation in this Article. There are several conferences, including those in Chicago, Rome, Tokyo, Geneva, and several other cities.

## **Introduction**

Aviation law is an essential concept of international public law which governs the relationship between domestic Airspaces and international airspaces and the maintenance demand and supply of internal and external regulatory frameworks for Private and Public Civil Aviation Services. Aviation law is in its budding stage as more and more globalization of civilians through employment, tourism, business, and even education aboard have become one of the most vitals of international travel.

One of the subfields of legal studies is aviation law. A broad perspective that addresses the unique traits and requirements of the aviation industry is called air law. There is no international law and no supervisory board with the authority to create air regulations that apply to all governments legally. However, the term "Air Law" refers to a set of both explicit and implicit agreements that the countries have made. Conventions are the name given to these agreements. There are several conferences, including those in Chicago, Rome, Tokyo, Geneva, and several other cities. Let us talk more about the law governing aviation.

Hence the liabilities accompanying these international carriers also have increased consistently its vital for both domestic and International Aviation laws to grow with its ever-widening service.

## **Outline of Air Law**

It is a subset of law that deals with all legal and commercial issues related to air transport operations. This is a set of regulations that control how the world's governments and the general public can profit from aviation's usage of airspace.

From 1910, when German air balloons regularly crossed into French airspace, the first attempt to establish the air law was undertaken. The French administration desired a joint resolution to the issue between the two countries. The Paris Conference of 1910 supported a state's sovereignty over the airspace above its territory.

After World War I, it began to advance when the first regularly scheduled flight from Paris to London took off in 1909.

## International Airspace

International law typically recognizes that a country's sovereign airspace comprises both the airspace over its frontiers and the airspace above its territorial waters. The territorial waters extend 12 nautical miles from a country's coastline.<sup>1</sup> There is no airspace in any country. The territorial limit is regarded as international. A country may, following international law, and agreement, assume responsibility for supervising international parts of airspaces, such as those above the oceans or polar regions, for instance, the United States offers air traffic management across a vast portion of the Pacific Ocean even though the airspace is restricted, smaller areas of the Atlantic Ocean International in scope. Canada, Iceland, and the United Kingdom are all responsible for the remainder of northern Atlantic airspace. Russia and Canada share authority over northern polar airspace.<sup>2</sup>

There is no diplomatic consensus regarding a country's airspace's vertical borders. Although it is widely acknowledged that no country controls space, there is no worldwide agreement on where airspace ceases, and space begins. This is an area that will demand attention as economies move toward larger space flight and the potential of civilian space flight becomes more probable.

## IOSA

A globally recognized and acknowledged system for auditing and certifying operational management and control systems in aircraft is the IATA Operational Safety Audit (IOSA).

This certified evaluating board was established by IATA in 2003. It constantly conducts airline audits in accordance with aviation legislation.

The airlines without IOSA accreditation most likely either underperformed in the audits or didn't participate at all. Although IOSA audits increase an airline's dependability, they are expensive. Most often, only foreign airlines take part in the audit since they can pay for it and make the recommended modifications.

The airlines that participated in the IOSA audit had a crash rate that was three times lower than the airlines that did not.

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<sup>1</sup> Griffin, Kirk Y. "Aviation Law." *GPSolo* 30, no. 2 (2013): 46–50. <http://www.jstor.org/stable/23630804>.

<sup>2</sup> INTERNATIONAL AVIATION/ AIRSPACE LAW AN OVERVIEW BY Yaya Kareng.

## Air Laws Around the World

The following are the three International Air laws

### 1. International Public Law

It alludes to the procedure through which international organizations and nations are bound by agreements regarding their aviation-related operations. Various issues of political, technological, economic, financial, social, or legal character may be involved in the operations. The Geneva Convention, the Chicago Convention, and other international agreements are a few examples.

### 2. International Private Law

It is a set of regulations that govern interactions between private individuals that operate and utilize airplanes. Both passengers and airline employees must abide by it. The Tokyo Convention, for instance, sets down the prohibition of crimes committed aboard airplanes.

### 3. Supranational Law

It is a legislation that a more powerful entity has the legal authority to impose on one or more states. Take EU air laws as an example.

## Chicago Convention

World War II not only provided the means but also the motivation for international air travel. The severity of the war inspired international leaders to inaugurate a brand-new era of collaboration and peace. To that purpose, officials from 52 Nations signed the International Civil Aviation Convention soon before the end of hostilities in Europe. The convention is known as the Chicago Convention due to it is being established in Chicago, Illinois. The Convention provided a framework that eventually led to a unified set of international aviation regulations. It featured measures for security and environmental rules, as well as defining each nation's rights and obligations concerning international aviation operations<sup>3</sup>.

The Convention was intended to replace hundreds of disparate agreements signed with a holistic framework that would allow the international aviation industry to thrive.<sup>4</sup> It only extends to international commercial air travel; military operations, domestic airline travel, and

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<sup>3</sup> Convention on International Civil Aviation - Doc 7300 (icao.int)

<sup>4</sup> Hudson, Manley O. "Aviation and International Law." *The American Journal of International Law* 24, no. 2 (1930): 228–40. <https://doi.org/10.2307/2189401>.

private aircraft operations are not included. The objective of this holistic view of civil aviation is best expressed in the Convention's introduction:

Whereas the future advancement of international civil aviation can greatly aid in the creation and maintenance of friendship and understanding among the world's nations and peoples, it is abuse can pose a threat to global security; and while it is desirable to avoid friction and to promote the co-operation between nations and peoples upon which peace is built in World.

As a result, the undersigned governments, having agreed on certain principles and arrangements to ensure that international civil aviation develops safely and orderly and that global air transport services are established based on equal treatment and operated soundly and economically, have indicated in this convention to that end.

The provisions of the Convention specify the rights and duties of the Member States. Instead of a precise set of rules, the articles give a framework. The Convention acknowledges every individual country's sovereign interest in its independent airspace; prohibits military aircraft and drones from flying over member countries without permission; prohibits member countries from discriminating against one another's aircraft and necessitates that public airports and aviation facilities be made available to all member countries to the same extent as domestic aircraft.

### **Tokyo Convention of 1963**

The Tokyo Convention of 1963 was the first effort to establish international legislation controlling offenses and some other conduct performed on board an airplane. 186 nations have approved this legal framework. It is hardly unexpected that the law created more than 50 years ago does not fully satisfy the needs of current air travel. Nonetheless, it remains the primary reference point for airlines dealing with cases involving belligerent and disruptive passengers.<sup>5</sup>

### **Montreal Convention, 1971, and Montreal Protocol, 1988**

The Tokyo Convention was followed by the 1971 Convention on the Prevention of Unlawful Acts Against Civil Aviation Safety (Montreal Convention). The Montreal Convention enlarged the range of activities that ratifying countries must make criminal offenses by adopting it into

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<sup>5</sup> Tokyo Convention 1963 » Air Law Digest Blog

their domestic laws.<sup>6</sup>

Furthermore, the Montreal Protocol of 1988 expanded this Convention by stating that the Montreal Convention's provisions would apply to rowdy passengers who act in a disruptive way not only on the airplane but also at the airport.

### **Montreal Protocol of 2014**

The Montreal Protocol of 2014 comes into force in 2020 when Nigeria became the 22nd country to ratify it. The advantages of this protocol cannot yet be realized by the globe because just a few governments have ratified it. Nonetheless, it is a positive step forward.

Rather than repealing the Tokyo Convention, this Protocol alters it. Both laws must be studied together. This Protocol specifies specified behaviors, and the activities that contracting governments may perform.

The Montreal Protocol encourages contractual parties to take the necessary steps to begin proper legal actions against problematic passengers who commit an offense on board, specifically:

1. Acts of physical assault or a threat to assault the crew.
2. Restraining to follow mandatory directions given by or on behalf of the aircraft commander for the safety of the aircraft or the passengers.

### **Right of recourse**

The Tokyo Convention did not permit airlines to offset costs incurred because of events involving disruptive passengers. These difficulties were aggravated by jurisdictional barriers. The Montreal Protocol provides for this by allowing carriers to pursue reimbursement under domestic laws for harm caused by the hostile passenger's behavior.

### **The International Civil Aviation Organization (ICAO)**

The ICAO is a UN entity in charge of creating standardized air transportation regulations that apply to international flights. The International Civil Aviation Organization (ICAO) is organized into three branches. The Assembly is a political institution that meets every three years to assess the activities of the ICAO, define policy, adopt a budget, and choose which

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<sup>6</sup> The Montreal Convention protects your luggage when traveling internationally – Forbes Advisor

Member States will have a seat on the ICAO's rule-making body, the Council. The Assembly is also in charge of approving any revisions to the Chicago Convention, which must subsequently be approved by all Member States.

The Secretariat is the ICAO's executive branch, and it oversees putting the Assembly's decisions into action. It is led by a Secretary General and organized into five bureaus, each with its field of expertise: the Technical Co-Operation Bureau, the Air Transport Bureau, the Air Navigation Bureau, the Legal Bureau, and the Bureau of Administration and Services. Several bureaus oversee putting safety measures and environmental policies into action, as well as monitoring the implementation of the ICAO's Standards and Recommended Practices (SARPs).<sup>7</sup>

The Council is the ICAO's rule-making body, responsible for debating and implementing SARPs for air transport. Various organizations and committees provide recommendations and technical expertise to the Council.

### **The organizational structure of the ICAO**

ICAO is made up of an Assembly of contracting nations' representatives, a Council of public entities made up of different subordinate entities and a Secretariat. The President of the Council and the Secretary-General are the top officers. Every three years, the ICAO has a meeting to discuss current work and decide on future policy.

The convention modifies the proposals, norms, and recommendations. The International Civil Aviation Organization (ICAO) divides the world into nine geographical zones to plan the supply of air navigation infrastructure and on-ground services required by aircraft in flight in these regions.

### **ICAO's Rule-Making Authority**

SARPs cover physical attributes, materials, configuration, performance, personnel, and procedures. SARPs are inserted into the Chicago Convention as Annexes if accepted by two-thirds of the Council. Standards are deemed required for international air navigation safety and regularity. While not technically obligatory, recommended practices are strongly encouraged.

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<sup>7</sup> "International Civil Aviation Organization." *International Organization* 13, no. 4 (1959): 639–41. <http://www.jstor.org/stable/2705442>.

The extent of the ICAO's rule-making jurisdiction is defined in Article 37 of the Chicago Convention. Adoption of international standards and processes (Article 37) Each contracting State agrees to work together to achieve the greatest possible degree of consistency in rules, standards, procedures, and organization relating to aircraft, people, airways, and auxiliary services in all areas where such uniformity will facilitate and improve air navigation.<sup>8</sup>

To that aim, the International Civil Aviation Organization should develop, and update needed international standards, recommended practices, and procedures dealing with:

- a) Communications systems and air navigation aids, including ground marking.
- b) Characteristics of airports and landing areas.
- c) Rules of the air and air traffic control practices.
- d) Licensing of operating and mechanical personnel.
- e) Airworthiness of aircraft.
- f) Registration and identification of aircraft.
- g) Collection and exchange of meteorological information.
- h) Logbooks.
- i) Aeronautical maps and charts.
- j) Customs and immigration procedures.
- k) Aircraft in distress and investigation of accidents; and such other matters concerned with the safety, regularity, and efficiency of air navigation as may from time to time appear appropriate.

To date, the ICAO has enacted 18 Annexes to the Chicago Convention dealing with topics such as aviation personnel training and licensing, airworthiness, ATC, crash investigation, and environmental protection.

Annexes are not laws, and the ICAO is not authorized to enforce them. They are instead recommendations that Member States can use to develop their aviation legislation. Member States that vary from the ICAO's Standards must notify the ICAO of their decision not to enforce compliance with an Annex under the Chicago Convention. Member States are also urged, but not required, to report the ICAO when they do not plan to follow a Recommended Practice. According to Article 38:

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<sup>8</sup> Jacobini, Horace Bowman. "Observations on International Aviation Law." *Social Science* 23, no. 1 (1948): 51–53. <http://www.jstor.org/stable/41885747>.



Article 38 – Departures from international standards and procedures.

A nation that finds it unfeasible to comply in all regulations with any such international standard or procedure, or to bring its regulations or practices into full accord with any international standard or procedure after the amendment of the latter, or which supposes it mandatory to adopt regulations or observes any differing in any Specific respect from those established by an international standard, shall give an instantaneous report to the International Civil Aviation Organization of the differences between its practice and that established by the international standard. In the case of amendments to global standards, any State which does not make the appropriate amendments to its independent regulations or enforcements shall<sup>9</sup> give notice to the Council within sixty days of the adoption of the amendment to the global standard or symbolize the conduct which it intended to be taken<sup>10</sup>.

### **International Aviation Liability**

Aviation liability encompasses a broad variety of legal liabilities linked with airports and other aviation operations other than aircraft operations.

The risk location is the territory in which the insured resides or operates a company. If more than one insured resident/business facility is covered, each may construct its risk location.<sup>11</sup>

### **The Warsaw and Montreal Conventions**

The Warsaw Convention of 1929 was the first treaty to address the rights and liabilities of passengers and carriers. Its primary goals were to establish global legal guidelines for liabilities arising out of international aviation accidents and to limit the liability of the air carrier to safeguard the then-budding airline industry from the devastating effects of unlimited liability for air disasters. With 152 signatories, the Warsaw Convention is one of the world's most frequently followed and disputed treaties.

Articles 1, 17, 20, 21, 22, 24, 25, 28, and 29 of the Warsaw Convention deal with carrier liability for passenger harm or death:

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<sup>9</sup> Latey, William. "The Law of Aviation." *Journal of Comparative Legislation and International Law* 7, no. 1 (1925): 96–100. <http://www.jstor.org/stable/753032>.

<sup>10</sup> [https://www.icao.int/safety/MoD/Manual%20on%20Notification%20and%20Publication%20of%20Differences\\_V0.2\\_21092015.docx](https://www.icao.int/safety/MoD/Manual%20on%20Notification%20and%20Publication%20of%20Differences_V0.2_21092015.docx)

<sup>11</sup> Aviation Laws and Air Carrier Liabilities in India Uthej Vattipalli

- Article 1: sets forth the applicability and scope of the Warsaw Convention.
- Article 17: creates a cause of action and the liability conditions for passenger death or bodily injury.
- Article 20: provides that the carrier shall not be liable if it proves that it has taken 'all necessary measures to avoid the damage.
- Article 21: contains a defense based on the contributory or comparative negligence of the passenger.
- Article 22(1): limits the liability of a carrier for passenger injury or death to US\$8,300 unless the injury or death was proximately caused by the 'willful misconduct of the air carrier or its employees within the meaning of article 25 of the Convention.
- Article 24: renders the Warsaw Convention exclusive and refers the determination of damages to local law.
- Article 28: sets forth four places where an action for damages must be brought.
- Article 29: sets forth two years of limitations for the commencement of actions.

However, the Warsaw Convention has been subjected to a patchwork of revisions and additional 'private' agreements among air carriers (this patchwork is commonly referred to as the Warsaw System of responsibility), with varying degrees of acceptance by the governments. The underlying motivation for these changes was discontent with the low liability limits for passenger injury and death (US\$8,300). Because of this patchwork, there is heterogeneity in the regulations that apply to passengers even during the same trip.

Thus, the International Civil Aviation Organization (ICAO) enacted the Montreal Convention in May 1999, intending to modernize and replace the Warsaw System of responsibility. The Montreal Convention constitutes few 'new' principles and largely integrates the preexisting Warsaw System into a single convention, modifying numerous provisions to reflect contemporary realities and concerns.

The most major modifications concern the Convention's aims and the limit of the carrier's liability. While both conventions sought consistency, the Warsaw Convention also sought to preserve the budding aviation sector, and the Montreal Convention sought to give passengers

with full compensation for their compensatory losses. In contrast to the Warsaw Convention, the Montreal Convention:

- Removes all limits on recovery for passenger death or injury (Article 21(1)).
- Levies almost strict liability on airlines on the first 113,100 special drawing rights (SDR) of recognized damages in the circumstance of passenger death or injury and for damages. For more than 113,100 SDR, the carrier can exclude its liability only if it is confirmed that the damages were not instigated by the carrier or caused exclusively by the culpability of a third party (article 21(2)).
- Develops the fundamentals for jurisdiction for claims involving passenger death or injury to permit litigation in the passenger's principal or permanent residence if certain conditions are met (Article 33(2)).

### **Damages and liability limits**

Both the Warsaw Convention and the Montreal Convention established a standard rule for the sorts of compensatory damages that can be recovered, who can sue, or who can recover. Indeed, the drafters of the Warsaw Convention attempted to address this issue but were unable to reach an agreement since they are distinctively anchored in local legislation (Warsaw Convention, article 24; Montreal Convention, article 29). These matters were left to the appropriate local legislation to settle (often after a choice of law analysis).<sup>12</sup>

Punitive damages, on the other hand, are not permitted in many states. By judicial interpretation, the Warsaw Convention and the Montreal Convention ban the collection of punitive, exemplary, or non-compensatory damages in article 29. Many nations do not recognize them outside of the framework of the Convention.

### **Liability for ground damage**

The Rome Convention was revised, and in 2009, the International Civil Aviation Organization (ICAO) adopted the Convention on Compensation for Damage to Third Parties Resulting from Unauthorized Intrusion That included Aircraft and the Convention on Compensation for

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<sup>12</sup> Aviation Liability: Global Overview - Lexology

Damage Caused by Aircraft to Third Parties. Neither of these Conventions has acquired the number of signatures needed for ratification and entrance into effect.

While governments have been reluctant to ratify these Conventions for a variety of reasons, some believe that the issue of ground damage is addressed effectively by their current national legislation, which frequently imposes limitless strict liability.

### **Liability for unruly passengers and crimes**

The carrier's liability for passenger injury or death caused by a disruptive passenger or terrorist incident may come under the purview of the Warsaw or Montreal Conventions if it happens during 'international transport by air.

In such a circumstance, the carrier's liability would be determined by the Warsaw or Montreal Conventions, or by local law. ICAO approved a Protocol to Supplement the Tokyo Convention in 2014. The Protocol establishes mandatory jurisdiction for the states of landing and operation, motivates states to initiate litigation against the offending passenger, empowers in-flight security officers to act with the same situations and immunities as the aircraft commander, and allows for the recovery of damages from the offending passenger under national law. To enter effect, the Protocol requires 22 ratifications or accession. The Protocol has been approved or acceded to by 21 nations to date.<sup>13</sup>

### **Government Liability**

Sovereign immunity is a widely recognized and acknowledged principle that can shield a nation from legal litigation. However, many jurisdictions do not consider this to be a total bar to civil claims arising from the negligence of government personnel. Some nations simply allow litigation to continue as any other civil suit, whilst others have established statute that waives this immunity for specific sorts of acts. The grounds, conditions, and scope of this grant of immunity differ depending on the state in consideration.

### **Contract of carriage**

The terms and conditions of an air carrier's contract of carriage are typically binding like any other contract if the passenger is notified of them and, in certain states, acknowledges them, if

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<sup>13</sup> Aviation Laws and Regulations Report 2022 (iclg.com)

they do not violate any other national law. It is also obvious that these terms and conditions cannot amend or alter the rules outlined in the Warsaw or Montreal Conventions.

### **Accident investigations**

The investigation of aircraft accidents is vital to aviation safety. The Chicago Convention's Article 26 and Annex 13 have gone a long way toward standard specification procedures that govern the investigation of aviation accidents and identifying which nation has the main investigative responsibility. However, the specific investigation method is regulated by the laws of each state, and there are disparities, particularly in the discovery and use of accident investigation materials and findings in litigation.

### **Family assistance**

Aiding the victims and their families of aviation accident have increased in importance over the last 25 years.

The Aviation Disaster Family Assistance Act was passed in the United States in 1996, and it was extended to international airlines in 1997. Ever since several additional states have adopted laws or voluntary standards emphasizing family aid to aviation victims and their families. The International Civil Aviation Organization (ICAO) adopted a Policy on Assistance to Aircraft Accident Victims and Their Families in 2013. Of course, the kind, forms, and extent of support vary according to the appropriate state. Even when no legal obligation exists, governments and air carriers agree that some form of help should be delivered.

### **Consumer protection**

A further topic of law that has lately gained popularity across the world is passenger rights or consumer protection. According to the state, the legislation may include compensation for rejected boarding, reimbursement for delayed or canceled flights, tarmac delays, and aid to those with limited movement. Despite the absence of regulation, several carriers have made voluntary promises to explain or improve their rules or procedures regarding specific client services, typically in response to public criticism and to enhance the customer experience.

While the International Civil Aviation Organization (ICAO) has established basic principles and policy advice, there has been little standardization in this area, and no treaties have indeed been adopted.

## **Conclusion**

From this Article, we can depict that International Aviation Laws and their Accommodating Liabilities are a bunch of General and Specific Agreements between Nations, Public, and Private Autonomous Entities. These laws and Regulatory bodies basically budding infrastructure for Civil Airspace management development as it is currently branching out in it is vertical and Horizontal Phase.