

## **INTERNATIONAL CONFERENCE**

### **Contemporary Issues in Air Transport, Air Law and Regulation**

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**[Background reference material to presentation by Prof. Michael Milde. *This is an excerpt from his book "International Air Law and ICAO" to which the international copyright protection is vested in Eleven Publishers, Utrecht***

#### **Does the Chicago Convention require modernization?**

The Convention was drafted with foresight that commands full respect. It endured –without substantive amendments – for well over sixty years. However, each international instrument is no more than a “snapshot” of a particular time of its drafting, of the social relations existing at that time and of the specific agreed balance of the conflicting interests achieved by the original parties at that time. During the last more than sixty years the world has changed dramatically in many fields – geopolitical, technical, social and economic. Many new States have emerged on the map of the world that did not exist as independent entities by 1944. Cold War marked the world relations for over forty years and its end offers many new opportunities and challenges. The aviation technology leaped ahead from the DC-3 – the workhorse of civil aviation by 1944 – to jet aircraft of several generations succeeding each other at a fast pace, including the wide-bodied aircraft capable of reaching any point on the earth without refuelling; supersonic flight has been tested as technically feasible, albeit not yet economical as a means of mass transport. Hypersonic and suborbital flights are also within the technical possibilities. The world progresses towards globalized economy in which the national borders and the nationality marks of aircraft would have only diminishing relevance. New problems and challenges have arisen that could not be foreseen sixty years ago – criminal acts against the safety of civil aviation, growing concern for the environmental protection, application of space technology for air traffic management, growing need for technical cooperation or assistance to assure global safety of civil aviation, electronic data processing that finds its application in airline management processes and also could change the working methods of the ICAO Secretariat, etc..

In 1944 the Convention was adopted by only 52 States out of the current 190 Parties; that means that only some 27% of the current membership had any direct influence on the drafting of the Convention while the remaining 138 States (73%) adhered to the Convention without having any role in its drafting.

The UN Charter drafted only few months after the Chicago Convention has a provision on the convening of a General Conference of the Members of the United Nations for the purpose of reviewing the Charter.<sup>1</sup> There is no similar provision in the Chicago Convention but nothing prevents the ICAO member

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<sup>1</sup> Article 109 of the UN Charter

States from convening such a general review Conference or to devote one of its Assemblies to a general revision and updating of the Convention.

It may be argued that there is no need for any general review of the Convention since it has served ICAO well for over sixty years and can flexibly accommodate by interpretation any new developments or contingencies. On the other hand it can be argued that any “creative” interpretation could go contrary to the original meaning of the Convention, distort the scope of the consensus of States or lead to a lack of the legal certainty that it is supported by all contracting States.

The constitutional framework of ICAO would evidently benefit from major modernization both in the practice and in amended provisions of the Convention:

The Assembly should be restored to the true position of the main body of the organization. ICAO is the only organization within the UN system that maintains a triennial cycle for the Assembly. Some empowering of the Assembly can be achieved by arranging for a regular session of the Assembly every two years for a period of three weeks, in line with other United Nations system organizations – a proposal strongly formulated also by the Joint Inspection Unit of the United Nations after its evaluation of ICAO in May 2007<sup>2</sup> for several reasons: in the first place the Assembly would be more in charge of the Organization’s effective decision-making and general governance, supervise the program and control the work of the Council; contracting States would get more frequently together to discuss their mutual problems and formulating the ICAO policy; the budgets would be prepared for a more reasonable period of two years – the current budgeting for three years in advance could often be a blind exercise that cannot take realistically into account the currency fluctuations or urgent exigencies arising for the work of the Organization. More frequent use should be made of the extraordinary sessions of the Assembly rather than of various “Conferences” that have no constitutional status under the Convention.

Similarly, the sessions of the Council – a rare “permanent” body within the UN system – and of the subordinate bodies should be limited to no more than two sessions per year and the Council should not waste its time by considering matters that are traditionally within the purview of the executive management (i.e., Secretary General).

The high number of meetings of the Council and the subordinate bodies and the vast amount of documentation prepared for them also lead to exorbitant language expenses and high cost of conference services. The 2007 Joint Inspection Unit’s Report critically indicated that 21.5% of ICAO’s budget account for language and publication.<sup>3</sup>

The time has also come that ICAO may consider redefining the role of the

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<sup>2</sup> JIU/REP/2007/5

<sup>3</sup> JIU/REP/2007/5, p. 13, paragraph 77

President of the Council. He should not be a salaried international civil servant with ill-defined jurisdictional delimitation from the Secretary General but one of the Representatives elected – possibly on a rotational basis – who would not interfere with the performance of the executive functions of the Organization but remain strictly within the powers defined in the Convention's Article 51. The Organization did not benefit from the thirty years with one President who accumulated powers and influence not foreseen in the Chicago Convention and relegated the Secretary General to a "glamorous" Director of Administration (even that under President's supervision and authority).

Any future revision of the Convention should attempt to fill some evident "lacunae" – issues that were not foreseen or were even unforeseeable by 1944 when the Convention was drafted but that have become an essential part of the work of the Organization:

- *Technical Assistance/Cooperation*: technical assistance (now, for political correctness called "technical cooperation") has become over the years an integral part and "permanent priority of ICAO that complements the role of the Regular programme in providing support to States in the effective implementation of SARPs and ANPs as well as in the development of their civil aviation administration infrastructure and human resources."<sup>4</sup> Although there is no word about technical assistance in the Convention, this activity is administered by a self-standing Bureau headed by a Director (Technical Cooperation Bureau – TCB) and some 73 staff members that required, in 2003, additional office space in a building adjacent to ICAO Headquarters.

The origins of the technical cooperation program within ICAO are obscured to most delegations and even the senior members of the Secretariat since the program started slowly and almost invisibly through a very vague patchwork of decisions taken more than fifty years ago – by the UN Economic and Social Council (ECOSOC)<sup>5</sup>, the UN General Assembly, the ICAO Council<sup>6</sup> and ICAO Assembly<sup>7</sup> approving Council's decision that ICAO should participate in the EPTA (Expanded Program of Technical Assistance) as an executing agency.

The projects were initially funded by the United Nations Development Program (UNDP) and ICAO costs were refunded to it in the form of the Administrative and Operational Services Costs (AOSC) – a determined percentage amount of each project to cover ICAO "overhead" and, at times, creating a healthy surplus for the TCB that gave it the best equipment and amenities within the Secretariat. There were instances of cash flow problems for the organization and the Secretary

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4 Resolution A35-20: Update of the new policy on technical cooperation

5 ECOSOC *Expanded Program of Technical Assistance for Economic Development of Under-Developed Countries*, ECOSOC Doc 222 (IX), 15 August 1949

6 8<sup>th</sup> Session, December 1949

7 Resolution A4-20, ICAO Doc 7017 (1950) – declared to be no longer in force by the 16<sup>th</sup> session of the Assembly in 1968

General was able to borrow money for salaries of the staff from the AOSC funds.

The UNDP funding has gradually decreased to the current insignificant portion to be replaced by funds provided by the assisted States themselves. The TCB went into major deficits on the AOSC that were temporarily covered from the accumulated surplus of the previous years. When that surplus was exhausted, the ICAO Assembly intervened by succeeding resolutions<sup>8</sup> essentially approving measures that would cover any shortfalls in the TCB financing from the regular budget and aim at progressive integration of the TCB into the organizational regular structure of the Secretariat.

The gradual step-by-step “creeping” of the Technical Cooperation Program into the Regular Program and Budget – with financial implications for States – seems to have gone almost unnoticed by States. It is important to stress that the Technical Cooperation Program under whatever name is very important in assisting States to implement their obligations under the SARPs. However, there is no constitutional and legal basis for this program and no amount of alleged “flexibility” in the interpretation of the Convention could possibly accommodate this additional activity, financial obligations and institutional structure. The Convention should be modernized and updated to give a formal constitutional basis to technical assistance/cooperation.

- *Aviation security*: at the 1944 Chicago Conference the delegations were aware of the ongoing war in Europe and in the Pacific and were anticipating that international peace would be achieved soon. Unlawful acts committed by individuals (not by States) against the safety of civil aviation and its facilities – in the form of unlawful seizure of aircraft (“hijacking”), sabotage of aircraft or of aeronautical facilities, communication of false information endangering safety of aircraft, violent acts at airports serving international civil aviation, misuse of civil aviation for criminal purposes – we not even imagined during the drafting of the Convention in 1944.

However, in the second half of the 20<sup>th</sup> century such acts became a critical and world-wide challenge for civil aviation and was capable to undermine the public confidence in the safety of this vital means of transport. ICAO member States responded to the challenge by initiating a spectrum of aviation security instruments adopted with maximum dispatch and in a rare harmony by diplomatic conferences convened by ICAO. These legal instruments currently belong to the most widely accepted unifications of law on the global level.<sup>9</sup> Moreover, the SARPs and the Security Manual were developed with urgent priority and are constantly being updated and modernized.

An abortive attempt was made in 1973 to adopt a) either an additional Convention or Protocol that would provide for sanctions against States not

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8 A29-20, A31-14, A32-21, A35-20

9 See Chapter. VIII below

respecting their obligations under the aviation security conventions or b) a major amendment of the Chicago Convention that would make the security obligations an integral part of the Chicago Convention. This alternative was presented because the Legal Committee was not able to decide clearly for one or the other course of action. For that reason two types of meetings were convened simultaneously in Rome on 28 August-21 September 1973: the 20th (Extraordinary) Session of the Assembly to consider the amendments of the Chicago Convention under Article 94 of the Convention and a separate Diplomatic Conference to consider any new Convention or protocol on aviation security.

The Diplomatic Conference was a complete failure since it did not adopt any instrument. The Assembly did not fare better: it had for consideration draft amendment to the Chicago Convention that would have inserted into the Convention a new Chapter XVI *bis* entitled : “Supplementary Provisions to Improve the Safety of International Civil Aviation” and that new Chapter would have included new Articles 79*bis*, 79*ter*, 79*quater*, 79*quinquies*, 79*sexies* and 79*septies* dealing with the duties of States to prevent acts against the safety of civil aviation, to suppress them, to cooperate with other States and with ICAO and that would eventually make The Hague Convention on the Suppression of Unlawful Seizure of Aircraft of 1970 and the Montreal Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation of 1971 an integral part of the Chicago Convention by reference. Two of the proposed new Articles obtained the required majority of two-thirds of the Assembly, the other did not; a vote on the proposal as a whole also failed<sup>10</sup>.

It must be understood that 1973 was not an easy time in international relations and the Cold War was an acutely sore reality. Moreover, the 20<sup>th</sup> (Extraordinary) session of the Assembly was marred by the fact, that a few days prior to the opening of the Assembly – on 10 August 1973 - Israeli military aircraft violated the Lebanese airspace and forcibly seized a Lebanese civil aircraft chartered by Iraqi Airways. The ICAO Council condemned Israel for its action on 20 August 1973 and the Assembly placed this item on its agenda and after extensive and animated discussions adopted Resolution A20-1 strongly condemning Israel.<sup>11</sup> The atmosphere of the session was not conducive to quiet drafting and seeking compromise. Nevertheless, the underlying idea was sound and did not lose its validity even now.

It should be also remembered that the 17<sup>th</sup> Extraordinary Session of the Assembly adopted resolution A17-21 in which it requested the Council “*to arrange for a study, taking account of existing conventions or conventions to be concluded, on the desirability of revising the Convention on International Civil Aviation with a view to including therein specific provisions covering acts of unlawful interference in order to afford better protection to international civil*

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10 Doc 9087, A20-Res, P-Min

11 A20-WP/12

*aviation*".<sup>12</sup> There is no record that the Council took an action on this resolution. During any revision of the Chicago Convention new provisions should be considered defining the commitment of States to prevent and suppress acts of unlawful interference with civil aviation, to cooperate mutually among them and with ICAO in matters of aviation security. The principles of the aviation security instruments prepared under the auspices of ICAO should be an integral part of the renewed Chicago Convention.

- *Protection of the environment*: environmental protection is gradually becoming one of the top priorities in the work program of ICAO. These issues were not foreseeable at the time of the Chicago Conference and they gained their importance with the swift evolution of the industrial activities and output in the second half of the 20<sup>th</sup> century all around the world, including the former colonial countries.

The production of electrical energy by thermal power plants together with refineries, chemical and metallurgical industry and with the millions of new automobiles on the roads resulted in growing pollution of the human environment, clouds of smoke in industrial areas and smog in the cities endangering the quality of life and threatening the health of the population. The "green" initiatives gained growing political weight in many countries and the international community started taking active interest in the protection of the environment.

The United Nations addressed the environmental issues for the first time on 30 July 1968 at the 45<sup>th</sup> session of ECOSOC that recommended to the General Assembly to convene a conference on "problems of the human environment".<sup>13</sup>

The first identified problem of environmental pollution connected with aviation was the noise, in particular in the vicinity of airports. ICAO took an early initiative at the 16<sup>th</sup> Session of the Assembly in Buenos Aires in September 1968 addressing the subject of aircraft noise in the vicinity of airports and urging the Council to convene an international conference and to adopt international specifications and guidance materials relating to aircraft noise.<sup>14</sup>

The Special Meeting on Aircraft Noise in the Vicinity of Aerodromes met in Montreal in November-December 1969 and made recommendations on the measuring of aircraft noise, aircraft noise certification, noise abatement procedures and land use control. The Council then adopted Annex 16 – Aircraft Noise that was later expanded under the title "Environmental Protection" to

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12 Doc 8895, A17-RES, p. 31

13 ECOSOC Resolution 1346 (XLV). On 3 December 1968 the General Assembly adopted Resolution 2398 (XXIII) convening the UN Conference on the Human Environment in Stockholm in 1972 and creating the United Nations Environment Programme (UNEP).

14 Resolution A16-3: *Aircraft Noise in the Vicinity of Airports*

encompass also provisions on aircraft engine emissions.

Since its 35<sup>th</sup> session<sup>15</sup> the ICAO Assembly has been adopting a Consolidated statement of continuing ICAO policies and practices related to environmental protection outlining the policies on the development of SARPs, land-use planning and management, environmental impact of civil aviation on the atmosphere, etc.. Special emphasis is placed on “balanced approach”<sup>16</sup> opposing unilateral or uncoordinated noise restrictions and taking into account the economic impact of premature forced replacement of earlier types of aircraft, in particular for the operators from developing countries. Engine emissions will become a matter for heightened attention since the carbon dioxide and oxides of nitrogen contained in the engine emissions are considered the chief cause of ozone layer depletion and growing global warming.

Aviation – domestic, international, both civil and military – is responsible for some 2% of the CO<sub>2</sub> emissions, a small but potentially growing part of the overall emissions<sup>17</sup>. Environmental protection is a matter of general concern and any revision of the Chicago Convention should confirm as a legal commitment of States the duty to protect the environment from aircraft noise and engine emissions in a coordinated and balanced manner determined by the Organization; at the same time States should accept an obligation not to introduce unilateral measures that would in any manner jeopardize the operation of foreign aircraft.

- *CNS/ATM – Global Navigation Satellite Systems (GNSS)*: the communication, navigation and surveillance (CNS) technology has developed fast after 1944 but the terrestrial systems have reached their limits of range and precision and new solutions had to be found in the “Future Air Navigation Systems” (FANS) now defined in the satellite-based system for the CNS and Air Traffic Management.

The GNSS is an electronic type of radio-navigation and positioning based on a range measurement from a satellite signal (timed by a precise atomic clock) whose arrival timing is measured by high precision GNSS receivers on board the aircraft or on the ground; by measuring the arrival time of the signal from three or more satellites (the position of which is known with precision), the receiver can determine its range from those satellites and hence its position in three dimensions and in real time. The GNSS is considered the backbone of the CNS/ATM system and is expected to evolve as the sole means of navigation on the global basis for terminal, en route, non-precision approach and landing and – with appropriate augmentations and overlays (provided by a Wide Area

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15 Resolution A35-5

16 Guidance material in ICAO Doc 9829

17 IATA has a “tongue -in-cheek “ message “Danger CO<sub>2</sub>W” message with a picture of a cow on the webpage <[iata.org/whatwedo/environment/campaign/cow.htm](http://iata.org/whatwedo/environment/campaign/cow.htm)> accessed on 7 December 2007; it claims that the share of airlines to atmospheric pollution is “less than the CO<sub>2</sub> produced worldwide by cattle...

Augmentation System, Local Area Augmentations and differential readings) – for precision approach and landing, possibly in zero visibility.

If the GNSS is to become the “sole” means of navigation, would it replace other electronic aids, including VMO/DME, Loran-C, Omega, Inertial Navigation System, Inertial Reference System, etc? Would it replace them on a “global” scope? Only time will show whether some “back-up” system will not be always needed since the GNSS signal could be vulnerable.

At present there are two systems of the GNSS one provided by the United States (NAVSTAR GPS), the other by the Russian Federation (Global Orbiting Satellite Navigation System – GLONASS). Both systems were originally designed for military uses and the US GPS vastly dominates among the various users (aviation is deemed to amount to some 2% of GPS use). A third system – Galileo – is planned by the European Union and the European Space Agency and should rival the GPS in precision and continuing availability; however, it is plagued by financial uncertainties and its operational availability cannot be at present estimated; by the end of 2007 the EU States agreed to take over the financing of the Galileo project when the private sector failed to reach an agreement on financing.

The GNSS are a new development unforeseeable at the time of the Chicago Conference in 1944.<sup>18</sup> The ICAO Legal Committee concluded that there was “no fundamental legal obstacle to the implementation and achievement of the CNS/ATM concept” and that there was “nothing inherent in the CNS/ATM concept which was inconsistent with the Chicago Convention”.<sup>19</sup>

This conclusion means no more than that the Chicago Convention is “neutral” or “void” as to the GNSS. No State has the duty to provide the GNSS services and no State is obliged to make use of such technology in its sovereign airspace if it is available from whatever source. The State or States providing the GNSS are free to design the system characteristics and there are no pre-existing ICAO standards that should be observed – on the contrary, any ICAO SARPs relating to GNSS take account of the paradigm of the existing design.

The need to formulate some legal principles relevant to GNSS inspired the Council of ICAO to adopt, on 9 March 1994, a “Statement of ICAO Policy on CNS/ATM Systems Implementation and Operation”<sup>20</sup> formulating several “precepts” that have no legal force but could be indicative of the incipient international consensus concerning the desirable legal principles for CNS/ATM.

In October 1998 the 32<sup>nd</sup> Session of the ICAO Assembly adopted Resolution

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18 See Milde, M. “*Solutions in search of a problem. Legal problems of the GNSS*”, 1997 Annals of Air and Space Law, Vol. XXII, Part II, pp.195-219

19 ICAO Doc 9630-LC/189 – Report of the 28<sup>th</sup> session of the Legal Committee (1994)

20 ICAO Doc LC/29-WP/3-2, 28 March 1994



A32-19, somewhat bombastically called “Charter on the Rights and Obligations of States Relating to GNSS Services”<sup>21</sup>; the term “Charter” should be reserved to international treaties of fundamental importance while an ICAO Assembly Resolution is not a source of international law but at best an indication of an opinion or developing consensus.

Resolution A32-19 “*solemnly declares*” that certain principles shall apply in the implementation and operation of GNSS. Among them is the principle of universal access and non-discrimination, no restriction on the sovereignty of States, safeguard of continuity, availability, integrity, accuracy and reliability of the services, highest practicable degree of uniformity in the provision of the GNSS services, any charges for the services to be in accordance with Article 15 of the Chicago Convention, principle of cooperation and mutual assistance on a bilateral or multilateral basis and due regard for the interests of other States.

These principles go beyond the current scope of the Chicago Convention and in any perspective revision of the Convention such principles should be embodied directly in the Convention. On the other hand there is no urgency for such a revision prior to full implementation of the GNSS services and before extensive experience is gained on the social relations created by the GNSS that require legal regulation. GNSS as technology does not require international legal regulation before potentially conflicting interests of States create a need for a legal balancing of such conflicting interests. In that sense it would appear premature that the 1998 Resolution of ICAO Assembly A32-20 called for the “development and elaboration of an appropriate long-term legal framework to govern the implementation of GNSS”; this Resolution recognized “the urgent need for the elaboration, both at the regional and global level, of the basic legal principles that should govern the provision of the GNSS”. Not only is this Resolution premature but it also takes away much of the credibility of Resolution A32-19 – the “Charter” that was deemed to have already formulated such basic principles in a very solemn form.

- *Regional Air Navigation Conferences and Air Navigation Plans*: over the years the Regional Air Navigation Conferences have become an important instrument of ICAO member States for regional planning and coordination of air navigation facilities and services. Such Conferences have been drafting, subject to approval by the Council of ICAO, the Regional Air Navigation Plans (RANPs) listing the facilities and services that are to be available in the given Region and assigning the authority over the designated Flight Information Regions (FIR). This regional planning frequently reveals conflicting interests of States, conflicting claims and sensitive political implications on the delimitation of the respective boundaries, exercise of jurisdiction or economic interests in providing the services.

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21 ICAO Doc 9848, p. V-3

The legal status of the RANPs has never been determined but States are led to believe that they have a legally binding force. However, there is no legal authority for such a conclusion and the RANPs have no legal status whatsoever under the Chicago Convention. Yet, even the United Nations Secretariat at the highest level was made to believe, in 1999 and again in 2003, that they were obliged to request the President of the Council of ICAO to suspend the European RANP<sup>22</sup> in relation to the UN administered territory of Kosovo to exempt it from the jurisdictional ambit of Serbia-Montenegro as it then existed.<sup>23</sup>

The practical importance of the RANPs cannot be underestimated but there is no constitutional basis in the Chicago Convention that would define their legal status, as well as the authority of the Council to “approve” them. In practice the RANPs were frequently “approved”, suspended or amended by the President of the Council under his “delegated authority”. It would be highly desirable to define a clear legal foundation for this field of ICAO activity in any update of the Convention. The current “legal vacuum” could lead to uncertainties, disputes or confusions.

- *Legal work of the Organization*: the work of the ICAO Legal Committee and of the Diplomatic Conferences convened under the auspices of ICAO over the years has become a highly visible, important and successful feature of the ICAO programs. Among the number of the international instruments drafted by the Legal Committee and its Sub-Committees are some that are decidedly in the forefront of the progressive development of international law and its codification. Among such instruments a particular place belongs to the aviation security conventions adopted with unprecedented speed and efficiency in response to the global challenges of aviation terrorism.

The legal principles and approaches developed in ICAO have been closely followed in other instruments adopted in different fora. Yet, for historical reasons<sup>24</sup> the Chicago Convention did not make any reference to the legal work of the Organization and the existence and Constitution of the Legal Committee and the Procedure for Approval of Draft Conventions are based only on Assembly resolutions<sup>25</sup> that do not represent a source of international law. That leads to some disregard of the proper procedures of the Legal Committee; long periods without a session of the Committee and improper referral of the legal issues to different bodies (e.g., “Secretariat Study Groups”) for which there is no

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22 EUR ANP ICAO Doc 7754

23 Letter of the President of ICAO Council to Secretary-General of the UN Kofi Anan, AN13/14.2 (open) dated 24 December 1999

24 See p xx above

25 Resolution A7-5 “*Constitution of the Legal Committee*” and Resolution A31-15, Appendix B

constitutional basis, which worked without the proper international representation and without transparency and whose composition was too often fully at the discretion of the President of the Council. In any perspective updating of the Chicago Convention the legal work of the Organization should be given appropriate constitutional basis and recognition.

- *“Empowerment” of ICAO*: perhaps the most far reaching innovation in the law and practice of international organizations is the ICAO’s determined approach to the enforcement of the safety and security standards. Enforcement is one of the rather unclear areas of international law; individual or collective enforcement of obligations is acceptable under strict limits in extreme cases – such as threat to international peace and security – justifying self-defence under the UN Charter.<sup>26</sup>

There is no precedent in international practice that an international organization would be granted the power of inspecting and assessing a State’s implementation of certain obligations, instruct on the remedial action to be taken with the implied threat that non-implementation of the corrective action would lead to damaging public disclosure of the shortcomings. But that is exactly what ICAO has done in its unprecedented quest for the global safety and security oversight – regular, mandatory, systematic and harmonized safety audit carried out by the Organization.<sup>27</sup>

The system is now firmly established in the practice of ICAO and so far there are no recorded difficulties, conflicts or complaints by States. However, the practice is based only on shaky and dubious legal grounds that could at any time be open to challenge – recommendation of a meeting of the Directors General of Civil Aviation and a resolution of the ICAO Assembly are not sources of international law. If there is in fact a true unity of the political will among States on such an “empowerment” of ICAO, the authority for ICAO to carry out safety and security oversight audits with potential “sanctions” as consequences should be included in due course in a revised version of the Chicago Convention.

- *Regional economic integration organizations*: a novel phenomenon that was not foreseeable at the time of the drafting of the Chicago Convention is the trend towards economic integration of sovereign States and their gradual integration in matters of policy and law. The European Union (EU) is the most advanced example of such a trend that may be in due course followed in other geographic areas.

The EU developed its own extensive legislation binding on its 27 members and

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26 Article 51 of the UN Charter

27 See p xx above

among such legislation are detailed regulations on the creation of a single aviation market and a host of regulations on a multitude of aspect of civil aviation. The EU has become a party to the Convention for the Unification of Certain Rules for International Carriage by Air of 28 May 1999 (“Montreal Convention 1999”)<sup>28</sup> as expressly permitted by Article 53, 2 of that Convention. The Convention states that it is open for signature by “Regional Economic Integration Organizations” – i.e., organizations created by sovereign States of a given region which have competence in respect of certain matters governed by the Convention and have been duly authorized to sign and to ratify the Convention. An identical provision will be found in the Convention on International Interests in Mobile Equipment and the Protocol to that Convention “on Matters Specific to Aircraft Equipment”, both signed at Cape Town on 16 November 2001<sup>29</sup>

The Regional Economic Integration Organizations may have competence in other matters of international civil aviation activities and voices have been heard that such organizations should have a formal status within ICAO. On the other hand, views have been expressed that giving any decision-making status in ICAO to such organizations would unduly enhance and duplicate the power of the component States of such organization.

The role of regional organizations within ICAO deserves consideration and should be addressed in any future review of the Convention. In its past ICAO readily adjusted itself to “disintegration” of the colonial empires and of several states by adjusting the Convention’s Article 50 (a) on the size of the Council. The Organization may have to adjust itself to the growing trends of “integration” of states.

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28 ICAO Doc 9740

29 ICAO Docs 9793 and 9794