



THE CHICAGO CONVENTION AS A SOURCE OF INTERNATIONAL AIR LAW

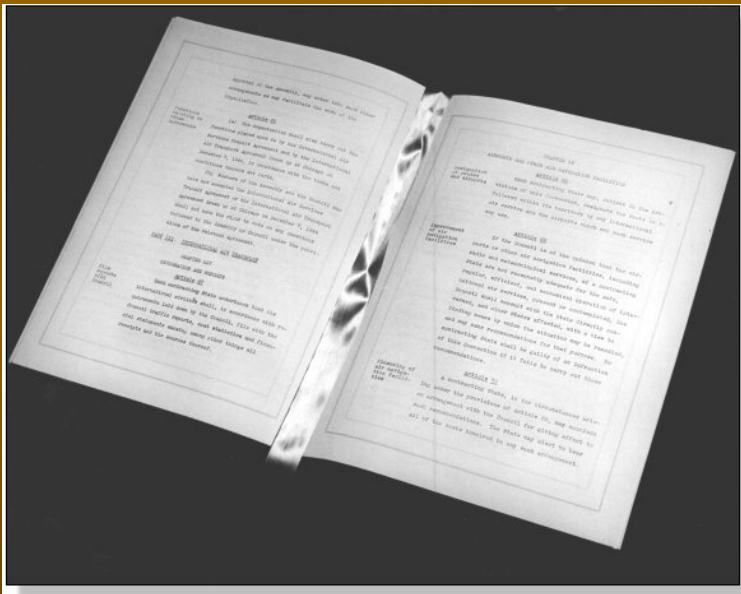
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The Chicago Convention of 1944 has two principal functions:



- I. **THE CHICAGO CONVENTION IS A SOURCE OF INTERNATIONAL AIR LAW (Articles 1-42)**
- II. **THE CHICAGO CONVENTION IS THE CONSTITUTION OF AN INTERNATIONAL ORGANIZATION (Articles 43-96) - ICAO**

The Chicago Conference



54 nations met at Chicago from November 1 to December 7, 1944, to "make arrangements for the immediate establishment of provisional world air routes and services" and "to set up an interim council to collect, record and study data concerning international aviation and to make recommendations for its improvement."

Accomplishments of the Chicago Conference

- [T]he Convention on International Civil Aviation, was concluded and opened for signature. . . . [T]his instrument provided a complete modernization of the basic public international law of the air. It was intended to replace the Paris Convention on Aerial Navigation of October 13, 1919, and did so when it came into effect on April 4, 1947. It also provided the constitution for a new permanent international organization, the International Civil Aviation Organization, which . . . replaced the previous international organization of more limited scope, the International Commission for Air Navigation.



Accomplishments of the Chicago Conference (Continued)

- The International Air Services Transit Agreement, commonly known as the Two Freedoms agreement, was concluded and opened for signature. . . .
- The International Air Transport Agreement, commonly known as the Five Freedoms agreement, was also concluded and opened for signature. . . . The number of accepting states reached a maximum of 17, but it is now declining, 4 having denounced the agreement. . . .
- A standard form of bilateral agreement for the exchange of air routes was prepared and recommended by the Conference as part of its final act. . . .
- An Interim Agreement on International Civil Aviation was completed and opened for signature. It came into effect on June 6, 1945, thereby providing an interim basis for many phases of international civil aviation and a constitution for the Provisional International Civil Aviation Organization. The interim agreement was replaced when the convention came into effect on April 4, 1947.
- Finally, a world-wide common basis was established for the technical and operational aspects of international civil aviation. . . .

Source: ICAO

Basic Principles of International Air Law

- *Territorial Sovereignty.* Every State has, to the exclusion of all other States, the unilateral and absolute right to permit or deny entry into the area recognized as its territory and similar right to control all movements within such territory.
- *National Airspace.* The territory of a sovereign State is three dimensional, including within such territory the airspace above its national lands and its internal and territorial waters.
- *Freedom of the Seas.* Navigation on the surface of the high seas and flight above such seas are free for the use of all.
- *Nationality of Aircraft.* Aircraft have the characteristic of nationality similar to that developed in maritime law applicable to ships. Thus aircraft have normally a special relationship to a particular State which is entitled to make effective the privileges to which such aircraft may be entitled and such State is also reciprocally responsible for the international good conduct of such aircraft.

Source: Prof. John Cobb Cooper

National Sovereignty Over Airspace

- Article 1 of the Chicago Convention of 1944 reaffirms Article 1 of the Paris Convention of 1919, by recognizing the pre-existing rule of customary international law, that “every State has complete and exclusive sovereignty over the airspace above its territory.”
- Territory is defined by Article 2 of the Chicago Convention as “the land areas and territorial waters adjacent thereto under the sovereignty, suzerainty, protection or mandate of each State.”
- Article 3 of the Law of the Sea Convention extends the jurisdiction of coastal States to 12 miles, while Article 38 establishes a right of transit in the straits for military and commercial aircraft.

National Sovereignty Over Airspace

- Though Article 5 of the Chicago Convention authorized certain rights of innocent passage for nonscheduled flights, scheduled flights were limited under Article 6 to those situations in which the permission or authorization of the underlying State was conferred.
- Article 6 of the Chicago Convention prohibits scheduled operations except with the permission or authorization of the State in whose territory an aircraft wishes to fly, and only in accordance with the terms established by that State.
- Article 7 of the Chicago Convention gives to each nation the right to reserve cabotage to itself. The second sentence of Article 7 prohibits States from entering "into any arrangements which specifically grant any such privilege on an exclusive basis to any other State or an airline of any State, and not to obtain any such exclusive privilege from any other State."

Aircraft Nationality



- Article 17 of the Chicago Convention provides that, “Aircraft shall have the nationality of the State in which they are registered.”
- Article 18 provides that aircraft may not be registered in more than one State, though registration may be changed from one State to another.
- Article 19 provides that registration, and transfers thereof, shall be according to the domestic laws of the registering State.
- Article *83bis* allows the registration functions to be transferred to another State better able to fulfill such regulatory requirements.

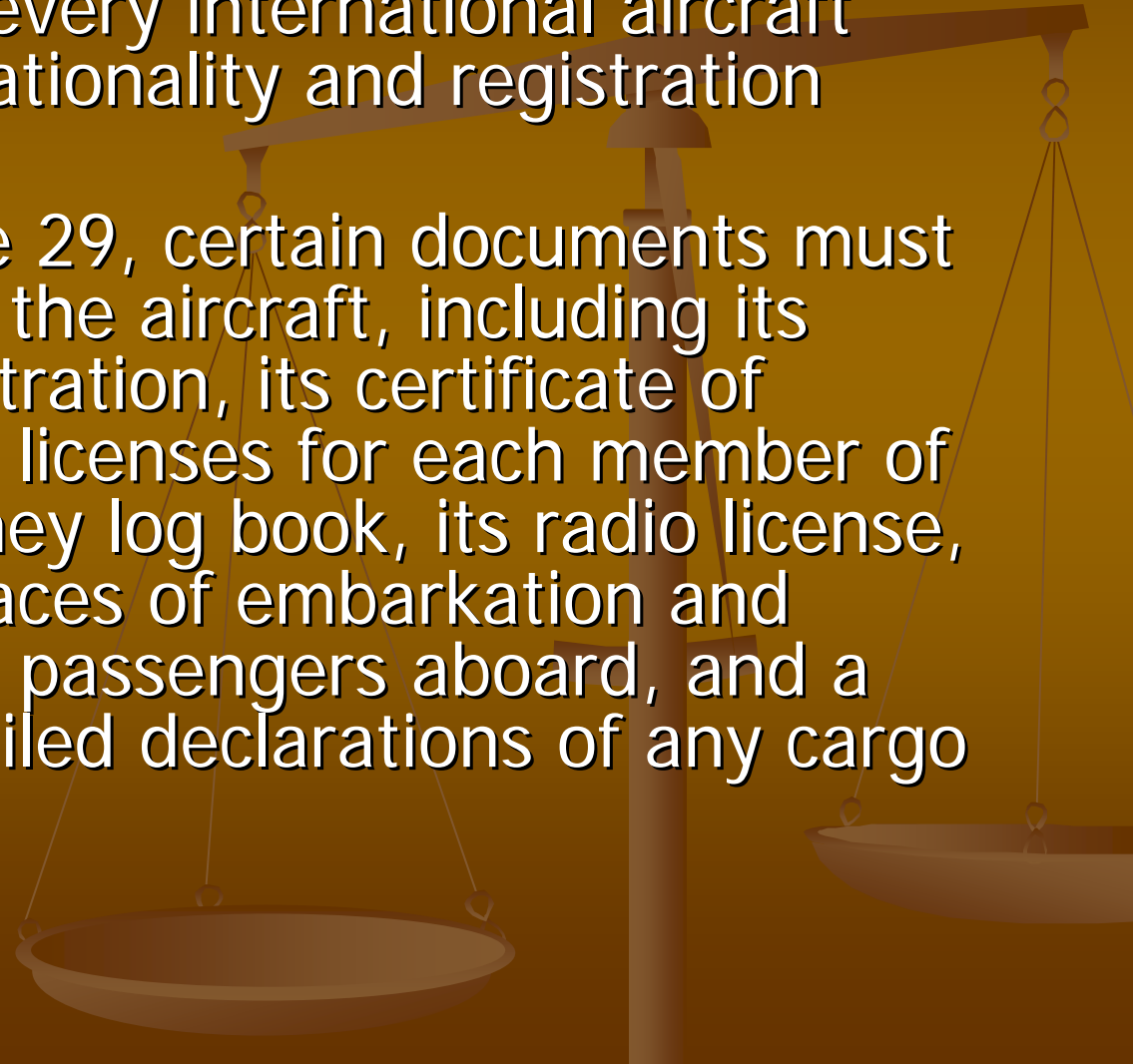
State Duties



- Article 12 of the Chicago Convention requires that States insure that aircraft flying over their territory or carrying their nationality mark shall comply with the rules and regulations governing flight there in force.
- Over the high seas, the rules in force are those established under the Convention (i.e., SARPs promulgated by ICAO).
- Under Article 21, the registering State must report to ICAO data revealing the ownership and control of aircraft it registers. It also must make available to other contracting States, or ICAO, information concerning the registration and ownership of aircraft registered in it, on demand.
- Under Articles 31 and 32, the State must provide such aircraft with a certificate of airworthiness, and issue certificates of competency and licenses for pilots and flight crew on such aircraft.
- Under Article 30, the State must also issue licenses for aircraft radio equipment.
- Pursuant to Article 33, other States, in turn, have a duty to recognize certificates of airworthiness and personnel certificates of competency and licenses as valid, but only so long as the requirements under which they are issued "are equal to or above the minimum standards which may be established" by ICAO.

Duties Imposed Upon Aircraft

- Under Article 20, every international aircraft must display its nationality and registration marks.
- Pursuant to Article 29, certain documents must be carried aboard the aircraft, including its certificate of registration, its certificate of airworthiness, the licenses for each member of the crew, its journey log book, its radio license, the names and places of embarkation and destination of any passengers aboard, and a manifest and detailed declarations of any cargo aboard.



Airline Nationality

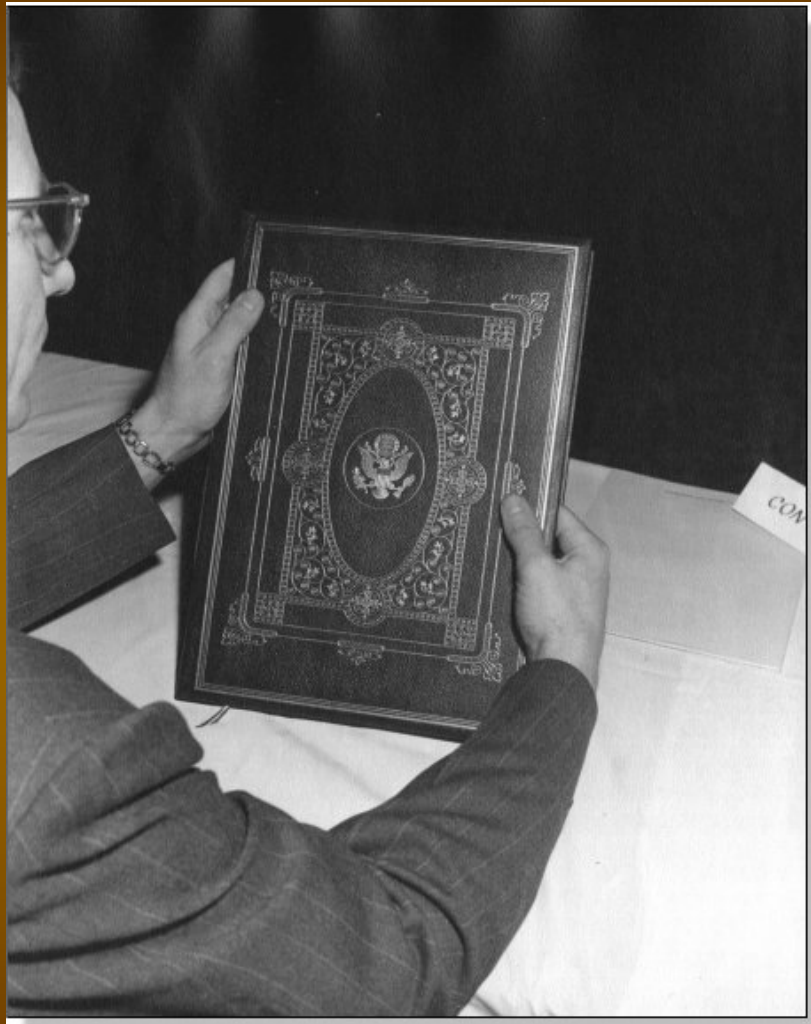
- Airline nationality is nowhere addressed in the Chicago Convention, though it has become an important part of bilateral air transport agreements, as well as the multilateral Transit and Transport Agreements, whose “substantial ownership and effective control” requirements have effectively precluded adoption of the maritime law notion of “flags of convenience” into international aviation.

Aircraft Categorization

- The Chicago Convention distinguishes between civil and State aircraft, manned and unmanned (or pilotless) aircraft, and scheduled and non-scheduled services.
- Under Article 3, the Chicago Convention explicitly applies “only to civil aircraft,” and not to State aircraft, though the definition of “aircraft” is nowhere defined in the Convention. Certain types of aircraft are presumptively State aircraft, including “Aircraft used in military, customs and police services”
- Article 3(d) provides that when issuing regulations for State aircraft, the contracting State “will have due regard for the safety of navigation of civil aircraft.” Traffic rights are circumscribed by Article 3(c), which provides that State aircraft may not fly over or land on the territory of another State “without authorization by special agreement or otherwise, and in accordance with the terms thereof.”
- *Article 3bis* reaffirms the customary international law principle that “every State must refrain from resorting to the use of weapons against civil aircraft in flight”, though it can require civil aircraft flying above its territory without permission to land at a designated airport. But “in the case of interception, the lives of persons on board and the safety of aircraft must not be endangered.”

Rights of Overflight and Traffic Rights

- *Scheduled Aircraft.* The general rule on traffic rights is set forth in Article 6 of the Chicago Convention: "No scheduled international air service may be operated over or into the territory of a contracting State, except with the special permission or other authorization of that State, and in accordance with the terms of such permission or authorization." This provision is the foundation for the negotiation of air transport agreements between nations, for without permission to fly across another's territory, a scheduled aircraft may not enter another's airspace
- *Non-scheduled Aircraft.* Although the operations of scheduled aircraft are restricted, under Article 5, aircraft engaged in non-scheduled flights enjoy the right to fly into or across the territory of another State, and to make stops for non-traffic purposes (first and second freedom rights). However, the State flown over has the right to require the non-scheduled aircraft to land, and to follow prescribed routes, or obtain special permission for such flights.
- *State Aircraft.* Pursuant to Article 3, State aircraft may not fly over or land on the territory of another State "without authorization by special agreement or otherwise, and in accordance with the terms thereof."
- *Pilotless Aircraft.* Pursuant to Article 8, pilotless aircraft may not fly over the territory of a contracting State "without special authorization and in accordance with the terms of such authorization." Such flights must be "controlled as to obviate danger to civil aircraft."



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