**Prospects for Improving the Codification**

**of International Air Law**

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In one of the reports of the International Law Commission on modern processes of fragmentation of the codification processes, the development of international law is defined as a movement from bilateral arrangements, through regional arrangements, to the erga omnes obligations [1, p. 382-390]. The history of the codification of international air law, which accompanied the formation of avia­tion from almost the very beginning, is a good illustration of this tendency.1 The first bilateral agreement on aerial navigation was concluded between France and Germany of 23 June 1913. It enshrined the sovereign right of states to their air­space [2, p. 38]. After World War I, in addition to the five peace treaties, the Paris Convention Relating to the Regulation of Aerial Navigation of 13 October 1919 was adopted at the Paris Peace Conference of 1919-1920. It established the full and exclusive sovereignty of each state over the airspace overlying its territory, including territorial waters [3, p. 1]. Pursuant to Article 34 of the Convention, there was the International Commission for Air Navigation which had to clarify and harmonize the provisions of the Convention and eight Annexes (A-N) to it [3]. A little later, in the western hemisphere, the Permanent American Aeronau­tical Commission headquartered in Lima (1927) was set up to perform similar functions on the American continent [4]. The Paris Convention of 1919 covered all of the issues relevant to air navigation, which had not yet been differentiated into the separate regulatory areas that subsequently emerged. Along with the annexes, the convention laid the foundations for multi-level air traffic control involving international institutions and participating states in the rule-making process.

Quite soon, the need for the commercial operation of aircraft prompted the totes to establish a separate system of international legal regulation in this area. From 1926 to 1929, two international conferences related to private air law, with the assistance

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The first aviation laws were adopted In France, Germany, Great Britain, Austria, Russia and the between 1909-1912, The International Aviation Law Committee also developed the international Air Code (1911), which was of a recommendatory nature.

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of the newly created International Technical Committee of Expert Lawyers, unified issues of supporting documentation, carrier liability and dispute settlement procedures. On October 12, 1929, the Warsaw Convention for the Unification of Certain Rules Relating to International Carriage by Air was signed. Subsequently, the Convention for the Unification of Certain Rules Relat­ing to Damage Caused by Foreign Aircraft to Third Parties on the Surface and the Convention for the Unification of Certain Rules Relating to the Precautionary Arrest of Aircraft (Rome, May 29,1933) were adopted simultaneously [2, p. 681].

By the end of World War II, the common will of the leading states of the world became the basis for a complex of systemic interstate agreements laying the foundations of a new international order: in the spring of 1944 at the Bret- ton Woods Conference the charters of the IMF and the IBRD were adopted, the same year (November 1, 1944) the Chicago Conference on Civil Aviation began, and a few months later (june 26, 1945) the UN Charter and the Charter of the International Court of Justicewere adopted. Thus, economic and universal international legal orders began to develop in parallel and interdependently. The Chicago Conference on Civil Aviation adopted the Chicago Convention on Inter­national Civil Aviation; Temporary Arrangements for Civil Aviation; The Transit Agreement for International Air Transport and the Final Act of the Conference, which contained the "Standard Form of Agreement for Granting Airlines", which unified the terms of bilateral treaties between states on the access of foreign civilg ian aircraft to their airspace [2, p. 74]. The Chicago Convention.on International Civil Aviation of December 7,1944 [5] became the most important achievement of the conference. The preamble and four parts of the Convention established a common strategy for air transport development in peacetime among the under­signed states. The legal framework for organizing international air connections was outlined in six chapters of Part I, headed "Air Navigation", Chapter I, headed "General Principles and Application of the Convention", is based on the principle of the complete and exclusive sovereignty of the contracting State over its airspace (Articles 1, 2). The provisions of the Convention are applicable only to civil air­craft, which should not be used for purposes incompatible with the Convention. Chapter II, under the heading "Flight over territory of contracting States", dis­tinguishes between the legal regime of non-scheduled (Article 5) and scheduled (Article 6) air services. Each contracting State may establish such a regime as it considers desirable.2 Each contracting State is responsible for ensuring that every aircraft with its nationality mark, while flying over the territories of other States

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2 During the Cold War, these norms were implemented by most states in such a way that any flights required the admission of foreign aircraft to their airspace only by prior permission.

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shall comply with regulations relating to flight (Article 12), and their passengers will comply with regulations relating to entry, departure, immigration, customs and immigration control, etc. (Article 13). Under Chapter III, headed "Nation­ality of Aircraft", established the undeniable connection of an aircraft with the place it is registered (Article 17), and the registration of an aircraft in more than one state being inaccessible (Article 18). Under Chapter IV, headed "Measures to Facilitate Air Navigation", the states are obliged to actively cooperate in issuance of unified regulations; in simplification and transparency of customs and other formalities; in reduction of customs duties and charges; in assistance to crashed aircrafts, their passengers and crews and in international investigation of air acci­dents. According to Article 28, under the heading "Air navigation facilities and standard systems", each contracting State in its territory is obliged: 1) to provide airports, radio and meteorological services and other air navigation facilities to facilitate international air navigation; 2) to adopt and enter into operation the appropriate standard systems of communications procedure, codes, markings, signals, lighting and other operational practices and rules recommended by the Convention; 3) to cooperate in international events to ensure the publication of aeronautical maps and schemes in accordance with ICAO standards. Chapter V headed "Conditions to be observed in respect to Aircraft", provides a list of documents required to be carried in aircrafts (Article 29). Chapter VI, headed "International Standards and Recommended Practices", concerns a number of questions on air navigation which shall be amended, as may be necessary, and standardized by the International Civil Aviation Organization (ICAO). Their indic­ative list (Article 37) includes: 1) communication systems and air navigation facil­ities; ^^characteristics of airports and landing areas; 3) flight rules and air traffic control practices; 4) licensing of operating and mechanical personnel; 5) airwor­thiness of ^aircrafts; 6) registration and identification of aircrafts; 7) collection and exchange of meteorological information; 8) log books; 9) aeronautical maps and charts; 10) customs and immigration procedures; 11) aircrafts in distress and investigation of accidents, as well as other matters related to the safety, regularity and efficiency of air navigation that may appear appropriate. Each contracting State is required to cooperate in ensuring the unification of such rules, standards, procedures and organization. The peculiarities of the unification are highlighted in Articles 39-42/

Part II, under the heading "The International Civil Aviation Organization", regulates the ICAO's activities. Article 43 of the Chicago Convention states the establishment of the Organization which consists of an Assembly, a Council and other such other bodies as may be necessary. Article 44 of the Convention defines the aims and objectives of the ICAO. They are to develop the principles

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and techniques for international air navigation and to foster the planning and development of international air transport. The highest body of the Organization is the Assembly (Chapter VIII) with all ICAO members represented. The Assembly shall meet at least once every three years (Articles 48, 49). The exclusive compe­tence of the Assembly is the right to make modifications and amendments to the Chicago Convention to be further ratified by the contracting States. The Secre­tary of the Assembly is the Secretary General of the ICAO. The executive body of the ICAO is the Council of the International Civil Aviation Organization (Chapter IX), responsible to the Assembly. The President, elected by the Assembly for three years, chairs the Council.

Article 54 determines mandatory functions of the Council, and Article 55 - optional functions of the Council. In particular, the mandatory functions of the Council include the collection, study and publication of information relevant to the development of air navigation and the operation of international air service; notification of contracting States and the Assembly of any violations of the Chi­cago Convention, as well as any failure to comply with the recommendations or decisions of the Council; adoption of international standards and recommended practices, notification of all contracting States of the action taken; consideration of recommendations of the Air Navigation Commission for amendment of the Annexes and taking actions in accordance with the provisions of the Chicago Convention. The Air Navigation Commission (Chapter X) shall consider, and recommend to the Council for adoption, modifications of the Annexes to the Convention; establish technical subcommittees; advise the Council concerning the collection and communication to the contracting States of all information which it considers necessary and useful for the advancement of air navigation (Article 37).

Part III, under the heading "International Air Transport\*, contains provisions on cooperation between the States through the ICAO Council in assisting ICAO in coordinating the activities of States to develop the efficiency and safety of civil aviation operations. Each contracting State undertakes that its international airlines shall file with the Council traffic reports, cost statistics and financial state­ments showing, among other things, all receipts and the sources thereof (Chapter XIV). Chapter XV, headed "Airports and other Air Navigation Facilities", defines the conditions for coordination between contracting States in designating the routes and airports, providing with air navigational aids and international air ser­vice. Chapter XVI provides conditions for joint operation of air lines by con­tracting States, the constitution of joint (international) agencies and pools both at the intergovernmental level and through non-state airlines. Part IV, under the heading "Final Provisions", obliges contracting States to denunciate

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the Paris Convention, 1919, and Havana Convention, 1928, to register with the ICAO Council other existing air navigation agreements between contracting States and other States, and to abrogate all obligations and understandings which are incon­sistent with the Chicago Convention (Chapter XVII); procedures for resolving dis­putes and sanctions for non-compliance with the provisions of the Convention (Chapter XVIII), etc. An integral part of the Convention is its Annexes, accounting for 19 as of today.3

The experts note the immutability of the ideological and substantive rele­vance of the Chicago Convention [3], which acts as a unifying regulatory frame­work. On the basis of the Convention, the system of normative acts of various levels of specialization and rulemaking is dynamically developed, modified and diversified. As stated in the report of the European Regional Office of ICAO, the main purpose of this system is the safety, security and sustainable development of international civil aviation [7]. This system includes three main lines of codi­fication of international air law: 1) regulation of interstate relations with regard to the international air traffic; 2) regulation of commercial air transportation; 3) ensuring flight safety.

The development and upgrading of existing standards by the ICAO divisions is a continuous process. In addition to the Annexes and their periodic updates (new editions), ICAO develops different manuals on specific issues of aviation activities, including: Safety Management Manual; Accident Preventing Man­ual; Manual of Aircraft Accident Investigation; Manual of Aircraft Accident and Incident Investigation; Manual concerning Safety Measures relating to Military Activities Potentially Hazardous to Civil Aircraft Operations; Manual of Radiote­lephony; Manual concerning Interception of Civil Aircraft; Manual on the Reg­ulation of International Air Transport, etc. The rules, procedures and standards developed from the provisions of the Convention by ICAO authorities and other aviation international organizations are specified in the bilateral intergovernmen­tal treaties, amounting to about three thousand.

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3 Annex 1 "Personnel Licensing"; Annex 2 "Rules of the Air"; Annex 3 "Meteorological Service for International Air Navigation"; Annex 4 "Aeronautical Charts"; Annex 5 "Units of Measurement to be used in Air and Ground Operations"; Annex 6 "Operations Of Aircraft"; Annex 7 "Aircraft Nationality and Registration Marks"; Annex 8 "Airworthiness Of Aircraft"; Annex 9 "Facilitation"; Annex 10 'Aeronautical Telecommunications"; Annex 11 "Air Traffic Services"; Annex 12 "Search and Rescue ; Annex 13 'Aircraft Accident Investigation"; Annex 14 "Aerodromes"; Annex 15 "Aer­onautical Information Services"; Annex 16 "Environment Protection"; Annex 17 "Security: Safe­guarding International Civil Aviation Against Acts of Unlawful Interference"; Annex 18: "The Safe Transport of Dangerous Goods by Air"; Annex 19 "Safety Management".

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Particular attention is paid to specifying the regulations on flight safety (FS), which are enshrined in the Annexes to the Convention, and in one way or another deal with this problem. On February 25, 2013, a special Annex 19 headed "Safety Management, International Standards and Recommended Prac­tices" was adopted (effective November 14, 2013). The Annex imposes an obli­gation on States to implement, on the basis of standard provisions, the State FS Programs and State Control over the organization of FS (Chapter 3) and to develop the State Air Traffic Management Systems (Chapter 4). State FS Programs should include four main areas: 1) determination of the state policy and objec­tives of FS; 2) risk management for FS; 3) essential measures for FS; and 4) pop­ularization of FS issues. ICAO periodic forums at the global and regional levels monitor the implementation of the provisions of Annex 19 [10].

From the last decade of the twentieth century there have been important changes in the international regulation of international commercial air transpor­tation. The results of the Uruguay Round and the adoption of the "Marrakesh Package" on April 15, 1994 also affected the aviation sphere [11, 12]. In the same year, the 4th World Air Transport Conference was held in Montreal, which recognized the need for significant changes in the regulation of air transport in order to adapt air services to the conditions of liberalization. Important changes have also taken place in the regulation of international commercial air trans­port with the adoption the Montreal Convention on the Unification of Certain Rules for International Carriage by Air on May 28,1999 [13], which replaces the Warsaw Air Traffic Management System. In the twenty-first century, the require­ments for the liberalization of air traffic became particularly acute in connection with the introduction of new forms of cooperation. States have faced the need to lift certain traditional restriction^ on access to the market for international transport. The level of bilateral agreements, which expanded and diversified its content, was complemented by regional multilateral agreements, in particular the implementation of the concept of open air, which following Europe is being implemented in Latin America and South-East Asia. All these issues became the subject of discussions and decisions under the auspices of ICAO [13]. In March 2003, ICAO hosted the World Air Transport Conference, entitled "The Chal­lenges and Opportunities for Liberalization", which was attended by 145 states and 29 international organizations [14]. The Conference adopted the "Decla­ration of Global Principles of International Air Transport Liberalization", which formalized the following tasks: ensuring a high level of flight safety and aviation security; promoting the effective and sustainable participation of all States on the basis of common interests principle and by introducing preferential measures for developing countries and ensuring conditions for providing them with adequate

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support infrastructure at reasonable prices; promoting investments in interna­tional air transport; promoting the development of its stable economic basis, adapted to the conditions of regulation and management; minimizing negative environmental impacts; ensuring reasonable consumer expectations for service, especially for non-economic routes; assisting in improving the efficiency of the air service market; creating adequate and effective guarantees for fair competi­tion; strengthening cooperation and harmonization at subregional, regional and global levels; adequate accommodation of interests of all actors in civil aviation, including air carriers, users, airports, the public, etc. [15].

The practical needs of international cooperation require States to increas­ingly adapt their national legal systems to the international standards, in which codification plays a crucial role. With the adoption of the UN Charter, in accord­ance with Article 103, all the obligations of the States under the Charter have an advantage over other contractual obligations. On the basis of compliance with its goals and principles, four main directions of interstate relations received (or updated) their codified legal basis: 1) diplomatic and other official external relations; 2) codification of international law (by concluding international agree­ments); 3) institutionalization of international cooperation (through the establish­ment of international intergovernmental organizations); 4) peaceful settlement of disputes, forming a unified dynamic system of international law and order, the complexity and structuring of which grows without violating its unity. In these processes, the main role is played by international organizations, whose divi­sions deal with the systematization and implementation of such requirements and standards. Unlike the legal equality of sovereign states, each international intergovernmental organization has a unique legal personality, due to its func­tional purpose, which reduces the possibility of defining a set of common unified norms for regulating their activities. Regionalism, which institutionalized a new level of legal personality, the rules of which compete with both national and international law on a global level, became an important phenomenon in mod­ern international law. The complex of problems related to the delimitation of the competence of subjects of legal relationships other than the state is analyzed in the context of the discussion on the fragmentation of international law [16]. The development and codification of international air law in this sense provides invaluable experience.