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## **A short note on the origins of the International Civil Aviation Organization on its 65th anniversary**

### **SUMMARY**

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In December 1944 the International Civil Aviation Conference took place in Chicago, USA. Representatives of 50 states met to discuss new approaches toward the challenges of civil aviation in the post-war era. This article aims to present a historical note of the event, different interests and attitudes of the participants involved in the discussion, as well as the outcomes of the conference including the establishment of the International Civil Aviation Organization.

**Key words:** Civil Aviation, Chicago Convention, International Civil Aviation Organization, air services

At the end of World War II the United States of America kept itself quite busy with the assessment of the war damages in many fields and reconstruction of the world order in many possible ways. It was obvious that the post-war reality would require new standards, mechanisms and institutions responding to the deeply diverse international relations. To answer the challenges, an international cooperation of a new kind and on many levels was necessary and the United States took up the role of the host for the most important world conferences dealing with crucial problems and establishment of new international organizations.

The year 1944 became a significant year for the American initiatives as it brought several major international events. All of them were hosted by the United States and they resulted in historical decisions and the establishment of major international organizations. The 26th session of the *International Labor Conference* was held from April 20 to May 12 in Philadelphia. One of the major resolutions (known as the *Philadelphia Charter*) dealt with aims and purposes of the *International Labor Organization* (ILO)<sup>1</sup>. Between July 1 and 22 of 1944 the famous conference leading to the establishment of the *International Monetary Fund* and the *World Bank* was held in Bretton Woods (New Hampshire)<sup>2</sup>. Later, during the late summer and early fall of 1944 the *Washington Conversations on the International Organization for the Maintenance of Peace and Security* were arranged in the US capital, in the house known as Dumbarton Oaks, to prepare the background for the replacement of the *League of Nations* by a new, universal organization<sup>3</sup>. Finally, in November and December of the same year representatives of interested states gathered in Chicago at the *International Aviation Conference* to discuss the future of civil aviation and to establish the *International Civil Aviation Organization* (ICAO). Only 6 months later, already in 1945, the conference in San Francisco brought into being a new universal international organization – the *United Nations* (UN) which soon became a core organization for the Bretton Woods institutions, ILO and ICAO which became UN specialized agencies.

This article is dedicated to the origins of the *International Civil Aviation Organization* that was formally called into being by the provisions of the 1944 *Convention on International Civil Aviation* (Chicago Convention)<sup>4</sup>, but in fact it started operating on April 4, 1947, that is exactly 65 years ago.

It has to be emphasized that the ICAO was not to be the first international body for the aviation matters. In 1919, the *Convention Relating to the Regulation*

<sup>1</sup> The *Philadelphia Charter* was adopted unanimously on May 10th and set out principles to inspire the policy of the ILO member states. First comments see: W. J. Cohen, J. H. Barr, *The 1944 International Labor Conference*, Social Security Bulletin, June 1944, p. 11 and next.

<sup>2</sup> The *Bretton Woods Agreements* were immediately recognized as „the most vital step in the path of realizing effective international economic cooperation”. See: H. Morgenthau Jr, *Bretton Woods and International Cooperation*, 23 Foreign Aff. 182 (1944–1945), p. 188.

<sup>3</sup> In the opening speech the US Secretary of State, Honorable Cordell Hull called for the „establishment of a lasting system of organized and peaceful relations among nations” and was fully supported by the heads of other delegations. *International Organization for the Maintenance of Peace and Security. Remarks of the Honorable Cordell Hull, Secretary of State of the United States of America and remarks of Sir Alexander Cadogan, Leader of the United Kingdom Delegation, and remarks of His Excellency Ambassador Andrei A. Gromyko, Leader of the Soviet Delegation at the Opening of the Informal Conversations on the General Nature of an International Organization for the Maintenance of Peace and Security, Washington D.C., August 21, 1944, 78th Congress 2nd Session, Document No. 231, United States Government Printing Office, Washington 1944, p. 1.*

<sup>4</sup> *Convention on International Civil Aviation* signed at Chicago, December 7, 1944, ICAO Doc 7300/8.

of *Aerial Navigation* (Paris Convention)<sup>5</sup> was signed by 26 and eventually ratified by 32 states (including the United States, the British Empire, Brazil, France, Greece, Italy, Japan, Poland, Czechoslovakia and others)<sup>6</sup>. It accepted the principle of complete and exclusive sovereignty over the air space above each state's territory (Article 1). It also established a permanent International Commission for Air Navigation placed under the direction of the League of Nations to execute some of the Convention's provisions and to allow for communication between contracting states (Article 34). The Paris Convention and the Commission constituted solid basis for international aviation's regulation and structure. However, due to the fact that some important states like Germany, China or Russia were not signatories of the Convention and due to the developments of World War II revealing the necessity for wider, more complex regulations, there was a clear need for another international gathering and negotiations for a new convention establishing the future legal order and an organization for civil aviation<sup>7</sup>.

On September 11, 1944, the Government of the United States headed by President F.D. Roosevelt sent out an invitation to the international conference on international civil aviation addressed to the representatives of fifty five states. Fifty three governments received direct invitations, while two were sent to the embassies in the United States addressed to the Danish and Thai Ministers in Washington. Out of fifty five, only two invitees absented themselves – Saudi Arabia and the Soviet Union. Several explanations may be found for the Russian absence including the formally produced reason that is the presence of countries like Spain, Switzerland or Portugal in Chicago with which the Soviet Union was not in diplomatic relations due to their “pro-Fascist policy hostile to the Soviet Union”<sup>8</sup>. The Russian lack of readiness to actually permit aircrafts of other countries to fly over the U.S.S.R. territory was also recalled as a reason<sup>9</sup>. Some

5 *Convention Relating to the Regulation of Aerial Navigation* signed at Paris, October 13 1919, League of Nations Treaty Series (1922) No. 297 at 173.

6 The very first attempt to regulate airspace internationally was made in 1910 in Paris where the International Conference for Aerial Navigation was called with response of 18 participants. The conflict between the British delegation opting for absolute sovereignty of a state in its air territory and the French delegation arguing for limited freedom of the airspace resulted in the fiasco of the conference. W.J. Wagner: *International Air Transportation as Affected by State Sovereignty*, Établissements Émilie Bruylant, Bruxelles 1970, p. 32–33.

7 E.R. Kreis: *A Comparative Analysis of the Aviation Network Within the European Community and the Ad-hoc Network Between the United States and Central America*, 24 *Transp. L. J.* 303 (1997), p. 306. There were also other aviation organizations established in the world but of minor significance. For details see: I. H. Ph. Diederiks-Vrschoor, *An Introduction to Air Law*. The Netherlands 2001, p. 6–7.

8 *Air Age*, *The Washington Post*, Nov 4, 1944, p. 4.

9 See: M. Sassaella, *The International Civil Aviation Organization: Its Contribution to International Law*, 8 *Melb. U. L. Rev.* 41, 1971–1972, p. 50, M. Milde, *International Air Law and ICAO*, The Netherlands 2008, p. 14. There are also reports stating that the Russian delegation made it to Chicago only to

commentators pointed to the isolationism of the Soviet Union and the fact that such absence would cause “at least one great block of closed air”<sup>10</sup>.

The US invitation expressed “urgent need for establishing an international civil air service pattern [...] so that all important trade and population areas of the world may obtain the benefits of air transportation as soon as possible”<sup>11</sup>. There were three main objectives for the conference proposed in the American invitation. The first one was to negotiate a general agreement establishing provisional world route arrangements as basis for the international air transport services to be implemented in the future. The second objective was to establish the Interim Council to act as the clearing house and advisory agency during the transitional period. The third objective was to reach an agreement to be followed in setting up a permanent international aeronautical body, and a multilateral aviation convention dealing with the fields of air transport, air navigation and aviation technical subjects<sup>12</sup>.

The *Definitive Agenda of the Conference* consisted of four major parts responding to the objectives indicated in the invitation. The first one was dedicated to the “Multilateral aviation convention and international aeronautical body”. The second one dealt with “Technical standards and procedures”, the third one focused on the “Arrangements covering transitional period: Establishment of air-transport services on provisional basis” and the fourth was dedicated to the *Consideration of establishment of Interim Council* to serve during a transitional period which could supervise work of other committees functioning during this period and performing such other functions as the conference may determine<sup>13</sup>. The idea was to divide the work during the conference between discussion and voting at plenary sessions of all representatives and work of the Technical Committees and their subcommittees designed for the conference. Committee I on the *Multilateral Aviation Convention and International Aeronautical Body* was the forum for deliberations over the structure and tasks of the future aviation organization (Subcommittee 1 – *International Organization*) and fundamental principles for the future convention on civil aviation (Subcommittee 2 on *Air Navigation Principles* and Subcommittee 3 on *Air Transportation Principles*). Committee II with total of 10 Subcommittees worked on the *Technical Standards*

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find out at the hotel that the USSR had pulled out and called the delegates to go back home. See: H. Osterhout, *A Review of the Recent Chicago International Air Conference*, 31 Va. L. Rev. 376 (1944–1945), p. 378. The Soviet Union eventually ratified the Chicago Convention and became member of the ICAO in 1970.

<sup>10</sup> *Open Skies*, *The Washington Post*, Dec. 7, 1944, p. 8.

<sup>11</sup> *Invitation of the United States of America to the Conference* [in:] *Proceedings of the International Civil Aviation Conference*, Chicago Illinois, November 1 – December 7, 1944, Vol. I, United States Government Printing Office, Washington 1948, p. 11.

<sup>12</sup> *Ibidem*, p. 12.

<sup>13</sup> *Definitive Agenda of the Conference* [in:] *Proceedings of the International Civil Aviation Conference*, op. cit., p. 14–15.

and Procedures, while Committee III concentrated its efforts on the *Provisional Air Routes* and Committee IV – on the *Interim Council*<sup>14</sup>.

It has to be noted that prior to the conference, the United States had conducted several bilateral negotiations and conversations preparing the stage for the multilateral talks in Chicago. The American commercial aerial fleet had no competition in the post-war era<sup>15</sup>. As such it would benefit from the regulations of the airspace based on the freedom of competition and philosophy of open market<sup>16</sup>. However, the national protectionism over the newly established airline industries of other players, as well as the national security considerations resulting from the devastation caused by military planes during the war, strongly opposed the American idea and argued for the close control over access to the airspace<sup>17</sup>.

The bilateral negotiations preceding the Chicago conference resulted in four major draft proposals regarding the main future solutions and structure of a permanent aeronautical body. They were prepared for consideration by the governments of the United States, the United Kingdom, Canada and Australia and New Zealand jointly<sup>18</sup>. The latter proposal aimed to establish

<sup>14</sup> There were also regular General Committees of the Conference including Executive Committee, Steering Committee, Committee on Nominations, Committee on Credentials and Committee on Rules and Regulations. See: *Committees of the Conference*, [in:] *Proceedings of the International Civil Aviation Conference*, op. cit., p. 25–28. There was an entire Personnel of the Conference appointed with the President, Vice-Presidents, Secretary General and Technical Secretary. The management of the conference was subject to the Regulations of the Conference adopted during the opening session. Ibidem, p. 16–24.

<sup>15</sup> On Dec 29, 1944 the New York Times wrote: „The year 1944 has seen the air transportation lines of the United States reach a new peak of usefulness both directly to the war effort and to the swift movement of civilians and goods in support of this effort. In cold figures the airlines have shown, a gain of 22 per cent in mail pound-miles and 7 per cent in express pound-miles flown, as compared with the preceding year. On behalf of the Air Transport Association, TWA has made public an estimate of revenue amounting to \$150,000,000. [...] The new marks which have been set have been made possible both by an increase in fleet of available transport airplanes which totaled only 188 last January but which has been augmented during the year by 112 released from the armed services, and especially by greater utilization of equipment. Load factors during the year have been above 90 per cent. [...] The airlines can face the new year with a sense of satisfaction for patriotic duty splendidly performed with a bright vision of new usefulness in the post-war world. *Airline Record, The New York Times*, Dec. 29, 1944, p. 14.

<sup>16</sup> B. Cheng, *The Law of International Air Transport*, London 1962, p. 7.

<sup>17</sup> A. Vamos-Goldman, *The Stagnation of Economic Regulation under Public International Air Law: Examining Its Contribution to the Woeful State of the Airline Industry*, 23 *Transp. L.J.* 425 (1996), p. 431.

<sup>18</sup> In fact, the United States' original intention was to find interim solutions (interim agreement and interim organization) and prepare the ground for further study and establishment of both – new international convention and new international aeronautical body. It appeared, however, that other states, especially Canada and United Kingdom attached the greatest importance to actual establishment of the convention and organization. As a result, the interim agreement was reached but completed with a text of permanent convention establishing the organization ready to be signed and submitted to national ratifications. See: *Drafting History of the Convention on International Civil Aviation*, [in:] *Proceedings of the International Civil Aviation Conference*, op. cit., p. 4–5.

an international air transport authority responsible for the operation of air services on prescribed international routes. Such an authority would own the aircraft and ancillary equipment employed on these routes. It was the most revolutionary idea presented at the Conference, based on the belief that after the wars, the air transport could serve as a powerful instrument for the international security and support the philosophy of the “Freedom from Fear” embodied in the Atlantic Charter<sup>19</sup>. The United Kingdom’s idea was to maintain the principle of territorial sovereignty in the airspace and to establish an *International Air Authority* which would give effect to the proposed Convention in the field of determination and distribution of the flight frequencies and in the field of fixing the rates of carriage in relation to standards of safety and accommodation<sup>20</sup>. The Canadian proposal also called for the establishment of the *International Air Authority* sharing competences with local *Regional Councils* set up throughout the world regulating and certifying international air services<sup>21</sup>. To the contrary, the American draft proposal on the future convention (the most complex and detailed one) provided for a freedom of air services and included establishment of two organs: a permanent organization called the *International Aviation Assembly* with representatives from all contracting states and the *Executive Council* composed of 15 states’ representatives and responsible to the *Assembly*. The functions of the *Council* and the *Assembly* were limited to technical and information sharing issues. The airlines would be free to compete in the free market, with no interventions of any regulatory agency<sup>22</sup>.

To no surprise, what emerged from the negotiations was a compromise between the American vision of “open sky” and freedom of the airspace to be accessed by any aircraft based on the market forces and the British contravision based on the combined principle of sovereignty and establishment of the international organization responsible for the economic and technical regulation of the air services. The Australian and New Zealand proposal was rejected which was a clear sign that extensive international control of air services was out of the conference’s scope. The Brazilian delegate while submitting the amendment calling for the rejection of this very modern initiative argued that international ownership of the aircraft cannot be accepted as „times are not yet ripe for the internationalization of aviation”. There were, however, voices

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<sup>19</sup> *Resolution to be moved by Hon. D.G. Sullivan, Chairman, New Zealand Delegation. International Ownership and Operation of Air Services on Prescribed International Trunk Routes*, Conference Doc. 49, [in:] *ibidem*, p. 550.

<sup>20</sup> *United Kingdom Proposal on International Air Transport*, Conference Doc. 48, [in:] *ibidem*, p. 569.

<sup>21</sup> *Canadian Revised Preliminary Draft of an International Air Convention*, Conference Doc. 50, [in:] *ibidem*, p. 570 and next.

<sup>22</sup> *United States Proposal of a Convention on Air Navigation*, Conference Doc. 16, [in:] *ibidem*, p. 562–563.

(expressed by the Afghan delegation and backed by the French) arguing that the time is very ripe after the two devastating wars and that the New Zealand and Australian proposal was „a ray of hope” for the future. After a strong American voice supporting the Brazilian amendment, the internationalization of aircraft was eventually rejected and left as a „dream” unable to come true<sup>23</sup>.

The three other delegations spent 8 days in the closed conference meetings trying to renegotiate their approaches and to reach a consensus between “the American stand for free competition under an organization with purely consultative, advisory and technical functions and the British – Canadian proposal for broad regulatory powers over routes, frequencies of service and fares”<sup>24</sup>. It resulted in a joint „partial draft of a section of an international air convention relating primarily to air transport” with some problems still open for further discussions<sup>25</sup>. After the failure of the „Anzac countries’ plan”, they supported the British solution and thus the American vision of the future of civil aviation based on open competition was opposed by the British-Canadian-Anzac vision of international control<sup>26</sup>.

The compromise over the future international aviation organization was a reflection of general compromise for the future regulation of international civil aviation. To fully understand the compromise one must keep in mind that both codifications of international air law (the one in 1919 and the one in 1944) were undertaken by the states experiencing two most devastating wars. World War II proved that aviation is a critical force in military actions. The security aspects therefore were strong enough and crucial enough for the majority of participants during the Chicago conference. They were well reflected in the decision of maintaining the territorial sovereignty of a state as a fundamental rule for the legal order of civil aviation as stated in Article 1 of the *Convention on International Civil Aviation*<sup>27</sup>. The economic perspective was also strongly influenced by the war. The United States were eager to open the world skies for competition as they were prepared for the economic battle. Their economy and aviation production were flourishing after the war and the military technology developed for the war could be easily transformed into the civil use of American aircrafts<sup>28</sup>. On the other hand, the British economy was weakened, and even if

<sup>23</sup> See. *Verbatim Minutes from Plenary Session, November 8*, Conference Doc. 117, p. 539 and next.

<sup>24</sup> R. Porter, Gain more ground on airways accord; Americans, Britons, Canadians Draw Nearer to Reconciling Differences at Chicago, *The New York Times*, Nov. 16, 1944, p. 8

<sup>25</sup> Introduction [in:] *Proceedings of the International Civil Aviation Conference*, op. cit., p. 2.

<sup>26</sup> J. R. Keith, *Air Transport. Commonwealth Convictions*, *The Washington Post*, Nov. 13, 1944, p. 8.

<sup>27</sup> M. Milde, *The International Civil Aviation Organization: After 50 Years and Beyond*, 1996 Austl. Int'l L.J. 60, p. 60.

<sup>28</sup> On December 10, 1944 *The New York Times* wrote: „The year 1944 has seen the air transportation lines of the United States reach a new peak of usefulness both directly to the war effort and to the swift movement of civilians and goods in support of that effort. In cold figures, the airlines have shown a gain of 22 per cent in revenue passenger-miles, 24 per cent in mail pound-miles and 7 per

the military aircraft industry was stronger, it could not pick up the production of air transportation equipment. Other European countries and countries from other parts of the world were struggling to trigger any aviation industry and were afraid of American domination<sup>29</sup>. It should be, however, noted that the Netherlands and Scandinavian states backed the US proposal<sup>30</sup>.

As a result, the US favored the economic liberalism leaving the determination of air routes, rates and frequencies to the market forces. It argued for the acceptance of several freedoms of the air that is privileges of air carriers in the airspace of other states<sup>31</sup>. The British response was based on national protectionism and favored only selected, technical freedoms of the air, arguing for the establishment of an international organization with discretionary competences to allocate air routes, fix rates and provide frequencies<sup>32</sup>. The British-American conflict was so deep that at one point it even threatened the conference with failure when Adolf A. Berle Jr., US Assistant Secretary of State, the chairman of the United States delegation and the President of the Conference, demanded extensive economic freedoms for the American air carriers flying to Europe (in fact, some commentators called the Chicago Conference a “Mr. Berle show”<sup>33</sup>). The issue was also discussed between Churchill and Roosevelt in personal messages regarding the US planes picking up passengers in Britain<sup>34</sup>.

The Final Plenary Session of the Chicago Conference was held on December 7, 1944 and the following instruments were formulated as a result of over a month of deliberations among and work of total of 955 individuals involved in the conference (185 delegates, 156 advisers and 306 members of the conference secretariat<sup>35</sup>):

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cent in express pound-miles flown, as compared with the preceding year”. *The New York Times* Dec. 10, 1944, Editorial, p. 4.

<sup>29</sup> M. Milde, *International Air Law and ICAO*, op. cit., p. 14–15.

<sup>30</sup> I.H.Ph. Diederiks-Vrschoor, *An Introduction to Air Law*, op. cit., p. 9.

<sup>31</sup> There are technical and commercial freedoms of the air. Technical ones allow for the non-commercial transit through the foreign air territories and for the technical landing (emergency reasons, etc.). The commercial freedoms focus on air transportation and concern the take on and put down passengers, cargo and mail from a homeland country to any country as well as at intermediate points.

<sup>32</sup> The two opposite views were also called “the English modified cartel ideology and the American principle of free enterprise”. H. Osterhout, *A Review of the Recent Chicago International Air Conference*, op. cit., p. 377.

<sup>33</sup> Ibidem.

<sup>34</sup> D. Pearson, *U.S. Demands Bog Down Air Talks*, *The Washington Post*, Dec. 3, 1944, p. B5. The detailed relation of the politics behind the front negotiations during the Chicago Conference is included in: D. McKenzie, *ICAO: a history of the International Civil Aviation Organization*, Toronto 2010, p. 24–57.

<sup>35</sup> A. Pelsler, *ICAO Accommodations: A Page of History*, on-line version available at the ICAO website: [http://legacy.icao.int/icao/en/premises\\_history.htm](http://legacy.icao.int/icao/en/premises_history.htm).



1. *The Interim Agreement on International Civil Aviation* to cover the transitional period before the permanent Convention was ratified by the required number of states and came in force and establishing therefore the *Provisional International Civil Aviation Organization*,
2. *The Convention on International Civil Aviation* setting up basic principles of the legal status of the airspace based on the territorial sovereignty of a state and establishing the *International Civil Aviation Organization*,
3. *The International Air Services Transit Agreement* including two technical freedoms of the air to be signed by interested states in addition to the main Convention,
4. *The International Air Transport Agreement* including five freedoms of the air (repeating two technical ones and adding three commercial ones), also as a separate document opened for signature for those interested in the liberalization of air transportation.

In addition to the four main agreements, *Drafts of Technical Annexes* were prepared constituting almost 200 pages of detailed technical standards and recommendations (SARPS) for the safety and security of the international civil aviation. They are definitely the greatest successes of the Chicago Conference. The 12 Annexes were further revised and updated and still serve as a “guide to practice throughout the world”<sup>36</sup>.

The *Interim Agreement on International Civil Aviation* open for signatures at the Conference entered into force on June 6, 1945 after 26 states’ ratification. Based on the provisions of Articles I–VIII, the *Provisional International Civil Aviation Organization* (PICAO) was established with interim organs and headquarters in Montreal, Canada. It operated for 20 months.

The *Convention on International Civil Aviation* was open for signature on December 7, 1944. The representatives of all states gathered in Chicago signed it and took back to their home countries for further national ratifications. It required 26 ratifications to become binding and it happened on April 4, 1947. On that day the permanent *International Civil Aviation Organization* (ICAO) came into being as well and started actual operation replacing the PICAO.

The number of states becoming party to the Convention and automatically members of the ICAO grew in time to presently reach 191, making ICAO one of the biggest international organizations in the world<sup>37</sup>. Interestingly, Article 93 of the Convention provided a procedure for the admission of „enemy states” into the Convention and ICAO. Special voting majorities were required in the

<sup>36</sup> L. Weber, *International Civil Aviation Organization. An Introduction*. The Netherlands 2007, p. 55 and next.

<sup>37</sup> On October 11, 2011 the newly born state – South Sudan became a signatory of the Convention.

Assembly and the admission could be subject to some restrictions and conditions. Between 1947 and 1948 Italy, Austria and Finland were admitted under the procedure without any special conditions and in 1953 Japan joined in also without objection. In 1955 the Federal Republic of Germany (FRG) applied for admission, which in the political circumstances could possibly create problems and objections, especially from Poland and Czechoslovakia – the only two countries from Eastern Europe who were parties to the Convention. Surprisingly enough, Poland failed to send a delegation to the Assembly meeting when the admission of FRG was voted and Czechoslovakia was at the time suspended in its voting rights due to the failure to discharge its financial obligations to the ICAO. No specific requirements or conditions were voted with the admission of FRG<sup>38</sup>.

The ICAO's powers and structure are outlined in the Convention. The American-British compromise stands out from the provisions of Chapter VII of the Convention dedicated to the establishment of the international organization that is ICAO. The aims and objectives of the Organization, as stated in Art. 44 of the Convention, are to „develop the principles and techniques of international air navigation and to foster the planning and development of international air transport so as to: (a) Insure the safe and orderly growth of international civil aviation throughout the world; (b) Encourage the arts of aircraft design and operation for peaceful purposes; (c) Encourage the development of airways, airports, and air navigation facilities for international civil aviation; (d) Meet the needs of the peoples of the world for safe, regular, efficient and economical air transport; (e) Prevent economic waste caused by unreasonable competition; (f) Insure that the rights of contracting States are fully respected and that every contracting State has a fair opportunity to operate international airlines; (g) Avoid discrimination between contracting States; (h) Promote safety of flight in international air navigation; (i) Promote generally the development of all aspects of international civil aeronautics”.

Two main organs serve to fulfill those objectives that is the Assembly and the Council. They are supported by some subordinate bodies (i.e. the Legal Committee, the Air Navigation Commission) and the Secretariat (Art. 48–57 of the Convention). Each member state of the ICAO is entitled to be represented in the Assembly which functions are quite ordinary for the representative body: elections of the members of the Council, examination of the Council's reports, voting and accepting the budget and financial regulations of the Organization. Most of the decisions are taken by consensus and in the form of resolutions. (Art. 48–49 of the Convention). The Council is presently composed of representatives of 36 states. The functions of the ICAO are practically carried by the Council

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<sup>38</sup> M. Milde, *International Air Law and ICAO*, op. cit., p. 30.

whose competences are divided into mandatory – such as submission of annual reports to the Assembly, establishment of other organs, and most of all – adoption of international standards and recommended practices (SARPS) relating to the civil aviation) and permissive – such as research, investigation of any aerial situation at the request of a state, etc. (Art. 50–55 of the Convention).

As R.D. van Darn writes, the Chicago Conference failed to bring about a multilateral aviation policy approach, but it did create a forum for the technical and operational unification of international civil aviation<sup>39</sup>. In technical field the Annexes to the Convention became the core of the ICAO's effectiveness. The number of Annexes grew to 18. The standards and recommended practices included in the Annexes play a major role in the joint efforts to maintain safety and security of aviation covering all kinds of technical spheres such as fields including personnel licensing, rules of the air, metrological service, aeronautical charts, telecommunications and information services, units of measurement, operation, nationality, and airworthiness of aircraft, air traffic services, search and rescue, aircraft accidents, aerodromes, environmental protection. When put together in 1944, they aimed to unify technical aspects of civil aviation world-wide so the rules and procedures of the aircraft operations are similar, predictable and efficient<sup>40</sup>. As such, they are perceived as an unquestionable success of the 1944 gathering.

The modern reality, 65 years later, is far from the dream envisioned in Chicago. With the number of member states almost equal to the number of the UN members, the diversities and various of problems concerning aviation in different parts of the world, make it more and more difficult for the ICAO to be an efficient guardian even of technical recommendations and standards. The SARPS adopted by the Council have no binding effect upon the states. The states may depart from SARPS and the only obligation is to notify the ICAO about the departures. (Art. 37–38 of the Convention). The ICAO has no power to sanction failures of the SARPS implementation and failures to notify the organization in case of inability to implement them.

The ICAO's attempts to take on some economic tasks were not successful. It was clear, just from the outcome of the Chicago Conference's failure concerning the establishment of commercial freedoms of the air. While the *International Air Services Transit Agreement* concerning technical freedoms have been widely adopted (presently there are 129 parties to it), the *International Air Transport Agreement*<sup>41</sup> was ratified by 11 states only, excluding, what is important the

<sup>39</sup> R. D. van Darn, *Regulating International Civil Aviation: An ICAO Perspective*, [in:] H. A. Wassenbergh, T. L. Masson-Zwaan, P. M de Leon, *Air and Space Law: De Lege Ferenda. Essays in honour of Henri A. Wassenbergh*, The Netherlands 1992, p. 13.

<sup>40</sup> G. W. Orr, *What is the International Civil Aviation Organization*, 1950 Ins. L.J. 95 (1950), p. 95.

<sup>41</sup> ICAO Doc 7500.

United States. The entire air transportation regulation was therefore left for bilateral solutions and felt outside of the ICAO's tasks. It should be added that since the exchange of air routes was left to be decided by interested states in bilateral agreements, the draft of such an agreement was also prepared during the Conference and to be widely used in the future as a model solution for the air services' regulations<sup>42</sup>.

There have been, of course, some significant accomplishments of the ICAO. Under the auspices of the Organization, several multilateral agreements were reached concerning various aspects of civil aviation, except the commercial ones. Three major agreements concerning aviation safety may serve as an example. They were signed and successfully ratified world-wide in the 1960s and 1970s. The Tokyo 1963 *Convention on Offences and Certain Other Acts Committed On Board Aircraft*<sup>43</sup> followed by the 1970 *Hague Convention on for the Suppression of Unlawful Seizure of Aircraft*<sup>44</sup> and completed with the 1971 *Montreal Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation*<sup>45</sup> were successful achievements in the response to the unlawful use of aircraft. However, forty years later, following the September 11 attacks in the US, the negotiations concerning the modern multilateral approach toward air terrorism, were much more difficult and complicated. They eventually resulted in a new 2010 *Beijing Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation*<sup>46</sup> which is open for signature and ratifications with 24 signatories presently.

The International Civil Aviation Organization was born in the most difficult time and as a result of most difficult compromises made during the Chicago Conference. The modern evaluation may be critical and the ICAO can be accused of being an extensive forum for states' deliberations but with very limited powers to make the states act. However, taking into consideration the challenges of the world in the shadow of World War II, the fact that such an organization was then created and soon brought so many countries to some sort of international cooperation, stands as a success in itself.

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<sup>42</sup> See: *Introduction*, [in:] *Proceedings of the International Civil Aviation Conference*, op. cit., p. 4.

<sup>43</sup> ICAO Doc 8364.

<sup>44</sup> ICAO Doc 8920.

<sup>45</sup> ICAO Doc 8966.

<sup>46</sup> ICAO Doc 9959.

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