



ICAO

UNITING AVIATION

THE WORK OF ICAO IN THE LEGAL FIELD

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ICAO LEGAL SEMINAR

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Overview of Presentation

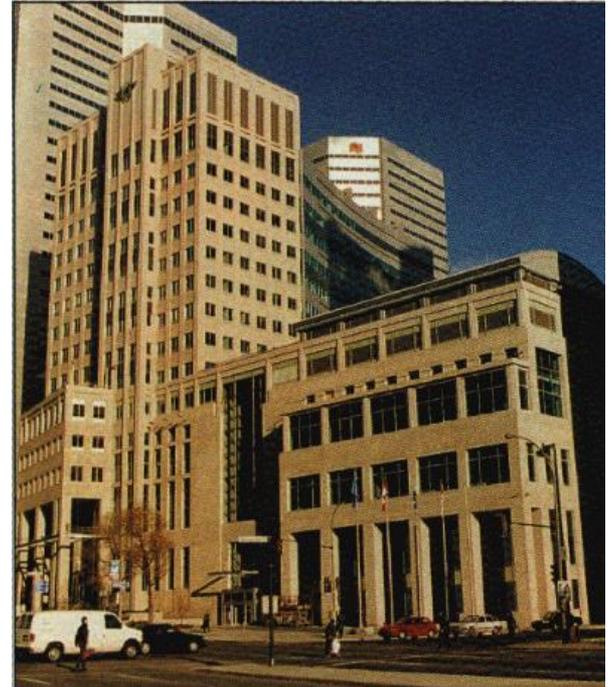
1. History of ICAO
2. The Treaty Making Process in ICAO
3. The Work Programme of the Legal Committee
4. Other Work in the Legal Field
5. Standards and Recommended Practices
6. The Convention on the Privileges and Immunities of the Specialized Agencies





History of ICAO

- World War II
- November 1944, 5 weeks, 52 states
- 7 December 1944
- Universal application: ~~494~~ 192 Member States (Tuvalu joined ICAO on 18 November 2017)
- Safe, orderly development of civil aviation



Main Bodies of ICAO

- The Assembly
 - 39th Session in Sept/Oct 2016
 - All contracting States entitled to be represented and to vote



Main Bodies of ICAO

- The Council
 - Permanent body responsible to the Assembly
 - 36 Member States elected for 3-year terms
 - President elected to serve as representative of the Council, has no vote



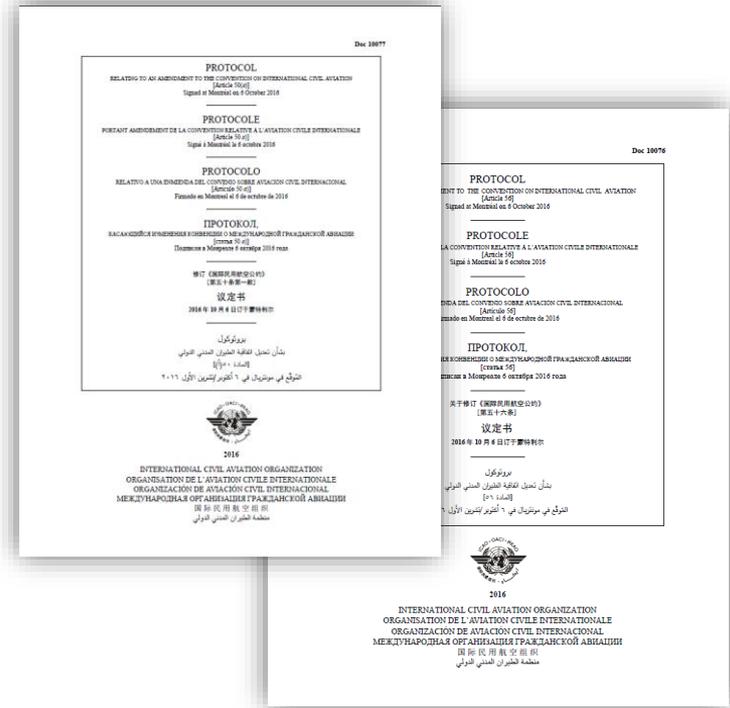
Main Bodies of ICAO

- The Air Navigation Commission (ANC)
 - 19 members appointed by the Council
 - Considers and recommends adoption or modification of technical Annexes



Main Bodies of ICAO

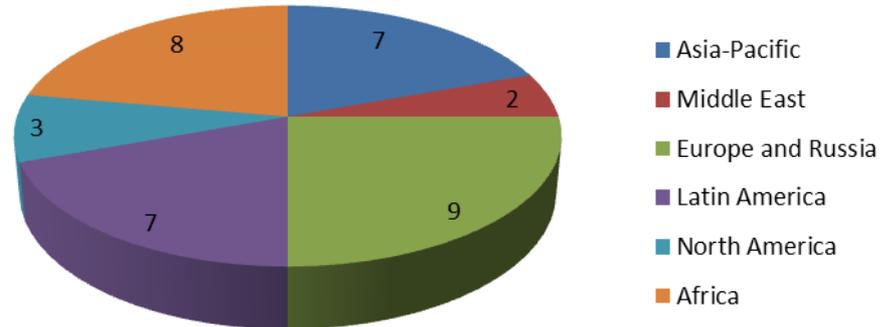
- The 39th Session of the Assembly approved amendments to Articles 50 (a) and 56 of the Chicago Convention
- The amendment to Article 50 (a) increases the membership of the Council from **36 to 40**, while the amendment to Article 56 increases the membership of the Air Navigation Commission from **19 to 21**
- As of 17 November 2017, 10 States have ratified these two Protocols; to enter into force both Protocols need 128 ratifications



Main Bodies of ICAO

- There are currently 8 African States elected on the Council of ICAO (Algeria, Cabo Verde, Congo, Egypt, Kenya, Nigeria, South Africa and Tanzania)
- None of the African States have ratified so far the Protocols to amend Articles 50(a) and 56 of the Chicago Convention

Membership of the ICAO Council per Regions



Treaty Making Process in ICAO

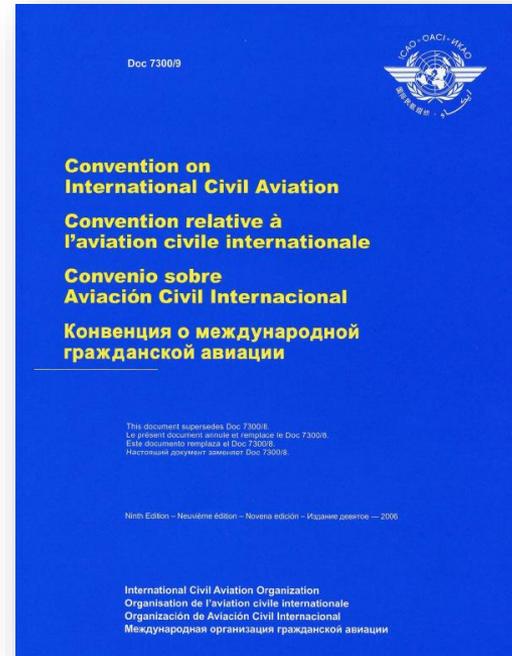
- Amendments to the Chicago Convention
- Other International Air Law Instruments



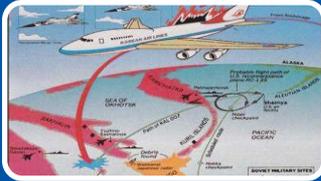
Amendments to the Chicago Convention

- Article 94 (a) of the Convention:

“Any proposed amendment to this Convention must be approved by a two-thirds vote of the Assembly and shall then come into force in respect of States which have ratified such amendment when ratified by the number of contracting States specified by the Assembly. ***The number so specified shall not be less than two-thirds of the total number of contracting States.***”



Amendments to the Chicago Convention



Article 3bis

- Prohibition of use of weapons against civil aircraft



Article 83bis

- Transfer of state of registry responsibility on leased, chartered aircraft

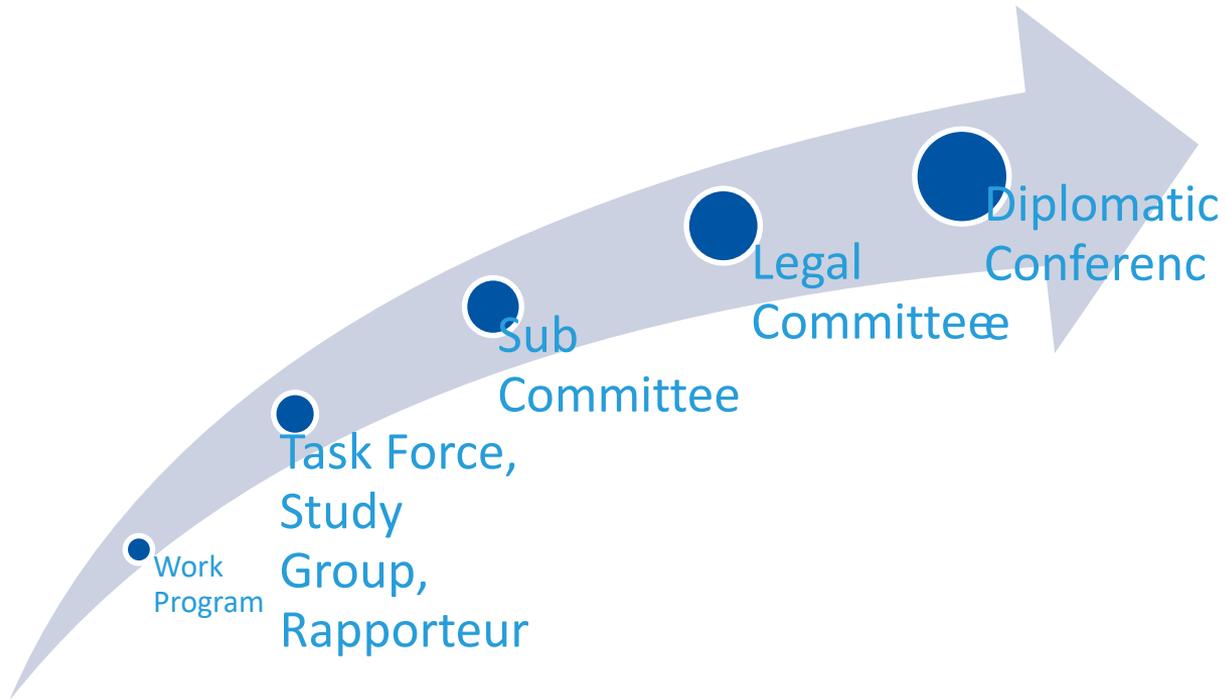


Institutional and procedural changes

- Membership, Assembly sessions, budget and languages



Other International Air Law Instruments





Other International Air Law Instruments

Tokyo Convention 1963 and Montreal Protocol 2014

- Offences and other acts committed on board aircraft, including unruly behaviour

The Hague Convention 1970

- Suppression of hijacking

Montreal Convention 1971 and the VIA Protocol 1988

- Other unlawful acts against the safety of civil aviation, and for the suppression of unlawful acts of violence at airports

Beijing Convention and Protocol 2010

- Suppression of unlawful acts against civil aviation, including new threats

MEX Convention 1991

- Marking of plastic explosives for purposes of detection



Other International Air Law Instruments

Montreal Convention of 1999

- Liability for death, injury, damage, loss or delays occurring in the course of transportation by air

Rome Convention 1952 and General Risks Convention 2009

- Liability of carrier for damage caused on the ground

Unlawful Interference Compensation Convention 2009

- Liability for damage to third parties caused by an aircraft in flight on an international flight, as a result of an act of unlawful interference

Geneva Convention 1948

- International recognition of rights in aircraft

Cape Town Convention and Aircraft Protocol 2001

- Framework to facilitate cross-border and asset-based financing of aircraft



Current Work Programme of the Legal Committee

1. Study of legal issues relating to remotely piloted aircraft;
2. Consideration of guidance on conflicts of interest;
3. Acts or offences of concern to the international aviation community and not covered by existing air law instruments;
4. Consideration, with regard to CNS/ATM systems including global navigation satellite systems (GNSS), and the regional multinational organisms, of the establishment of a legal framework;
5. Determination of the status of an aircraft – civil/State;
6. Promotion of the ratification of international air law instruments;
7. Safety aspects of economic liberalization and Article 83 *bis*; and
8. Implementation of Article 21 of the Chicago Convention.

Work Programme of the Legal Committee

Item 1: Study of legal issues relating to remotely piloted aircraft

- A questionnaire was distributed to States in Fall 2016
- 66 responses have been received
- These responses are currently being analysed and will be reported to the 37th Session of the Legal Committee in 2018





Work Programme of the Legal Committee

Item 1: Study of legal issues relating to remotely piloted aircraft

Examples of questions in the legal survey:

- Please elaborate on the definitions applicable to RPAs in your own domestic legislation. In particular, are different categories of UA defined according to their weight or according to other parameters?
- Does the State's RPAS framework have an enforcement process, including civil and/or criminal penalties?
- In the last two years, has the State received a request from an RPAS operator for a "special authorization" to allow a civil remotely piloted aircraft to operate within its territory, as required by Article 8 of the Chicago Convention (a) From a domestic operator? (b) From an RPAS operator from another State?

Defining conflict of interest

Personal

Official has private interests that may be perceived to improperly influence or interfere with the performance of his or her official duties and responsibilities

- Financial interest
- Family
- Emotional life
- Political or national affinity of the official

Organizational

Organization fails to act or is impeded from acting impartially due to outside activities or relationships it has with other entities

- Common ownership of regulatory agency and the operating entities
- Performance of regulatory duties by the designated staff of the regulated entities
- Lobbying and the “revolving door”
- Combination of regulatory and service provision in the same entity

It is possible that conflicts of interest (real or perceived), arising from such interactions or relationships, may hamper effective, independent and impartial regulation.



Work Programme of the Legal Committee

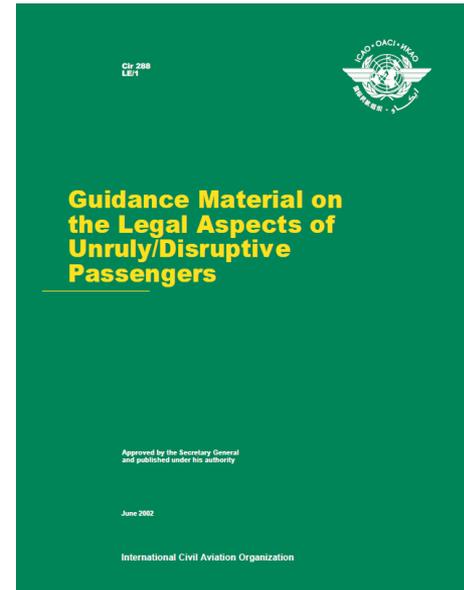
Item 2: Consideration of guidance on conflicts of interest

- The 39th Session of the Assembly adopted Resolution A39-8 entitled “Conflict of interest in civil aviation”
- It urges States to establish a framework on conflict of interests that applies to civil aviation activities
- Progress on implementation of Resolution A39-8 will be reported to the next Session of the Legal Committee in 2018

Work Programme of the Legal Committee

Item 3: Acts or offences of concern to the international aviation community and not covered by existing air law instruments

- Previously, this item has led to the adoption of three international air law treaties
- Current work: A Task Force on Legal Aspects of Unruly Passengers has been set up
- It has held three meetings and is reviewing the contents of the Model Legislation on Certain Offences Committed on Board Civil Aircraft and ICAO Circular 288
- It will report to the next Session of the Legal Committee in 2018 including the draft of new model legislation



Work Programme of the Legal Committee

Item 4: Consideration, with regard to CNS/ATM systems including GNSS

- Previous work has led to the adoption of Assembly Resolutions A32-19 on a Charter on the rights and obligations of States relating to GNSS Services and A32-20 on the Long-term legal framework to govern the implementation of GNSS
- No major recent activity within ICAO. The Secretariat will continue to observe any new development relating to this subject





Work Programme of the Legal Committee

Item 5: Determination of the status of an aircraft – civil/State

Examples of questions in the legal survey:

- Has the State established procedures for handling requests for authorization for overflight of its territory by aircraft of another State that are deemed under Article 3 of the Chicago Convention to be ‘state aircraft’ – i.e. ‘aircraft used in military, customs and police services’?
- Identification of the factors which the States consider in determining whether an aircraft is “used in military, customs and police services”.
- Has the State adopted definitions of “state aircraft” and “military aircraft” in its own legislation ?

Item 6: Promotion of the ratification of international air law instruments

Assembly Resolution A39-11, Appendix C

- Urges States to ratify all international air law instruments including the two 2016 Protocols amending Articles 50(a) and 56 of the Chicago Convention (A39-5 and A39-7); the Montreal Convention of 1999 (A39-9) and the Beijing Convention and Beijing Protocol of 2010 (A39-10)
- Directs the Secretary General to take measures to States encountering difficulties in the process of ratification and implementation of the air law instruments, including the organization of and the participation in workshops or seminars to further the process of ratification of air law instruments.
- The Antananarivo framework on Sustainable Development of Air Transport in Africa (2015) and the Lomé framework on Air Cargo Development in Africa (2014) promote the ratification of air law instruments



Work Programme of the Legal Committee

Item 7: Safety aspects of economic liberalization and Article 83 *bis*

- Establishment of the Article 83 *bis* Task Force in September 2014
- The Article 83 *bis* Task Force has completed its meetings and a Manual on this topic has been published in June 2017
- Work on other items include proposed amendments to Annexes



Work Programme of the Legal Committee

Item 8: Implementation of Article 21 of the Chicago Convention

- Article 21 of the Chicago Convention Article 21 provides the basis for the exchange of aircraft registration, ownership and control data between States
- Questionnaire to States was distributed in the summer of 2017
- A first meeting of Task Force was held in late September 2017
- It is expected that these efforts will culminate in the development of new guidance materials to facilitate the implementation of Article 21 of the Chicago Convention





Work Programme of the Legal Committee

Item 8: Implementation of Article 21 of the Chicago Convention

Examples of questions in the legal survey:

- Has your State established a legal framework for registration of aircraft?
- Is the entity responsible for registration of aircraft also responsible for certifying or determining the ownership and/or control of aircraft registered in your State?
- Has your State established a framework for determining the ownership and/or control of aircraft registered in your State and habitually engaged in international air navigation?

Other Work of ICAO in the Legal Field

Settlement of Differences:

- Under the Chicago Convention and the Transit Agreement the Council of ICAO has been entrusted with a judicial function
- Any disagreement between two or more contracting States relating to the interpretation or application of the Chicago Convention, its Annexes or the Transit Agreement that cannot be settled by negotiation shall on the application of any State concerned in the disagreement, be decided by the Council
- Within ICAO's history, seven disputes were filed with the Organization and two of them are still under consideration by the Council of ICAO





Other Work of ICAO in the Legal Field

Cases presented before the Council of ICAO:

India and Pakistan (1952)

- Relates to the establishment by Pakistan of a prohibited zone along its western border.
- Articles 5 (right of non-scheduled flight) and 9 (prohibited areas) of the Chicago Convention and the Transit Agreement

United Kingdom and Spain (1967)

- Relates to the establishment of a prohibited area by Spain near Gibraltar airport
- Article 9 (prohibited areas) of the Chicago Convention

Pakistan and India (1971)

- Relates to overflight rights by Pakistani aircraft over Indian territory. Article 5 (right of non-scheduled flight) of the Chicago Convention as well as the Transit Agreement

Cuba and US (1996)

- Relates to the right of Cuban-registered aircraft to overfly United States territory during their flights to and from Canada. Article 5 (right of non-scheduled flight) of the Chicago Convention as well as the Transit Agreement

US and 15 EU States (2000)

- Relates to EU Regulation 925/99 on the EU's non-addition, or "hushkit" rule. United States alleged that the EU Regulation violated Articles 11 (applicability of air regulations), 15 (airport and similar charges), 38 (departures from international standards and procedures) and 82 (abrogation of inconsistent arrangements) of the Chicago Convention as well as Annex 16, in that it limited the registration and operation within the EU of aircraft that were modified in order to comply with ICAO noise standards



Other Work of ICAO in the Legal Field

Cases presently being considered by the Council of ICAO:

Brazil and United States (2016)

- Relates to the “the interpretation and application of the Convention and its Annexes following the collision, on September 29th 2006, of the air carrier Boeing 737-8EH operating a regular flight GLO 1907, and air jet Legacy EMB-135BJ operating a flight by ExcelAire Services Inc.”

Qatar and Egypt, Bahrain, Saudi Arabia and UAE (2017)

- Relates to the interpretation and application of the Chicago Convention and the Transit Agreement following an alleged closing of the airspace by the Respondents to Qatar-registered aircraft



ICAO | UNITING AVIATION

Assistance to Supervisory Authority under the Cape Town 2001 Instruments



INTERNATIONAL REGISTRY
OF MOBILE ASSETS



Reports to
Supervisory
Authority

CESAIR
Secretary

Fees and
Regulations

Guidance
to Registrar
(Aviareto)



Standards and Recommended Practices (SARPs)

Adoption of Standards and Recommended Practices (SARPs) under Articles 37 and 38 of the Chicago Convention:

- “**Standard**” Any specification for physical characteristics, configuration, matériel, performance, personnel or procedure, the uniform application of which is recognized as necessary for the safety or regularity of international air navigation and to which Contracting States will conform in accordance with the Convention
- “**Recommended Practice**” Any specification ... the uniform application of which is recognized as desirable for the safety, regularity or efficiency of international air navigation and to which Contracting States will endeavour to conform in accordance with the Convention

ICAO Standards and Recommended Practices (**SARPs**) are set out in 19 Annexes to the Chicago Convention



List of Annexes

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
Used in Air and Ground Operations

Annex 6 — Operation 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 and
Incident Investigation

Annex 14 — Aerodromes

Annex 15 — Aeronautical Information
Services

Annex 16 — Environmental
Protection

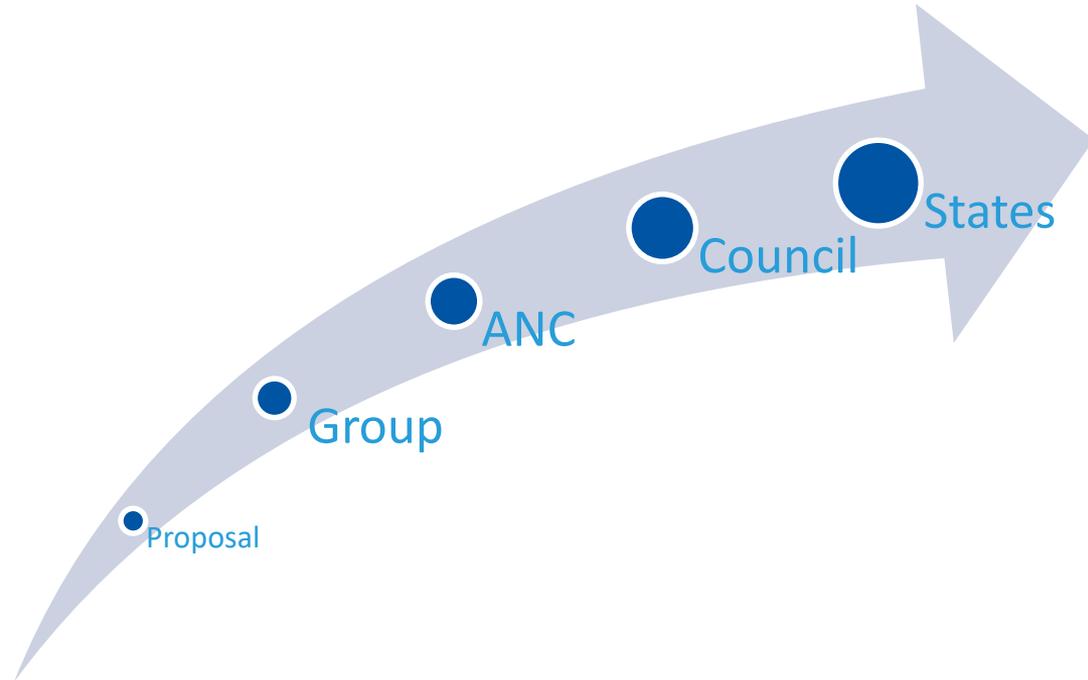
Annex 17 — Security

Annex 18 — The Safe Transport of
Dangerous Goods by Air

Annex 19 — Safety Management

SARPs Adoption Process

- Council shall adopt SARPs and designate them as annexes to the Convention (Article 54(I)).
- $\frac{2}{3}$ Council vote, majority State disapproval (Article 90)

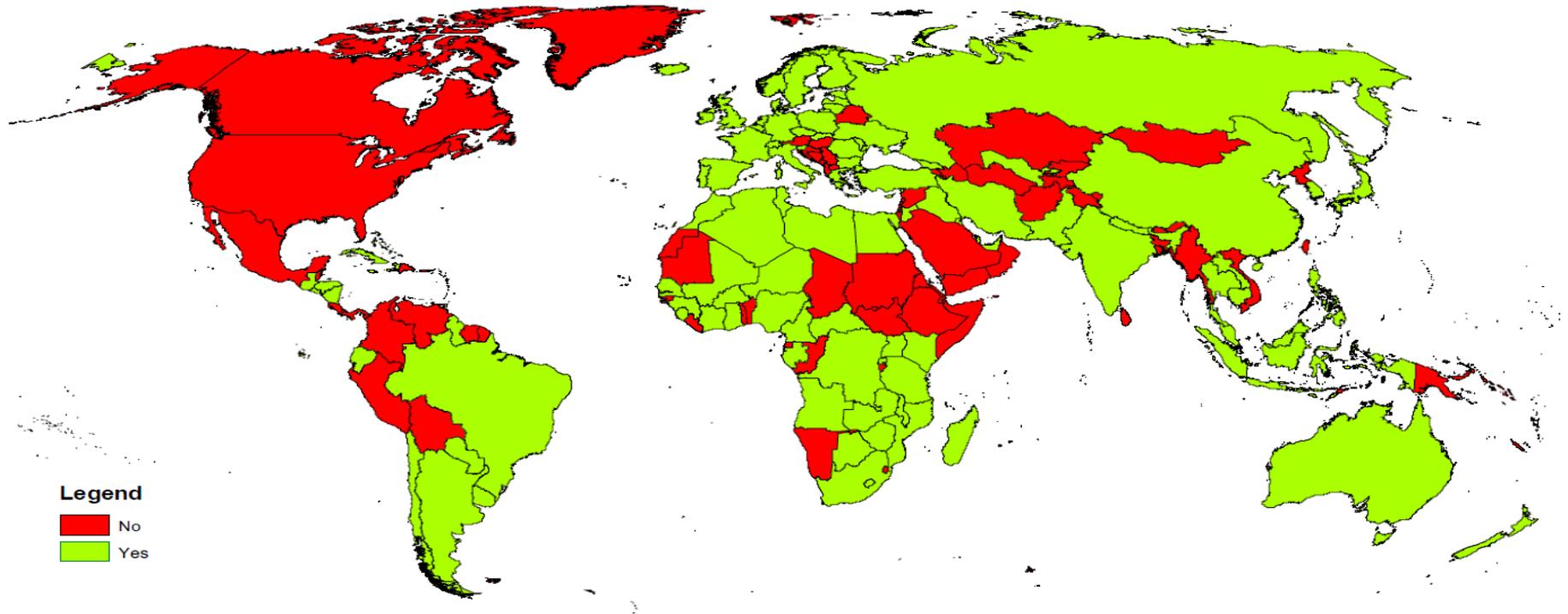


The Convention on the Privileges and Immunities of the Specialized Agencies and its Annex III

- This Convention, as applied to ICAO through its Annex III, facilitates the administration of privileges and immunities essential for the efficient exercise of the Organization's functions in ICAO's Member States (e.g. immunity from legal process, arrest and detention, search and seizure; exemption from immigration restrictions; tax exemption)
- The accession of a State facilitates the planning of ICAO events, the implementation of technical cooperation and assistance project in it by ensuring that ICAO officials enjoy privileges and immunities
- 34 African States, are parties to the Convention and its Annex III



Annex III of the Convention on the Privileges and Immunities of the Specialized Agencies Status of ratification/accession





International Air Law course

- **Goal:** To enable representatives of civil aviation authorities, airports and air navigation service providers to support their organization in compliance with international air law through the application of appropriate knowledge gained in case discussions.
- **Upon completion of the course,** participants will be able to accomplish the following:
 - learn the concepts and rules of international air law;
 - explain the relevance of the rules and procedures of international air law for their own role and functions in their organization; and
 - apply their knowledge and understanding to assist their national administration in improving implementation.
- **Target audience:** lawyers and administrators or managers with or without legal education from Civil Aviation Administrations, Civil Aviation Authorities and Airports and Air Navigation Service Providers of Member States.
- **Language:** English
- **Mastery test**



2018 Schedule

Location	Date
Paris, France <i>(ICAO EUR/NAT Office)</i>	12 to 16 February 2018
Bangkok, Thailand <i>(ICAO APAC Office)</i>	26 February to 2 March 2018
Lima, Peru <i>(ICAO SAM Office)</i>	9 to 13 April
Montreal, Canada <i>(ICAO HQ)</i>	28 May to 1 June
Mexico City, Mexico <i>(ICAO NACC Office)</i>	11 to 15 June 2018
Cairo, Egypt <i>(ICAO MID Office)</i>	11 to 13 September 2018
Dakar, Senegal <i>(ICAO WACAF Office)</i>	October 2018 (TBC)
Nairobi, Kenya <i>(ICAO ESAF Office)</i>	November 2018 (TBC)



ICAO

UNITING AVIATION



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South American
(SAM) Office
Lima

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Montréal

Western and
Central African
(WACAF) Office
Dakar

European and
North Atlantic
(EUR/NAT) Office
Paris

Middle East
(MID) Office
Cairo

Eastern and
Southern African
(ESAF) Office
Nairobi

Asia and Pacific
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