

International Civil Aviation Organization
(ICAO)

Dobrica Savic

November 2005
Montreal

EXECUTIVE SUMMARY

This research paper was prepared as a required part of the GDIA 622 – Fundamentals of Law for Charitable and Not-for-Profit Corporations course. The main purpose was to examine some elements of the legal environment in which an organization exists and functions. This includes impact of international, provincial and federal laws; purpose and mandate of the organization; its structure; various programs and activities that the organization is performing; sources of revenue and financing; as well as its strengths, weaknesses and current challenges. The organization selected was the International Civil Aviation Organization (ICAO) which has its headquarters in Montreal since 1945.

As the only United Nations specialized agency with headquarters in Canada, ICAO has played an important role in Canadian international exposure. At the same time, it placed special legal requirements and challenges to the Canadian Government. Legal solutions applied to ICAO represent a unique case in Canadian legislature that required particular attention and creative solutions. Particular emphasis in this paper was placed on three legal documents – Convention on International Civil Aviation, the Agreement between the ICAO and Canada, and the Understanding between the ICAO and Quebec.

CONTENTS

Introduction	3
Chicago Conference	4
Establishment of ICAO	5
The Chicago Convention	6
Structure of the ICAO	8
ICAO Regional Offices	9
Financing of the ICAO	11
Mission of the ICAO	12
Current Challenges	13
Seat of the Organization	13
Headquarters Agreement between ICAO and Canada	15
Understanding between ICAO and the Government of Quebec	19
Conclusions	20
Bibliography	21

INTRODUCTION

This research paper was prepared as a required part of the GDIA 622 – Fundamentals of Law for Charitable and Not-for-Profit Corporations course. The main purpose was to examine some elements of the legal environment in which an organization exists and functions. This includes impact of international, provincial and federal laws; purpose and mandate of the organization; its structure; various programs and activities that the organization is performing; sources of revenue and financing; as well as its strengths, weaknesses and current challenges.

As the focus of this legal research, I have selected the International Civil Aviation Organization (ICAO). I have been employed by this organization since 1988 and have held different management positions, none of which included direct legal responsibilities. Therefore, this research helped me gain some new and completely different insights about ICAO's legal framework in respect to Canadian laws and regulations and obligations of both sides under the Headquarters Agreement signed between ICAO and Canada.

What makes the legal status of ICAO in Canada very interesting is a fact that ICAO is part of the United Nations (UN) family of Specialized Agencies. It is the only UN Agency with Headquarters located in Canada. There are some other smaller UN programs and branches (satellite offices), but ICAO is an exception since its main base is in Montreal, although, ICAO also maintains seven Regional Offices located in different places around the world.

CHICAGO CONFERENCE

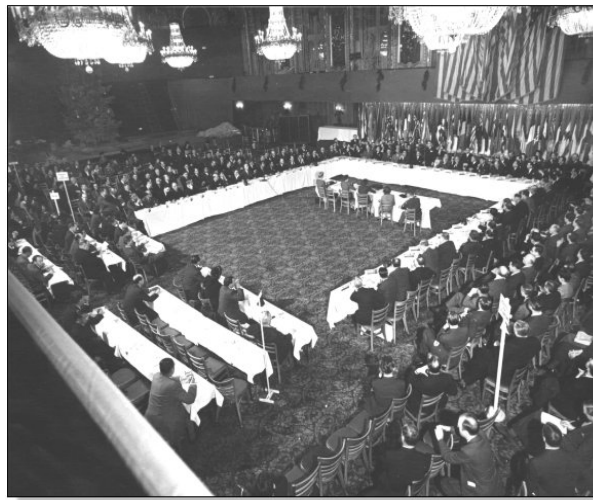
The consequence of the studies initiated by the United States Government and subsequent consultations between the major World War II Allies was that the US Government extended an invitation to 55 States or authorities to attend, in November 1944, an International Civil Aviation Conference in Chicago. In response to the invitation of the United States Government, representatives of 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." The Conference was also invited to "discuss the principles and methods to be followed in the adoption of a new aviation convention."

At the end, on 7 December 1944, 32 States signed a Convention on International Civil Aviation (also known as Chicago Convention). Newly adopted Convention set up the permanent International Civil Aviation Organization (ICAO) as a means to secure international co-operation with highest possible degree of uniformity in regulations and standards, procedures and organisation regarding civil aviation matters. At the same time, the following documents were also signed during the Chicago Conference:

- Interim Agreement on International Civil Aviation
- The International Services Transit Agreement
- The International Air Transport Agreement
- Drafts of 12 Annexes to the Chicago Convention
- Standard form of Bilateral Agreement for the exchange of air routes and services.

For some, the most important work accomplished by the Chicago Conference was in the technical field (12 Annexes) because the Conference laid the foundation for a set of rules and regulations regarding air navigation as a whole which brought safety in flying a great step forward and paved the way for the application of a common air navigation system throughout the world. However, the Conference successfully responded to its two main purposes:

- To facilitate the inauguration of international air transport operations as soon as the global military situation permitted
- To promote orderly and healthy development of international civil aviation during the post-war era.



Stevens Hotel, Chicago, November 1944

ESTABLISHMENT OF ICAO

Because of the inevitable delays in the ratification of the Convention, the Conference had signed an Interim Agreement, which foresaw the creation of a Provisional International Organization (PICAO) of a technical and advisory nature, with the purpose of collaboration in the field of international civil aviation. This Organization was in

operation from August 1945 to April 1947 when the permanent ICAO came into being. Its seat was in Montreal, Canada and in 1947 the change from PICAO to ICAO was little more than a formality. However, it also brought about the end of ICAN because, now that ICAO was firmly established, the ICAN member States agreed to dissolve International Commission for Air Navigation (ICAN)¹ by naming ICAO specifically as its successor Organization.

THE CHICAGO CONVENTION

The 96 articles of the Convention on International Civil Aviation, also known as the Chicago Convention, established the privileges and restrictions of all Contracting States, and provide for the adoption of International Standards and Recommended Practices (SARPs) regulating international air transport. The Convention accepts the principle that every State has complete and exclusive sovereignty over the airspace above its territory and provides that no scheduled international air service may operate over or into the territory of a Contracting State without its previous consent. The aims and objectives of ICAO, as contained in Article 44 of the Chicago 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:

- Ensure the safe and orderly growth of international civil aviation throughout the world.
- Encourage the arts of aircraft design and operation for peaceful purposes.
- Encourage the development of airways, airports, and air navigation facilities for international civil aviation.

¹ ICAN was established on 13 October 1919 when the Supreme Council adopted the International Air Convention which was opened for signature by plenipotentiaries of 32 Allied and Associated Powers represented at the Paris Peace Conference.

- Meet the needs of the peoples of the world for safe, regular, efficient and economical air transport.
- Prevent economic waste caused by unreasonable competition.
- Ensure that the rights of Contracting States are fully respected and that every Contracting State has a fair opportunity to operate international airlines.
- Avoid discrimination between Contracting States.
- Promote safety of flight in international air navigation.
- Promote generally the development of all aspects of international civil aeronautics.

STRUCTURE OF THE ICAO

ICAO has sovereign body – the Assembly, and a governing body – The Council. The Assembly meets at least once in three years and is convened by the Council. Each Contracting State is entitled to one vote and decisions of the Assembly are taken by a majority of the votes cast except when otherwise provided in the Convention. At these sessions, the Complete work of the Organization in the technical, economic, legal and technical cooperation fields is reviewed in detail and guidance is given to the other bodies of ICAO for future work.

The Council is a permanent body responsible to the Assembly and is composed of 36 Contracting States elected by the Assembly for a three-year term. In the election, adequate representation is given to States of chief importance in air transport, States not otherwise included which make the largest contribution to the provision of facilities for civil air navigation and States not otherwise included whose designation will ensure that all the major geographic areas of the world are represented on the Council.

The Council and its subsidiary bodies provide the continuing direction of the work of the Organization. One of the major duties of the Council is to adopt International Standards and Recommended Practices (SARPs) and to incorporate these as Annexes to the Convention on International Civil Aviation. The Council may act as an arbiter between Contracting States on matters concerning aviation and implementation of the Convention; it may investigate any situation which presents avoidable obstacles to the development of international air navigation and, in general, it may take whatever steps are necessary to maintain the safety and regularity of operation of international air transport.

Although the Council has the responsibility for adoption of SARPs, and approval of Procedures for Air Navigation Services (PANS), the principal body concerned with their development is the ICAO Air Navigation Commission. The Commission is composed of 15 persons who have qualifications and experience in the science and practice of aeronautics. Its members are nominated by Contracting States and are appointed by the Council. They act in their personal expert capacity and not as representatives of their nominators. The Commission is assisted by small groups of experts, nominated by Contracting States and international organizations and approved by the Commission.

The Secretariat, headed by a Secretary General, is divided into five main divisions:

- Air Navigation Bureau
- Air Transport Bureau
- Legal Bureau
- Technical Cooperation Bureau
- Bureau of Administration and Services.

In order for the work of the Secretariat to reflect a truly international approach, professional personnel are recruited on a broad geographical basis.

ICAO works in close collaboration with other specialized agencies of the United Nations, such as the International Maritime Organization, the International Telecommunication Union and the World Meteorological Organization. Other international organizations including the International Air Transport Association, the Airports Council International and the International Federation of Air Line Pilots' Associations participate at many ICAO meetings.

ICAO REGIONAL OFFICES

From the very assumption of activities of PICA/ICAO, it was realized that the work of the Secretariat, especially in the technical field, would have to cover two major activities: those which covered generally applicable rules and regulations concerning training and licensing of aeronautical personnel both in the air and on the ground, communication systems and procedures, rules for the air and air traffic control systems and practices, airworthiness requirements for aircraft engaged in international air navigation as well as their registration and identification, aeronautical meteorology and maps and charts. For obvious reasons, these aspects required uniformity on a world-wide scale if truly international air navigation was to become a possibility. Activities in these fields had therefore to be handled by a central agency, i.e. ICAO headquarters, if local deviations or separate developments were to be avoided; those concerning the practical application of air navigation services and facilities by States and their co-ordinated implementation in specific areas where operating conditions and other relevant parameters were comparable.

To meet the latter objective it was agreed to sub-divide the surface of the earth into a number of "regions" within which distinct and specific air navigation problems of a similar nature existed. A typical example of this process is illustrated by a comparison of the so-called "North Atlantic Region (NAT)", where the primary problems concern long-range overseas navigation, with the "European-Mediterranean region (EUR)" where the co-ordination of trans-European operations with domestic and short-range international traffic constitutes the major problem. Once the regions created, it was necessary to provide bodies which were able to assist States in the resolution of their specific "regional" problems and it was agreed that this could best be achieved by the creation of a number of Regional Offices which were to be located either in the Region they served or, if more than one Region was to be served by such an Office, as close as possible to the Region concerned.

As a consequence of the above ICAO adopted the concept of Regions and Regional Offices on the understanding that any regional activities could only be undertaken provided they did not conflict with the world-wide activities of the Organization. However, it was also recognised that such activities could vary from Region to Region taking into account the general economic, technical or social environment of the Region concerned.

Today, ICAO maintains seven Regional offices:

- Bangkok: Asia and Pacific (APAC) Office
- Cairo: Middle East (MID) Office
- Dakar: Western and Central African (WACAF) Office
- Lima: South American (SAM) Office
- Mexico: North American, Central American and Caribbean (NACC) Office
- Nairobi: Eastern and Southern African (ESAF) Office
- Paris: European and North Atlantic (EUR/NAT) Office

Coordination of the Regional offices, their work and activities, is the responsibility of the Regional Affairs Office, which is one of the parts of the Montreal-based Secretariat.

FINANCING OF THE ICAO

The Chapter XII of the Chicago Convention, Articles 61-63, are devoted to the financing matters of the Organization. It determines that the Council submits to the Assembly annual budgets, annual statements of accounts and estimates of all receipts and expenditures. The Assembly votes the budgets with whatever modification it sees fit to prescribe, and apportions the expenses of the Organization among the contracting States on the basis which it determines from time to time determine.

The Assembly may suspend the voting power in Assembly and in the Council of any contracting State that fails to discharge within a reasonable period its financial obligations to the Organization.

Each contracting State bears the expenses of its own delegation to the Assembly and the remuneration, travel, and other expenses of any person whom it appoints to serve on the Council, and of its nominees or representatives on any subsidiary committees or commissions of the Organization.

The total budget of the ICAO for period 2005-2007 is US \$161.5 million.

MISSION OF THE ICAO

The main mission of ICAO includes strengthening of safety and security, increasing of efficiency of international civil aviation, and promotion of principles enshrined in the Chicago Convention. The mission is further elaborated through eight strategic objectives:

- Foster the implementation of ICAO Standards and Recommended Practices (SARPs) to the greatest extent possible worldwide.
- Develop and adopt new or amended SARPS and associated documents in a timely manner to meet changing needs.
- Strengthen the legal framework governing international civil aviation.
- Ensure the currency, coordination and implementation of regional air navigation plans and provide the framework for the efficient implementation of new air navigation systems and services.
- Respond on a timely basis to major challenges to the safe, secure and efficient development and operation of civil aviation.
- Ensure that guidance and information on the economic regulation of international air transport is current and effective.
- Assist in the mobilization of human, technical and financial resources for civil aviation facilities and services.
- Ensure the greatest possible efficiency and effectiveness in the operations of the Organization, inter alia to meet the above objectives.

CURRENT CHALLENGES

Since 1944, the Chicago Convention has proved resilient by providing a sufficiently flexible framework to enable ICAO to fulfil successfully the responsibilities assigned to it. Today, however, major challenges are facing international civil aviation. There is a great need for ICAO to adapt within the framework of the Convention to rapidly changing circumstances including:

- Globalization and trans-nationalization of markets and operations.
- Terrorism and use of aircrafts as weapons.
- Emergence of regional and sub-regional trading and regulatory blocks.
- Commercialization of government service providers.
- Diversification of fiscal measures to respond to budgetary needs.
- Potential evasion of safety regulation (along with labour, competition and other regulation) as a consequence of blurring of sectoral boundaries and responsibilities of related authorities.
- Recognition of and response to environmental concerns.
- Emergence of new technologies.
- Approach of physical limits to infrastructure capacity.

SEAT OF THE ORGANIZATION

Although the Chicago Conference selected Canada as a host country, it diplomatically stopped short of indicating a preference with respect to the province or city in which it might be established. Virtually from the day of Conference's adjournment, the Canadian Government began its planning for locating the headquarters of PICA0 in Montreal. There never was any doubt – Montreal was the obvious choice. It was, at the time,

clearly the country's leading metropolis, its most cosmopolitan and international city. Furthermore, it was also the country's hub of international civil air transport.

On 6 June 1945, the required 26 States, including each of the 20 States elected to the Council, had accepted the Interim Agreement on International Civil Aviation. Thus, PICAO was born - as anticipated, within the six months of closing of the Chicago Conference. Two weeks later, a Canadian Preparatory Committee swung into action with office accommodation at Dominion Square in Montreal.

The Canadian Government has decided that such a committee, with small dedicated office staff was the best means of handling its primary task, preparing for the first meeting of the Interim Council. These preparations included meeting-room accommodations, administrative and logistical support, press and public relations facilities, and an agenda with supporting documentation. To augment the work of the Preparatory Committee, a small Secretariat staff has been seconded from various Canadian Government departments to the Committee's Dominion Square Offices. By 15 August, the temporary office staff so assembled numbered 25; they occupied just a small corner of two complete floors, some 1,200 square meters of floor-space, which the Government already had reserved for the PICA.

The first Council meeting was convened at the Windsor Hotel adjacent to the Dominion Square. The Federal Government, the Province of Quebec and the City of Montreal spared no expense in welcoming the PICA Council to Canada. A wide-ranging social calendar was offered, including tours of Ottawa and Quebec City, a tug-boat tour of Montreal's harbour, an elegant reception at City Hall plus several additional events. Montreal's newspapers gave the meeting and its participants extravagant daily coverage

in both words in pictures. Canada was proud to have PICA0 based in its country; it aimed at making it a permanent arrangement as soon as possible.

By March 1947, PICA0 Secretariat staff numbered 341. PICA0 functioned as an interim organization from 6 June 1945 until 4 April 1947, 30 days after the 26th ratification of the Chicago Convention had been deposited. On that day, the permanent International Civil Aviation Organization came into being. Thus, what have been planned as the Second PICA0 Assembly in May 1947 became the First Session of the Assembly of ICAO. It, too, was convened at Montreal's Windsor Hotel.

HEADQUARTERS AGREEMENT BETWEEN ICAO AND CANADA

Few countries around the world have the privilege of hosting the Headquarters of an international organization – in particular, a specialized agency of the UN system.² To act as a host country brings considerable international prestige, possibly increased influence over the activities of the organization, and most definitely considerable responsibility and expense, although the economy of the host country also benefits when employment is created by the activities of the organization, and the budget of the organization and of national delegations is spent in its territory.

The agreements between the host State and the international organization concerning the headquarters of the organization have a fundamental legal significance for the determination of the legal status, immunities, and privileges of the Organization in the territory of the host State, as well as of the status, immunities, and privileges of the representatives of Member States of the Organization and its officials (the Secretariat).

² Vienna, Paris, Rome, Geneva, London, New York, Washington DC.

On 21 November 1947, the General Assembly of the United Nations adopted the Convention on the Privileges and Immunities of the Specialized Agencies. Its aim was to uniformly regulate bilateral relations between the host State and the international organizations. However, this Convention was regarded as too general and never achieved universal acceptance.

Canada did not become a party to the 1947 Convention on the Privileges and Immunities of the Specialized Agencies, but the Headquarters Agreement between Canada and ICAO, of 14 April 1951, closely paraphrased the principles and the wording of that Convention. The 1951 Headquarters Agreement served both ICAO and Canada well for over four decades. On 16 September 1980 a Supplementary Agreement entered into force. It dealt with ICAO Headquarters premises at 1000 Sherbrooke Street West in Montreal. On 20 February 1992, the 1951 Agreement was terminated and superseded by a new Agreement that entered into force the same day. A new Supplementary Agreement was signed on 28 May 1999 superseding the Supplementary Agreement signed in 1980 in order to reflect the relocation of the Organization's Headquarters to a new location on 999 University Street on November 1, 1996.

Headquarters Agreement from 1992 is a relatively speaking a short document containing only 40 articles. The Organization is given a corporate legal personality including the capacity to contract; acquire and dispose of immovable and movable property; and to institute legal proceedings. At the same time, the Organization, its property and its assets were given the same immunity from suit and every form of judicial process as is enjoyed by foreign states. The Headquarters premises of the Organization shall be inviolable with the Government of Canada giving it the same protection as is given to

diplomatic mission in Canada. The property and assets of the Organization, wherever located and by whomsoever held, are immune from search, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial, or legislative action, except with the consent of and under the conditions agreed to by the Secretary General of the Organization. The Organization has the obligation to prevent the Headquarters premises from becoming a refuge either for persons who are avoiding arrest or for persons who are endeavouring to avoid services of execution of legal process.

The Organization is exempt from taxes and duties, as well as from prohibition or restriction on import, export or sale of its publications. It has the right to hold and transfer funds, gold or currency of any kind and use diplomatic courier services and bags.

Persons designated by a Member State as a Permanent Representatives to the Organization enjoy the same privileges and immunities as other diplomats in Canada. Members of the administrative staff of a mission and members of their families, as well as officials of the Organizations enjoy immunities and privileges accorded to the same categories of persons under the Vienna Convention on Diplomatic Relations.

The Agreement stipulates that privileges and immunities accorded to Permanent Representatives, administrative and service staff is not for their personal benefits, but for safeguarding the independent exercise of their functions in connection with the Organization. At the same time, the Representatives have a duty not to interfere in the internal affairs of Canada. However, none of the above mentioned privileges and immunities are accorded to Canadian citizens and permanent residents. Only limited

immunity from legal process in respect of words spoken or written and of all acts performed in the official capacity are exempted.

Very interesting consequences for Canadian citizens and permanent residents have the Article 25. It states that salaries and emoluments paid by the Organization to officials of the Organization are not taxed and cannot be used for the purpose of determining Canadian tax due on income earned from sources other than the Organization.

Canadian Government recognize and accept United Nations laissez-passer held by officials of the Organization as valid travel documents and issue, upon request, diplomatic visas to a Permanent Representative or a Representative of a Member State and, as may be appropriate, diplomatic or courtesy visas to officials of the Organization.

Settlement of disputes with the Government of Canada concerning the interpretation or application of the Agreement, which is not settled by negotiation or other agreed mode, is referred for final decision to a tribunal of three arbitrators. One should be named by the Secretary of State for External Affairs, one to be named by the President of the ICAO Council, and the third to be chosen by the two, or, if they fail to agree upon a third, then by the President of the International Court of Justice.

Agreement also prohibits any discrimination based on race, sex, language or religion. It can be revised at the request of either of the Parties, who shall consult each other and mutually agree on any alterations to be made.

UNDERSTANDING BETWEEN ICAO AND THE GOVERNMENT OF QUEBEC

Due to fact that ICAO maintains its headquarters in Montreal, a special Understanding between the Government of Quebec and ICAO was signed on 20 May 1994. Its 37 Articles deal with exemptions and courtesy privileges extended to the Organization, to Member States and to members of a representation to the Organization.

Under Quebec legislation, the Government of Quebec recognizes ICAO as an international governmental organization. ICAO is given the exemptions from legal process applied by the courts which act in application of the laws of Quebec. The Government of Quebec agreed to exempt from all property, municipal or school taxes, any ICAO immovable property which is exclusively intended for the execution of its mandate and to exempt ICAO from any personal tax or municipal compensation which might be levied against it as owner, tenant or occupant of a building, excluding those levied separately and collected in remuneration for services rendered.

ICAO is not subject to the application of the Act respecting Labour Standards, and its officials are not governed by that law. However, ICAO respects the provisions of the Act respecting the Regie de l'assurance maladie du Quebec. In respect to the Charter of the French Language, ICAO is given the status of an international body. Subject to the conditions established under Quebec regulations, the Government will issue permit to work in Quebec to the spouses of Permanent Representatives, members of the administrative staff and officials of ICAO, as well as to their children. Only top level officials of the Organization are given the privilege to register their vehicles with a diplomatic plate.

The remaining Articles of the Understanding between ICAO and Quebec closely follow Articles from the Agreement between ICAO and Canada.

CONCLUSIONS

International Civil Aviation Organization (ICAO) is the only United Nations specialized agency with headquarters in Canada. Established in 1944, with its permanent headquarters in Montreal, ICAO has played an important role in Canadian international exposure. At the same time, it placed special legal requirements and challenges to the Canadian Government. Legal solutions applied to ICAO represent a unique case in Canadian legislature that required particular attention and creative solutions. Particularity of the Canadian federal and provincial laws and regulations further raised the complexity of the solution represented in the Agreement between the ICAO and Canada, and the Understanding between ICAO and Quebec.

In adopting the Agreement and the Understanding, both Canada and Quebec, have shown remarkable willingness to act as a generous host to the International Civil Aviation Organization and to accommodate its particular needs and requirements.

BIBLIOGRAPHY

- ICAO Annual Report of the Council
- ICAO-NET (www.icao.int/icaonet)
- ICAO Public website (www.icao.int)
- ICAO and Canada Headquarters Agreement. Signed at Calgary on 4 October 1990 and at Montreal on 9 October 1990. No. 28718.
- Understanding between the Government of Quebec and ICAO, 20 May 1994.
- Convention on International Civil Aviation, Chicago, 1944.