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TREATIES ESTABLISHING ICAO AND IMO – A COMPARATIVE STUDY

RUWANTISSA ABEYRATNE*

ABSTRACT

The comparison between air law and maritime law reveals both similarities and distinctions rooted in the unique frameworks of the International Civil Aviation Organization (ICAO) and The International Maritime Organization (IMO). While both entities were established through separate treaties, the Chicago Convention birthed ICAO, emphasizing the organization's Assembly, Council, and auxiliary bodies. In contrast, the IMO Convention, also known as the Convention on the International Maritime Organization, forms the basis for IMO's structure and functions as outlined in its preamble.

The core objectives of IMO revolve around fostering collaboration among governments to enhance regulatory frameworks for international maritime trade. This encompasses advocating for elevated standards in maritime safety, navigation efficiency, and marine pollution prevention. Similarly, ICAO aims to establish principles and techniques for air navigation, promoting safe, regular, economical, and efficient air transport. The Chicago Convention primarily focuses on regulating international civil aviation, ensuring its orderly development and safety through defined principles and procedures, including standards for airspace sovereignty, aircraft registration, airworthiness, and aviation security. Conversely, the IMO Convention tackles various aspects of international maritime transportation, spanning safety, security, environmental protection, and shipping efficiency. Despite being specialized agencies of the United Nations, both ICAO and IMO face the challenge of accommodating diverse interests and

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viewpoints of their member states without the autonomy enjoyed by the private sector. Nonetheless, both organizations have consistently served the international community in facilitating world trade and commerce within their respective domains. This article discusses details of comparison and contrasts between ICAO, IMO, and air law and maritime law in their treaty settings.

Key words: ICAO; IMO; Chicago Convention; IMO Convention; aviation safety; maritime safety; air law; maritime law.

TABLE OF CONTENTS

I. INTRODUCTION	298
A. BASIC DIFFERENCES	300
B. BASIC SIMILARITIES.	302
II. HISTORY OF THE TREATIES	303
A. THE CHICAGO CONVENTION.	303
B. CONVENTION ON THE INTERNATIONAL MARITIME ORGANIZATION.	314
III. COMPARISON BETWEEN THE CHICAGO CONVENTION AND CONVENTION ON THE INTERNATIONAL MARITIME ORGANIZATION.	318
A. ESTABLISHMENT OF ICAO AND IMO	318
B. STRUCTURAL DIFFERENCES	320
1. <i>The ICAO and IMO Assemblies.</i>	320
2. <i>The ICAO Council.</i>	325
3. <i>The IMO Council.</i>	335
C. RESPECTIVE SECRETARIATS.	337
1. <i>ICAO</i>	337
2. <i>IMO</i>	341
IV. CONCLUSION.	344

I. INTRODUCTION

The semantics and philosophy of air law and maritime law reflect both similarities as well as differences. This is partly because the two treaties establishing the International Civil Aviation Organization (ICAO) and The International Maritime Organization (IMO), although established by their respective treaties, show differences both structurally and in substance as well as in principles that comport with the different nature of each mode of transport. The principles of air transport, according to the Convention on

International Civil Aviation (Chicago Convention),¹ base their philosophy on a post-World War II mindset, which recognizes that aviation should develop in a manner so as to “create and preserve friendship and understanding among the people of the world,” by avoiding conflict and promoting cooperation among states to achieve safe and orderly air transport with equality of opportunity and by being operated soundly and economically.²

Within these broad parameters, ICAO has been assigned aims and objectives to advance the principles and methodologies of international air navigation while fostering the planning and advancement of international air transportation so that the Organization can: ensure the secure and systematic expansion of international civil aviation worldwide; promote the advancement of aircraft design and operation for peaceful objectives; stimulate the establishment of air routes, airports, and air navigation infrastructure for international civil aviation; fulfill the global population’s requirements for safe, regular, efficient, and cost-effective air travel; prevent economic inefficiency resulting from unfair competition; guarantee that the rights of contracting States are fully upheld and that each contracting nation has an equitable opportunity to operate international air carriers; eliminate discrimination among contracting nations; enhance flight safety in international air navigation; and encourage the comprehensive development of all facets of international civil aeronautics.³

Maritime transport is based on principles contained in multiple treaties that require IMO to ensure safety at sea by instituting and enforcing regulations and standards that improve the safety of maritime activities, encompassing ship construction, equipment, and operations.⁴ In its efforts to safeguard the marine environment, IMO focuses on minimizing the ecological impact of maritime operations by tackling issues like oil spills, air emissions, and the proper disposal of ship-generated waste.⁵ Furthermore, IMO must optimize navigational safety and efficiency by pursuing initiatives such as the creation of maritime traffic management systems and the establishment of guidelines to facilitate safe navigation.⁶ In promoting seamless international maritime trade,

¹ Convention on International Civil Aviation, Dec. 7, 1944, 15 U.N.T.S. 295.

² *Id.*

³ *Id.* art. 44.

⁴ Int’l Maritime Org., *Convention on the International Maritime Organization*, IMO, <https://www.imo.org/en/About/Conventions/Pages/Convention-on-the-International-Maritime-Organization.aspx> [https://perma.cc/5JDA-VA9N].

⁵ *Id.*

⁶ *Id.*

IMO sets forth regulations that establish uniform standards and procedures for ports, shipping entities, and maritime authorities.⁷

Another key aspect of IMO's function is to address threats to maritime security, including piracy, terrorism, and smuggling as a priority for IMO, which implements measures to bolster security in maritime transportation.⁸ IMO ensures the implementation and enforcement of global maritime regulations through mechanisms such as port state control, oversight by flag states, and fostering international collaboration.⁹ Supporting the development of international legal frameworks, conventions, and agreements is a key role of IMO, covering various aspects of maritime law, such as liability and compensation for accidents and pollution incidents.¹⁰

A. BASIC DIFFERENCES

Arguably, the most fundamental difference between commercial air transport and maritime transport is that, whereas the former requires that no scheduled international air service may be operated over or into the territory of a contracting State, except with the special permission or other authorization of that State, and in accordance with the terms of such permission or authorization,¹¹ no such prior permission is required for commercial maritime transport to enter into the territorial waters of a State.¹² Maritime transport is anchored on freedom of the seas on the principle of "Mare Liberum"—a Latin phrase meaning "The Free Sea."¹³ It served as the title of a renowned publica-

⁷ *Id.*

⁸ Int'l Maritime Org., *Maritime Security and Piracy*, IMO, <https://www.imo.org/en/ourwork/security/pages/maritimesecurity.aspx> [<https://perma.cc/R236-WZYL>].

⁹ *Id.*

¹⁰ Int'l Maritime Org., *Liability and compensation*, IMO, <https://www.imo.org/en/ourwork/legal/pages/liabilityandcompensation.aspx> [<https://perma.cc/9K54-VKR9>].

¹¹ Chicago Convention, *supra* note 1, at 300.

¹² Article 17 of The United Nations Convention on the Law of the Sea (UNCLOS) provides that ships of all States, whether coastal or land-locked, enjoy the right of innocent passage through the territorial sea. Innocent passage, as per Article 18 means navigation through the territorial sea for the purpose of: traversing that sea without entering internal waters or calling at a roadstead or port facility outside internal waters; or proceeding to or from internal waters or a call at such roadstead or port facility. The words, "proceeding to . . . internal waters," can be regarded as not requiring the stringent standards of permission or authorization obtained through prior negotiation as required in market access in air transport in Article 6 of the Chicago Convention. *See* U.N. Convention on the Law of the Sea, *opened for signature*, Dec. 10, 1982, 1833 U.N.T.S. 30 (entered into force Nov. 16, 1994).

¹³ HUGO GROTIUS, *THE FREE SEA* xi (1990).

tion penned by the Dutch legal scholar and philosopher Hugo Grotius in 1609.¹⁴ In this treatise, Grotius put forth the notion of unrestricted access to the oceans, contending that they should be open and available to all nations for trading and navigation purposes, devoid of any impediments or exclusive dominance by individual states.¹⁵

Grotius's arguments countered the prevailing idea of "mare clausum" or the "closed sea," which recognized that nations could assert control over specific maritime territories and restrict foreign vessel passage.¹⁶ Instead, he advocated for the principle of "mare liberum," positing that the seas constituted international territory and should be freely accessible for navigation and commerce by all nations.¹⁷ This seminal work by Grotius laid the groundwork for contemporary international maritime law and played a pivotal role in shaping the concept of freedom of navigation. This principle remains a cornerstone in modern international relations and maritime legal frameworks.

This fundamental distinction between air law and maritime law is purely applicable to territorial access into a State and commercial rights to carry passengers or cargo into and out of a State as both aircraft and ships typically need permission (from a procedural standpoint) from the State to unload passengers or cargo within its territory. This permission is usually obtained by following specific procedures, which involve obtaining approval from port authorities, submitting required paperwork, and adhering to customs, immigration, and health protocols. Notwithstanding the above, States possess the sovereign right to govern access to their territories, which includes managing the offloading of passengers and goods. This control is essential for maintaining security, safety, public health, and immigration standards. Aircraft and vessels are obligated to abide by the rules and regulations of the port state, which may involve acquiring permits or licenses related to cargo handling, customs formalities, and environmental safeguards.¹⁸

¹⁴ *Id.*

¹⁵ *Id.* at 10.

¹⁶ *Id.* at xv.

¹⁷ *Id.*

¹⁸ See Chicago Convention, *supra* note 1, at 316–319; See U.N. Convention on the Law of the Sea, *supra* note 12, at 109. Both the Chicago Convention and UNCLOS have specific requirements: Article 11 of The Chicago Convention requires that, subject to the provisions of the Convention, the laws and regulations of a Contracting State relating to the admission to or departure from its territory of aircraft engaged in international air navigation, or to the operation and navigation

Failure to secure proper authorization or comply with State regulations can lead to penalties, financial sanctions, operational delays, or even the detention of the aircraft or vessel as the case may be.¹⁹ Therefore, airline and ship operators must ensure they obtain all necessary permissions and fulfill clearance requirements before discharging passengers or cargo in a foreign State.

B. BASIC SIMILARITIES

Both air transport and maritime transport permit innocent passage, *i.e.* the right to traverse territorial airspace and territorial waters without the need for prior authorization or permission from the grantor State. At air law, this is called the first freedom of the air, which grants an aircraft the right to fly over the territory of a State without the need for prior permission, subject to any special prohibition that a State may impose.²⁰

At maritime law, the right of innocent passage is granted by the United Nations Convention on the Law of the Sea (UNCLOS), which was ratified in 1982 and came into effect in 1994.²¹ UNCLOS serves as the legal framework governing the utilization of the world's oceans and seas.²²

Within UNCLOS, there are clauses outlining the concept of innocent passage for ships traversing territorial seas. These seas encompass the waters adjacent to a coastal nation's territory, stretching up to twelve nautical miles from the coastal state's baseline.²³ According to the Convention, foreign vessels, whether

of such aircraft while within its territory, shall be applied to the aircraft of all contracting States without distinction as to nationality, and shall be complied with by such aircraft upon entering or departing from or while within the territory of that State. Article 19 of UNCLOS lays down several conditions precluding prohibited activity stating that passage is innocent so long as it is not prejudicial to the peace, good order, or security of the coastal State. *See* Chicago Convention, *supra* note 1, at 304; U.N. Convention on the Law of the Sea, *supra* note 12, at 31.

¹⁹ *See U.N. Convention on the Law of the Sea, supra* note 12, at 109–111 (outlining repercussions by State for violations); Chicago Convention, *supra* note 1, at 354.

²⁰ The First Freedom of the Air is the right or privilege, in respect of scheduled international air services, granted by one State to another State or States to fly across its territory without landing (also known as a First Freedom Right). The Second Freedom of the Air is the right or privilege, in respect of scheduled international air services, granted by one State to another State or States to land in its territory for non-traffic purposes (also known as a Second Freedom Right). *See* Int'l Civil Aviation Org., *Freedoms of the Air*, ICAO, <https://www.icao.int/pages/freedomsair.aspx> [<https://perma.cc/Y5PS-MB6X>].

²¹ U.N. Convention on the Law of the Sea, *supra* note 3, at 30.

²² *See id.* at 25.

²³ *See id.* at 27.

commercial or non-commercial, are entitled to innocent passage through these territorial waters.²⁴

The term “innocent passage” denotes the transit of ships through territorial waters in a manner that does not jeopardize the peace, order, or security of the coastal state.²⁵ This entails passing through without engaging in activities like fishing, military exercises, or surveys without explicit permission.²⁶ Article 17 of UNCLOS provides that “subject to the Convention, ships of all States, whether coastal or land-locked, enjoy the right of innocent passage through the territorial sea.”²⁷ Article 18 defines innocent passage as “navigation through the territorial sea for the purpose of traversing that sea without entering internal waters or calling at a roadstead or port facility outside internal waters; or proceeding to or from internal waters or a call at such roadstead or port facility.”²⁸ Article 19 states *inter alia* that passage is innocent so long as it is not prejudicial to the peace, good order or security of the coastal State.²⁹

Consequently, under UNCLOS, ships typically do not require specific authorization or consent to navigate through the territorial waters of foreign nations, provided they abide by the principles of innocent passage.³⁰ Nevertheless, coastal states retain the authority to establish regulations and prerequisites for navigation within their territorial seas, including rules pertaining to navigation safety and environmental protection.³¹

II. HISTORY OF THE TREATIES

A. THE CHICAGO CONVENTION

The current regulatory structure of commercial aviation commenced with the Chicago Conference, held from November 1 to December 7, 1944, which commenced with the delivery of a message from the President of the United States.³² President

²⁴ *See id.* at 33–35.

²⁵ *Id.* at 31.

²⁶ *Id.*

²⁷ *Id.* at 30.

²⁸ *Id.*

²⁹ *Id.* at 31; *see also* U.N. Convention on the Law of the Sea, *supra* note 12, https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf [<https://perma.cc/Z4YS-GGZL>].

³⁰ U.N. Convention on the Law of the Sea, *supra* note 12, at 30.

³¹ *Id.* at 31–32.

³² *See* International Civil Aviation Conference, *Proceedings of the International Civil Aviation Conference*, at 42–43 (Nov. 1–Dec. 7, 1944).

Roosevelt, referencing the Paris Conference of 1919 aimed at facilitating air traffic across Europe, which unfortunately faced prolonged delays in implementation, expressed:

I do not believe that the world of today can afford to wait several years for its air communications. There is no reason why it should. Increasingly, the airplanes will be in existence. When either the German or the Japanese enemy is defeated, transport plans should be available for release from military work in numbers sufficient to make a beginning. When both enemies have been defeated, they should be available in quantity. Every country has its airports and trained pilots; and practically every country knows how to organize air lines. ... You are fortunate in having before you one of the great lessons of history. Some centuries ago, an attempt was made to build great empires based on domination of great sea areas. The lords of these areas tried to close these seas to some, and to offer access to others, and thereby enrich themselves and extend their power. This led directly to a number of wars both in the Eastern and Western Hemispheres. We do not need to make that mistake again. I hope you will not dally with the thought of creating great blocs of closed air, thereby tracing the in the sky the conditions of future wars. I know you will see to it that the air which God gave to everyone shall not become the means of domination over anyone....³³

President Roosevelt emphasized the importance of avoiding protectionist policies and preventing one nation from exerting dominance over others.³⁴ This directive has since posed a persistent challenge for regulators, who grapple with how to prevent domination by one state without resorting to protectionism. The ongoing quest for a delicate balance between these objectives remains a central focus of discussions in this paper.

Adolf A. Berle Jr., the Conference Chairman, echoed the President's sentiments, highlighting the collective responsibility of nations in ensuring the accessibility of air travel for humanity.³⁵ He underscored that the air is a shared resource, accessible to all nations, offering a means of global connection if a cooperative framework can be established and maintained.³⁶

During the Conference, the United States advocated for a cooperative approach to air usage, likening it to the common use of

³³ *Id.*

³⁴ *Id.* at 43.

³⁵ *Id.*

³⁶ See International Civil Aviation Conference, *Proceedings of the International Civil Aviation Conference*, at 42–43 (Nov. 1–Dec. 7, 1944).

the sea.³⁷ However, it acknowledged that unlike the sea, airspace is subject to the sovereignty of the nations it traverses.³⁸ Thus, the United States proposed that nations should collaborate to ensure the beneficial use of airspace for the greater good of humanity.³⁹ It emphasized the principle of sovereignty over national airspace while advocating for reciprocal exchange of air traffic rights between friendly nations.⁴⁰ The United States asserted that while nations maintain sovereignty over their airspace, this right should be balanced with the promotion of friendly international relations and the facilitation of communication and trade between states, without resorting to discriminatory measures.⁴¹

The United States made it clear that it expected reciprocal exchange of air traffic rights among nations. Their stance was articulated in the statement: “The United States believes that, while fully respecting sovereignty rights, we should operate on the principle of mutual exchange of necessary privileges and permissions, which friendly nations are entitled to from each other.”⁴²

According to the United States, the ability to communicate via air with friendly nations wasn’t an unrestricted right to travel anywhere globally.⁴³ They argued that air traffic differed significantly from maritime traffic, where commercial activities could be detached from the country of origin of the ship.⁴⁴ Air routes, in their view, were akin to railway lines, facilitating the establishment of consistent traffic flow and economic connections between countries.⁴⁵ The United States asserted that the scope of the Chicago Conference should be limited to adopting a convention that would facilitate communication between states, emphasizing that it was premature to expand beyond this concept.⁴⁶

During the Chicago Conference in 1944, the United States proposed a comprehensive agreement aimed at ensuring unrestricted commercial landing rights worldwide for all airlines.⁴⁷ They argued that both air and sea routes were natural conduits

³⁷ *Id.*

³⁸ *Id.* at 55.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ See International Civil Aviation Conference, *Proceedings of the International Civil Aviation Conference*, at 42–43 (Nov. 1–Dec. 7, 1944).

⁴² *Id.*

⁴³ *Id.* at 57.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ See International Civil Aviation Conference, *Proceedings of the International Civil Aviation Conference*, at 55 (Nov. 1–Dec. 7, 1944).

accessible to all humanity, but while the use of the sea was largely unencumbered, air travel fell under the sovereignty of nations traversed.⁴⁸ Therefore, the United States advocated for cooperative arrangements among nations to maximize the benefit of air travel for global welfare.⁴⁹

The United Kingdom presented a perspective emphasizing the need to balance national interests with promoting efficiency and enterprise in air services.⁵⁰ They suggested that fostering competition, rather than relying on subsidies, would lead to economic viability in civil aviation, thereby alleviating financial burdens on taxpayers.⁵¹ This approach aimed to support the growth of air services while ensuring fair opportunities for all states in air traffic.⁵²

India, while acknowledging the importance of rational development and the inherent right of each State to airspace freedom, advocated for a universal reciprocal approach to granting commercial air traffic rights.⁵³ They argued that negotiations on such rights should occur on a multilateral basis rather than through bilateral agreements.⁵⁴ India proposed the establishment of an authority to regulate these freedoms, ensuring equitable treatment for both powerful and smaller nations and safeguarding the interests of the people.⁵⁵

It is crucial to emphasize that the Chicago Convention's primary focus lies in addressing the global populace's need for cost-effective air transportation while preventing inefficiencies due to unfair competition and ensuring equitable opportunities for all states to operate air services.⁵⁶ To achieve this objective, the Convention, facilitated by ICAO, must carefully consider the economic implications associated with the operation of international air services by commercial airlines worldwide, especially those belonging to ICAO member states.

During the inaugural session of the Interim Council of the Provisional International Civil Aviation Organization (PICAO) in August 1945, Hon. C.D. Howe, Canada's Minister of Reconstruction, expressed Canada's belief in the necessity of greater freedom

⁴⁸ *Id.*

⁴⁹ *Id.* at 56.

⁵⁰ *Id.* at 65.

⁵¹ *Id.*

⁵² *Id.*

⁵³ See International Civil Aviation Conference, *Proceedings of the International Civil Aviation Conference*, at 76 (Nov. 1–Dec. 7, 1944).

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ See Chicago Convention, *supra* note 1, at 326.

for the development of international air transport within a framework that ensures equal opportunities and rewards efficiency.⁵⁷

Similarly, Dr. Edward Warner, the United States' representative (later becoming the first President of the ICAO Council), highlighted the primary goal of civil aviation to facilitate international harmony.⁵⁸ He stressed the importance of making air travel safer, more reliable, and enjoyable, while also emphasizing its role in fostering understanding and communication between nations.⁵⁹ Warner underscored civil aviation's significance in bringing people together and promoting global understanding, portraying it as a social imperative rather than solely an economic consideration.⁶⁰ Through their statements, both Minister Howe and Dr. Warner conveyed the international community's perspective on aviation at that time.

Despite the foundational principles of civil aviation being rooted in notions of equal opportunity and social necessity rather than solely economic motives, the American perspective at the Conference, particularly regarding market access and air traffic rights, diverged significantly.⁶¹ Adolf Berle, then Assistant Secretary of State, articulated this viewpoint, emphasizing the profound impact aviation could have on American foreign interests and policy, including territorial defense and commercial transportation. This perspective extended beyond viewing air transport solely as a social need based on equality of opportunity.⁶²

The First Interim Assembly of PICA0 convened in May 1946, setting the stage for addressing the issues that led to the provisions of the Chicago Convention.⁶³ Following this assembly, PICA0 tasked a group of experts known as Commission 3 with drafting a multilateral agreement on commercial aircraft rights, resulting in the Draft Multilateral Agreement on Commercial Rights.⁶⁴ This draft encompassed three key elements: granting commercial operation rights to traffic centers serving each state's international traffic, regulatory provisions to prevent abuse, and

⁵⁷ *PICA0 Documents*, Montreal, 1945, Volume 1, Doc 1, at 3.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ DAVID MACKENZIE, *ICAO: A HISTORY OF THE INTERNATIONAL CIVIL AVIATION ORGANIZATION 3* (University of Toronto Press, 2010).

⁶² *See id.*

⁶³ ICAO Doc. 1825, EC/52 at 1 (1946).

⁶⁴ *Id.*

a mechanism for settling disputes between contracting states through arbitration.⁶⁵

While the draft agreement garnered unanimous agreement on most provisions, disagreements arose regarding routes, airports, and capacity.⁶⁶ Commission 3 also examined the distinction between scheduled and non-scheduled air services, leading to further discussions at the 17th Session of the ICAO Council in 1952.⁶⁷ During this session, the Air Transport Committee reviewed a Secretariat study on regulations in international non-scheduled aviation, revealing diverse national policies regarding permissions for foreign non-scheduled aircraft.⁶⁸

The Committee also addressed interpretations of Article 5 of the Chicago Convention, particularly regarding the freedom to load and unload passengers or goods not carried for hire, and the right of states to require landing.⁶⁹ Additionally, considerations were made regarding the application of the convention to state aircraft and the implications for civilian state aircraft. These discussions highlighted the complexities surrounding international air regulations and underscored the need for comprehensive agreements to address various operational and regulatory aspects of civil aviation.⁷⁰

During its Fifteenth Session on March 28, 1952, the ICAO Council adopted an analysis incorporating various perspectives, alongside a definitive report addressed to Contracting States regarding scheduled international air services, as outlined in Article 6 of the Chicago Convention.⁷¹ This report clarified that a scheduled international air service necessitates a series of flights, with a single flight alone insufficient to meet this criteria.⁷² Article 6 mandates that such a series of flights traverse the airspace of multiple states and be conducted by aircraft transporting passengers, cargo, or mail for payment.⁷³ Additionally, the service must operate between the same two or more points, either according to a

⁶⁵ Views of Commission No. 3, Doc.4023, A-1 -P/3, at 23-26 (Apr. 1, 1947).

⁶⁶ See ICAO Working Paper No. AT-WP/295, at 5 (Dec. 15, 1952).

⁶⁷ See *id.*

⁶⁸ *Id.*

⁶⁹ ICAO Working Paper No. AT-WP/296, at 9 (Dec. 15, 1952).

⁷⁰ See *id.*

⁷¹ The ICAO Assembly, at its Second Session held in Geneva in June 1948, adopted Resolution A2-18 which called for the adoption by the Council of a definition of "scheduled international air service." See *Resolutions and Recommendations of the Assembly*, Res. A2-18, at 79-80, ICAO Doc. 7670 (1956).

⁷² *Id.*; See Int'l Civil Aviation Org. [ICAO], *Definition of a Scheduled International Air Service*, at 3, ICAO Doc. 7278-C/841 (1952).

⁷³ *Id.*

published timetable or with a frequency that denotes a systematic series.⁷⁴ The term “remuneration” within this provision holds the same interpretation as outlined in Article 5 of the Convention.

Amidst the divergence between the “free market” stance of the United States and the more cautious approach of the United Kingdom, a bilateral agreement known as “Bermuda 1” was forged in 1946.⁷⁵ This agreement served as a compromise, embodying a middle ground between the philosophies of the two nations that had clashed during the Chicago Conference. Bermuda 1 was characterized by its stringent pricing regulations and liberal capacity arrangements and route designations.

In this agreement, the United States conceded by withdrawing its objection to the international regulation of fares and agreeing that the primary responsibility for setting fares should rest with the International Air Transport Association (IATA).⁷⁶ Conversely, the United Kingdom shifted from its previous stance advocating for capacity regulation, acknowledging that airlines should have the discretion to regulate capacity by determining flight frequency on specific routes, albeit subject to government oversight.⁷⁷

Numerous other nations adopted the Bermuda model in their air services agreements for nearly three decades following its establishment.⁷⁸ While one advantage of this model was recognized as the IATA tariff-setting clause, which achieved a form of multilateralism through bilateralism, a major drawback was that it provided governments with a basis to formulate overly restrictive civil aviation policies, occasionally leading to the withdrawal of air traffic rights enjoyed by airlines.⁷⁹

As anticipated, Bermuda 1 eventually collapsed after three decades due to these shortcomings.⁸⁰ The first ICAO Assembly in 1947 continued the work initiated by PICAO on developing a

⁷⁴ *Id.*

⁷⁵ Air Services Agreement between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland, Feb. 11, 1946, 60 Stat. 1499 (1946).

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.* at 1504.

⁷⁹ *Id.*

⁸⁰ The “Bermuda II” Agreement, which was signed in 1977, contained a system of multiple designation of airlines by one State and other liberal provisions that toned down the harshness of capacity and route designation of its predecessor. *See* Agreement Between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland Concerning Air Services, July 23, 1977, U.S.–Gr. Brit., 28 U.S.T. 5368 [hereinafter Bermuda II].

Multilateral Agreement on Commercial Rights in International Civil Air Transport.⁸¹ During this assembly, the United Kingdom advocated for certain general principles to govern route agreements,⁸² while the US Government expressed concerns about disorder in operating frequencies, capacity, route exchanges, and fifth freedom traffic rights on a general multilateral basis.⁸³

At the Assembly, the Canadian delegate articulated the rationale behind seeking multilateralism in air services, emphasizing the importance of creating conditions that all nations wishing to fly could utilize, thereby preventing discrimination and potential conflicts.⁸⁴ They emphasized that the objective wasn't merely to achieve uniformity, although desirable, but rather to establish conditions accessible to all nations interested in aviation.⁸⁵ These conditions would ensure transparency regarding opportunities and challenges, preventing discrimination between nations and the granting of privileges that wouldn't be equally extended to others.⁸⁶ This approach aimed to mitigate friction and potential conflicts that could escalate into war, emphasizing the pursuit of multilateralism beyond mere uniformity.⁸⁷ Conversely, the delegate of Peru underscored the challenges posed by differing levels of development and aeronautical potential among nations, highlighting the complexities of achieving absolute and universal multilateral agreements:

The multilateral agreement is a high ideal for which we have already fought and must continue to fight, but a firm fighting spirit should not allow eagerness to obscure reality. The latter, as we Peruvians see it, places grave difficulties in the way of an absolute and universal multilateral agreement. Those difficulties emanate from the different stages of development in commercial aviation among various nations, from the different aeronautical potential of each country, from the variations found when considering each country in international air transport, according to its climatic or geographical conditions and lastly, what is more important, the substantial differences between the countries already in commercial aeronautics, and these countries, such as ours, which can only look to the future.⁸⁸

⁸¹ Int'l Civil Aviation Org. [ICAO], *Discussions of Commission No. 3 of the First Assembly*, ICAO Doc 4510, A1-EC/72 (1947).

⁸² *Id.* at 12–13.

⁸³ *Id.* at 23.

⁸⁴ *Id.* at 35.

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ Int'l Civil Aviation Org. [ICAO], *Discussions of Commission No. 3 of the First Assembly*, ICAO Doc 4510, A1-EC/72 (1947).

⁸⁸ *Id.* at 45–46.

Conversely, the delegate of Peru presented the perspectives of the developing world, acknowledging the significance of a multilateral agreement while highlighting the practical challenges it posed.⁸⁹ These challenges stemmed from varying stages of development and aeronautical potential among nations, as well as climatic and geographical conditions influencing international air transport.⁹⁰ Additionally, substantial disparities existed between countries already established in commercial aviation and those, like Peru, with aspirations for future development.⁹¹

The ICAO Assembly, during its Second Session in Geneva in June 1948, adopted Resolution A2-16, urging further action on a Multilateral Agreement on Commercial Rights and encouraging Contracting States to study and consider the aforementioned elements.⁹²

Subsequently, due to the inability to reach a multilateral agreement on uniformity in awarding air traffic rights, two agreements emerged. The Transit or Two Freedoms Agreement, signed by thirty-two States, allowed aircraft to fly across or land in each other's territories for non-traffic purposes without specific permission.⁹³ The Five Freedoms or Transport Agreement, signed by twenty States, granted carriers the five freedoms of the air, facilitating free operation in each other's territories.⁹⁴

States not party to these agreements were required to enter into bilateral air services agreements for commercial operations

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² Int'l Civil Aviation Org. [ICAO], *Resolutions and Recommendations of the Assembly*, Res. A2-16, at 78, ICAO Doc. 7670 (1956).

⁹³ International Air Transit Agreement, *opened for signature*, Dec. 7, 1944, 84 U.N.T.S. 389–390, <https://treaties.un.org/doc/Publication/UNTS/Volume%2084/volume-84-II-252-English.pdf> [<https://perma.cc/D4KT-H73Z>].

⁹⁴ There are three other freedoms of the air that have been added since the Chicago Convention was signed: The Sixth Freedom provides that an airline has the right to carry traffic between two foreign States via its own State or registry. This freedom can also be considered a combination of third and fourth freedoms secured by the State of registry from two different States producing the same effect as the fifth freedom vis a vis both foreign States; The Seventh Freedom allows an airline operating air services entirely outside the territory of its State of registry, to fly into the territory of another State and there discharge, or take on, traffic coming from, or destined for, a third State or States; and, the Eighth Freedom is Cabotage, as referred to in Article 7 of the Chicago Convention. *See Freedoms of the Air*, ICAO, <https://www.icao.int/pages/freedomsair.aspx> [<https://perma.cc/D9KD-QCQB>]; Chicago Convention, *supra* note 1, at 300 (“consecutive cabotage”).

involving passenger, mail, and cargo transportation.⁹⁵ Additionally, cabotage was addressed in Article 7 of the Convention, which states that every State that is a party to The Convention retains the authority to deny entry to aircraft from other signatory States intending to embark or disembark passengers, mail, or cargo for compensation and bound for another location within its borders.⁹⁶ Each participating State also commits to refraining from making agreements that exclusively confer such privileges to another State or its airlines, and pledges not to secure such exclusive rights from any other State.⁹⁷

The Convention's preamble underscores aviation's potential to foster peace and understanding among nations, highlighting the importance of safeguarding against its abuse, which could threaten general security.⁹⁸ The interpretation of "general security" encompasses a wide range of concerns, including social injustice and threats to commercial expediency facilitated by civil aviation.

In 1947, the First Amendment centered on the financial aspects of ICAO and clarified procedures for altering the Convention. The Second Amendment, in 1959, prioritized safety concerns, particularly in establishing standards and regulations for air navigation and traffic control. Three years later, the Third Amendment further honed safety protocols, including provisions for aircraft certification and airworthiness. By 1967, the Fourth Amendment introduced alterations to ICAO's financing and organizational structure. The Fifth Amendment in 1984 expanded provisions regarding aviation security to address evolving threats. Environmental considerations took precedence in the Sixth Amendment of 1995, with measures to mitigate noise and emissions. In 2001, the Seventh Amendment embraced new technologies for air navigation and communication. Responding to the aftermath of the September 11 attacks, the Eighth Amendment of 2003 concentrated on enhancing security measures.⁹⁹ The Ninth Amendment of 2006 continued to refine provisions related to aviation safety and security. Finally, in 2007, the Tenth Amendment tackled is-

⁹⁵ See Int'l Civil Aviation Org., Chicago Conference Introduction, ICAO, <https://www.icao.int/ChicagoConference/Pages/chicago-conference-introduction.aspx> [<https://perma.cc/K6G6-X29V>].

⁹⁶ Chicago Convention, *supra* note 1, art. 7.

⁹⁷ *Id.*

⁹⁸ *Id.* 61 Stat. at 1180.

⁹⁹ International Maritime Organization, *Maritime Security*, IMO, <https://www.imo.org/en/OurWork/Security/Pages/GuideMaritimeSecurityDefault.aspx> [<https://perma.cc/JW4E-QLAP>].

sues concerning international air transport facilitation, including passenger and cargo security procedures. These amendments collectively underscore ongoing endeavors to uphold the safety, security, and efficiency of global civil aviation, consistent with the principles outlined in the Chicago Convention.

At the time this article was being written, there were 193 States that had either signed or otherwise agreed to the Chicago Convention, automatically granting them membership status in ICAO.¹⁰⁰ However, back in 1944, only fifty-two countries had ratified the Convention, comprising roughly 27% of the current total.¹⁰¹ Throughout the years, the Convention has maintained its original integrity without undergoing any substantial alterations or revisions at diplomatic conferences outside the ICAO Assembly, although a few superficial adjustments have been made.¹⁰² Specifically, three amendments pertaining to articles such as Article 3 *bis*, Article 83 *bis*, Article 50(a), and Article 56 were enforced between 1995 and 1998.¹⁰³

It must be noted that from time to time, the Council of ICAO adopts amendments to Standards and Recommended Practices of the 19 Annexes to the Chicago Convention. However, these are not amendments *per se* to the main provisions of the treaty.¹⁰⁴ A discussion on how these Annexes are developed and adopted will follow.

¹⁰⁰ See The History of ICA and the Chicago Convention, *supra* note 2.

¹⁰¹ *Id.*

¹⁰² ICAO Working Paper No. A36-WP/284, at 2 (Nov. 21, 2007).

¹⁰³ Protocol Relating to an Amendment to the Convention on International Civil Aviation, Article 56, Oct. 6, 1989, https://www.icao.int/secretariat/legal/List%20of%20Parties/56_1989_EN.pdf [<https://perma.cc/8P9R-Y433>]; Protocol Relating to an Amendment to the Convention on International Civil Aviation, Article 50(a), Oct. 26, 1990, https://www.icao.int/secretariat/legal/List%20of%20Parties/50a_1990_EN.pdf [<https://perma.cc/S24Y-AJUL>]; Protocol Relating to an Amendment to the Convention on International Civil Aviation, Article 3 *bis*, May 10, 1984 (entered into force Oct. 1, 1998), 2122 U.N.T.S. 337, https://www.icao.int/secretariat/legal/Administrative%20Packages/3bis_en.pdf. [<https://perma.cc/XSN7-DA74>]; Protocol Relating to an Amendment to the Convention on International Civil Aviation, Article 83 *bis*, (entered into force June 20, 1997), 2122 U.N.T.S. 321, https://www.icao.int/secretariat/legal/Documents/83bis_EN.pdf [<https://perma.cc/WV4Z-H6CQ>].

¹⁰⁴ The Annexes are referred to in Article 54 (1) of the Chicago Convention identifies a mandatory function of the Council of ICAO as adopting, in accordance with the provisions of Chapter VI of the Chicago Convention international standards and recommended practices and recommended practices and *for convenience*, designating them as Annexes to the Convention; and notifying all contracting States of the action taken. See Chicago Convention, *supra* note 1, art. 51(1).

B. CONVENTION ON THE INTERNATIONAL MARITIME ORGANIZATION

Throughout the ages, the importance of worldwide cooperation in maritime affairs has been widely recognized. This collaboration has been evident in enduring maritime traditions like ships seeking shelter in foreign ports during harsh weather and providing aid to distressed vessels, irrespective of their origin.¹⁰⁵

In 1889, a global gathering in Washington, D.C., USA, discussed the possibility of forming a lasting international organization to cater to the needs of the shipping sector.¹⁰⁶ This suggestion arose after the formation of several other global bodies, including the International Telegraph (now Telecommunications) Union in 1865, the International (now World) Meteorological Organization in 1873, and the Universal Postal Union in 1874.¹⁰⁷

Nevertheless, the idea of establishing such a maritime entity was rejected. The assembly concluded that “for the present the establishment of a permanent international maritime commission is not considered expedient.”¹⁰⁸ While not explicitly stated, this decision was driven by the industry’s reluctance to accept any attempts to regulate its activities and limit its commercial independence.¹⁰⁹

In 1945, the United Nations was founded, marking the beginning of various international organizations dedicated to specific areas of interest.¹¹⁰ The International Civil Aviation Organization (ICAO) was established in 1944, followed by the Food and Agriculture Organization (FAO) and the United Nations Educational, Scientific and Cultural Organization (UNESCO) in 1945, and the World Health Organization (WHO) in 1947.¹¹¹ These organizations were all integrated into the United Nations framework. In 1948, efforts were made to create a similar organization focusing on maritime issues.¹¹²

The Geneva conference of 1948, held in February, concluded with the adoption of the Convention establishing the Intergovernmental Maritime Consultative Organization (IMCO) on March 6, 1948. (later renamed the International Maritime Organization (IMO) in 1982).¹¹³

¹⁰⁵ Convention on the International Maritime Organization, *supra* note 4.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ Convention on the International Maritime Organization, *supra* note 4.

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.*

The goals of the newly formed organization were succinctly delineated in Article 1 of the treaty as promoting collaboration between governments on regulatory frameworks and practices regarding various technical aspects of international trade shipping, while advocating for the adoption of optimal standards for maritime safety and navigational efficiency; encouraging the removal of discriminatory measures and unnecessary restrictions imposed by governments on international trade shipping, thereby promoting equal access to shipping services worldwide. It was highlighted that government support for national shipping development and security, as long as it did not aim to restrict the participation of ships from different flags in global trade, would not be considered discriminatory. Other goals were: empowering the organization to investigate issues related to unfair restrictive practices carried out by shipping companies, as detailed in authorizing the Organization to address any shipping-related issues referred to it by any United Nations body or specialized agency; facilitating the exchange of information among governments concerning matters under consideration by the Organization.¹¹⁴

The 1948 Convention did not address marine pollution or environmental concerns, which are now among the primary focuses of IMO.¹¹⁵ References to maritime safety were minimal, briefly mentioned at the end of Article 1 paragraph (a).¹¹⁶ The Convention mainly emphasized economic initiatives aimed at promoting “freedom” and ending “discrimination.”¹¹⁷ Paragraphs (b) and (c) raised concerns among several governments, who saw promises to establish “a world without discrimination” and to combat “unfair restrictive practices” as potential interference in free enterprise.¹¹⁸

IMO’s duties are intended to be consultative and advisory.¹¹⁹ Article 3 (b) specified that, to achieve the goals outlined in Article 1, IMO should “assist in the drafting of conventions, agreements, or other suitable instruments, and recommend them to governments and intergovernmental organizations, and convene necessary conferences.”¹²⁰ IMO itself was not authorized to ratify treaties. Article 1 (c) outlined that IMO should “establish

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ Convention on the International Maritime Organization, *supra* note 4.

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.*

mechanisms for consultation among Members and facilitate the exchange of information among governments.”¹²¹

It was foreseen in 1948 that Article 1 (b) might provoke controversy, as Article 3 outlined a procedure for addressing issues related to unfair restrictive practices by shipping companies.¹²² It stated:

When, in the opinion of the Organization, any matter concerning unfair restrictive practices by shipping concerns is incapable of settlement through the normal processes of international shipping business, or has in fact so proved, and provided it shall first have been the subject of direct negotiations between the Members concerned, the Organization shall, at the request of those Members, consider the matter.¹²³

During the 1960s, there was a surge in the number of newly independent nations with maritime interests, prompting an enlargement of IMO’s membership.¹²⁴ In September 1964, at the 2nd Extraordinary Session of the Assembly, an amendment to IMO Convention was approved, enlarging the Council to accommodate eighteen seats.¹²⁵

While the primary maritime powers retained six seats each, a category was introduced to ensure representation from countries with specialized interests in maritime transport or navigation.¹²⁶ This category comprised six Member States, diversifying representation across various geographical regions.

The revisions made in 1965, effective from 1968, were noteworthy, particularly the modification of Article 28 to increase the Maritime Safety Committee’s membership to sixteen.¹²⁷ Eight seats were reserved for the top ten ship owning States, while four positions were allocated to ensure representation from Africa, the Americas, Asia and Oceania, and Europe.¹²⁸ The remaining four seats were designated for States not otherwise represented on the Committee.¹²⁹ These amendments in 1964 and 1965 reflected the evolving composition of IMO’s membership. The dominance of traditional maritime powers was waning as more developing nations joined the Organization.¹³⁰

¹²¹ Convention on the International Maritime Organization, *supra* note 4.

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ Convention on the International Maritime Organization, *supra* note 4.

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.*

The significant amendments of 1974, which took effect in 1978, resulted in the expansion of the Council's membership to twenty-four Member States during the 5th Extraordinary Session in October 1974.¹³¹ This expansion involved enlarging Group (c) to include twelve Member States.¹³²

These revisions aimed to tackle criticisms of perceived bias towards traditional ship owning States within IMO.¹³³ The change in membership dynamics was emphasized with the adoption of resolution A.316 (ES.V), recognizing the significant presence of developing nations within the Organization and emphasizing the importance of broader and more equitable representation across all sectors of IMO's governance.¹³⁴ The 1975 amendments, to be effective in 1982, were triggered by the Torrey Canyon oil spill in 1967, which highlighted the severe environmental impact of major oil tanker accidents.¹³⁵ This incident revealed deficiencies in the international framework for assessing liability and compensation for oil spill damages.¹³⁶ In response, IMO established a Legal Committee and a new sub-committee of the Maritime Safety Committee (MSC) to address these issues.¹³⁷

By the mid-1970s, environmental protection and legal concerns became integral to IMO's agenda, leading to the establishment of a permanent Marine Environment Protection Committee (MEPC) through resolution A.358(IX) at the 9th Assembly.¹³⁸ This resolution elevated the status of MEPC and the Legal Committee to the level of the MSC.¹³⁹

Article I of the Convention underwent modification, broadening its scope to include "the prevention and control of marine pollution from ships" and legal matters related to the Convention's objectives.¹⁴⁰ Additionally, the organization's name was changed to the International Maritime Organization to eliminate confusion arising from the term "Consultative," which implied limited decision-making authority.¹⁴¹

¹³¹ *Id.*

¹³² *Id.*

¹³³ Convention on the International Maritime Organization, *supra* note 4.

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ Convention on the International Maritime Organization, *supra* note 4.

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

In 1977, further amendments were adopted to accommodate IMO's growing involvement in environmental, administrative, and legal affairs.¹⁴² Article 2, which previously confined IMO's role to consultation and advice, was eliminated, and subsequent articles were renumbered.¹⁴³ The Technical Cooperation Committee, established in 1969, was elevated to the same status as the MSC, Legal Committee, and MEPC.¹⁴⁴

The amendments in 1979 increased the Council's size to thirty-two, with sixteen seats allocated to Group (c).¹⁴⁵

In 1991, amendments enhanced the status of the Facilitation Committee to bring it in line with other Committees, aiming to streamline documentation processes in international maritime trade.¹⁴⁶

By 1993, the Council's size had expanded to forty, with Group (a) and (b) expanded to ten each, and Group (c) to twenty Member States.¹⁴⁷ This adjustment addressed concerns regarding election procedures raised during the 17th Assembly session.¹⁴⁸

The proposed amendments in 2021, pending implementation, propose enlarging the Council to fifty-two Members from the current forty, extending Members' terms to four years, and recognizing three additional language versions of IMO Convention as authentic.¹⁴⁹

The Articles of the Convention cover various subjects, including the organization's goals, functions, membership procedures, governing bodies, and miscellaneous provisions such as voting and the conditions for the Convention's entry into force.¹⁵⁰

III. COMPARISON BETWEEN THE CHICAGO CONVENTION AND CONVENTION ON THE INTERNATIONAL MARITIME ORGANIZATION

A. ESTABLISHMENT OF ICAO AND IMO

ICAO was established by the Chicago Convention, which in Article 43 thereof provides that an organization to be named the International Civil Aviation Organization is formed by the

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ Convention on the International Maritime Organization, *supra* note 4.

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ Convention on the International Maritime Organization, *supra* note 4.

¹⁵⁰ *Id.*

Convention.¹⁵¹ It is made up of an Assembly, a Council, and such other bodies as may be deemed necessary.¹⁵²

The aims and objectives of the ICAO are to develop the principles and techniques of international air navigation and to foster the planning and development of international air 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) and, promote generally the development of all aspects of international civil aeronautics.¹⁵³

IMO was established by the IMO Convention (also known as the Convention on the International Maritime Organization).¹⁵⁴ The specific provision under which IMO was established is outlined in the Convention's preamble.¹⁵⁵ IMO Convention was adopted on March 6, 1948, and entered into force on March 17, 1958.¹⁵⁶ It serves as the framework for IMO's activities and provides the legal basis for its governance and operations in regulating international maritime activities.

The primary objectives of IMO, as outlined in Article 1 of the Treaty, are to establish a framework for collaboration among governments concerning regulatory frameworks and practices

¹⁵¹ Chicago Convention, *supra* note 1, art. 43.

¹⁵² *Id.*

¹⁵³ *Id.* art. 44.

¹⁵⁴ Convention on the Intergovernmental Maritime Consultative Organization, Mar. 6, 1948, 289 U.N.T.S. 48 [hereinafter IMCO Convention].

¹⁵⁵ The Preamble begins with: "Noting that the establishment of an international maritime organization entrusted with the duty of developing measures for improving safety at sea, promoting efficiency in navigation, and preventing and controlling marine pollution from ships would contribute to the goals set out above; believing that such an organization should be based on the principle of the most effective cooperation among Governments in developing measures for achieving these goals; desiring to create the international maritime organization at the earliest practicable date . . ." followed by "The States parties to the present Convention hereby establish the International Maritime Organization (hereinafter referred to as "the Organization")." *Id.*

¹⁵⁶ Convention on the International Maritime Organization, *supra* note 4.

pertinent to international maritime trade.¹⁵⁷ This involves advocating for the adoption of the highest achievable standards concerning maritime safety, navigational efficiency, and the prevention and control of marine pollution from vessels.¹⁵⁸ Additionally, the organization addresses administrative and legal issues associated with the aforementioned objectives.¹⁵⁹

Another goal is to promote the removal of discriminatory measures and unnecessary restrictions imposed by governments on international trade shipping, thus ensuring equitable access to shipping services for global commerce.¹⁶⁰ It is underscored that government support for the development of national shipping and security measures is not considered discriminatory, provided it does not aim to restrict the participation of vessels under various flags in international trade.¹⁶¹

Article 1 also tasks IMO with addressing issues related to unfair restrictive practices by shipping companies, considering matters concerning shipping and its impact on the marine environment as referred by any United Nations organ or specialized agency, and facilitating the exchange of information among governments on topics under consideration by the organization.¹⁶²

B. STRUCTURAL DIFFERENCES

1. *The ICAO and IMO Assemblies*

Article 45 of the Chicago Convention establishes the permanent seat of ICAO as decided at a place as determined at the final meeting of the Interim Assembly of the Provisional International Civil Aviation Organization (PICAO) set up by the Interim Agreement on International Civil Aviation signed at Chicago on December 7, 1944.¹⁶³ The seat could be temporarily transferred elsewhere by decision of the Council. During the closing stages of the inaugural PICAO Interim Assembly on June 6, 1946, Montréal, Canada was designated as the permanent headquarters of the Organization, garnering twenty-seven votes.¹⁶⁴ The alternative candidate cities received the following votes: Paris—nine votes, Geneva—four votes, and a city in China yet to be named—one

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ Chicago Convention, *supra* note 1, art. 45.

¹⁶⁴ *Id.*

vote.¹⁶⁵ With regard to IMO, London was selected as the central hub of the Organization because of its rich history in global maritime activities and its strategic location within international shipping networks.¹⁶⁶ The Government of the United Kingdom built the current headquarters of IMO in 1970.¹⁶⁷

The Chicago Convention, in Article 47, grants ICAO legal capacity in the territory of each contracting State as may be necessary for the performance of its functions.¹⁶⁸ Full juridical personality is granted wherever compatible with the constitution and laws of the State concerned.¹⁶⁹ In the context of IMO, Article 64 of IMO Convention provides that the legal rights, privileges, and immunities granted to, or associated with IMO are determined by the General Convention on the Privileges and Immunities of the Specialized Agencies, as endorsed by the United Nations General Assembly on November 21, 1947.¹⁷⁰

Article 43 of the Chicago Convention, whilst establishing ICAO, designates the structure of ICAO to be composed of an Assembly, a Council, and such other bodies as may be considered necessary from time to time.¹⁷¹ Article 11 of IMO Convention states that IMO comprises an Assembly, a Council, a Maritime Safety Committee, a Legal Committee, a Marine Environment Protection Committee, a Technical Co-operation Committee, any necessary subsidiary organs, and a Secretariat.¹⁷²

Article 46 of the Chicago Convention required the first meeting of the ICAO Assembly to be summoned by the Interim Council PICAO as soon as the Chicago Convention came into force (which was to be in April 1947) at a time and place to be decided by the Interim Council.¹⁷³ Established in 1948, IMO convened its inaugural Assembly, convened in January 1959, primarily addressed administrative matters, particularly focusing on the

¹⁶⁵ *The Interim Assembly of PICAO*, POSTAL HISTORY OF ICAO, https://applications.icao.int/postalhistory/the_interim_assembly_of_picao.htm [https://perma.cc/J7K5-LX8E].

¹⁶⁶ *Id.*

¹⁶⁷ *IMO Headquarters to Welcome Visitors as Part of Open House Festival*, ICAO (Sep. 1, 2023), <https://www.imo.org/en/mediacentre/Pages/WhatsNew-1949.aspx> [https://perma.cc/68UH-T3G2].

¹⁶⁸ *Id.*

¹⁶⁹ Chicago Convention, *supra* note 1, art. 47.

¹⁷⁰ Convention on the International Maritime Organization art. 64, Mar. 6, 1948, 9 U.S.T. 621, 389 U.N.T.S. 3 [hereinafter IMO Convention].

¹⁷¹ Chicago Convention, *supra* note 1, art. 43.

¹⁷² IMO Convention, *supra* note 170, art. 11.

¹⁷³ Chicago Convention, *supra* note 1, art. 46.

equitable distribution of expenses among Member States.¹⁷⁴ Resolution A.20(I) was adopted to establish a framework where each Member's financial commitment was determined by its proportional share of the United Nations' funding.¹⁷⁵ Countries contributing less than 2% were obligated to pay a fixed fee of \$2,000, while those exceeding a 10% contribution were required to pay \$10,000.¹⁷⁶

Additionally, Members were subject to an extra levy based on the gross tonnage of their commercial fleet, utilizing information from the latest edition of Lloyd's Register of Shipping.¹⁷⁷ Consequently, contributions to the IMO budget primarily mirrored shipping tonnage rather than national economic capacity, distinguishing it as a unique characteristic within the United Nations framework.¹⁷⁸

Following the commencement of operations by the Inter-Governmental Maritime Consultative Organization (IMCO) in 1959, several existing conventions were incorporated, notably the International Convention for the Prevention of Pollution of the Sea by Oil (OILPOL) 1954.¹⁷⁹ Beginning in January 1959, IMO took on the responsibility of upholding and advancing the 1954 OILPOL Convention.¹⁸⁰ Guided by IMO, this convention underwent amendments in 1962, 1969, and 1971.¹⁸¹ The inaugural gatherings of the newly established IMCO took place in London in 1959.¹⁸² The Convention officially came into effect when Egypt and Japan ratified it on March 17, 1958, reaching the required number of Parties.¹⁸³ However, when the first meeting took place in January 1959, numerous reservations suggested that the scope of IMO's authority primarily centered on technical safety matters, as specified in Article 29.¹⁸⁴

¹⁷⁴ Convention on the International Maritime Organization, *supra* note 4.

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ Convention on the International Maritime Organization, *supra* note 4.

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ *See id.* at 36. The responsibilities assigned to the MSC as outlined in Article 29 encompassed the examination of "navigation aids, ship construction and equipment, crewing from a safety perspective, regulations for collision prevention, management of hazardous cargo, maritime safety protocols and standards, hydrographic data, ship logs and navigation records, marine accident investigation, salvage and rescue operations, and any other issues directly impacting maritime

Article 48 of the Chicago Convention requires the ICAO Assembly to meet annually and be convened by the Council at a suitable time and place.¹⁸⁵ Extraordinary meetings of the Assembly may be held at any time upon the call of the Council or at the request of any ten contracting States addressed to the Secretary General.¹⁸⁶ All contracting States must have an equal right to be represented at the meetings of the Assembly and each contracting State must be entitled to one vote.¹⁸⁷ Delegates representing States may be assisted by technical advisers who may participate in the meetings but must have no vote.¹⁸⁸ A majority of the contracting States is required to constitute a quorum for the meetings of the Assembly.¹⁸⁹ Finally, unless otherwise provided in this Convention, decisions of the Assembly must be taken by a majority of the votes cast.¹⁹⁰

As in the ICAO Assembly, Article 12 of IMO Convention states that the Assembly consists of all Members.¹⁹¹ The following article says that regular Assembly sessions occur every two years.¹⁹² Extraordinary sessions are convened upon a sixty-day notice if requested by one-third of the Members or deemed necessary by the Council, also with a sixty-day notice.¹⁹³ Article 14 provides that a majority of the Members, excluding Associate Members, must be present to constitute a quorum for Assembly meetings.¹⁹⁴

Powers and duties of the ICAO Assembly are laid out in Article 49 of the Chicago Convention which says that such powers and duties are to:

- a) elect at each meeting its president and other officers;
- b) elect the contracting States to be represented on the Council;
- c) examine and take appropriate action on the reports of the council and decide on any matter referred to it by the Council;
- d) determine its own rules of procedure and establish such subsidiary commissions as it may consider to be necessary or desirable;
- e) vote annual budgets and determine the financial arrangements of the organization;
- f) review expenditures and approve the accounts of ICAO;

safety.” See Convention on the International Maritime Organization, *supra* note 4, at 62.

¹⁸⁵ Chicago Convention, *supra* note 1, art. 48.

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ See IMO Convention, *supra* note 170, at 54.

¹⁹² *Id.* art. 13.

¹⁹³ *Id.*

¹⁹⁴ *Id.* art. 14.

g) refer, at its discretion, to the council, to subsidiary commissions or to any other body any matter within its sphere of action; h) delegate to the council the powers and authority necessary or desirable for the discharge of the duties of the organization and revoke or modify the delegations of authority at any time; i) carry out the appropriate provisions of Chapter XIII; j) consider proposals for the modification or amendment of the provisions of this convention and, if it approves of the proposals, recommend them to the contracting states in accordance with the provisions of Chapter XXI; k) deal with any matter within the sphere of action of the organization not specifically assigned to the council.¹⁹⁵

Article 15 of IMO Convention differs from the provision in the Chicago Convention in that, instead of “powers and duties,” the former identifies “responsibilities” of IMO Assembly to include: electing its President and two Vice-Presidents from among its Members, except Associate Members, during each regular session, with their terms extending until the subsequent regular session; establishing its own procedural rules, with exceptions outlined in the Convention; establishing temporary or permanent subsidiary bodies as deemed necessary, either independently or upon the Council’s recommendation; electing Members to represent them on the Council, as outlined in Article 17; reviewing and deliberating on reports from the Council and deciding on any matters referred to it by the Council; approving the Organization’s work program; voting on the budget and determining the financial arrangements of the Organization, in line with Part XII; reviewing expenditures and approving the Organization’s accounts; carrying out the Organization’s functions, with matters related to Article 2 (a) and (b) referred to the Council for recommendations or instruments; recommending regulations and guidelines to Members for adoption concerning maritime safety, marine pollution prevention and control from ships, and other shipping-related matters affecting the marine environment as assigned by international instruments, or amendments to such regulations and guidelines referred to it; undertaking actions to promote technical cooperation in line with Article 2 (e), with attention to the specific requirements of developing nations; making decisions regarding the convening of international conferences or adopting other suitable procedures for international conventions or amendments to any international conventions.¹⁹⁶

¹⁹⁵ Chicago Convention, *supra* note 1, art. 49.

¹⁹⁶ IMO Convention, *supra* note 170, art. 15.

2. *The ICAO Council*

Article 50 of the Chicago Convention provides that the Council, which is accountable to the Assembly, stands as a permanent body consisting of twenty-one contracting States chosen by the Assembly.¹⁹⁷ This number has now risen to thirty-six members comprising three categories of States in which States are elected by the Assembly.¹⁹⁸ These are: States of chief importance in air transport; States not otherwise included which make the largest contribution to the provision of facilities for international civil air navigation; and States not otherwise included whose designation will ensure that all major geographic areas of the world are represented on the Council.¹⁹⁹

Elections of States to the Council take place at the Assembly every three years.²⁰⁰ Those elected to the Council serve until the next election.²⁰¹ Any vacancies on the Council are promptly filled by the Assembly, with the newly elected member serving the remaining term of their predecessor. Council representatives from contracting States must not have active involvement in or financial interests related to international air services.²⁰² Article 51 pertains to the President of the Council who will be elected for a term of three years, with the option of reelection.²⁰³ The President holds no voting rights.²⁰⁴ The Council selects one or more Vice Presidents from its members, who retain voting rights when acting as President.²⁰⁵ The President can be chosen from outside Council member representatives, but if a representative is elected, their seat becomes vacant and is filled by their State.²⁰⁶ The President's responsibilities include convening Council, Air Transport Committee, and Air Navigation Commission meetings, representing the Council, and executing functions assigned by the Council.²⁰⁷

Article 52 requires decisions of the Council to be taken by majority approval from its members.²⁰⁸ The Council may delegate authority on specific matters to a committee comprised of its

¹⁹⁷ Chicago Convention, *supra* note 1, art. 50.

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

²⁰¹ *Id.*

²⁰² *Id.*

²⁰³ Chicago Convention, *supra* note 1, art. 50.

²⁰⁴ *Id.*

²⁰⁵ *Id.*

²⁰⁶ *Id.*

²⁰⁷ *Id.*

²⁰⁸ *Id.* at 334.

members.²⁰⁹ Any decisions made by a Council committee may be appealed to the Council by any concerned contracting State.²¹⁰ Article 53 says that any contracting State may participate, without voting, in Council and committee discussions on matters particularly affecting its interests.²¹¹ Council members are prohibited from voting on disputes in which they are involved.²¹²

Article 54 mandates the Council with a range of functions that are essential.²¹³ Under this provision—which is titled “mandatory functions of the Council—the Council’s responsibilities encompass a range of functions, including providing annual reports to the Assembly and adhering to the directives outlined by the Assembly and fulfilling duties specified in this Convention.²¹⁴ It is tasked with organizing its structure and procedural guidelines, appointing and outlining the responsibilities of the Air Transport Committee, comprised of Council representatives, as well as establishing an Air Navigation Commission as per Chapter X.²¹⁵ Additionally, the Council oversees the Organization’s finances in line with Chapters XII and XV, determines the President’s remuneration, and appoints a Secretary General and necessary personnel as per Chapter XI.²¹⁶ It is also responsible for gathering, analyzing, and disseminating information pertinent to air navigation and international air services, including operational costs and subsidies.²¹⁷ Furthermore, the Council reports any breaches of the Convention to contracting States, ensures compliance with its recommendations, and notifies the Assembly of any infractions not rectified by contracting States in a timely manner.²¹⁸ It adopts international standards and practices, designates them as Annexes to the Convention, and informs all contracting States accordingly.²¹⁹ The Council evaluates recommendations from the Air Navigation Commission for Annex amendments and takes appropriate action as outlined in Chapter XX.²²⁰ Moreover, it

²⁰⁹ *Id.*

²¹⁰ *Id.*

²¹¹ Chicago Convention, *supra* note 1, art. 50.

²¹² *Id.*

²¹³ *Id.*

²¹⁴ *Id.*

²¹⁵ *Id.*

²¹⁶ *Id.*

²¹⁷ Chicago Convention, *supra* note 1, art. 50.

²¹⁸ *Id.*

²¹⁹ *Id.*

²²⁰ *Id.*

addresses any matters related to the Convention referred to it by contracting States.²²¹

The ICAO Council also has what are called “permissive functions.”²²² Under Article 55, the Council possesses several prerogatives, including the ability to establish subordinate air transport commissions regionally or otherwise, defining groups of states or airlines to aid in achieving the Convention’s objectives.²²³ It can assign additional duties to the Air Navigation Commission beyond those outlined in the Convention and modify or rescind such delegations as necessary.²²⁴ Moreover, the Council conducts research on internationally significant aspects of air transport and navigation, disseminates findings to contracting States, and facilitates information exchange among them on these matters.²²⁵ It examines various issues related to the organization and functioning of international air transport, such as ownership and operation of services along key routes, presenting plans to the Assembly accordingly.²²⁶ Additionally, it investigates situations hindering international air navigation development at the behest of contracting States and issues reports post-investigation as deemed appropriate.²²⁷ Article 55 (c) mandates the Council to conduct comprehensive research on air transport and navigation, share findings with Contracting States, and foster information exchange, aligning with ICAO’s aim to ensure safe, regular, efficient, and economical air transport globally.²²⁸ This provision underscores the Council’s responsibility to initiate studies encompassing all pertinent aspects of international air transport, analyzing their implications on demand and potential solutions, culminating in comprehensive planning resources for states, manufacturers, environmentalists, and service providers, as outlined in the Chicago Convention.²²⁹

There are several bodies, established by the Council that report to the Council. They are: The Air Navigation Commission, consisting of experts who function in their individual capacity and not on behalf of their States; the Air Transport Committee, which comprises some member States of the Council; the Legal

²²¹ *Id.*

²²² *Id.* art. 55.

²²³ Chicago Convention, *supra* note 1, art. 50.

²²⁴ *Id.*

²²⁵ *Id.*

²²⁶ *Id.*

²²⁷ *Id.*

²²⁸ *Id.*

²²⁹ *Id.*

Committee; the Technical Cooperation Committee; the Finance Committee; and the Joint Support Committee.²³⁰

The Air Navigation Commission (ANC) serves as a specialized entity within the Council of ICAO with the responsibility of formulating and recommending worldwide standards and practices for air navigation.²³¹ Its members, appointed by the ICAO Council, are esteemed professionals with expertise spanning various facets of air navigation, encompassing air traffic management, navigation systems, communication systems, and airport operations.²³²

A core function of the Air Navigation Commission is to assess and propose revisions to the international standards and recommended practices (SARPs) pertaining to air navigation delineated in Annexes 2, 4, 5, 6, 10, 11, and 15 of the Chicago Convention.²³³ Moreover, the ANC undertakes the task of evaluating emerging technologies, operational protocols, and best practices to bolster the safety, efficiency, and sustainability of global air navigation systems.²³⁴ In its collaborative efforts, the ANC closely engages with other ICAO bodies such as the Air Traffic Management (ATM) Panel and the Frequency Spectrum Management Panel (FSMP) to ensure consistency and coherence in air navigation standards and procedures worldwide.²³⁵ In essence, the Air Navigation Commission plays a pivotal role in fostering cooperation among member states, industry stakeholders, and international entities to advance the development and implementation of secure, efficient, and seamless air navigation systems on a global scale.

The Air Transport Committee (ATC) is another key component of the Council tasked with addressing issues related to international air transport.²³⁶ Composed of representatives from member states of ICAO, the committee convenes to discuss and

²³⁰ *At a glance: The International Civil Aviation Organization*, EUROPEAN PARLIAMENT (Oct. 2016), [https://www.europarl.europa.eu/RegData/etudes/ATAG/2016/593483/EPRS_ATA\(2016\)593483_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/ATAG/2016/593483/EPRS_ATA(2016)593483_EN.pdf) [<https://perma.cc/V6HX-2AM5>].

²³¹ Int'l Civil Aviation Org., *Air Navigation Commission*, ICAO, <https://www.icao.int/about-icao/AirNavigationCommission/Pages/default.aspx> [<https://perma.cc/X8W7-CT83>].

²³² *Id.*

²³³ *Id.*

²³⁴ *Id.*

²³⁵ Int'l Civil Aviation Org. ICAO, *ANC Technical Panels*, ICAO, <https://www.icao.int/about-icao/airnavigationcommission/pages/anc-technical-panels.aspx> [<https://perma.cc/CA3M-D4QW>].

²³⁶ *Air Transport Bureau*, ICAO, <https://www.icao.int/secretariat/air-transport/Pages/default.aspx> [<https://perma.cc/8ZT9-MSZB>].

develop strategies concerning various aspects of air transport, including policy formulation, regulatory frameworks, safety standards, environmental considerations, and economic matters.²³⁷ The primary role of the ATC is to facilitate collaboration among member states and industry stakeholders to address challenges and promote the sustainable development of international air transport.²³⁸ This involves examining trends in air travel demand, analyzing economic impacts, enhancing safety and security measures, and promoting efficient and environmentally responsible practices within the aviation sector.²³⁹

Additionally, the ATC works to harmonize regulations and standards across different regions to ensure consistency and interoperability in international air transport operations.²⁴⁰ It also plays a crucial role in coordinating with other ICAO bodies and relevant international organizations to address emerging issues and promote global cooperation in the field of air transport.²⁴¹ Overall, the ATC serves as a forum for dialogue and cooperation among member states and industry partners, aiming to foster the growth and resilience of international air transport while ensuring safety, security, and sustainability.

The Legal Committee comprises legal professionals appointed by ICAO Member States, typically officials from their aviation authorities, legal departments, or similar governmental entities.²⁴² These experts actively engage in the committee's sessions and dialogues, offering legal insights and recommendations concerning issues pertinent to global civil aviation legislation and rules.²⁴³ Their primary objective is to advocate for their states' interests and play a pivotal role in shaping and interpreting international aviation laws and norms under ICAO's jurisdiction.²⁴⁴

The Technical Cooperation Committee (TCC) operates as a specialized entity within the framework of the Council harmonizing technical cooperation endeavors among member nations.²⁴⁵

²³⁷ *Id.*

²³⁸ *Id.*

²³⁹ *Id.*

²⁴⁰ *Id.*

²⁴¹ *Id.*

²⁴² *The First Years of the Legal Committee*, ICAO, https://applications.icao.int/postalhistory/the_first_years_of_the_legal_committee.htm [https://perma.cc/5E92-W5HG].

²⁴³ *Id.*

²⁴⁴ *Id.*

²⁴⁵ *Technical Cooperation Programme*, ICAO, <https://www.icao.int/annual-report-2021/Pages/implementation-support-icao-auditing-programmes-nclb>

Comprising delegates from member states and relevant international bodies, the committee collaborates to foster the advancement and implementation of aviation infrastructure, capabilities, and standards in regions where support is required.²⁴⁶ At its core, the TCC facilitates the sharing of knowledge, resources, and effective strategies among member nations to tackle various challenges and drive the sustainable growth of civil aviation on a global scale.²⁴⁷ This encompasses the provision of technical aid, capacity-building initiatives, and educational programs aimed at bolstering aviation safety, security, operational efficiency, and environmental stewardship.²⁴⁸

Furthermore, the TCC actively engages in resource mobilization and partnership cultivation to bolster technical cooperation initiatives, ensuring alignment with ICAO's overarching strategic objectives and global agendas.²⁴⁹ The committee also undertakes the critical task of monitoring the progress and impact of technical cooperation endeavors, assessing their efficacy, and pinpointing areas necessitating enhancement.²⁵⁰ In essence, the TCC functions as a pivotal forum for fostering collaboration and synergy among member states, international entities, and relevant stakeholders. Through its concerted efforts, the TCC endeavors to advance ICAO's mission of promoting safe, secure, and sustainable civil aviation worldwide by facilitating technical assistance and capacity-building endeavors.

The Finance Committee of the Council is a specialized body responsible for overseeing financial matters within the organization. Comprised of representatives from member states, the committee collaborates to ensure the prudent management of ICAO's finances and resources.²⁵¹ The primary role of the Finance Committee is to review and provide recommendations on the Organization's budget, financial statements, and resource allocation.²⁵² This includes assessing proposed budgets, monitoring expendi-

technical-cooperation-and-assistance-technical-cooperation.aspx [https://perma.cc/H3LM-4EBB].

²⁴⁶ *The Technical Cooperation Programme*, THE POSTAL HISTORY OF ICAO, https://applications.icao.int/postalhistory/the_technical_cooperation_programme.htm [https://perma.cc/GVU4-PURW].

²⁴⁷ *Id.*

²⁴⁸ *Id.*

²⁴⁹ *Id.*

²⁵⁰ *Id.*

²⁵¹ *The Technical Cooperation Programme*, THE POSTAL HISTORY OF ICAO, https://applications.icao.int/postalhistory/the_technical_cooperation_programme.htm [https://perma.cc/GVU4-PURW].

²⁵² *Id.*

tures, and advising on financial policies and procedures to promote transparency, accountability, and fiscal responsibility.²⁵³

Additionally, the Finance Committee may evaluate funding mechanisms, revenue sources, and financial sustainability initiatives to support the organization's activities and objectives effectively.²⁵⁴ It also plays a crucial role in overseeing the implementation of financial controls and risk management practices to safeguard ICAO's assets and interests.²⁵⁵ Overall, the Finance Committee serves as a key forum for member states to discuss and collaborate on financial matters related to ICAO, ensuring the organization's financial health and stability to effectively fulfill its mandate of promoting safe, secure, and sustainable civil aviation worldwide.

Article 69 of the Chicago Convention provides that:

If the Council is of the opinion that the airports or other air navigation facilities, including radio and meteorological services, of a contracting State are not reasonably adequate for the safe, regular, efficient, and economical operation of international air services, present or contemplated, the Council shall consult with the State directly concerned, and other States affected, with a view to finding means by which the situation may be remedied, and may make recommendations for that purpose to be remedied. No contracting State must be considered guilty of an infraction of the Convention if it fails to carry out these recommendations."²⁵⁶

Article 70 provides that:

A contracting State, in the circumstances arising under the provisions of Article 69, may conclude an arrangement with the Council for giving effect to such recommendations. The State may elect to bear all of the costs involved in any such arrangement. If the State does not so elect, the Council may agree, at the request of the State, to provide for all or a portion of the costs."²⁵⁷

The provision that follows states that:

If a contracting State so requests, the Council may agree to provide, man, maintain, and administer any or all of the airports and other air navigation facilities including radio and meteorological services required in its territory for the safe, regular, efficient and economical operation of the international air services of the

²⁵³ *Id.*

²⁵⁴ *Id.*

²⁵⁵ *Id.*

²⁵⁶ Chicago Convention, *supra* note 1, art. 69.

²⁵⁷ *Id.* art. 70.

other contracting States, and may specify just and reasonable charges for the use of the facilities provided.²⁵⁸

The Council established the Joint Support Committee under the aforesaid provisions on a request by Iceland and Denmark, which did not have the resources and infrastructure to provide air navigation services over the Atlantic to the many aircraft operating air services between Europe and North America.²⁵⁹ Accordingly, the Joint Support Section of the Air Transport Bureau, which is self-funded by a portion of the charges levied on airlines for overflight gives administrative support in the calculation of charges reports to the Joint Support Committee of the Council.²⁶⁰ There are two Joint Financing Agreements governing the provision and funding of facilities and services offered by Denmark and Iceland for civil aircraft traversing the North Atlantic region, situated north of the 45th parallel north latitude.²⁶¹ These services encompass air traffic control, communication systems, and meteorological support.²⁶² The operation and financing of these services adhere to the terms outlined in these two agreements, which have undergone modifications and updates in 1982 and 2008.²⁶³ Currently, several States whose civil aircrafts frequently fly across the North Atlantic are parties to these agreements, including Denmark and Iceland as the primary provider states.²⁶⁴ Other states with significant North Atlantic air traffic are encouraged to join these agreements. The majority of the expenses associated with these services are recuperated from the users, with the United Kingdom National Air Traffic Services Limited acting as the billing and collection agent.²⁶⁵ Any remaining costs not attributed to international civil aviation are divided among the states party to the agreements based on the percentage of North Atlantic crossings conducted by aircraft operators from each State.²⁶⁶

Another privilege accorded to the ICAO Council is the discretion to establish regional air transport bodies. Article 55(a)

²⁵⁸ *Id.* art. 71.

²⁵⁹ Int'l Civil Aviation Org., *North Atlantic Joint Financing Agreements: A Successful Approach to Financing Air Navigation Services*, ICAO, https://www.icao.int/sustainability/Documents/jf_accord_en.pdf [<https://perma.cc/64NM-H3F9>].

²⁶⁰ *Id.* at 7.

²⁶¹ *Id.* at 1.

²⁶² *Id.*

²⁶³ *Id.*

²⁶⁴ *Id.*

²⁶⁵ *Id.* at 5.

²⁶⁶ *Id.*

of the Chicago Convention provides that, “where appropriate and as experience may show to be desirable, the Council may create subordinate air transport commissions on a regional or other basis and define groups of states or airlines with or through which it may deal to facilitate the carrying out of the aims of this Convention.”²⁶⁷ It is on this basis that the European Civil Aviation Conference (ECAC); the Latin American Civil Aviation Commission (LACAC); the African Civil Aviation Commission (AFCAC); and the Arab Civil Aviation Commission (ACAC) were formed.²⁶⁸

During its Tenth Session held in Caracas from June 19 to July 16 in 1956, the ICAO Assembly passed Resolution A10-5, establishing a policy framework for collaboration between ICAO and ECAC centered around regional cooperation.²⁶⁹ An accord signed on July 12, 1969, between ICAO and ECAC allowed for the assignment of ICAO personnel to the ECAC Secretariat and the provision of skilled staff to ECAC.²⁷⁰ Similarly, an agreement effective from January 1, 1978, was reached between ICAO and AFCAC, stipulating, among other things, that ICAO would extend secretariat services to AFCAC to the best of its abilities.²⁷¹ Furthermore, an agreement effective from January 1, 1979, between ICAO and LACAC mandated close collaboration between the two organizations and the provision of secretariat services to LACAC by ICAO.²⁷² Cooperation between ICAO and these bodies have flourished over the years.

The Council also monitors ICAO activity in the regions through several regional offices which are maintained to offer closer support and coordination to ICAO Member States.²⁷³ The Asia and Pacific (APAC) Office, which holds accreditation from thirty-nine contracting States, fosters connections with two Spe-

²⁶⁷ Chicago Convention, *supra* note 1, art. 55.

²⁶⁸ African Civil Aviation Policy (AFCAP), Second Session of the African Union Conference of Ministers Responsible for Transport, Nov. 21-25, 2011, AU/TPT/EXP/2A2 (II), 2.

²⁶⁹ *International Review*, 24 J. AIR L. & COM. 84, 95 (1957), <https://scholar.smu.edu/cgi/viewcontent.cgi?article=3004&context=jalc> [https://perma.cc/4ZWS-GPHA].

²⁷⁰ George Selim Farag, *The African Civil Aviation Commission AFCAC*, at 41-42 (1980) (L.L.M. thesis, McGill University).

²⁷¹ *Id.* at 42.

²⁷² *Id.* at 43.

²⁷³ See *Asia and Pacific (APAC) Office*, ICAO, [https://www.icao.int/APAC/Pages/default.aspx#:~:text=Welcome%20to%20the%20ICAO%20Asia%20and%20Pacific%20\(APAC\)%20Office&text=The%20APAC%20Office%20is%20accredited,with%2049%20Flight%20Information%20Regions](https://www.icao.int/APAC/Pages/default.aspx#:~:text=Welcome%20to%20the%20ICAO%20Asia%20and%20Pacific%20(APAC)%20Office&text=The%20APAC%20Office%20is%20accredited,with%2049%20Flight%20Information%20Regions) [https://perma.cc/JX4U-UYAJ].

cial Administrative Regions of China and thirteen additional Territories.²⁷⁴ An essential component is the Regional Sub-Office (RSO), inaugurated in Beijing and hosted by the Civil Aviation Administration of China (CAAC), playing a pivotal role in air navigation functions, air transport policies, technical cooperation, legal matters, and aviation security within the region.

The Middle East (MID) Office, situated in Cairo, acts as a central point for coordination and assistance in the Middle East.²⁷⁵ Its functions include aiding Member States in implementing regional plans, adhering to ICAO standards, and advocating air transport policies.²⁷⁶ In Dakar, the Western and Central African (WACAF) Office is dedicated to enhancing aviation safety, security, and efficiency across Western and Central Africa, working closely with regional bodies like the African Civil Aviation Commission (AFCAC).²⁷⁷ Lima hosts the South American (SAM) Office, which supports South American nations in various aviation-related issues, promoting compliance with ICAO standards and fostering cooperation among neighboring states.²⁷⁸

The North American, Central American, and Caribbean (NACC) Office, headquartered in Mexico, plays a crucial role in advancing safe and efficient air transport in North America, Central America, and the Caribbean.²⁷⁹ It engages with regional bodies and monitors aviation security initiatives. The Eastern and Southern African (ESAF) Office, located in Nairobi, offers indispensable services to Eastern and Southern African countries, supporting technical cooperation programs, legal matters, and aviation security endeavors.²⁸⁰ Paris serves as the headquarters for the European and North Atlantic (EUR/NAT) Office, coordinating activities related to air navigation, air transport, and aviation security in Europe and the North Atlantic region. Collaborations with the European Civil Aviation Conference (ECAC) and other pertinent bodies are paramount.²⁸¹ Each regional office caters

²⁷⁴ *Id.*

²⁷⁵ Int'l Civil Aviation Org., *Middle East Regional Office*, ICAO, <https://www.icao.int/mid/Pages/default.aspx> [<https://perma.cc/LJC2-R7U8>].

²⁷⁶ *Id.*

²⁷⁷ Int'l Civil Aviation Org., *Western and Central African (WACAF) Office*, ICAO, <https://www.icao.int/WACAF/Pages/default.aspx> [<https://perma.cc/Z4UR-V8AT>].

²⁷⁸ *Id.*

²⁷⁹ *Id.*

²⁸⁰ *Id.*

²⁸¹ See *Other Meetings Seminars and Workshops*, ICAO, <https://www.icao.int/EUR-NAT/Pages/Other-Meetings.aspx> [<https://perma.cc/SQW8-LNUF>].

to the Contracting States within its jurisdiction, maintains communication with non-Contracting States, and contributes to the coherent development of the international air transport system.

3. *The IMO Council*

In the maritime context the IMO Convention in Article 16 stipulates that the Council is composed of thirty-two Members, chosen through election by the Assembly. This number has now risen to forty.²⁸² Article 17 outlines the criteria for selecting Council Members which were initially: eight to be from States with the largest interest in providing international shipping services; eight to be from other States with the largest interest in international seaborne trade; and sixteen (to be from States not elected under the first two categories) that have special interests in maritime transport or navigation, and whose election to the Council will ensure the representation of all major geographic areas of the world.

These numbers have later risen to ten representing States heavily involved in international shipping services, another ten from those highly engaged in global maritime trade, while the remaining twenty should hail from States with significant interests in maritime transport or navigation across diverse geographic regions.²⁸³ Council Members elected under Article 16 serve until the subsequent regular Assembly session and are eligible for re-election, as per Article 18.²⁸⁴ Article 19 delineates the Council's internal procedures, including the selection of its chairperson, establishment of procedural rules, and the constitution of a quorum by twenty-six Members.²⁸⁵ The Council convenes upon one month's notice, summoned by the Chairperson or upon request by at least four Members, at convenient locations for all concerned.²⁸⁶

Article 20 permits the Council to invite Members to participate in discussions relevant to them, albeit without voting rights.²⁸⁷ Article 21 details the Council's responsibilities, including reviewing the work program and budget estimates, receiving reports from various organs of the Organization, and transmitting them

²⁸² IMO Convention, *supra* note 170, art. 16.

²⁸³ *Id.* art. 17.

²⁸⁴ *Id.* art. 18.

²⁸⁵ *Id.* art. 19.

²⁸⁶ *Id.*

²⁸⁷ *Id.* art. 20.

to the Assembly. Matters falling under specified articles require input from relevant committees before Council consideration.²⁸⁸ Article 22 empowers the Council, with Assembly approval, to appoint the Secretary-General and determine the terms of service for the Secretary-General and other staff members.²⁸⁹ The Council reports on the Organization's activities at each regular Assembly session (Article 23) and presents financial statements along with recommendations (Article 24).²⁹⁰ Article 25 permits the Council to establish agreements or arrangements with other entities, subject to Assembly approval, and manage the Organization's relationships between sessions.²⁹¹ During Assembly breaks, the Council assumes organizational functions, coordinating activities and adjusting the work program as needed for efficiency, as per Article 26.²⁹²

There are several committees reporting to the Council of IMO. Article 27 establishes that the Maritime Safety Committee includes all members.²⁹³ Article 28 delineates the Committee's responsibilities, encompassing various aspects of maritime safety such as navigation aids, vessel construction, safety protocols, and hazardous cargo handling.²⁹⁴ It also clarifies that the Committee operates in alignment with international conventions and the directives of the Assembly and Council. Article 34 outlines the duties of the Legal Committee, including drafting conventions and submitting reports to the Council.²⁹⁵ The Legal Committee is mandated to meet annually, elect officers, and establish its procedural rules, as per Article 35.²⁹⁶ Article 36 emphasizes adherence to relevant international conventions while carrying out the Legal Committee's functions.²⁹⁷ Similarly, Part IX focuses on the Marine Environment Protection Committee, detailing its composition and duties, including the adoption of regulations and cooperation with regional organizations to combat marine pollution.²⁹⁸ The Committee submits proposals, recommendations, and reports to the Council and meets at least once a year,

²⁸⁸ IMO Convention, *supra* note 170, art. 21.

²⁸⁹ *Id.* art. 22.

²⁹⁰ *Id.* art. 24.

²⁹¹ *Id.* art. 25.

²⁹² *Id.* art. 26.

²⁹³ *Id.* art. 27.

²⁹⁴ IMO Convention, *supra* note 170, art. 16.

²⁹⁵ *Id.* art. 34.

²⁹⁶ *Id.* art. 35.

²⁹⁷ *Id.* art. 36.

²⁹⁸ *Id.* arts. 37-41.

adhering to relevant international instruments, as per Articles 37-41.²⁹⁹ Lastly, Part X addresses the Technical Cooperation Committee, which coordinates technical cooperation projects and reviews the Secretariat's work in this regard.³⁰⁰ The Committee submits recommendations and reports to the Council, convenes annually, and follows relevant provisions of international conventions, as outlined in Articles 42-46.³⁰¹

Similar to ICAO, IMO employs a decentralized framework, establishing regional hubs to address the unique requirements and obstacles more effectively across various global regions. As of January 2022, IMO operated five strategically positioned regional centers worldwide: IMO Regional Office for Africa, situated in Nairobi, Kenya; IMO Regional Office for Asia and the Pacific, located in Manila, Philippines; IMO Regional Office for the Caribbean, stationed in Port of Spain, Trinidad and Tobago; IMO Regional Office for Latin America and the Caribbean, found in Lima, Peru; IMO Regional Presence for the Middle East, headquartered in Cairo, Egypt.³⁰² These regional establishments undertake tasks such as facilitating the enforcement of IMO conventions, offering technical aid and capacity development, fostering collaboration among member nations, and addressing maritime challenges specific to their respective areas.³⁰³

C. RESPECTIVE SECRETARIATS

1. ICAO

The Secretary General of ICAO is the Chief Executive Officer of the ICAO Secretariat.³⁰⁴ The duties of overseeing the daily activities of the Secretariat fall under the purview of the Secretary General.³⁰⁵ Regarding personnel, the Convention grants the Secretary General the authority to select Secretariat staff, comprising

²⁹⁹ *Id.*

³⁰⁰ *Id.* arts. 42-46.

³⁰¹ *Id.*

³⁰² Int'l Maritime Org., *Geographical Coverage*, IMO, <https://www.imo.org/en/OurWork/TechnicalCooperation/Pages/Geo-Coverage.aspx> [<https://perma.cc/BGT8-J39P>].

³⁰³ *Id.*

³⁰⁴ *Secretary General*, ICAO, <https://www.icao.int/secretariat/secretarygeneral/pages/default.aspx#:~:text=The%20Secretary%20General%20is%20also,Communications%2C%20and%20seven%20Regional%20Offices> [<https://perma.cc/BC53-EQ79>].

³⁰⁵ *Id.*

both technical specialists and administrative personnel, essential for the effective performance of the organization.³⁰⁶

The Chicago Convention provides the groundwork for the establishment and functioning of the ICAO Secretariat, ensuring it possesses the requisite power and resources to advance the secure, safe, and efficient evolution of international air travel. Concerning the responsibilities of ICAO, the Convention delineates—albeit implicitly—the tasks of the Secretariat, encompassing aiding member nations in adhering to global aviation standards and regulations, conducting research and analysis on aviation matters, and fostering collaboration among member states and international entities.³⁰⁷ The tasks of the Secretariat are to assist the Council in reaching policy decisions, and this is done through preparation of documents such as working papers and draft treaties on subjects relating to the aims and objectives of ICAO as recognized in Article 44 of the Chicago Convention, namely to: establish and refine the principles and methodologies of global air navigation while fostering the strategic planning and expansion of international air travel to: guarantee the secure and organized expansion of global civil aviation; promote the advancement of aircraft design and operations for peaceful purposes; stimulate the growth of air routes, airports, and air navigation infrastructures for international civil aviation; address the global populace's requirements for dependable, regular, efficient, and cost-effective air transportation; prevent wasteful economic practices resulting from unfair competition; ensure that the rights of all contracting states are fully upheld and that each contracting state has equitable opportunities to operate international air carriers; eliminate discriminatory practices among contracting states; enhance flight safety in international air navigation; and, generally advance all facets of international civil aviation.³⁰⁸

One of the key functions of the Secretariat is to aid both in substance and administration the various panels, study groups and other bodies developing the 19 Annexes to the Chicago Convention.³⁰⁹ A typical example can be seen in the ANC (this process is the same with other committees of the Council) where the

³⁰⁶ *Id.*

³⁰⁷ *Id.*

³⁰⁸ Chicago Convention, *supra* note 1, art. 44.

³⁰⁹ *Annex 19—Safety Management*, POSTAL HISTORY OF THE ICAO, https://applications.icao.int/postalhistory/annex_19_safety_management.htm [https://perma.cc/RBN9-62BJ].

process commences with a proposal put forth by either a member state, the ICAO Council, or the ANC within ICAO.³¹⁰ This proposal could originate from various sources such as advancements in aviation technology, safety apprehensions, regulatory necessities, or shifts in international air travel practices.³¹¹ Following the proposal, the ANC, consisting of experts across diverse aviation domains, conducts a thorough review and evaluation.³¹² The ANC scrutinizes the proposal's technical merits, safety implications, and alignment with prevailing international standards.³¹³

Should the proposal be deemed viable and essential, the ANC proceeds to draft the text of the proposed Annex or modification to an existing one.³¹⁴ This drafting process meticulously considers legal, technical, and operational facets to ensure precision and efficacy.³¹⁵ Subsequently, the draft Annex undergoes circulation among ICAO Member States and pertinent stakeholders for feedback and input. This consultation phase facilitates the identification of potential concerns, suggestions for enhancement, and the fostering of consensus among Member States.³¹⁶

Based on the feedback received during consultation, the draft Annex may undergo revision to address concerns, incorporate suggestions, or enhance clarity.³¹⁷ The ANC may convene additional meetings or working groups to finalize the text of the Annex.³¹⁸ Once the draft Annex garners satisfaction, it is presented to the ICAO Council for approval. The Council scrutinizes the draft Annex and may introduce further amendments or modifications before granting approval.³¹⁹ Following approval by the Council, the Annex is formally adopted, becoming an integral component of the Chicago Convention.³²⁰ Adoption typically

³¹⁰ See *Air Navigation Commission*, POSTAL HISTORY OF THE ICAO https://applications.icao.int/postalhistory/the_air_navigation_commission.htm [<https://perma.cc/D8Q2-QKM4>].

³¹¹ *Id.*

³¹² *Id.*

³¹³ *Id.*

³¹⁴ *Id.*

³¹⁵ *Id.*

³¹⁶ See *Air Navigation Commission*, POSTAL HISTORY OF THE ICAO https://applications.icao.int/postalhistory/the_air_navigation_commission.htm [<https://perma.cc/QZ32-BTK5>].

³¹⁷ *Id.*

³¹⁸ *Id.*

³¹⁹ *Id.*

³²⁰ Chicago Convention, *supra* note 1, at 356.

necessitates a specified number of ratifications or approvals by member states, as delineated in the Chicago Convention.³²¹

Upon meeting the requisite number of ratifications or approvals, the Annex enters into force.³²² Once in force, it becomes binding on all member states that have ratified or acceded to the Chicago Convention.³²³ Throughout this process, principles of transparency, collaboration, and consensus-building remain pivotal to ensuring that Annexes to the Chicago Convention accurately reflect the collective expertise and interests of the international aviation community.³²⁴

The ICAO Secretariat plays a crucial role in facilitating the creation of an Annex to the Chicago Convention, providing essential administrative support to streamline the process.³²⁵ As the initial point of contact, the Secretariat receives proposals for new Annexes or modifications from member States, the ICAO Council, or the ANC.³²⁶ It organizes and manages these proposals for thorough evaluation. Serving as a bridge between the proposing entity and relevant stakeholders, the Secretariat ensures effective communication and coordination throughout the review process.³²⁷ It ensures that proposals undergo comprehensive assessment by the appropriate ICAO bodies.³²⁸

Offering technical expertise and assistance, the Secretariat aids the proposing entity and other stakeholders during the drafting phase. This support includes providing legal advice, conducting technical analyses, and offering operational insights to ensure alignment with ICAO standards. While the primary drafting responsibility lies with the Air Navigation Commission (ANC), the Secretariat may assist in structuring and refining the text of the proposed Annex. Its focus is on maintaining clarity, consistency, and efficacy in the draft.

The Secretariat plays a crucial role in organizing meetings, consultations, and working groups relevant to Annex development, facilitating discussions, and managing logistical aspects to ensure smooth progress. Throughout the developmental phase, the Secretariat diligently maintains records of all proceedings,

³²¹ *Id.*

³²² *Id.*

³²³ *Id.*

³²⁴ *See id.*

³²⁵ *Air Navigation Bureau (ANB)*, ICAO, <https://www.icao.int/safety/policy-and-standardization/Pages/default.aspx> [<https://perma.cc/CDY2-V333>].

³²⁶ *Id.*

³²⁷ *Id.*

³²⁸ *Id.*

including meeting minutes, draft texts, feedback, and decisions. This meticulous documentation fosters transparency, accountability, and a comprehensive archive of the Annex creation process. Upon finalization and approval by relevant ICAO bodies, the Secretariat assists in compiling necessary documentation for formal approval and adoption by the ICAO Council. It ensures adherence to procedural obligations and facilitates the Annex's entry into force. In summary, the ICAO Secretariat operates discreetly in the background, providing invaluable administrative, technical, and logistical support to ensure the seamless and effective progression of the Annex development process.

2. IMO

The paucity of explicit provision in the Chicago Convention on the duties of the ICAO Secretariat can be contrasted with explicit provision in IMO Convention.³²⁹ Article 47 of the Convention stipulates that the Secretariat, under the leadership of the Secretary-General, comprises essential personnel designated by the Secretary-General according to Article 22.³³⁰ Article 48 outlines the responsibilities of the Secretariat, which include managing necessary documentation and compiling and disseminating essential materials such as documents, papers, agendas, minutes, and information vital to the functioning of the Organization.³³¹

In accordance with Article 49, the Secretary-General is tasked with preparing and presenting financial statements and biennial budget proposals to the Council, with yearly breakdowns provided.³³² Article 50 underscores the Secretary-General's duty to keep Member States informed about the Organization's activities, while allowing each Member State the prerogative to appoint representatives for effective communication.³³³ Article 51 emphasizes the independence of the Secretary-General and their staff, highlighting their obligation to carry out their responsibilities without influence from any government or external authority, thereby preserving the inherently international nature of their role.³³⁴ Lastly, Article 52 specifies that the Secretary-General may

³²⁹ See *Convention on the International Maritime Organization (IMO)*, UNIV. OF OSLO, https://www.jus.uio.no/english/services/library/treaties/14/14-01/imo_consolidated.html [<https://perma.cc/J2GD-LGA7>].

³³⁰ *Id.*

³³¹ *Id.*

³³² *Id.*

³³³ *Id.*

³³⁴ *Id.*

undertake additional duties as delegated by the Convention, the Assembly, or the Council, ensuring flexibility in responding to evolving organizational needs.³³⁵

The Secretariat of IMO is instrumental in facilitating the Organization's mandate of advocating for safe, secure, environmentally friendly, efficient, and sustainable maritime transport across the globe.³³⁶ Serving as the administrative nucleus of IMO, the Secretariat shoulders a diverse array of responsibilities and duties geared towards bolstering the organization's objectives and serving the interests of its member nations.³³⁷ This exposition will delve into an exhaustive examination of the pivotal functions and obligations shouldered by IMO Secretariat.

A paramount duty of IMO Secretariat lies in furnishing administrative and operational support to the various organs within the organization, encompassing IMO Assembly, the Council, and an array of committees and sub-committees.³³⁸ This entails orchestrating meetings, crafting agendas, drafting documentation, and ensuring meticulous record-keeping.³³⁹ By fostering channels of communication and collaboration among member states and stakeholders, the Secretariat plays a pivotal role in facilitating the smooth operation of IMO's decision-making mechanisms.

Beyond its administrative purview, the Secretariat is charged with championing and operationalizing international conventions and protocols formulated by IMO. This encompasses pivotal agreements such as the International Convention for the Safety of Life at Sea (SOLAS), the International Convention for the Prevention of Pollution from Ships (MARPOL), and the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW), among others.³⁴⁰ The Secretariat aids member states in ratifying and adhering to these conventions, monitors compliance, and extends guidance and technical support as necessitated.³⁴¹ Moreover, the IMO Secre-

³³⁵ *Id.*

³³⁶ IMO Secretariat Official, Remarks on 2030 Agenda (2019), <https://sdgs.un.org/un-system-sdg-implementation/international-maritime-organization-imo-34611> [<https://perma.cc/P4YG-M5QP>].

³³⁷ *Id.*

³³⁸ *Id.*

³³⁹ *Id.*

³⁴⁰ *List of IMO Conventions*, IMO, <https://www.imo.org/en/about/Conventions/Pages/ListOfConventions.aspx> [<https://perma.cc/VC6U-9SHJ>].

³⁴¹ See e.g., *IMO Moves to Amend SOLAS Requiring Reporting Containers Lost at Sea*, THE MARITIME EXECUTIVE (Sept. 27, 2022) <https://maritime-executive.com/article/imo-moves-to-amend-solas-requiring-reporting-containers-lost-at-sea> [<https://perma.cc/4YXP-HU5K>].

tariat assumes a critical role in spearheading global initiatives to fortify maritime safety and security.³⁴² This encompasses the formulation and dissemination of regulations, directives, and best practices aimed at averting accidents, curbing pollution, and combatting illicit activities such as piracy and maritime terrorism.³⁴³ The Secretariat collaborates closely with member states, international bodies, and industry stakeholders to foster a culture of safety and security across the global maritime sphere.³⁴⁴

Another pivotal facet of IMO Secretariat's remit is its fervent advocacy for environmental sustainability within the shipping domain.³⁴⁵ Acknowledging the profound ecological ramifications of maritime activities, IMO has instituted a comprehensive regulatory framework to address issues such as emissions control, ballast water management, and the mitigation of marine pollution stemming from vessels.³⁴⁶ The Secretariat lends support to the implementation of these regulations through the provision of technical aid, research initiatives, and the facilitation of collaborative ventures among stakeholders.³⁴⁷

Furthermore, the Secretariat serves as a nexus for the exchange of information and the promotion of capacity-building endeavors pertinent to maritime affairs.³⁴⁸ Through the facilitation of workshops, training initiatives, and informational publications, the Secretariat disseminates knowledge and fosters the nurturing of human capital within the maritime sector.³⁴⁹ By championing educational initiatives and professional development endeavors, the Secretariat contributes to the augmentation of maritime competencies and expertise on a global scale.³⁵⁰

In summation, the Secretariat of IMO occupies a multifaceted role in the advancement of the organization's mission and objectives. From furnishing administrative support and advocating for

³⁴² See *Maritime Security*, IMO, <https://www.imo.org/en/OurWork/Security/Pages/GuideMaritimeSecurityDefault.aspx#:~:text=The%20IMO%20secretariat%2C%20in%20particular,and%20suppress%20piracy%2C%20armed%20robbery> [<https://perma.cc/LHB6-6LJ9>].

³⁴³ *Id.*

³⁴⁴ *Id.*

³⁴⁵ *Ballast Water Management*, IMO, <https://www.imo.org/en/ourwork/environment/pages/ballastwatermanagement.aspx> [<https://perma.cc/C2ZJ-KJ6X>].

³⁴⁶ *Id.*

³⁴⁷ *Id.*

³⁴⁸ *Integrated Technical Cooperation Programme (ITCP)*, IMO, <https://www.imo.org/en/OurWork/TechnicalCooperation/Pages/ITCP.aspx> [<https://perma.cc/Y855-6F2Z>].

³⁴⁹ *Id.*

³⁵⁰ *Id.*

international conventions to bolstering maritime safety, security, and environmental integrity, the Secretariat stands as a linchpin in shaping the trajectory of the global shipping industry. Through its unwavering dedication and commitment to excellence, the IMO Secretariat continues to engender invaluable contributions to the safety, security, and sustainability of maritime transportation on a global scale.

IV. CONCLUSION

The Chicago Convention is primarily concerned with the regulation of international civil aviation. It sets out principles and procedures to ensure the safe and orderly development of international air navigation.³⁵¹ Additionally, through its Annexes, it establishes SARPs pertaining to airspace sovereignty, aircraft registration, airworthiness, and aviation security.³⁵² Conversely, the IMO Convention addresses various aspects of international maritime transportation.³⁵³ This includes issues related to safety, security, environmental protection, and the efficiency of shipping operations.³⁵⁴ The Chicago Convention established ICAO, which is tasked with promoting the safe and orderly development of international civil aviation.³⁵⁵ Similarly, IMO is established by the IMO Convention with a specific mandate to regulate shipping and promote maritime safety, security, and environmental protection.³⁵⁶

In terms of regulatory authority, the ICAO, created under the Chicago Convention, is responsible for formulating and maintaining SARPs concerning aviation safety, security, efficiency, and environmental protection.³⁵⁷ Member states are obliged to adhere to these standards and practices.³⁵⁸ On the other hand, IMO is tasked with developing and enforcing international regulations, standards, and guidelines pertaining to maritime safety, security, pollution prevention, and maritime transportation.³⁵⁹

³⁵¹ Chicago Convention, *supra* note 1, at 296.

³⁵² *Id.* at 356.

³⁵³ See *Basic Documents: Volume I*, IMO, at 3 (2023), [https://wwwcdn.imo.org/localresources/en/KnowledgeCentre/Documents/KD001E%20-%202023%20Edition%20\(Secretariat\).pdf](https://wwwcdn.imo.org/localresources/en/KnowledgeCentre/Documents/KD001E%20-%202023%20Edition%20(Secretariat).pdf) [<https://perma.cc/A86M-9GEZ>].

³⁵⁴ *Id.*

³⁵⁵ Chicago Convention, *supra* note 1, at 296.

³⁵⁶ See *Basic Documents: Volume 1*, *supra* note 362, at 3.

³⁵⁷ Chicago Convention, *supra* note 1, at 320.

³⁵⁸ *Id.*

³⁵⁹ See *Basic Documents: Volume 1*, *supra* note 362, at 3–4.

It can also be mentioned that the Chicago Convention primarily focuses on matters related to civil aviation, such as air navigation, aircraft operations, air traffic management, airport infrastructure, aviation safety, security, and environmental protection.³⁶⁰ In contrast, the IMO Convention addresses a broad spectrum of maritime issues, including ship design and construction, navigation and communication equipment, crew training and certification, maritime search and rescue, pollution prevention, ballast water management, and the transportation of dangerous goods by sea.³⁶¹

While both the Chicago Convention and IMO Convention are international agreements aimed at regulating modes of transportation, they diverge in terms of their focus, establishment, regulatory authority, and areas of regulation. The Chicago Convention predominantly governs international civil aviation through ICAO, while IMO Convention centers on international maritime matters under the purview of IMO.

To be more specific with regard to ICAO, there are retrogressive features brought to bear by the Chicago Convention which, notwithstanding its wisdom and adaptability, is antiquated in certain areas which need review. The “equal application” provisions within the Chicago Convention offer both advantages and obstacles.³⁶² While ICAO has set numerous standards, many of them remain unimplemented.³⁶³ Ensuring consistent and reliable funding for the organization’s operations is essential for its sustainability.³⁶⁴ Additionally, there is a pressing need to address transparency and accessibility deficiencies within the organization, as well as to boost morale among its Secretariat members.³⁶⁵ Integrating the Organization more deeply into the United Nations system is also crucial.³⁶⁶ One commentator has opined that, considering the evolving needs of modern aviation, it may be beneficial for a third-party “group of wise persons” to conduct a strategic evaluation of ICAO’s mission and adaptability.³⁶⁷ De-

³⁶⁰ Chicago Convention, *supra* note 1, at 320.

³⁶¹ See Basic Documents: Volume 1, *supra* note 362, at 12.

³⁶² Chris Lyle, *ICAO in need of reforms to enhance its relevance – now is opportune*, CAPA: CENTRE FOR AVIATION (Oct. 2021), <https://centreforaviation.com/analysis/reports/icao-in-need-of-reforms-to-enhance-its-relevance—now-is-opportune-580003> [<https://perma.cc/N7ZC-GK9L>].

³⁶³ *Id.*

³⁶⁴ *Id.*

³⁶⁵ *Id.*

³⁶⁶ *Id.*

³⁶⁷ *Id.*

spite its undeniable success in promoting air navigation and international air transport, ICAO, established prior to the UN, has encountered limitations typical of multinational institutions.³⁶⁸ The convention's equal application provisions essentially mandate a top-down regulatory approach, wherein SARPs serve as quasi-legislative norms agreed upon by member states.³⁶⁹ Consequently, while ICAO sets global minimum standards, individual countries may enforce more stringent regulations within their borders, especially concerning economic and environmental matters like taxes and charges, which can provoke sovereignty-related concerns.³⁷⁰

Both ICAO and IMO show slow progress as well as external influence when it comes to responding to emissions and climate change. In a way, ICAO is weaker than its counterpart in that ICAO's tool, CORSIA (Carbon Offsetting and Reduction Scheme for International Aviation), is somewhat insouciantly couched in a series of Assembly Resolutions—which are essentially results of political compromises—leaving discretion for States to record differences to their provisions, as well as in Annex 16 (Part IV) to the Chicago Convention, which again is discretionary.³⁷¹

After ICAO Assembly's approval in 2010 of the concept forwarded by IATA of achieving “carbon neutral growth” starting from 2020, ICAO devised CORSIA as the primary global mechanism to mitigate emissions, accompanied by standards concerning the “Monitoring, Reporting, and Verification” of emissions.³⁷²

³⁶⁸ *Id.*

³⁶⁹ *Id.*

³⁷⁰ *Id.*

³⁷¹ Article 38 of the Chicago Convention provides for departure from International standards and Recommended Practices of an Annex by saying “Any State which finds it impracticable to comply in all respects with any such international standards or procedure, or to bring its own regulations or practices into full accord with any international standard or procedure after amendment of the latter, or which deems it necessary to adopt regulations or practices differing in any particular respect from those established by an international standard, shall give immediate notification to the International Civil Aviation Organization of the differences between its own practice and that established by the international standard. In the case of amendments to international standards, any State which does not make the appropriate amendments to its own regulations or practices shall give notice to the Council within sixty days of the adoption of the amendment to the international standard, or indicate the action which it proposes to take. In any such case, the Council shall make immediate notification to all other States of the difference which exists between one or more features of an international standard and the corresponding national practice of that State.” See Chicago Convention, *supra* note 1, art. 38.

³⁷² Lyle, *supra* note 371.

However, CORSIA, being essentially a compromise among States due to the Chicago Convention's hierarchical regulatory framework, is now deemed insufficient to address the urgency of climate change and fulfill aviation's obligations under the 2015 Paris Agreement.³⁷³

Moreover, ICAO stipulates that CORSIA should serve as the sole global market-based measure for CO₂ emissions from international aviation, a decision intended to limit the efforts of countries with more ambitious goals but inconsistent with the bottom-up approach of the Paris Agreement, which emerged after the top-down strategy faltered in Copenhagen in 2009.³⁷⁴ Addressing emissions in aviation presents a more complex challenge compared to that of aircraft noise, not only due to its heightened importance but also because the phase-out of Chapter 2 aircraft only applied to countries opting to restrict their operation initially, leaving room for continued use elsewhere.³⁷⁵ The impact of aircraft emissions on climate change transcends borders, highlighting the necessity for ICAO to effectively respond to the Paris Agreement, ideally before its Assembly Session in 2022. However, the organization's ability to do so remains uncertain, given its prolonged deliberation over the feasibility of a long-term emissions target for the past eleven years.³⁷⁶ In a proactive move, IATA took the initiative at its October 2021 AGM by setting a long-term emissions goal for its member airlines and urging ICAO to adopt a comparable ambition for the industry as a whole.³⁷⁷

IMO on the other hand has more legal legitimacy than ICAO in that it follows specific provisions of IMO Convention on environmental protection. However, in policy both ICAO and IMO are circumscribed by two regressive concepts: Common but Differentiated Responsibilities and Respective Capabilities (CBDR-RC). The principles of non-discrimination/no more favorable treatment and common but differentiated responsibilities and respective capabilities are inherently contradictory.³⁷⁸ In the case of IMO, CBDR-RC was introduced to appease certain developing countries, including Brazil, Saudi Arabia, and India, who staunchly advocate for it.³⁷⁹ As for ICAO, accommodating

³⁷³ *Id.*

³⁷⁴ *Id.*

³⁷⁵ *Id.*

³⁷⁶ *Id.*

³⁷⁷ *Id.*

³⁷⁸ Harilaos N. Psaraftis & Chrisos A. Kontovas, *Influence and transparency at IMO: the name of the game*, 22 MARITIME ECON. & LOGIST. 151, 166 (2020).

³⁷⁹ *Id.*

developing countries (including China and India) on CBDR-RC was the issue. According to this principle, which dates back to the Kyoto Protocol,³⁸⁰ developing nations argue for a “differentiated” obligation, implying a lesser responsibility compared to developed countries in reducing greenhouse gas (GHG) emissions.³⁸¹ Some commentators have asserted that this principle poses a significant barrier to any advancements in reducing maritime GHG emissions.³⁸² Overcoming or abolishing CBDR-RC is deemed essential for any meaningful progress.³⁸³ As long as CBDR-RC persists, primarily for political reasons, accusations of the industry’s inertia regarding GHG reduction miss the mark entirely.³⁸⁴

IMO is seemingly making some progress as Member States of IMO, in their endeavor to diminish greenhouse gas (GHG) emissions, are contemplating the implementation of a compulsory fuel oil surcharge. This levy aims to finance research and development initiatives focused on advancing low-carbon and zero-carbon shipping technologies.³⁸⁵

A closer look at the Chicago Convention gives rise to some concern. For example, the abundance of SARPs within the ICAO framework prompts considerations of their relevance, with

³⁸⁰ The Kyoto Protocol, adopted on December 11, 1997, and enforced on February 16, 2005, served as a global treaty with the objective of curbing greenhouse gas emissions to combat climate change. Although the Kyoto Protocol lacked a pre-determined end date, its initial commitment phase spanning from 2008 to 2012 officially concluded on December 31, 2012. *What is the Kyoto Protocol?*, UNFCCC, https://unfccc.int/kyoto_protocol [<https://perma.cc/C2B8-4B7V>]. While the Kyoto Protocol predominantly targeted emissions from fixed sources like factories and power plants, it didn’t directly regulate emissions from international aviation and maritime activities. Nonetheless, Article 2.2 of the Kyoto Protocol indirectly tackled emissions from these sectors, urging member nations to endorse energy sources and technologies with lower greenhouse gas outputs, including those from international aviation and maritime bunker fuels. Kyoto Protocol to the United Nations Framework Convention on Climate Change, Dec. 10, 1997, 2303 U.N.T.S. 162, at 215. Additionally, it recognized the roles of ICAO and IMO in addressing emissions from these industries. Following agreements like the Paris Agreement of 2015, subsequent climate negotiations have incorporated provisions specifically addressing emissions from international aviation and maritime transport, emphasizing the need for countries to address emissions from these sectors. *International Policy Framework on Climate Change*, IMO: MARINE ENVIRONMENT, <https://www.imo.org/en/OurWork/Environment/Pages/Historic-Background.aspx#> [<https://perma.cc/6WT6-SQ3J>].

³⁸¹ Psaraftis, *supra* note 387, at 166.

³⁸² *Id.* at 167.

³⁸³ *Id.*

³⁸⁴ *Id.*

³⁸⁵ Baine Kerr, *Binding the International Maritime Organization to the United Nations Convention on the Law of the Sea*, 19(2) INT’L ORGANIZATIONS LAW REVIEW 391 (2022).

potential outdatedness or overlap requiring a comprehensive review and streamlining effort.³⁸⁶ Emphasizing the implementation of SARPs has been a longstanding objective for ICAO, aligned with its “No country left behind” philosophy; however, further actions are warranted to enhance regional application, possibly leveraging the strengthening of ICAO’s regional offices as a means to facilitate greater adherence to standards.³⁸⁷

The adequacy of traditional funding mechanisms for ICAO’s activities comes under scrutiny, particularly in light of persisting challenges related to late or unpaid dues from Member States.³⁸⁸ Budget constraints, exemplified by the “Zero Nominal Growth” principle, may necessitate reassessment, especially with the addition of new initiatives like the audit function and environmental protection efforts. There’s a need to explore alternative sources of income, potentially extending the Ancillary Revenue Generation Fund to secure contributions from private entities while ensuring the organization’s impartiality.

Transparency in ICAO’s decision-making processes warrants improvement, notably by adopting practices that align with other UN entities, such as making council sessions more accessible and publishing working papers. Similarly, opening up participation to a wider array of interested parties, including environmental NGOs, could enrich discussions and foster broader collaboration.

Addressing morale within the Secretariat emerges as a priority, acknowledging reports of a toxic work environment stemming from perceived politically influenced management. Efforts to boost morale and address administrative concerns, including unresolved issues like data hacking incidents, should be undertaken promptly to cultivate a more positive organizational culture.³⁸⁹

ICAO’s delineation of responsibilities between its Council and Secretariat requires clarity, with potential overlaps hindering impartial decision-making. Enhanced integration into the UN family could mitigate silo mentalities and promote collaboration with relevant bodies, particularly on environmental matters.

ICAO should seek opportunities for strategic reform, with a commitment to governance enhancement, organizational restructuring, and digital transformation.³⁹⁰ Yet, significant changes may necessitate backing from the Council or Assembly, requir-

³⁸⁶ Lyle, *supra* note 371.

³⁸⁷ *Id.*

³⁸⁸ *Id.*

³⁸⁹ *Id.*

³⁹⁰ *Id.*

ing proactive engagement and consensus-building.³⁹¹ Given the longstanding recognition of the need for substantial reforms within ICAO, external evaluation through a “group of wise persons” or similar independent body could provide valuable insights and recommendations for modernization.³⁹² Establishing metrics of accountability and potentially a permanent independent assessment body could ensure ongoing scrutiny and alignment with the organization’s mandate. Ultimately, the modernization of ICAO is imperative to meet the evolving needs of aviation and remain relevant in shaping its future trajectory.³⁹³ Amidst industry challenges and calls for direction, ICAO has a pivotal role to play in effecting meaningful change and advancing global aviation.

As for IMO, in 2018 Transparency International, a global non-governmental organization headquartered in Berlin, published a comprehensive report evaluating the governance structure of IMO.³⁹⁴ The report identified several shortcomings in IMO’s governance framework, citing an imbalanced influence of private industry and certain Member States in the decision-making process.³⁹⁵ It also underscored issues regarding delegate accountability, noting a lack of transparency surrounding national delegations’ positions during debates and negotiations.³⁹⁶ An earlier summary of the report, released in April 2018, raised additional concerns.³⁹⁷

Media coverage of IMO meetings is restricted, hindering journalists’ ability to report freely, while non-governmental organizations with consultative status risk expulsion for criticizing the agency or disclosing country views.³⁹⁸ Member States have the authority to appoint corporate employees, including those from shipping companies, to their delegations, resulting in their dominance within some delegations.³⁹⁹ These delegates wield considerable influence over their government’s stance on IMO policies without being bound by conflict of interest regulations or a code of conduct.⁴⁰⁰

³⁹¹ *Id.*

³⁹² *Id.*

³⁹³ *Id.*

³⁹⁴ TRANSPARENCY INTERNATIONAL, GOVERNANCE AT THE INTERNATIONAL MARITIME ORGANISATION: THE CASE FOR REFORM (2018).

³⁹⁵ *Id.* at 2.

³⁹⁶ *Id.* at 3.

³⁹⁷ *Id.* at 2.

³⁹⁸ *Id.* at 15.

³⁹⁹ *Id.* at 3.

⁴⁰⁰ *Id.*

It has been submitted that, despite IMO's essential role and overall satisfactory performance, there are areas where its governance appears to lag, leaving room for significant enhancement.⁴⁰¹ Particularly, the rules governing representation are perceived as too lenient, potentially leading to situations that undermine transparency and fairness.⁴⁰² Various factors, predominantly of a political nature, contribute to the slow progress in the regulatory process aimed at decarbonizing shipping. However, there is no apparent evidence of deliberate collusion among IMO stakeholders to impede this effort.⁴⁰³ Concerning the shipping industry's commitment to driving decarbonization, there is insufficient evidence to support the notion of a deliberate obstruction.⁴⁰⁴ Nonetheless, a more assertive approach, beyond the recent proposal for a \$2 per ton research and development fund, is deemed necessary to effectively meet IMO's decarbonization targets.

Key IMO member states such as Japan, the USA, Germany, Norway, and China wield significant influence over IMO policies, with Denmark and Korea also holding considerable sway.⁴⁰⁵ This influence is often matched or exceeded by the International Association of Classification Societies (IACS), whose members possess additional avenues to shape IMO policies beyond IACS itself. This arrangement represents a notable governance deficiency within IMO. Contrary to its status as the world's foremost shipping power in terms of controlled fleet, Greece maintains a relatively low-profile role within IMO and does not emerge as a prominent influencer in IMO affairs.

Opacity surrounding representation within certain delegations and NGOs further compounds governance issues within IMO, posing a significant challenge.⁴⁰⁶ Despite the European Union (EU) holding substantial potential to influence IMO initiatives, particularly regarding the pace of decarbonization and its alignment with the European Green Deal agenda, the EU has yet to fully leverage this potential, despite recent developments.⁴⁰⁷

It can be concluded that both ICAO and IMO, as specialized agencies of the United Nations in their respective fields, do not have the benefit of autonomy of the private sector and are obliged

⁴⁰¹ *Id.*

⁴⁰² Psaraftis, *supra* note 387, at 169.

⁴⁰³ *Id.*

⁴⁰⁴ *Id.*

⁴⁰⁵ *Id.*

⁴⁰⁶ *Id.*

⁴⁰⁷ *Id.*

to accommodate diverse interests and viewpoints of their Member States. ICAO demonstrates this position well in its mission statement, which states that the Organization's role is "to serve as the global forum of States for international civil aviation."⁴⁰⁸ ICAO develops policies and Standards, undertakes compliance audits, performs studies and analyses, provides assistance and builds aviation capacity through many other activities and the cooperation of its Member States and stakeholders.⁴⁰⁹ IMO's mission statement is "to promote safe, secure, environmentally sound, efficient, and sustainable shipping through cooperation."⁴¹⁰ IMO is responsible for the regulation of all facets pertaining to international shipping.⁴¹¹ IMO's main mission and responsibility is to develop and preserve a comprehensive framework of regulations and policies for the shipping industry and its activities.⁴¹² It also sets the rules for preventing ocean pollution and accident.⁴¹³ In both, the word "cooperation" stands out.

⁴⁰⁸ *Vision and Mission*, ICAO, <https://www.icao.int/about-icao/Council/Pages/vision-and-mission.aspx> [<https://perma.cc/2RJQ-97VC>].

⁴⁰⁹ *Id.*

⁴¹⁰ *Brief History of IMO*, IMO, <https://www.imo.org/en/About/HistoryOfIMO/Pages/Default.aspx> [<https://perma.cc/9KDW-AUDT>].

⁴¹¹ *Id.*

⁴¹² *Id.*

⁴¹³ *Id.*