Introduction

In November 1944, towards the end of the Second World War, representatives from fifty-four nations gathered in Chicago to design a blueprint for the worldwide regulation of post-war international civil aviation.1 The Conference resulted in the adoption of the Convention on International Civil Aviation (Chicago Convention) on 7 December 1944 and the establishment of the International Civil Aviation Organization (ICAO) on 4 April 1947, when the Convention came into force.2 The main mission of ICAO is to “insure the safe and orderly growth of international civil aviation throughout the world”.3 Accordingly, since the date of its birth, ICAO has been closely linked with aviation safety.4

More than sixty years have passed. Has ICAO lived up to the expectations of its founders? Some believe that it is “one of the most effective international organizations in the United Nations system”;5 others, while praising the work of its first 50 years, mention that it has been “losing ground” in the past decade.6 Without any doubt, ICAO is confronted with huge challenges. If it does not fare well, its constituents may bid farewell to it. If it does not wish to retire at the same age as a natural person normally does, it needs to re-juvenate itself.

The purpose of the current study is to explore, from a legal point of view, the safety mandate of ICAO in the context of international civil aviation. The

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2 Id. See ICAO Doc 7300/9 Convention on International Civil Aviation.
3 Art. 44 a), Chicago Convention. The Preamble also mentions that the undersigned governments have agreed on certain principles and arrangements in order that international civil aviation “may be developed in a safe and orderly manner”.
4 See infra Ch.1, 1.2 to 1.4. Throughout the present study, the term “safety” or “aviation safety” refers to the safety of international civil aviation. It does not deal with the use of aircraft for military services, or the law of air warfare, except to the extent that they have impact on the safety of international civil aviation.
6 Onidi, O., “A Critical Perspective on ICAO” (February 2008) xxxiii/1 Air & Space Law 38 at 38 and 41. It is said, among other things, that dramatic growth in air traffic and technical complexity of aviation have made ICAO’s role of maintaining a satisfactory safety system worldwide virtually unsustainable.
Introduction

The author intends to present, in retrospect, the major contributions of ICAO to the global safety framework. At the same time, on the basis of the lessons learned in the past, certain proposals will be made to rationalize the safety framework in order to enhance aviation safety through the rule of law.

Chapter 1 begins with the analysis of the concept of aviation safety, in view of the growing concern of the global aviation community on this matter. Commencing with a survey of different views about the definition of safety, it will try to focus on what safety means from a legislative point of view. Then the development of safety regulations in the history of civil aviation will be briefly reviewed, underlining the trend to move from national to international regulation. Following that is the demonstration of strong demands in the contemporary world for the improvement of safety, as well as the heavy responsibility put on ICAO in this respect.

The next three chapters cover the three major dimensions of safety concerns. Chapter 2 mainly addresses technical regulations of aviation safety. It describes the safety oversight function of States and the ICAO framework for the adoption of technical standards to deal with the natural or inherent hazards of aircraft operations, such as mechanical failure, bad weather or human errors. The more recent initiatives of ICAO to audit its member States for their compliance with ICAO provisions, as well as their legal basis, will be analyzed.

Chapter 3 considers the relations between military activities and aviation safety, as well as the work of ICAO in this respect. While military activities represent legitimate interests of States, they may present man-made dangers to civil aviation, if they are not properly coordinated. Interfaces between military activities and civil aviation sometimes present difficult issues, which require a careful study.

Chapter 4 deals with terrorist and other unlawful acts, which represent the most serious man-made dangers to civil aviation. The pioneering efforts of ICAO since 1960s in this area will be analyzed in the context of the new trend in the legislation against terrorism.

Chapter 5 will be the focus of the present undertaking. To meet with its new challenges, ICAO should learn from the past and muster for the future. If the organization is mandated to police aviation safety in the world, it must first and foremost be able to police itself. The past experience of ICAO has left abundant food for thought for its institutional reform, including a number of basic but crucial issues. What is the normative value of ICAO regulatory material? Is there any system of hierarchy for these norms? Are there any grounds to put safety considerations above some other considerations? How should ICAO stand vis-à-vis powerful States or regional organizations? What are the appropriate mechanisms for checks and balances in the ICAO’s decision-making process? While the answers to these questions may not be readily available, efforts should be made to tackle them with a view to enhancing the rule of law.