

ТЕОРІЯ ТА ІСТОРІЯ ДЕРЖАВИ І ПРАВА, МІЖНАРОДНЕ ПРАВО

DOI: 10.18372/2307-9061.68.17974

УДК 656.7.01:061.25 «71»:341(045)ICAO

Kateryna Vodolaskova,

PhD of Law

ORCID ID: <https://orcid.org/0000-0002-6133-822X>

Svitlana Holovko,

PhD of History, Associate Professor

ORCID ID: <https://orcid.org/0000-0003-0795-7166>

ICAO: HISTORICAL BACKGROUND, INSTITUTIONAL FRAMEWORK AND COMPETENCE

National Aviation University

Liubomyra Huzara Avenue, 1, 03058, Kyiv, Ukraine

E-mails: khusanova@gmail.com, golovkos@ukr.net

The purpose of the study is a historical and law analysis of the historical background of the formation and development of the ICAO as well as a legal framework of its institutional framework and competence stipulated in the Chicago Convention. Research methods: the methodological background of this study includes methods of historicism, analytics, formal-dogmatic and systemic. Results: this year, the National Aviation University is celebrating its 90th anniversary since its official foundation, when the Kyiv Aviation Institute was founded on the basis of the Aviation Faculty of KMI by Decree of the Council of People's Commissars of the USSR No. 1815 of 08/25/1933. However, in fact, the prerequisites for this official recognition and establishment were certain conditions based on enthusiasm, technical progress, the development of international civil aviation, and the need for a clear distinction between military and civil aviation. These and other conditions also became a condition for the creation of the ICAO – a specialized UN agency that organizes and coordinates international cooperation of states in all aspects of civil aviation. Discussion: this work is dedicated to research of the historical background, institutional framework, and competence of ICAO. These studies will also take contribution to the understanding of the conditions and background of formation and development of NAU in a more comprehensive way.

Key words: ICAO; the Chicago Convention; international conventions of the civil aviation law.

Problem statement. In connection with the need to regulate international air transport after the Second World War, the US government invited all states that participated in the war, as well as neutral states (except Argentina) to an international conference in Chicago. The decision to create the International Civil Aviation Organization (ICAO) was made on December 7, 1944, during the signing of the 'Chicago Convention' on International Civil Aviation. 37 participants among 52 signed the agreement, after which the Montreal organization temporarily began work under the name of the

PICAO, namely - Provisional International Civil Aviation Organization. The Convention entered into force in 1947, April, 4, and PICAO was replaced by ICAO. The location of the organization remained in Montreal. A month later, on May 13, 1947, ICAO received the status of a specialized agency of the UN in accordance with Article 57 of the UN Charter. Currently, 190 countries have joined ICAO. Seven local offices were established in Cairo, Mexico City, Lima, Bangkok, Nairobi, Dakar, and Paris, responsible for nine air service areas [1, p. 12-13]. ICAO works closely with other

agencies of the United Nations such as the WMO - World Meteorological Organization, the WHO - World Health Organization, the International Telecommunication Union, the International Maritime Organization, and the Universal Postal Union. Also a lot of non-governmental organizations take part of in the work of the ICAO, e.g., the IATA and the IFAPA - International Federation of Airline Pilots' Associations.

These and other conditions and historical background formed the whole vector of the civil aviation industry after the WW I till nowadays worldwide.

Main material. The history of ICAO is closely connected with the adoption of the Chicago Convention. The Chicago Convention is the main source of international public air law. Before the ratification of the Chicago Convention, PICAQ was established by 26 states. It was in effect from June 6, 1945, to April 4, 1947. By March 5, 1947, the 26th ratification was adopted. ICAO was established on April 4, 1947. In October of the same year, ICAO became a specialized UN agency affiliated with the ECOSOC - Economic and Social Council. [2, p. 62].

PICAQ operated until the entry into force of the Chicago Convention, but in no case did the interim period exceed three years from the entry into force of the Interim Agreement [3, p. 16].

The structure of PICAQ is defined in the Section 2 of Article I of the Interim Agreement on International Civil Aviation, where it is defined the ICAO will consist of an Interim Assembly and an Interim Council with the headquarter in Canada [4, Art. I].

After official creation there was lots of work to do before the opening of the first Interim Assembly of PICAQ. A suitable location needed to be found, one with enough space to handle all the expected delegates and advisers; rules and regulations needed to be established; agendas had to be approved, dates scheduled, and the size and shape of the secretariat needed to be discussed. The Interim ICAO Council would have to meet first, so it could produce a budget, but there was a question whether it should then issue the invitations for the Interim Assembly, or the members should be advised in advance to be prepared to come on short notice. Or could the Interim Council and Interim Assembly

meet, at the same time? It was not even completely clear what the roles of the president and secretary general would be. And membership on the Interim Council – would this be a full or part-time position? The Interim Agreement became effective on 6 June 1945, and the date for the first meeting of the Interim Council was set for August, by which time forty-four nations had accepted the agreement [5, p. 36].

Although not primarily a legal or judicial body, the PICAQ Board has had legal responsibilities since its inception. Legal capacity was defined in the Interim Agreement on International Civil Aviation as follows: the Organization has such legal capacity in the territory of each member state as may be necessary for the performance of its functions. Full legal personality is granted in cases where it is compatible with the constitution and laws of the respective state [4, Art. 1].

The main legal topics that the Council was most concerned about during the first year of PICAQ's existence were:

(a) Determining the conditions governing the submission to PICAQ and subsequent disposition of agreements relating to international air transport.

(b) Establishing rules and procedures for arbitration or taking other measures, as specified in the Interim Agreement, in matters arising between Member States.

(c) Study and further development of international conventions relating to air law [6, p. 46].

Hence, briefly summarizing the section on the PICAQ, we should focus on the fact that PICAQ consisted of the Interim (Provisional) Council and the Interim Assembly, and from June 1945 the Provisional Council met continuously in Montreal, Canada, and was composed of representatives of 21 member states. The first PICAQ Interim Assembly, the forerunner of ICAO's triennial assemblies in the modern era, was also held in Montreal in June 1946. On April 4, 1947, after a sufficient number of ratifications of the Chicago Convention, the provisional aspects of PICAQ were not accepted. adoptive. more relevant, and it officially became known as ICAO [7].

Therefore, the second quarter of 1947 saw the transition from PICAQ to ICAO, from a temporary to a permanent aviation organization. On April 4,

the Chicago Convention entered into force, and on May 6, the First Assembly of the permanent ICAO opened in Montreal [8, p. 416]. Before adjourning on 27 May, the Assembly, among other things, established ICAO's general policy for its first year of operation and adjusted ICAO's relationship with the United Nations by excluding Franco Spain from membership. On the other hand, it failed (similar to the Chicago Conference of 1944 and the PICAQ Assembly of 1946) to conclude an acceptable multilateral agreement on commercial air rights [7]. In the area of international private air law, it was also impossible to conclude a convention on rem rights to aircraft, as many had hoped.

The 21-member ICAO Council, which was elected by the Assembly for a three-year term, opened its first session on 28 May. The Council was expected to adjourn until July 1 and reconvene on September 2. During the first few weeks, the Council devoted its meetings almost entirely to organizational issues. Dr. Edward Warner was unanimously elected President of the ICAO Council, and Dr. Albert Roper was elected Secretary-General of ICAO. Both held respective positions in the temporary organization [9, p. 381]. At the beginning of June, the Council's committee on air navigation and air transport also started its work. During the second quarter, the only purely technical meeting was the Euro-Mediterranean Air Traffic Control Conference PICAQ (second special session). Meeting in Paris from 15 to 25 April, this conference agreed on the air traffic control procedures necessary for next winter's operations in the area under its jurisdiction, based on the experience of the previous winter. It also agreed on the dates when these procedures should come into force. As of June 15, forty-three states have joined ICAO, the latest being Iraq and El Salvador. At the time PICAQ became a permanent organization, the membership numbered fifty [9, p. 384].

Thus, these delegates met at a very dark time in human history and traveled to Chicago at great personal risk. Many of the countries they represented were still occupied. Ultimately, 54 of the 55 invited nations participated in the Chicago Conference, and by the time it ended on December 7, 1944, 52 of them had signed the new Convention on

International Civil Aviation, which was implemented [10, p. 68].

This landmark agreement, known then and today more widely as the "Chicago Convention", laid the foundation for the standards and procedures of peaceful global air navigation.

The Chicago Convention set forth the purpose of ICAO. The main goal of ICAO is the development of international air traffic. In addition, unified and universal regulation is aimed at ensuring the safe and orderly development of civil aviation and creating a single basis for the functioning of international air services. In accordance with Article 44 of the Chicago Convention, the ICAO develops principles and technical methods for the economic and safe development of international air traffic. In particular, this includes ensuring the safe and orderly development of international civil aviation throughout the world, promoting the construction and operation of aircraft for peaceful purposes, encouraging the development of airways, airports and air navigation facilities, and preventing economic waste caused by unreasonable competition. In addition, the rights of States Parties and their ability to operate international air services should be fully respected, any discrimination between States Parties should be avoided and flight safety should be promoted. These goals are mainly implemented by directives and recommendations. There is broad uniformity in certain areas due to the adoption of 18 annexes in many jurisdictions: aircrew accreditation, air traffic regulations, meteorological services, air tickets, telecommunications standardization, aircraft operation, government ownership and marking of aircraft, airworthiness, approach facilitation and admission to aircraft, air traffic control services, flight signal service systems, aviation accident investigation, search and rescue services, classification and establishment of airports, air safety air noise, flight information services, and safety regulations for the carriage of dangerous goods. These annexes are complemented by numerous ICAO technical publications that promote further standardization and facilitate the integration of worldwide flight surveillance, communications and search and rescue services. On the other hand, ICAO provides international development assistance by delegating experts to developing countries and providing financial re-

sources for educational purposes and educational institutions in many countries [11, p. 212].

ICAO has three main bodies: the Council, the General Assembly and the General Secretariat.

The Council, as a permanent executive body, is elected by the General Assembly for a term of three years and consists of representatives of 36 contracting states.

ICAO has seven regional offices responsible for nine different air navigation regions (Bangkok for Asia and the Pacific, Cairo for the Middle East, Dakar for West and Central Africa, Lima for South America, Mexico City for North and Central America and the Caribbean, Nairobi for East and South Africa and Paris for Europe and the North Atlantic).

In addition, the Council performs arbitration functions in resolving disputes regarding the interpretation and application of the Chicago Convention and its annexes. Procedural rules are based on ICIJ (International Court of Justice) rules.

The sovereign body of ICAO is the General Assembly, which consists of representatives of all contracting states. The third body of ICAO is the Secretariat, which is located at the headquarters of the organization in Montreal. It is headed by the General Secretary, who is elected for three years [12, p. 89].

Conclusions. Since its establishment, ICAO has confirmed its competence, in particular, regarding the unification of national air traffic rules. The 18 annexes to the Chicago Convention make a particularly significant contribution to the improvement of flight safety. Today's law on civil aviation would be impossible to imagine without ICAO.

Drafted in 1944 by 54 nations, the Chicago Convention on International Civil Aviation was created to promote cooperation and establish and maintain friendship and mutual understanding among the nations and peoples of the world.

References

1. Schäffer H.F. Von Kitty Hawk nach Montreal – Der Weg zur International Civil Aviation Organisation (ICAO). TranspR, 2003, 377 p.
2. Mackenzie D. PICAO: An International Conference Always at Work. ICAO: A History of the International Civil Aviation Organization, Toronto: University of Toronto Press, 2018, 354 p.
3. What is PICAO? Provisional International Civil Aviation Organization. USA: University of Michigan, 1946, 22 p.
4. United Nations: Interim Agreement on International Civil Aviation. The American Journal of International Law. Vol. 40, No. 2, Official Documents (Apr., 1946, 23 pages), pp. 63-85, Art. 1. DOI: <https://doi.org/10.2307/2213814>
5. Dobson A. A History of International Civil Aviation: From Its Origins Through Transformative Evolution. The Netherlands: Routledge, 2017, 380 p. DOI: <https://doi.org/10.4324/9781315180601>
6. Jacob Schenkman. International Civil Aviation Organization. USA: E. Droz, 1955. 410 p.
7. The CAA, PICAO, and the Establishment of International Aviation Standards. URL: <https://www.faa.gov/about/history/pioneers/media/PICAO.pdf>
8. Warner E. PICAO and the Development of Air Law. Journal of Air Law and Commerce, 1947, Vol. 14, Issue 1, pp. 385-419.
9. International Civil Aviation Organization (ICAO). 14 J. AIR L. & COM. 378, 1947, P. 377-385. URL: <https://scholar.smu.edu/jalc/vol14/iss3/11>.
10. Abeyratne, Ruwantissa I.R. Frontiers of Aerospace Law. Routledge, 2017. 362 p. DOI: <https://doi.org/10.4324/9781315254852>
11. Behind and Beyond the Chicago Convention. The Evolution of Aerial Sovereignty / Pablo Mendes de Leon & Niall Buissing / The Netherlands: Wolters Kluwer, 2019. 510 p.
12. Michael Milde. International Air Law and ICAO. The Netherlands: 2008, 492 p.

ІКАО: ІСТОРИЧНА ДОВІДКА, ІНСТИТУЦІЙНА БАЗА ТА КОМПЕТЕНЦІЯ

Національний авіаційний університет
проспект Любомира Гузара, 1, 03058, Київ, Україна
E-mails: khusanova@gmail.com, GolovkoS@ukr.net

Метою дослідження є історико-правовий аналіз історичних передумов становлення та розвитку ІКАО, а також правової основи її інституційної бази та компетенції, передбаченої Чиказькою конвенцією. **Методи дослідження:** методологічне підґрунтя даного дослідження включає методи історизму, аналітичний, формально-догматичний та системний. **Результатами:** цього року Національний авіаційний університет відзначає своє 90-річчя з дня офіційного заснування, коли Постановою Ради Народних Комісарів СРСР № 1815 від 25.08.1933 р. на базі авіаційного факультету КПІ було засновано Київський авіаційний інститут. Однак фактично передумовами для цього офіційного визнання та встановлення були певні умови, засновані на ентузіазмі, технічному прогресі, розвитку міжнародної цивільної авіації та необхідності чіткого розмежування між військовою та цивільною авіацією. Ці та інші умови стали підставою також і для створення ІКАО – спеціалізованої установи ООН, яка організовує та координує міжнародне співробітництво держав у всіх аспектах цивільної авіації. **Обговорення:** дана робота присвячена дослідженню історичних передумов, інституційної основи та компетенції ІКАО. Ці дослідження також сприятимуть більш комплексному розумінню умов та передумов становлення та розвитку НАУ.

Ключові слова: ІКАО; Чиказька конвенція; міжнародні конвенції міжнародного цивільного права.

Стаття надійшла до редакції 07.09.2023