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Enhancing the Enforcement Powers of ICAO in Aviation Safety and Security

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Enhancing the Enforcement Powers of ICAO in Aviation Safety and Security

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Summary. The objective of this article is to determine the improvements required by ICAO's institutional mechanisms so to enforce compliance with Standards contained in Annexes to the Chicago Convention, detailing preventive safety or security measures. To offer a comprehensive study, the article analyses the enforcement measures under international law, the enforcement mechanisms of organising it internationally, the monitoring mechanisms of ICAO, and the mechanism on the settlement of disputes included in the Chicago Convention. The article recommends a number of amendments to the Chicago Convention and analyses the challenges to achieve such recommendations.
Keywords: International Law, Chicago Convention, Enforcement, Settlement of Disputes.

ICAO vykdymo galių stiprinimas aviacijos saugos ir saugumo srityje

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Santrauka. Šio straipsnio tikslas – nustatyti patobulinimus, kurių reikia ICAO instituciniams mechanizmams, siekiant užtikrinti, kad būtų laikomasi Čikagos konvencijos prieduose esančių standartų, kuriuose išsamiai aprašomos prevencinės saugos ar saugumo priemonės. Siekiant pasiūlyti išsamų tyrimą, straipsnyje buvo analizuojamos tarptautinės teisės vykdymo priemonės, tarptautinės organizacijos vykdymo mechanizmai, ICAO stebėsenos mechanizmai ir Čikagos konvencijoje numatytas ginčų sprendimo mechanizmas. Straipsnyje rekomenduojami keli Čikagos konvencijos pakeitimai ir analizuojami iššūkiai, su kuriais susiduriama siekiant tokių rekomendacijų.
Pagrindiniai žodžiai: tarptautinė teisė, Čikagos konvencija, vykdymas, ginčų sprendimas

Introduction

In its preamble, the *Chicago Convention on International Civil Aviation* establishes as its goal the development of international civil aviation "in a safe and orderly manner" (Chicago Convention, Preamble). Furthermore, the ICAO Assembly continuously confirms that aviation safety and security remain the

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highest priorities for ICAO (Assembly Resolution A35-06, 2024, p. 23). Here, it is pertinent to make a very brief sidenote on the difference between aviation safety and security. The aim of aviation safety is to safeguard civil aviation against technical and operational hazards, while the aim of aviation security is to safeguard civil aviation against acts of unlawful interference, such as hijacks, sabotages, and other terrorist acts. While aviation safety protects civil aviation against accidents, aviation security protects civil aviation against premeditated attacks (Rossi Dal Pozzo 2015, p. 10–11).

For international civil aviation to develop in a safe and secure manner, the risks that accidents or premeditated attacks occur must be mitigated to acceptable levels by preventive measures (ICAO Working Paper AN-WP/7699, 2001, para. 2.2). The Chicago Convention empowers ICAO to manage the risks to civil aviation globally by establishing aviation safety and security rules that detail preventive measures (Chicago Convention, Articles 37, 44, 54, and 90). Nevertheless, establishing rules is not enough. As stated by the ICAO Secretariat, it is necessary that the rules are transposed, monitored and enforced by States. The establishment, transposition, monitoring and enforcement of rules are different stages in the regulatory process of aviation safety and security (Manual on notification and publication of differences, 2018, point 2.3.2).

Establishing rules on a global level entails the adoption of new rules by ICAO principally in the form of Standards and Recommended Practices (SARPs) contained in Annexes to the Chicago Convention. The ICAO Assembly defined Standards as those specifications which are "necessary for the safety or regularity of international air navigation and to which Contracting States shall conform in accordance with the Chicago Convention." Recommended Practices were defined by the ICAO Assembly as those specifications which are "desirable in the interests of safety, regularity or efficiency of international air navigation and to which Contracting States shall endeavour to conform in accordance with the Chicago Convention" (Assembly Resolution A1-31, 1947, p. 27–29).

Various literature has already been written on the differences in the legal effects of Standards and Recommended Practices. For the scope of this article, it suffices to note that Standards are obligatory on States, while Recommended Practices are not (McClean et al., 2014, Vol. 1, p. 20–21). Under the Chicago Convention, States have the possibility to opt-out from the Standards by notifying ICAO of the differences between their national laws or policies and the Standards (Chicago Convention, Article 38). This means that States are expected to comply with the Standards or to file differences with ICAO. For Recommended Practices, the Chicago Convention does not specify that States must inform ICAO of the differences between their national laws or policies and Recommended Practices, which indicates that notification is not necessary as Recommended Practices are not obligatory (Van Antwerpen 2007, p. 37).

Transposition involves that States incorporate such Standards into national laws or policies. Subsequently, the Standards should be applied in practice. In case the Standards are applied by private or corporatized entities, such as air carriers, airport operators, air traffic control agencies and other parties in the aviation industry, States have the obligation to ensure that the Standards are indeed complied with through monitoring and enforcement (Huang 2008, p. 92, 280).

Monitoring refers to those activities by States serving the objective to either verify compliance by private entities with the Standards (and possibly detecting non-compliance), or to investigate alleged violations of the Standards. Enforcement includes those activities of States to mitigate non-compliances with the Standards, such as the revocation of authorisations and licenses, or the application of fines against non-compliance (Joosen et al. 2021, p. 7).

Furthermore, ICAO monitors through its audit programmes that States comply with their duties of transposing, monitoring and enforcing the Standards (Manual on Notification and Publication of Differ-

ences, 2018, point 2.3.2). In cases when ICAO, identifies that a State is not complying with its duties, ICAO can make use of institutional mechanisms, stipulated in the Chicago Convention, through which it can put pressure on the defaulting State to rectify the non-compliance (Huang 2008, p. 105, 274).

The objective of this article is exactly to determine the improvements that need to be made to the institutional mechanisms, through which ICAO may enforce compliance with the Standards. This article will also analyse the challenges to bring about the necessary improvements to these institutional mechanisms.

1. Enforcement under international law

Enforcement refers to the authority to apply sanctions against non-compliance with legal obligations. Under international law if States do not comply with their international obligations, other States may apply sanctions, such as economic measures, to put pressure on governments to comply with their international obligations (Kirgis 1996).

The Vienna Convention (1969) permits the termination or suspension of a bilateral treaty as reprisals against a material breach of the treaty, the principle of *inadimplendi non est adimplendum*. The right of injured States to terminate or suspend treaties arises only if the breach is a material one that is a violation of a provision essential to accomplish the objective of a treaty (Vienna Convention, Articles 60(1) and 60(3)).

The Vienna Convention (1969), however, limits the right of States to terminate or suspend multilateral treaties due to material breaches. Multilateral treaties may be terminated or suspended, due to a material breach, if there is unanimous agreement between all the parties and not by a single State (Vienna Convention, Article 60(2)). In fact, the suspension of the Chicago Convention by a single State, on the basis of a material breach, was not accepted by the ICAO Council and subsequently by the ICJ. The ICJ in the *Appeal relating to the Jurisdiction of the ICAO Council*, supported the decision of the ICAO Council that India did not have the right to unilaterally suspend the Chicago Convention in relation to Pakistan on the basis of an alleged material breach of the Convention for which Pakistan was responsible. The ICJ specified that the suspension or termination of the Chicago Convention on the basis of a material breach must be done by an independent body, like the ICAO Council, and not by the disputing parties (*India v Pakistan*,1972, para. 38).

Another important exception that limits the right of States to terminate or suspend treaties as a result of a material breach is the provisions relating to the protection of the human being contained in treaties of a humanitarian character (Vienna Convention, Article 60(5)). The ultimate aim of treaties, such as the Tokyo Convention (1963), The Hague Convention (1970), the Montreal Convention (1971), and the Beijing Convention (2010), is the protection of the human being. In their preambles, such treaties mention that their purpose is to deter acts which would jeopardise the safety of aircraft and persons by providing appropriate measures for the punishment of offenders. It is, hence, the opinion of the author that such treaties fall within the scope of Article 60(5) of the Vienna Convention and may not be terminated or suspended by a single State on the basis of a material breach.

2. Enforcement by international organisations

Depending on their constituent instrument, international organisations may also possess the authority to apply sanctions against States for non-compliance with treaty rules. For instance, the United Nations

Security Council acting under Chapter VII of the UN Charter may impose measures to rectify threats to peace, breaches of peace and acts of aggression (Charter of the UN, 1945, Article 39). Such measures may be the interruption of economic relations and the severance of diplomatic relations. Constituent instruments of specialised agencies of the UN may also provide for the suspension of the voting power of States that do not comply with treaty rules (Kirgis 1996).

The UN and its specialised agencies have developed institutional mechanisms short of Chapter VII sanctions but which still put pressure on non-complying governments. Noteworthy in this regard are the mechanisms to monitor compliance with treaty rules and to 'name-and-shame' States with recurring non-compliance. Furthermore, in cases where non-compliance is due to lack of technical capacity, specialised agencies of the UN that possess the necessary resources may offer technical assistance, which, together with persuasion, may generate the will for the rectification of the non-compliance (Kirgis 1996).

3. Enforcement mechanisms within ICAO

Within ICAO, compliance with the Standards is usually obtained by the common consent of Contracting States to make international civil aviation function safely and securely as a transport system rather than by enforcement measures. In aviation, natural sanctions are more of a deterrence for Contracting States not to breach the Standards than legal sanctions since a breach could lead to a disastrous accident or an act of unlawful interference (Huang 2008, p. 268, 271).

Nevertheless, what if a State persists in not rectifying deficiencies identified during an audit? Does ICAO have enforcement powers to insist on compliance? Although the enforcement functions of ICAO are very limited and not comparable with those of domestic courts, it has mechanisms in place through which Contracting States are expected to rectify deficiencies identified during audits especially if the deficiencies mount to significant safety or security concerns (Medes de Leon 2013, p. 12).

Mechanisms to monitor compliance with the Standards and to 'name-and-shame' States with recurring non-compliance also exist within ICAO. In this context, the audit programmes of ICAO are not only monitoring tools but also enforcement mechanisms, particularly when considering that deficiencies mounting to significant safety concerns are made available publicly by ICAO and deficiencies that mount to significant security concerns are disseminated to the other Contracting States through ICAO's secure website (Ratajczyk 2014, p. 9)[1].

The bad publicity has the potential of jeopardising access to markets for air carriers of non-compliant States. The economic impact of bad publicity is immediately felt by the air carriers and the tourism industry of the defaulting State, as passengers often do not travel to places or with air carriers that are not safe. Therefore, the ICAO audit programmes are very important to expose safety and security concerns and to promote compliance (Havel et al. 2014, p. 180).

Prof. Paul Stephen Dempsey considers that not exposing such concerns is a violation of Article 54(j) of the Chicago Convention which requires that Contracting States are informed of infractions to the same convention. Nevertheless, this author recognises that some States may simply not have the necessary resources to rectify deficiencies identified during audits and, in such circumstances, economic coercion is not enough to compel such Sates to comply with the Standards (Dempsey 2004, p. 35, 67, 73).

In fact, the ICAO Assembly recognised that most developing States, mainly in Africa, were finding difficulties to rectify deficiencies and concerns identified during audits due to the lack of resources,

[1] The ICAO audit programmes include the Universal Safety Oversight Audit Programme (USOAP) and the Universal Security Audit Programme (USAP).

human and financial, and that these States are not able to rectify such deficiencies without assistance (Assembly Resolution A33-09, 2001, p. 32–34). For this reason, as a means to encourage Contracting States to rectify deficiencies and to implement the Standards, the Assembly directed the Council to develop aid programmes not only to provide financial resources but also to provide training for personnel from developing countries and to provide technical assistance. For this reason, ICAO developed the 'No Country Left behind' initiative through which it assists States to comply with the Chicago Convention and its annexes (ICAO website). According to the audits' findings, ICAO provides the best form of assistance that a Contracting State requires. One of the criteria for Contracting States to be eligible for assistance is consistency in implementing the corrective action plans submitted to rectify deficiencies identified during audits thus ensuring implementation of the Standards (Assembly Resolution A33-10, 2001, p. 35–37). Initially, assistance was provided to rectify deficiencies identified during safety audits, but it was later provided also to rectify deficiencies identified during security audits (Assembly Resolution A35-09, 2004, p. 37).

3.1. Reporting by the ICAO Council

The ICAO Council has the power to report infractions of the Chicago Convention and to report Contracting States that fail to carry out its recommendations or decisions (Chicago Convention, Article 54(j)). Such an enforcement mechanism applies subtle pressure on Contracting States which, in the contemporary world, may be more effective than the traditional sanctions of international law. The report of the Council has great influence in the international aviation community and hence may create political and economic repercussions against the defaulting State which could affect its vital interests. Such a report creates an unpleasant impression of the defaulting States, and this can trigger reactions from other Contracting States, which may blacklist aircraft registered in the defaulting States or ban flights to and from them (Huang 2008, p. 101 and 272)[2].

When the information, collected during audits under the USOAP or USAP, demonstrate that a Contracting State has significant compliance shortcomings, the Secretary General shall firstly work together with the Contracting State to resolve the shortcomings, including the provision of support through the assistance programmes. If the Contracting State is unwilling to cooperate with the Secretary General or if it does not rectify the shortcomings with the assistance provided, the Secretary General shall then report the case to the ICAO Council (Council Decision C-Dec 175/13, 2005).

Once the case has been presented to the Council, the latter has a quasi-judicial function and must follow the elementary principles of justice. This means that the Contracting State has the right to participate, without a vote, when the Council is considering a question which affects its interests. The procedure adopted by the Council gives the Contracting State the possibility to provide information to the Council before issuing the recommendation (Rules of Procedure of the Council, 2014, rule 31; Chicago Convention, Article 53). In the recommendation, the Council may require the Contracting State to remedy the shortcomings within a specified timeframe. If the Contracting State fails to carry out the recommendation of the Council, the Secretary General shall then report the shortcomings to all Contracting States (ICAO State Letter AN 1 l/4 1-05/87, 2005).

[2] Huang argues that the reporting mechanism under Article 54(j) of the Chicago Convention was never used by the ICAO Council; however, there were instances when the ICAO Council made statements that an infraction of the Chicago Convention had taken place, such as in the aftermath of the shooting-down of Korean Airline Flight 007 by the Soviet Union. Nevertheless, such a reporting mechanism remains an enforcement measure irrespective of whether it has been used or not.

3.2. Settlement of Disputes

The ICAO Council has also the jurisdiction to settle disagreements between Contracting States related to the interpretation or application of the Chicago Convention and its annexes that cannot be settled through negotiation (Chicago Convention, Article 84). Dispute settlement procedures offer a possibility for enforcing compliance with the Standards (Hillgenberg 1999, p. 506). In fact, ICAO lists the whole Chapter 18 of the Chicago Convention as one of its mechanisms to ensure compliance with the Chicago Convention and its annexes (ICAO website). Decisions of the Council may be appealed before an *ad hoc* tribunal or in front of the ICJ whose judgements are final and binding (Chicago Convention, Article 86). The Chicago Convention does not specify that decisions of the Council are final and binding; however, if no appeal is filed within the specified timeframe, then it is safe to presume that the decisions of the Council are final and binding. The ICJ, in the 'Appeal relating to the Jurisdiction of the ICAO', determined that, when settling disagreements, the ICAO Council is acting as an international tribunal and may, hence, decide questions on its jurisdiction over a case (India v Pakistan, 1972, para. 46). Such a conclusion, which was reinforced in later judgements of the ICJ (Bahrain, Egypt, Saudi Arabia and United Arab Emirates v. Qatar, 2020, para. 42), is in line with the Statute of the ICJ which specifies that the ICJ must be satisfied of its own jurisdiction over a case by looking into this itself (Charter of the UN, 1945, Article 36(6)).

The ICAO Council also has jurisdiction to decide whether an air carrier is operating in line with the Chicago Convention and its annexes. The decisions of the Council as regards air carriers are effective unless reversed by the appeal, while for cases where the parties are Contracting States the decisions of the Council are suspended until appeals are decided. If air carriers do not conform to final decisions, be it Council Decisions, decisions of *ad hoc* tribunals or ICJ decisions, Contracting States are obliged not to allow the defaulting air carriers to operate through their airspace. If Contracting States do not conform to final decisions, the ICAO Assembly shall suspend their voting powers both at the Assembly and at the Council (Chicago Convention, Articles 87 & 88). This should persuade the Contracting States that value their entitlements within ICAO not to disregard final decisions.

The terminology 'application of the Chicago Convention and its annexes', used in Article 84 of the Chicago Convention, refers to the implementation of the Chicago Convention and its annexes in practice, thus implying conformity with the same convention and its annexes. Lack of conformity with the Chicago Convention and its annexes could lead to disputes between Contracting States, and therefore the dispute settlement mechanism specified in Article 84 of the Chicago Convention is an important tool for the Council to insist with States to comply with the same convention and its annexes. Nevertheless, the Council relies on States to trigger the dispute settlement mechanism (Van Antwerpen 2007, p. 42). Indeed, this possibility was never used in relation to the annexes of the Chicago Convention since no application for the settlement of disputes resulting from non-conformity with the Standards has ever been filed (Huang 2008, p. 274–275).

In this context, the author believes that Article 84 of the Chicago Convention should be amended in order to endow the Council with the power to settle disputes between Contracting States and the Secretary General. This should permit the Secretary General to submit to the Council disputes it has with Contracting States resulting from non-conformity with the Standards identified during ICAO audits. Following a process of negotiations, where technical assistance could be provided to the Contracting States, if significant compliance shortcomings with the Standards are not rectified, the Secretary General should be authorised to take the dispute in front of the Council. The Council should then follow the dispute settlement procedures as specified in the Chicago Convention. Subsequently,

if Contracting States do not comply with a final decision, the Council may either suspend their voting powers or may ban their air carriers.

Such a new enforcement mechanism would add pressure on non-complying States to rectify deficiencies identified during ICAO audits. This could be the subsequent step if the reporting by the Secretary General to the Council as per Article 54(j) of the Chicago Convention does not generate the desired result. Such a mechanism already exists in other international organisations. For instance, EUROCONTROL may refer to arbitration before the Permanent Court of Arbitration any disputes it may have with one of its Member States due to lack of implementation of decisions taken by one of the organisation's bodies. This should be the case also within ICAO, where the Chicago Convention should provide for an enforcement mechanism that can be triggered by the ICAO Secretary General (Van Antwerpen 2007, p. 54–55, 80).

For such a new enforcement mechanism to be supported by Contracting States, the ICAO Council should improve the execution of its dispute settlement functions. For instance, the Council being a political body has a history of not including reasons in its decisions, which sheds doubt on the Council's capability to administer justice appropriately (Rose 2021, p. 308). Indeed, in 2020, the ICJ advised the ICAO Council that future decisions should include "the reasons of law and the facts that led to the ICAO Council's conclusions" (Bahrain, Egypt, Saudi Arabia and United Arab Emirates v. Qatar, 2020, para. 125).

Alternatively, a new judicial body could be established to be responsible for the execution of dispute settlement functions. The ICAO Council is considered more of a political organ rather than a legal one. Indeed, if decisions on dispute settlements taken by an independent legal organ should enjoy more credibility and authority, particularly if the members of the legal organ are approved by the ICAO Assembly following a nomination by Contracting States (Alshamsi et al. 2024, p. 456–457). Such a mechanism would be more in line with the rule of law principle that dispute settlement should be undertaken by an organ that is separate and independent from the organ that actually adopted the rules. In this case, the ICAO Council is responsible to promulgate the SARPs in Annexes to the Chicago Convention and then settle disputes between Contracting States on the interpretation of such SARPs.

4. Challenges in amending the Chicago Convention

The previous section identified that Article 84 of the Chicago Convention needs to be amended to enhance the enforcement powers of ICAO. However, amending the Chicago Convention is not without challenges in itself.

Amendments to the Chicago Convention are, first and foremost, regulated by the provisions of the Chicago Convention itself. The Chicago Convention specifies that its amendments shall be approved by a two-thirds vote of the Assembly, which shall act in compliance with its standing rules of procedures (Chicago Convention, Article 94(a); Standing Rules of procedure of the Assembly of the International Civil Aviation Organisation, 2008). Article 94(a) of the Chicago Convention specifies that amendments come into force not when adopted, but when ratified by two-thirds of the total number of Contracting States. Furthermore, even when amendments are ratified by the prescribed constitutional majority, they only come into force for those States which have ratified them. This means that amendments come into force in respect of States which ratify them only and are considered as binding on the ratifying States once the amendment has been ratified by two-thirds of the total number of Contracting States (Weber 2007, p. 47).

The mechanism for amending the Chicago Convention is the classical consensual method whereby amendments come into force only for those States which ratify them. Theoretically, the procedure for

the amendment of the Chicago Convention fully respects the sovereignty of States and the general rule of international law, codified in the Vienna Convention, that a treaty or an amendment does not create rights or obligations for States without their consent (Vienna Convention, Articles 24(3) and 40(4)). Nevertheless, Article 94(a) may lead to the fragmentation of the Chicago Convention into different smaller instruments binding upon different Contracting States, whereby, obligations under the Chicago Convention may apply for some Contracting States and not for others (Milde 2008, p. 24). If Article 84 is ever to be amended, such a paradoxical situation should definitely be avoided. To really enhance ICAO's enforcement powers, all Contracting States should accept that disputes may be instituted against them before the ICAO Council by the Secretary General.

Another problem when amending the Chicago Convention is the fact that the same amendments require inordinately long time to come into force, since the amendments require ratification by two-thirds of the Contracting States. Furthermore, the increased membership of ICAO made the situation even more difficult. At the time of writing, an amendment to the Chicago Convention requires ratification by one hundred and twenty-eight States to enter into force (Weber 2007, p. 48).

To make up for this problem, Article 94(b) provides that States may be expelled from ICAO and cease to be parties to the convention if they do not ratify amendments to the Chicago Convention which the ICAO Assembly, in its resolution to adopt them, is of the opinion that the nature of the amendment justifies this course (Chicago Convention, Article 94(b)). This procedure has never been used by the ICAO Assembly (Milde 2008, p. 23, 27). A possible amendment to Article 84 of the Chicago Convention would definitely warrant the use of Article 94(b) as this would ensure that the amendment enters into force within a reasonable period of time. Furthermore, it would ensure that the amendment enters into force for all Contracting States, which is imperative so to have all States accepting that the Secretary General may institute disputes against them for non-compliances identified during audits. Nonetheless, in the humble opinion of the author, it is not sensible to have Contracting States expelled from ICAO and to cease being parties to the convention, as stipulated in Article 94(b), since, once expelled, a State is no longer obliged to comply with any provision of the Chicago Convention, including aviation safety rules. In fact, this could have been the reason why ICAO never used this mechanism.

In view of the above, Article 94(b) should also be amended so that to stipulate a stepped approach whereby Contracting States continuously not ratifying amendments to the Chicago Convention should initially lose their voting powers in the Assembly and the Council. If a Contracting State persists in its behaviour not to ratify amendments to the Chicago Convention, its airlines should not be allowed to operate in the airspace of any Contracting State. Such a mechanism is warranted since States that continuously do not ratify amendments to the Chicago Convention are not complying with their implied duty arising from the membership to cooperate with ICAO (Voting Procedure on Questions relating to Reports and Petitions concerning the Territory of South West Africa, 1955, p. 119). Additionally, having such a mechanism included in the Chicago Convention should deter Contracting States from exhibiting uncooperative behaviour. The amendment with this mechanism has to be proposed by ICAO as it is very difficult to envisage Contracting States to propose it. Nevertheless, such a mechanism should not come as a surprise to States since a similar mechanism already exists within the Chicago Convention for when States fail to comply with final decisions of the Council. In a way, an amendment to Article 96(b) would also enhance ICAO's enforcement powers as it would be in a better position to enforcement amendments to the Chicago Convention.

ICAO's policy with respect to amendments of the Chicago Convention is reflected in Assembly resolution A4-3 of 1950, which specifies that the Chicago Convention may be amended when either proved necessary by experience, or when it is demonstrably desirable or useful (Assembly Resolution

A4-3, 1950, p. 2). In this context, it is understandable that the Contracting States lack the appetite to propose an amendment to Article 84 of the Chicago Convention as being proposed by this article. However, the ICAO Secretariat should have an interest to amend this article. For the period of 2019–2021, there was a compliance rate of 68% in ICAO safety audits, which indicates that Contracting States do not always rectify the non-conformities identified during ICAO audits (Report on Universal Safety Oversight Audit Programme – Continuous Monitoring Approach Results, 2022, p. 21). An amendment to Article 84 of the Chicago Convention should improve the compliance rate.

ICAO should take a more proactive role in amending the Chicago Convention. It should not only be proactive to propose amendments to the Chicago Convention but should also take decisive actions against those Contracting States that either continuously refrain from ratifying amendments to the Chicago Convention or that do not rectify the non-conformities identified during ICAO audits. The Chicago Convention is the constituent treaty of ICAO, and it is the latter which should make all efforts to keep this convention abreast of the advancement in the aviation industry.

Conclusion

1. The objective of this article is to determine the improvements required by ICAO's institutional mechanisms so that to enforce compliance with the Standards, contained in the Annexes to the Chicago Convention, detailing preventive safety or security measures. To offer a comprehensive study, the article commenced by analysing the enforcement measures under international law where it was identified that multilateral treaties may not be terminated or suspended as a means of enforcement measures. Subsequently, the article analysed the enforcement by international organisations where the mechanisms to monitor compliance, to 'name-and-shame' States with recuring non-compliance, and to provide technical assistance to States with limited resources, were all identified as mechanisms that may generate compliance.
2. The article then focused on the audit and assistance programmes of ICAO and how such mechanisms could enhance compliance with the Standards. In the analysis on the reporting by the ICAO Council as an enforcement measure, it was argued that if a Contracting State fails to rectify deficiencies identified during ICAO audits after receiving technical assistance, the Secretary General may report the Contracting State to the ICAO Council. The Council, after considering the position of the State involved, shall issue a recommendation requiring the same State to remedy the shortcomings within a specified timeframe. The Secretary General shall then report the shortcomings to all Contracting States if the State fails to carry out the recommendation of the Council.
3. Furthermore, the article analysed the mechanism on the settlement of disputes between States related to the interpretation and application of the Chicago Convention and its annexes. Such a mechanism also offers the possibility to enforce compliance with the Standards, since lack of conformity with the Chicago Convention and its annexes could lead to disputes between States. Nevertheless, the article identified a limitation in this mechanism. The Council must rely on States to trigger the dispute settlement mechanism, which in reality has never been used yet for non-conformity with the Standards. Therefore, this article is proposing for Article 84 of the Chicago Convention to be amended so that this mechanism could also be triggered by the Secretary General. If the Contracting State does not comply with the decision of the Council, then its voting rights within ICAO bodies may be suspended and/or its air carriers could be banned. Such an amendment would add further pressure on non-complying States if the reporting under Article 54(j) of the Chicago Convention does not generate the desired result. Nevertheless, for States to accept such an amendment, the

ICAO Council should improve the execution of its dispute settlement functions mainly by adopting the ICJ's advice to include "the reasons of law and the facts that led to the ICAO Council's conclusions."

4. The article identified that amending Article 84 of the Chicago Convention would not be without challenges. Article 94(a) of the Chicago Convention, which regulates amendments to the Chicago Convention and which requires that amendments come into force when ratified by two-thirds of the total number of Contracting States and only for those States which have ratified them, may lead to the fragmentation of the Chicago Convention into different smaller instruments binding upon different Contracting States, where amendments to the Chicago Convention may be in force for some Contracting States and not for others. This article argued that if – ever – Article 84 is to be amended, it would be imperative that the amendment would come into force for all Contracting States.
5. Another problem when amending the Chicago Convention is the fact that the same amendments require inordinately long time to come into force. Article 94(b) provides a procedure, that has never been used by the ICAO Assembly, whereby States may be expelled from ICAO if they do not ratify important amendments to the Chicago Convention. A possible amendment to Article 84 of the Chicago Convention would definitely warrant the trigger of Article 94(b), nonetheless, it was argued that it is not sensible to have Contracting States expelled from ICAO and to cease being parties to the convention as stipulated in Article 94(b), since, once expelled, a State is no longer obliged to comply with any provision of the Chicago Convention, including aviation safety rules. Instead, this article argued that Article 94(b) should also be amended so that to create a stepped approach whereby the penalties on Contracting States would increase the longer they take to ratify amendments to the Chicago Convention. The penalties should fall short of expelling Contracting States from ICAO but should be implemented more frequently, which, in a way, would also be enhancing ICAO's enforcement powers regarding amendments to the Chicago Convention.
6. Finally, this article argues that whilst one might understand that Contracting States lack the appetite to propose an amendment to Article 84 of the Chicago Convention, the ICAO Secretariat should have an interest to amend this article, as such an amendment would improve the compliance rate during audits. Indeed, the article concludes that ICAO should be more proactive to propose amendments to the Chicago Convention and to take decisive actions against those Contracting States that either continuously do not ratify amendments to the Chicago Convention, or that do not rectify deficiencies identified during ICAO audits.

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