

# INTERNATIONAL AIR LAW (PART I)

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# INTRODUCTION

- Defining “air law”
- Air law vs. Aviation law
- Legal sources
- International air transport regulation
- Chicago Convention (1944)
- Air services agreements



LANDING ON HUDSON RIVER, 2009.



EUROPEAN AIRPORTS, ICELANDIC  
VOLCANO ERRUPTION, 2010.



# DEFINING AIR LAW

Air law vs. Aviation law





## AIR LAW / „place”

- ❖ legal regime of air space
- ❖ legal status of aircraft
- ❖ air navigation and air transport
- ❖ air transport market and services (conditions for entering – certificates, licences etc.)

## AVIATION LAW / „operation”

- ❖ Commercial and competition law issues ( Etc. > OBJECTS/SUBJECTS are stakeholders involved in this industry (airports, airlines, passengers, manufacturers, air traffic control etc.)

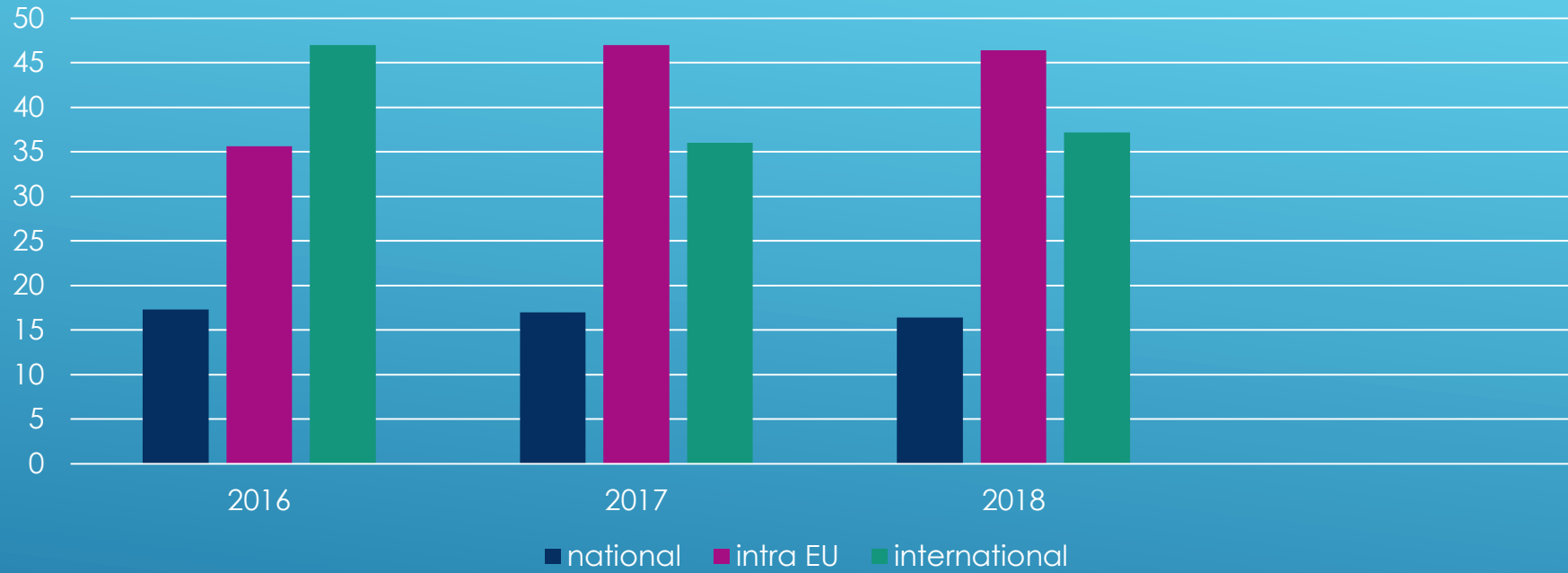
# WHAT IS IT REGULATING?

# DEVELOPMENT OF AIR LAW

- ▶ Began in early 20th century
- ▶ Influence of maritime transport law
- ▶ Today: leading transport mode in passenger transport on mid- and long-haul distances > **international character**
- ▶ **In 2017: approx. 36,7 million flights and 4,1 billion passengers > expected to almost double by 2036**
- ▶ **Global industry** – heavily influenced by economic and political situation (industry growth, service demand, oil prices etc.)
- ▶ The safest mode of transport



Chart Title



# EU AIR TRANSPORT STATISTICS, 2016-2018

# INTERNATIONAL AIR/AVIATION LAW

## ▶ public

- Safety
- Security
- Air navigation
- Criminal law issues
- Competition rules
- Environment

## ▶ private

- Transport/Carriage contracts
  - Tort & Extra contractual liability
  - Aircraft financing
  - Insurance
- 
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# SOURCES OF INTERNATIONAL AIR LAW



# 1. TREATIES (AND OTHER INTL. AGREEMENTS):

- ▶ Paris Convention of 1919
- Warsaw Convention of 1929
- Chicago Convention of 1944
- Geneva Convention of 1948
- Rome Convention of 1952
- Tokyo Convention of 1963
- Hague Convention of 1970
- Montreal Convention of 1971
- Montreal Convention of 1999
- Cape Town Convention of 2001
- Montreal Convention of 2009 + Beijing Convention of 2010 (not i.f.)
- Montreal Protocol, 2014 (not in force)

(Sources – cont.'d)

2. Customary international law
  3. **ICAO's Standards and Recommended Practices: SARPs**
  4. **EU aviation *acquis***
  5. Judicial cases (case law)
  6. National legislation (incl. practice and procedures)
  7. General principles of law
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# CHICAGO CONVENTION, 1944





1. it recognized and codified certain principles of substantive public international law
2. it established an international aviation organization (ICAO)

***Chicago Convention is constitution of international civil aviation***

PRINCIPAL ACHIEVEMENTS  
OF CHICAGO CONVENTION

# STRUCTURE

## Chicago Convention

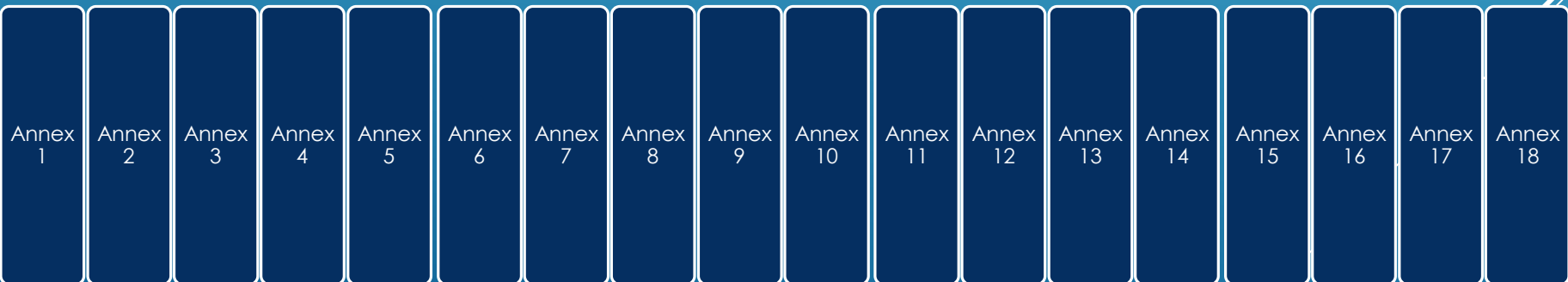
191 State Parties  
Original text + revisions

Part I  
Air Navigation  
art. 1-42

Part II  
ICAO  
art. 43-66

Part III  
International  
Air Transport  
art. 67-79

Part IV  
Final  
Provisions  
art. 80-96



Annex 1 Personnel Licensing  
Annex 2 Rules of the Air  
Annex 3 Meteorological Service for International Air Navigation  
Annex 4 Aeronautical Charts  
Annex 5 Units of Measurement to be Used in Air and Ground Operations  
Annex 6 Operation of Aircraft  
Annex 7 Aircraft Nationality and Registration Marks  
Annex 8 Airworthiness of Aircraft  
Annex 9 Facilitation  
Annex 10 Aeronautical Telecommunications  
Annex 11 Air Traffic Services  
Annex 12 Search and Rescue  
Annex 13 Aircraft Accident and Incident Investigation  
Annex 14 Aerodromes  
Annex 15 Aeronautical Information Services  
Annex 16 Environmental Protection  
Annex 17 Security: Safeguarding International Civil Aviation Against Acts of Unlawful Interference  
Annex 18 The Safe Transport of Dangerous Goods by Air



## Standards

- ▶ Aiming at uniform application, necessary for the safety or regularity of international air navigation
- ▶ Art. 38 – possibility of departure from them
- ▶ Problem of implementation

## Recommended practices

- ▶ Desirable
- ▶ Often accepted by many states but no harmonization

SARPs



# AIRSPACE SOVEREIGNTY > INTERNATIONAL AIR TRANSPORT

**Article 1:** “Every State has complete and exclusive sovereignty over the airspace above its territory.”

- ▶ The territory considered as three dimensional - including within such territory the airspace above its national lands and its internal and territory waters. (Article 2)

**Article 6:** „No scheduled international air service may be operated over or into the territory of a contracting State, except with the special permission and authorization.”

# FREEDOMS OF THE AIR – TRAFFIC RIGHTS

- ▶ right to use airspace of a country for offering air transport services > a set of commercial aviation rights granting a country's airlines to
  - ▶ overfly another country's airspace
  - ▶ land for a technical stop
  - ▶ pick-up and discharge traffic in another country's territory



# IASTA, 1944. (TRANSIT AGREEMENT)

- 130 state parties – multilateral agreement– all parties mutually (so-called technical freedoms)
- ▶ **first** - right to overfly a territory (air space) of another country without landing on its territory
- ▶ **second** - right to overfly a territory (air space) of another country including right to land for non-traffic purposes (e.g. fuel supply)

# IATAG, 1944.

intended as multilateral but failed (only 11 state parties)

> commercial air freedoms still being regulated in bilateral agreements

- ▶ **third** – right to put down, in the territory of other State, traffic coming from the home State of the carrier
- ▶ **fourth** – right to take on, in the territory of other State, traffic destined for the home State of the carrier
- ▶ **fifth** – right to put down and take on, in the territory of other State, traffic coming from or destined to a third State

# CABOTAGE

- ▶ Art. 7 Chicago Convention: „Each contracting State shall have **the right to refuse permission** to the aircraft of other contracting States to take on in its territory passengers, mail and cargo carried for remuneration or hire and destined for another point within its territory. **Each contracting State undertakes not to enter into any arrangements which specifically grant any such privilege on an exclusive basis to any other State or an airline of any other State , and not to obtain any such exclusive privilege from any other State.**”

# AIR SERVICES AGREEMENT (ASA/ATA)

- consensus reached by two States for the purpose of granting each party's airlines the privilege to carry passengers, cargo, or a combination of both to points to, from, over, or beyond their respective territories
- “traffic rights” - historically subject to a number of protectionist conditions:
  - caps on the number of flights flown over a given time period (frequencies),
  - predetermined limits on the amount of passengers and/or cargo carried (capacity)
  - and rate of return (pricing or air fare) regulations

# BILATERAL ASAs

- individual negotiations – agreeing on all aspects important for establishing (scheduled) air transport between two countries:
  - market access
  - designation
  - routes
  - capacity
  - frequency
  - tariffs etc.



# BERMUDA I (UK-USA), 1946

- widely accepted model
- Countries exchanging traffic rights on a *quid-pro-quo* basis
- Extremely restrictive:
  - Identifying the routes to be served (Annexes)
  - designating one flag carriers per city-pair route
  - capacity restrictions
  - rates set by airlines – subject to prior approval by both state parties governments



# OPEN SKIES AGREEMENTS

- ▶ U.S. w/ THIRD COUNTRIES
- ▶ following U.S. policy in domestic air transport (1970s) > early 1990s:
  - ▶ 1992 U.S.- Netherlands – liberalization > allowed KLM and any other Dutch carrier (!) to fly to any point in the U.S. (and allowed U.S. carriers to fly to any point in the Netherlands) > Wings Alliance (Northwest Airlines and KLM)
  - ▶ Followed by: 1996 Germany, Italy, Portugal, Austria, France ...
  - ▶ U.S.-EU and its MS: 2007 Agreement + 2010 Protocol
- ▶ today: more than 100 open-skies partners

# OPEN SKIES AGREEMENTS (CONT.'D)

- ▶ Characteristics:
  - ▶ Open market (entry) on all routes
  - ▶ Unrestricted capacity and frequency on all routes
  - ▶ Double-disapproval pricing (in Third and Fourth Freedom markets)
  - ▶ Open code-sharing opportunities
  - ▶ Self-handling provisions (right of a carrier to perform/control its airport functions alone)
  - ▶ Procompetitive provisions on commercial opportunities, user charges, fair competition
  - ▶ Commitment for nondiscriminatory operation of and access to computer reservation systems