

AN ASSESSMENT OF THE EFFECT OF THE 1944 CHICAGO CONVENTION ON THE AIR CARRIER'S DUTY OF AIRWORTHINESS UNDER THE CARRIAGE OF GOODS

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ABSTRACT

Our understanding of airworthiness as the fitness of the aircraft in all respects to encounter the ordinary perils of the air that could be expected on her journey, and deliver the goods safely to their destination is a confirmation of the fact that the responsibility is heavy for the air carrier upon reception, carriage and delivery of the goods. The traditional liability regime in airfreight is contained in the Warsaw System of Conventions and the Montreal Convention 1999. The coexistenceⁱ of these laws creates challenges in obtaining a uniform liability scheme for the loss, damage and delay of goods on transitⁱⁱ. The question, however, is how useful could the Chicago Convention 1944 be in determining the air carrier's liability? This is more so because the following Warsawⁱⁱⁱ and Montreal Conventions have to be differentiated from the Chicago convention of 1944, as Chicago deals with public international law looking at technical standards, licensing, freedom of air, accident investigation or security issues. This article therefore introduces the major aspects of the Chicago Convention and subsequently its nexus with the air carrier's duty of airworthiness.

Keywords: Chicago Convention, Air Carrier, Airworthiness, Warsaw System of Conventions and the Montreal Convention 1999.

INTRODUCTION

As the world becomes globalised, trade between nations is unavoidable. It is trite knowledge to say that no particular country is able to produce all what it needs. It must depend on one country for particular goods and vice versa. This is the basis of buying and selling operations in international trade^{iv}. This operation finally crystallises when the goods are disposed to the buyer and for the latter to make payments thereof. The means of transportation of these goods are multifarious^v. It could also be by means of multimodal^{vi}transport^{vii} of which air and sea transports are the most important ones and occupy a central role in international commercial transactions^{viii}. Both modes of carriage are guided by specific set of rules which have been developed through various conventions over time^{ix}. However, this study shall dwell on the transportation of goods by air and most especially the air carrier's duty of airworthiness^x. The globalisation^{xi}of trade and transportation of goods by air in particular is a major industry in its own right and it also provides inputs into wider economic, political, and social processes^{xii}.

The law on the carriage of goods by air has been in place for a long time, starting from rules based on customs, precedents and best practices in the industry, the Common Law then developing to meet the different needs of the industry, that is, the Warsaw-system of conventions^{xiii} then the Montreal Convention 1999^{xiv}. Law in general is dynamic which means that it should be flexible and able to develop according to industrial needs, and the law on carriage of goods by air is not an exception to this principle. The Warsaw-system of conventions^{xv}and the Montreal Convention 1999 are good examples of this.

The aviation industry has witnessed several developments since the end of the Second World War apart from those Conventions covering the air carrier's liability^{xvi}. As concerns security, safety oversight and the maintenance of airworthiness, the first international instrument is the Chicago Convention 1944^{xvii}on International Civil Aviation. This Convention introduced certain measures to improve safety and security on board the aircraft and at airports.

In spite of the fact that the Convention is not part of the Warsaw System of Conventions and the Montreal Convention, it is very important as far as this study is concerned because it covers mostly aircraft airworthiness while the latter dwells on cargo worthiness to give a complete meaning to the air carrier's duty of airworthiness. Also, the Convention will still be compulsory for all the aircrafts carrying the flags of the member states.

As a result of the Convention, both parties to the contract of carriage will be able to prove whether the aircraft was airworthy or not, thanks to the compulsory detailed documentation of

all incidents and procedures taken by the company, human factor, maintenance of crew to make the aircraft comply with the convention. As the Chicago Convention can directly or indirectly affect the air carrier's obligation of airworthiness, it would be necessary to consider the sections of the Convention which affect or help the air carrier in complying with its obligation in this article.

POTENTIAL LEGAL IMPLICATIONS OF THE CHICAGO CONVENTION^{xviii} ON THE ISSUE OF AIRWORTHINESS

The Chicago Convention 1944^{xix} is the first and widely applicable international instrument to cover aviation accidents resulting in massive loss of property including aircrafts and goods, and is a good development in the aviation industry. It was signed on 7th December 1944.

Background of the Chicago Convention^{xx}

Before the Second World War, two international conventions regulated aerial navigation: the Paris Convention of 1919 whose permanent body was the International Commission for Air Navigation (ICAN) and the Havana Convention of 1928 without a permanent office. At that time, there were approximately fifty sovereign states in the world. The ICAN gathered thirty three of these States, whereas the Havana Convention had been ratified by eleven States.

The advent of World War II, while interrupting civilian flying, did not stop international civil aviation, It is needless to say that the air flights executed during World War II not only resulted in horror and human tragedies but that its utilisation also significantly advanced the technical and operational possibilities of air transport in a world which had finally found peace again. In fact, for the first time, large numbers of people and goods had been transported over long distances and ground facilities had been developed to permit this in an orderly and expeditious manner.

By the spring of 1942, more than two years before the end of the Second World War, it was apparent that civil air transport would play a large and important role in international relations. Serious discussions of political and diplomatic arrangements for international civil aviation had begun mainly in Canada, the United Kingdom and the United States. At the Anglo-American Conference held in Quebec City from 10 to 24 August 1943, Roosevelt and Churchill discussed post-war aviation policy and were planning for a United Nations type of organisation to handle some aspects of international civil aviation. The Prime Minister of Canada, William Lyon

Mackenzie King, hosted this wartime conference. Meanwhile, as the year 1944 progressed and as the war took a turn for the better, it became even more apparent that the time was rapidly approaching when some nations would want to initiate new international air services on a regular commercial basis^{xxi}.

One of the Quebec City's best known and historic landmarks is the Château Frontenac. Architect Bruce Price designed the grand hotel for the Canadian Pacific Railway Company. It opened in 1893 as a luxury hotel, named for Louis de Buade, Count of Frontenac and Governor of New France in the later part of the 17th Century. The Château Frontenac, one of Quebec City's most popular tourist attractions, overlooks the St. Lawrence River with a spectacular view that extends for several kilometres. Seen from across the river, the hotel is Quebec City's most prominent feature in the skyline. Indeed, the building has become a symbol of the city. On 11 September 1944, the United States extended an invitation to fifty-three governments and two Ministers in Washington for an international civil aviation conference to be convened in the United States on 1 November 1944 to make arrangements for the immediate establishment of provisional world air routes and services and to set up an interim council to collect, record and study data concerning international aviation and to make recommendations for its improvement. The Conference was also invited to discuss the principles and methods to be followed in the adoption of a new aviation convention.

On 7 October 1944, the Department of State announced the selection of the Stevens Hotel in Chicago, Illinois, as the site for the International Civil Aviation Conference. Because of the Dumbarton Oaks conversations, the first concrete step towards an international organization for the maintenance of peace and security, were a Washington conference, President Roosevelt requested Adolf A. Berle, Jr., Assistant Secretary of State, Head of the US delegation to the conference, to find another site for the aviation conference. The city of Chicago was suggested, which would bring an international conference to the isolated Midwest^{xxii}.

Commonwealth civil aviation discussions were held in Montreal at the Windsor Hotel from 22 to 27 October 1944 in preparation for the Chicago Conference. Immediately following this Conference and before the Commonwealth representatives would return home, the same hotel would become the host of a two-day Commonwealth meeting on 9 and 10 December 1944.

Opened on 1 November 1944, the Chicago Conference, as it came to be known, was eventually attended by fifty-two nations together with two observer nations, without the privilege of

voting, Denmark and Thailand; the Soviet Union refused to participate. The Conference was attended by a total of one hundred and eighty-five delegates, one hundred and fifty six advisers, experts and consultants, forty five secretaries, one hundred and five clerks and stenographers, three hundred and six members of the Conference secretariat and one hundred and fifty eight press representatives, for a total of nine hundred and fifty five persons participating directly or indirectly. This was estimated to be the largest international conference held in the United States in those years.

For seven weeks, the delegates of fifty-two nations considered the problems of international civil aviation. The most important result of the conference was the drawing up of a Convention on International Civil Aviation, the charter of a new body established to guide and develop international civil aviation.

The Executive Committee of the Conference recommended that the seat of the provisional ICAO be located in Canada, taking into consideration the war circumstances in Europe and the wish to start its work rapidly. Canada was also a logical choice as an important aviation nation and one with strong links with Europe. However, the permanent seat of the Organisation would be determined at the final meeting of the Interim Assembly of the Provisional ICAO.

The Provisional International Civil Aviation Organisation (PICAO) was established by the Chicago Conference, as an interim body pending the ratification of a permanent world civil aviation convention. The Canadian Government chose Montreal for locating PICAO's headquarters, as it was at that time the leading metropolis of the country, the most cosmopolitan and international city. It was also the main hub for international civil air transport.

On 7 December 1944, the Conference concluded with the signature of a final act that was a formal and official record summarising the work^{xxiii}. The International Civil Aviation Conference turned out to be one of the most successful, productive and influential conferences ever held, and the Stevens Hotel in Chicago had been its host. As a result, ICAO became the sole universal institution of international public aviation rights, superseding the Paris Convention of 1919 and the Havana Convention of 1928. For the first time in the history of international aviation, an authority would facilitate the order in the air, introduce maximum standardisation in technical matters to unify the methods of exploitation and settle any differences that may occur^{xxiv}.

On 8 December 1944, the Conference was convened in plenary session to elect the States to become members of the Interim Council. Twenty of the twenty-one seats were filled. It left one seat vacant for the USSR, should it decide to adhere to the Convention. The latter country did not finally adhere to the Convention until 1970.

Fifty years later, from 30 October to 1 November 1994, an important gathering of aviation and aerospace leaders took place at Chicago in the Chicago Hilton and Towers Hotel to commemorate the 50th anniversary of the Convention and to share views on the future of the world's aviation and aerospace business. This Conference and Exhibition attracted over five hundred participants in the world civil aviation industry. L. Welch Pogue, one of the few surviving US delegates to the Chicago Conference, was among the list of speakers. The ICAO Council held, for the first time at its birthplace in Chicago, a special commemorative meeting on 1 November 1994, exactly fifty years after the opening of the Conference on International Civil Aviation and expressed gratitude to the members of the delegations from fifty-two states of the world community who worked together to draft and perfect the Chicago Convention^{xxv}.

The ICAO was set up by part II of the Chicago Convention. It began function as soon as the convention came into force on 4th April, 1947, and held its first Assembly in Montreal in May, 1947.

Objectives of the Chicago Convention

The Chicago Convention, as its preamble states, aims to provide the largest possible degree of international standardisation of practice in many matters as regards safe, expeditious, and easy air navigation

Again, the objectives of the Chicago Convention/ICAO are laid down in article 44 of the Convention^{xxvi}.

The essential target of the convention is the elimination of human error, as this is a major cause of aviation accidents. Therefore, if the proper application of the convention led to the elimination of repeated occurrences of human error, this, in essence, should raise the international aviation shipping standards and, consequently, raise the safety in air.

Considering the definition of the concept of airworthiness as the fitness of an aircraft to fly when it meets the minimum conditions laid down in its type certificate. This includes the design and construction in accordance with specific certification codes. An airworthy aircraft is one

that is fit to fly and transport goods^{xxvii}. Again, airworthiness^{xxviii} can be considered as the legal and mechanical status of an aircraft in terms of its readiness and suitability for a flight^{xxix}.

Considering the definition of due diligence as the efforts of the prudent air carrier to take all reasonable measures that can be possibly taken, in the light of available knowledge and means at the relevant time, during the journey, to fulfil his obligation to provide an airworthy aircraft^{xxx}. One can then compare the definition of airworthiness with the objectives of the convention and see that both aim to achieve the same purpose, that is: increasing safety in air in order to reduce damage or loss of the cargo or other property; and reduce human losses and injuries. The convention further aims at preventing aviation pollution which in a way could result from the lack of airworthiness^{xxxi}.

Also, when the definition of due diligence is compared to the methods the Chicago Convention employs to achieve its objective, great similarities can indeed be seen. Due diligence requires the air carrier to take all reasonable means and measures in the light of the available knowledge in order to provide an airworthy aircraft. The Convention in fact states those reasonable means, which are, creating safe practices on board the aircraft and ensuring that the crew are prepared to face emergencies. This would mean that the crew should be competent, trained, and provided with all necessary information to be able to carry out their duties. It also requires the air carrier/shipping company to identify all the risks their aircraft may encounter and ensure that it is prepared for them. Furthermore, the convention provides the means and methods that should be followed in order to comply with its requirements.

In a nutshell, the Chicago Convention aims to increase the shipping standards in order to create a safer shipping environment and eventually to reduce aviation accidents. This should benefit all parties to any shipping transaction as will be seen. Airworthiness in essence aims to achieve the same goal.

The Chicago Convention and Airworthiness

The Chicago Convention is not incorporated into the Warsaw-system of Conventions or the Montreal Convention. This might give the idea that the Convention has nothing to do with the issue of airworthiness. But this is not the case as all aviation Conventions are linked to one another in one way or another. Furthermore, as the Convention sets the minimum standards required to eliminate human error, it can therefore be considered as a framework to set high standards of airworthiness. In other words, we can say that a prudent aircraft owner would

follow the Convention in order to provide an airworthy aircraft. Consequently, the Convention can be considered a framework for a good practice to provide an airworthy aircraft^{xxxii}.

Moreover, the Convention did not introduce revolutionary ideas. To the contrary, the convention emphasised the existing good practice carried out by prudent aircraft owners, that is, keeping up to date charts, carrying out regular maintenance, thus, the convention highlights good practice in the industry and asks all the companies/aircraft owners to follow it^{xxxiii}.

That is why the Convention requires each owner/shipping company in each member state to set their own safety management system which on the one hand complies, with the requirement of the Convention, and on the other, reflects the good practice in the type of trade the aircraft is involved with.

Taking into account what was mentioned and compared with the duty of the air carrier to exercise due diligence to provide airworthy aircraft a clear resemblance can be seen between the requirement of the Convention and the requirement of airworthiness^{xxxiv}.

From all the authorities^{xxxv} on the issue of airworthiness, it is evident that the aircraft owner's duty to provide an airworthy aircraft is a relative one, that is, it is relative to the state of knowledge and the standards at the relevant time, and when assessing airworthiness one has to consider what a prudent aircraft owner would have done had he been in the same situation and under the same conditions.

As the Convention takes into account the prevailing knowledge of the aviation shipping industry, it can thus be said that complying with the requirements of the convention can be considered as exercising due diligence to provide an airworthy aircraft, especially since the Convention requires the shipping company to provide competent, qualified and trained crew to manage the aircraft, to equip the aircraft appropriately and to maintain the aircraft and its equipment so it is able to perform its services properly. All these requirements can be seen as essential elements of airworthiness^{xxxvi}.

The Chicago Convention and burden of proof

The existing law on the burden of proof, with regard to airworthiness, is represented by articles 18-20 of the Warsaw-system of Conventions and Montreal Convention 1999^{xxxvii}. Under both instruments, the air carrier will be liable if there was loss, damage or delay unless he proves that he and his servants and agents took all reasonable measures to prevent the occurrence and

its consequences. The time the loss or damage occurs, the air carrier will be liable for it unless that there is no fault or privity on his part or that of his agents or servants, or even if there is fault or privity, it did not contribute to the loss or damage. Consequently, the air carrier is always considered to be at fault unless and until he proves the reverse or his innocence. Article 20 states that, the air carrier is not liable if he proves that he and his employees have taken all necessary measures to avoid the damage, or that it was impossible for him, or them, to take such measures. The various types of acts which may be regarded as constituting "necessary measures" are left to the discretion of the judge. In *Rugani v. KLM*^{xxxviii} some expensive furs were stolen from a KLM hanger at idle wild airport in New York, where they had been placed in storage prior to shipment. The New York City Court ruled that all necessary and possible measures had not been taken. Although there had been a guard on duty, he was unarmed. Consequently, the guard was unable to protect the goods, because he had no effective defence in this case of armed robbery.

In a similar case an American court ruled that the words "all necessary measures" should not be interpreted too literally, but, since the air carrier had failed to take all reasonable measures that prudent foresight would have envisaged for the security of high-value cargo, he was held liable to the shipper for the theft of his good by armed robbers from the air carrier's building^{xxxix}.

From both instruments, we see that the air carrier is considered liable for any loss of or damage to the cargo or for delay if it took place while the cargo was in his charge. If the air carrier wants to avoid liability, he must prove that he and his servants and agents took all reasonable measures that could be taken to avoid the cause of the loss or damage and its consequences. The term "all necessary measures" or "all measures that could reasonably be required" includes the duty of the air carrier to exercise due diligence. The air carrier bears the burden of proving the cause of the loss and has to prove the exercise of due diligence the moment the cargo-owner/shipper proves the loss or damage^{xl}.

The Chicago Convention 1944 can also be useful in determining the air carrier's liability in addition to the above, as one of the main requirements of the Convention is the documentation of every procedure, incident, or action taken on board or by every aircraft. Furthermore, the Convention requires the establishment of a system whereby every incident, hazardous situation, non-compliance or corrective action taken is reported to the highest level of management via the aviation personnel. Hence, a documenting system is in place and the aircraft owner will be

required to keep these documents and present them to the court if these documents can help his case or the claimant's case. The Civil Procedures Rules 1998 provides in r31 (6) that: Standard disclosure requires a party to disclose only:

- (a) The documents on which he relies; and
- (b) The documents which -
 - (i) Adversely affect his own case;
 - (ii) Adversely affect another party's case; or
 - (iii) Support another party's case; and
- (c) The documents which he is required to disclose by a relevant practice direction.

Once the documents are presented, the cargo-owner can have access to the relevant documents to prove un-airworthiness if it exists. These documents can also be used by the company to prove their case.

It would be easier for both parties to prove their case when the aircraft-owner/air carrier is asked to disclose the relevant documents. However, this in itself would be an incentive for the aircraft-owner/air carrier to exercise due diligence to make his aircraft airworthy in order to document this and reveal it as proof of his diligence. The issue of whether the convention would prove beneficial in increasing the standards of airworthiness and prudence of ship-owner would only appear once the convention is put to a real test and scrutinised by the courts.

AVIATION PERSONNEL

The technical standards required for aircraft and the issuing of certificates of competency and licences for the crew are matters which have been made subject to uniform rules. Annex I of the Chicago Convention contains a system of rules on pilot certificates. These rules were introduced for urgent reasons of safety. The Annex constitutes an elaboration of articles 32 and 33 of the convention proper. The aircraft commander and the other personnel shall be examined.

The aircraft commander^{xli}

The aircraft commander occupies a special position within the legal framework. Right from the beginning the importance of his position has been recognised, and it has been given careful consideration since 1926, first by Comité International Technique des Experts Juridiques Aériens (CITEJA) and later by ICAO. It is most desirable that the rights and duties of a person in such a responsible position be carefully defined.

One might compare the position of an aircraft commander with that of a ship's captain, but there are notable differences. A journey by aircraft is shorter. The passengers and the crew are less numerous; the freedom of movement on board is very limited. All these factors affect the relationships amongst those on board an aircraft and contribute to making the aircraft commander's position quite different from that of a ship's captain.

Since 1947 ICAO has been working on an analysis of the legal status of aircraft personnel. The studies and drafts of the former CITEJA served as a starting-point. Yet ICAO has not made much progress beyond revising an earlier draft dating from 1931.

In a general manner the powers and responsibilities of the aircraft commander includes, inter alia, the following:

1. The responsibility of the perfect condition of the aircraft and the welfare of the crew the preparations for the flight and its successful completion. This includes, the cargo manifest, to carry out pre-take-off records, etc.
2. The right of the commander to issue strict orders to crew and passengers. This role is especially important in the event of criminal offences being committed on board
3. In addition, the commander has the authority to undertake all necessary measures to ensure the safe completion of the flight. He must have authority, for instance, to have repairs carried out when necessary, and to arrange for fresh supplies on behalf of the company by which he is employed. When no airline officials are present in a particular country, the commander should be empowered to act as the official representative of the company. As the granting of such authority and duties is entirely at the discretion of the company it would be better to draw up international rules to cover this point, making it compulsory for contracting states to adapt their own legislations accordingly.

4. The administrative duties of the commander include the registration of births and deaths on board an aircraft, the authority to perform marriages or to act as the competent authority for drawing up of wills.

5. The commander decides whether and in what way to render assistance in search and rescue operations in the event of an accident in accordance with the provisions of the convention.

In Annex 2 of the Convention entitled 'Rules of the Air' air traffic procedures are set out in detail. In chapter 3 it is stated that the aircraft commander is responsible for carrying out directions of air traffic control. It also provides, however, that the aircraft commander is ultimately responsible.

Other personnel

Leaving aside the aircraft commander with his special position, the other personnel involved in aviation may be divided into two categories, that is, ground personnel and flying personnel, according to their functions and assignments.

- **Ground personnel**

Included in this group are employees who, without leaving the ground, are involved in the preparation and guidance of aircraft. The group therefore includes airport personnel, meteorology and other ground service personnel.

- **Flying personnel**^{xlii}

This category includes anyone who normally performs his duties during the flight and whose presence on board throughout the flight is essential: the commander, the co-pilot and the flight attendants.

In most national legislations flying personnel is sub-divided into the following categories:

- a. Persons in charge of command, actual flying or technical matters during the flight and,
- b. Persons performing ancillary services, for instance cabin crew stewards

In terms of international law, the civil liability of flying personnel is laid down in the Warsaw Convention, The Hague Protocol (which amended the Warsaw Convention), the Guadalajara Convention, the Guatemala Protocol, the Rome Convention of 1952 and it's Montreal Protocol

of 1978. Apart from these international agreements, their liability is governed by general law and the employment contracts.

Regrettably, the legal status of ground personnel has hardly any base in international law while, on a national level, it enjoys the protection of rules applicable to aviation personnel generally only in isolated cases. Consequently, their position is at best covered merely by general provisions of domestic and international law respectively.

The category of ground personnel deserves a special mention in connection with the vital role played by the air traffic control services, whose duty is to ensure a safe and orderly flow of traffic. A strike action undertaken by this group of personnel may have the most serious consequences for thousands of people not even remotely involved in the conflict. Liability of their employer, usually a government authority, may be assumed and has been upheld in court on a number of occasions. It should be born in mind, however, that an action against the government is available to the airlines only. The persons suffering damage may sue the carrier on the basis of their contract.

In a nutshell, the aviation personnel are a link between the shore-based management and the aircraft-based staff. Therefore, he will have access to the highest level of management and to the aircraft's crew. The aviation personnel are responsible for ensuring that the aircraft and its crew are complying with the technical standards and practices, and that adequate resources and shore-based support are available. Also, he is in charge of carrying out audits to identify any incompliance with or deficiencies in the standards and report it to the highest level of management. Finally, the aviation personnel are responsible for making sure that corrective actions have been taken and applied appropriately.

Hence, as the aviation personnel will be responsible for the safe operation of the aircraft, and ensure the compliance with the standards, it is very important that he should have sufficient qualifications to carry out such a mission. Therefore, they should have the appropriate experience with regard to the aircraft's operation, aircraft safety and pollution prevention. Moreover, he should be aware of the company's safety and pollution prevention policy. Also, they should have the independence, authority and the access to the highest level of management to report any incompliance or deficiencies. Finally, he should be able to carry out safety audits to ensure compliance with the convention's technical standards and make sure that the corrective action has been taken.

- **What the aircraft commander should report?**

The aircraft commander as the main aviation personnel and eventually the aviation company's management board due to his role should be in possession of all the information about the aircraft, its performance and its problems.

The answer to this question depends on the aircraft commander's responsibilities and the authority he has to carry out his duties. Usually this is included in his appointment document which would contain the procedure on how to report and what the aircraft should report to the management and what he can deal with directly without reporting. It is often the case that the senior management would only be interested in major incidents or non-conformities which need huge financial resources to correct, and would leave the minor issues to the aircraft commander to deal with. Therefore, in the case of major issues the aircraft commander would report the incident and his recommendations then wait for the response from senior management.

- **Would the knowledge of the senior management be considered the same as that of the aircraft commander?**

The position of the aircraft commander would allow him to be in touch with all that is happening on board the aircraft, and he is responsible for reporting that to the senior level of management. The question which arises here is; would his knowledge be the same as that of the management?

In small size aviation shipping companies, it is often the case that the management would be more involved with the daily running of the aircraft and it is more likely, though not always the case, for the management of the company to play the role of the aircraft commander at the same time. In this case the knowledge of the management would be the same as that of the aircraft commander. However, where the size of the company makes it more practical to employ one or more aircraft commander(s) the question which would arise is: can the management say that they did not know what was happening on board?

The Chicago Convention's introduction of the aircraft commander role would make it very difficult for the aircraft owner/carrier to use the exceptions of articles 20 of the Warsaw Convention 1929^{xliii} and the Montreal Convention 1999^{xliiv} as it requires proof that neither the aircraft owner nor his servants contributed to the loss in any way in order to use this exception.

Moreover, the aircraft owner would not be able to use any of the protections provided above if there was want of due diligence represented by her not asking for reports or not taking the appropriate corrective action.

Also it is the duty of the aircraft commander to ensure that the international standards and recommended practices^{xlv} indicated in articles 37-42 of the Chicago Convention 1944^{xlvi} are implemented in the right way and any negligence on his part can be considered as privity of the senior management due to the fact that they did not ensure that the standards and recommended practices are not properly implemented by the crew^{xlvii}. The convention, although not directly related to the issue of airworthiness, can prove beneficial to raise the standard of due diligence.

It is worth mentioning that, the air carrier would not be able to blame the aircraft commander for the un-airworthy condition of the aircraft by claiming that he diligently appointed a competent aircraft commander and that the latter failed to be diligent. The reason for this is the duty to exercise due diligence is a personal one and in spite of the fact that the carrier can delegate the exercise of the duty to someone else, in this case the aircraft commander, he will still be liable should the aircraft turn to be un-airworthy and the aircraft commander fails to exercise due diligence.

The role of the aircraft commander and airworthiness

The role of the aircraft commander is important to ensure the airworthiness of the aircraft, as he is the aviation company representative responsible for ensuring the safety of the aircraft on air and while at airport. This can be done throughout the different responsibilities of the aircraft commander. The relationship between airworthiness and the role of the aircraft commander can appear in different areas^{xlviii}:

- **Training**

The aircraft commander should carry out audits to check that the aircraft complies with the convention and aircraft recommended practices and conditions to be fulfilled with respect to aircraft. The audit should reflect the preparedness of the crew to face emergency situations. Therefore, if he realises that part or all of the crew lack training in certain areas, that is, facing emergency situation etc., then it is his responsibility to recommend training to cover this gap in order to guarantee that the crew can face an emergency situation. By failing to do so, he will

be compromising the aircraft's airworthiness. It is also his duty to ensure that training is carried out at regular intervals^{xlix}.

The Cameroonian example as to training could be illustrative^l. The Cameroon Civil Aviation Authority is required to ensure the development and implementation of a national training programme for personnel of all entities involved with or responsible for the implementation of various aspects of the National Civil Aviation Programme. The CCAA^{li} also ensures that trainers and training programmes of the operators, regulated agents and aviation security agencies meet appropriate standards. Finally, the Authority ensures that personnel carrying out security audits^{lii}, tests, surveys and inspections are trained to appropriate standards for these tasks.

Licensing and Certification Obligations. A certification system is in place for licensing of aviation personnel, approval of air operators, maintenance organisations and training centres. This is done through a well-articulated certification process including the initial contact phase, formal application, document evaluation, conformity inspection and issuance of certificate. The total number of aircrafts on Cameroon's register is 28 of which 27 are in an airworthy condition. Over 120 pilots and 135 cabin crew members hold valid licences. Eighteen (18) AMO approvals have been issued of which 04 of them are based at home and 14 abroad. Continuous surveillance, all holders of certificates, licences, qualifications and other approvals granted by the CCAA are subject to continuous supervision by the CCAA. Scheduled and unannounced inspections and surveillance are regularly carried out to ensure that holders of aviation authorisations continue to meet and respect the pertinent requirements which served as the certification basis.

- **Physical airworthiness^{liii}**

Beside the issue of crew preparedness, if the aircraft commander discovers, either through the audits or through the reports sent by the flying crew of the aircraft, that the aircraft needs some repairs or maintenance then he should promptly take corrective action if this falls within his authority, or send his recommendation to the aviation company management in order for them to take the appropriate action to maintain the aircraft. If the company or he, when taking such actions as falling within his responsibility, decides to take corrective action it is his duty to ensure that such action is implemented promptly and correctly. This would ensure that the aircraft is ready (airworthy) at any time to perform the required trip^{liv}.

- **Documentation^{lv}**

The Chicago Convention 1944 depends^{lvi}, to a very large extent, on documentation. This implies that the aviation company and the aircraft should have document of compliance, international and recommended practices, safety and environmental protection policy. Also the code requires that the aircraft should always have up to date documentation. The documents which the Convention requires the aircraft to carry are essential to the aircraft's airworthiness, as it might not be allowed to enter or leave the airport if it does not have, for example, international standard recommended practices or most especially a certificate of airworthiness on board it, which means that the aircraft is un-airworthy. Therefore, it is the duty of the aviation personnel most especially aircraft commander to ensure that the aircraft has on board, at any time, all the required documents. Also part of the documentary element of airworthiness is to ensure that all documents essential for the safe navigation of the aircraft, that is, charts, aircraft manuals etc. are on board, and it is the aircraft commander's responsibility with the flying crew especially the pilot to ensure that they are kept up to date and the obsolete ones are removed, otherwise, in case of an accident the company/aircraft owner cannot claim that his aircraft was airworthy.

The aircraft must have on board sufficient up-to-date charts, flying directions, notices to crew, tide tables and all other nautical publications necessary for the intended voyage, which will allow her to navigate safely to her destination. These documents are as important as any other equipment on board the aircraft such as the compass or radar, and it is the responsibility of the aircraft owner to make sure that his aircraft is supplied with such documents^{lvii}. Also the aircraft must have the charts not only for the route she is taking but also for alternative routes that she might need to take instead of the original one.

It was shown earlier that the aircraft-owner can delegate the duty to provide an airworthy aircraft to his agent or servant. Therefore, he can also delegate the duty of supplying the aircraft's documents to the flying crew or an agent, but in this case he will still be responsible if they fail to provide these documents or keep them up to date. This is because the duty to provide an airworthy aircraft is a personal one and non-delegable^{lviii}.

The documents that the aircraft needs on board and which affect its airworthiness vary and depend on the circumstances of each case and depend on "the law of the aircraft's flag or by

the laws, regulations or lawful administrative practices of governmental or local authorities at the aircraft's airport of call^{lix}.

As a result, the air carrier is required to establish a system on board his aircraft to ensure that all the navigational documents are updated and all the old ones have been removed from the aircraft. He can delegate this job to the master or an agent, but he will still be responsible if his agent fails to do his job.

One of the Chicago Convention requirements is to ensure that all the documents on board the aircraft are updated. Moreover, the Convention requires the aircraft-owner to create a monitoring system to ensure that all the old documents have been removed from the chart room, and that the documents are up-dated on a regular basis^{lx}.

CONCLUSION AND RECOMMENDATIONS

In conclusion, the Chicago Convention 1944 has proven to be of considerable importance to the aviation shipping industry as it will increase the standards of due diligence and eventually reduce the chances of un-airworthy aircrafts being sent to on air. Furthermore, it has a substantial commercial effect as it improves productivity and efficiency, reduces insurance rates due to increase of due diligence standards, and reduces litigation. The proper implementation of the international standards and recommended practices as provided by the convention will also help creating documents that can be used by both parties to any litigation to prove their case.

However, the Chicago Convention 1944 faces a problem of effective application or enforcement. In order for the convention to be applied effectively, the ICAO should have two routes. The first one is the creation of a penalty system for member states which do not strictly apply the convention. This can take the form of withdrawing the right of a member state to issue the required certificates and putting it on a black list.

Also the ICAO should assign to a reputable entity, that is, a classification society, the duty to check that the same standards and strictness are applied in all member states. Moreover, it is very important that the ICAO should produce a black list of countries, aviation companies or aircrafts that do not comply with the requirement of the convention in order to prevent any

unfounded attempts by member states to prevent certain aircrafts, carrying flags of certain states, from entering their airports.

The second is that the ICAO^{lxi} should require the member states to introduce a penalty system to be applied in respect of aviation companies and their personnel who do not comply with the requirement of the convention or the company's standards and recommended practices. With regard to this route some countries already have in place such penalty regime, for instance, Cameroon in the CEMAC Civil Aviation Code 2012^{lxii} incorporated the Chicago Convention 1944, and voluntarily introduced a criminal regimen on aircrafts registered under its flag, represented by fines and/or imprisonment for company staff, or the withdrawal of certificates which might render the aircraft un-airworthy in the form of administrative and penal sanctions.

Also, the introduction of the Convention conflicts with the existing law on airworthiness; for instance, the Warsaw Convention 1929, with regard to the period of exercising due diligence. The original Warsaw Convention requires the air carrier to exercise due diligence during the journey, but it does not recognise code-share agreements, by implication the journey covered under such sub-contracts is not regulated by this instrument. Whereas, the Chicago Convention 1944 requires the aviation shipping company/air carrier to ensure compliance with the convention at any time so as to ensure the continuous validity of the certificates. This means he must ensure that the aircraft is airworthy at any time including the period under code-share agreements^{lxiii}.

This means that the original Warsaw Convention 1929 needs to be reconsidered to extend the duty to cover the whole journey. This has been incorporated into the Guadalajara Convention 1961 amending the Warsaw Convention. The problem has not been completely solved given that some parties are signatories to the original Warsaw Convention 1929 but not to the Guadalajara Convention. Thus a problem of conflict of laws in case a dispute arises. The extension of the period of responsibility should not make the air carriers duties difficult due to the existence of the aircraft commander who would be leasing between the aviation company and the aircraft to ensure the swift running and management of the aircraft, and should the need for repairs or maintenance arises, the aircraft commander can arrange for those to take place, that is, providing spare parts at the next airport of call, providing up to date charts etc.

Finally, although the Chicago Convention 1944 is mandatory to all member states, it was not made part of the Warsaw-system of Conventions or the Montreal Convention. This is not

essential provided the ICAO recommends that the member states consider the convention as a framework for what might be considered good practice and what a prudent air carrier would do to make his aircraft airworthy.

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ENDNOTES

ⁱ See p.4 of the United Nations Conference on Trade and Development UNCTAD Report on its eleventh session, Sao Paulo consensus para 59, www.unctad.org

ⁱⁱ The air carrier is liable under the convention for delay and for the loss of or damage to the goods, provided that the occurrence that caused the prejudice took place during the carriage by air.

ⁱⁱⁱ The Warsaw Convention is the informal title for Convention for the Unification of Certain Rules Relating to International Transportation by Air, concluded at Warsaw, Poland, opened for signature October 12, 1929, 49 Stat. 3000, T.S. No. 876, 137 L.N.T.S. 11, reprinted in 49 U.S.C.A. app. at 430 (West Supp. 1976) (adhered to by the United States June 27, 1934).

^{iv} See Basedow, Jürgen. "Worldwide Harmonisation of Private Law and Regional Integration-General Report" *Uniform Law Review* 31, 2003(1/2), pp. 31-49.

^v See Martina, Obi Agbor. "The Contractual Liability of the Maritime Carrier of Goods", LL.M. Thesis (Unpublished) Faculty of Laws and Political Science, University of Douala, 2005, p.4 i.e. it could be by air, land, sea or rail.

^{vi} See Marin, Jasenko. "The harmonisation of liability regimes concerning loss of goods during multimodal transport", University of Zagreb, Faculty of Law, Trg maršala Tita 14, 10000 Zagreb, Croatia, jmarin@pravo.hr, p. 1; there are some other terms similar to multimodal transport like intermodal transport (the movement of goods

in one and the same loading unit or road vehicle, which uses successively two or more modes of transport without handling the goods themselves in changing modes) or combined transport (intermodal transport where the major part of the European journey is by rail, inland waterways or sea and any initial and/or final legs carried out by road are as short as possible), Economic Commission for Europe (UN/ECE), Terminology on combined transport, United Nations, New York and Geneva, 2001.

^{vii} The United Nations Economic and Social Council (UNECE) define multimodal transport as the carriage of goods by two or more modes of transport. It is also known as combined or intermodal transport e.g. road/sea/road or road/rail/sea/road. The modern international trade demands for the same goods to be transported from the seller to the buyer as soon as possible, without unnecessary delay. Therefore, the effective transport must be “just in time” and “tailor made” (“door to door”). In practice it means that the goods very often must be carried by two or more modes of transport (sea, air, road, inland navigation, and rail). Such type of transport is called multimodal transport.

^{viii} See Elvis, Mundam.Cheonguh., "A Critical Appraisal of the Law on Carriage of Goods by Air in Cameroon", LL.M. Thesis (Unpublished) Faculty of Laws and Political Science, University of Dschang, 2014, p.2.

^{ix} See Ashique Mondal. & Rita Basu. "Carriage of Goods by Air and Sea: A Relative Diagnostic Assessment of the Prevailing Regimes", *International Law Annal*, (2013), p. 135.

^x As early as 1900, the French jurist Fauchille suggested that a Code of international air navigation be created by the Institute of International Law in France. In 1903 the discussions were given a new impulse: aviation had become a matter of topical interest and concern because the Wright Brothers had successfully carried out their first engine-power flight. It is possible to go back even further into the past when one takes into account the national rules and regulations in various countries. In France, for instance, a police directive was issued on April 23, 1784, aimed directly and exclusively at the balloons of the Montgolfier Brothers: flights were not to take place without prior authorization. The purpose of this measure was of course to protect the population.

^{xi} Globalization, in its most literal sense, is the process of making, transformation of things or phenomena.

^{xii} The air transport industry itself has established international bodies to both interact with national governments and institutions such as the ICAO; e.g. the International Air Transport Association (IATA) was established to assist airline companies to achieve lawful competition and uniformity in prices

^{xiii} The Warsaw System of Conventions consists in a chronological order of: Warsaw Convention 1929, Hague Protocol 1955, Guadalajara Convention 1961, Guatemala City Protocol 1971, Montreal Additional Protocols Numbers 1,2 and 3 of 1975 and Montreal Additional Protocol Number 4 of 1975.

^{xiv} Convention for the Unification of Certain Rules for International Carriage by Air - Montreal, 28 May 1999

^{xv} See Diederiks, Verschoor, I.H.Ph. *An Introduction to Air Law*, 5th Revised ed, Kluwer Law and Taxation Publishers, Deventer- Boston, 1993, p.2.

^{xvi} See Donald, Andersen R. "Recent Developments in Aviation Law", *Journal of Air Law and Commerce*, vol.78, issue. 1, 2013, pp. 219-317.

^{xvii} In line with improving the safety of navigation and environmental protection, on December 7, 1944, some 50 states signed the Chicago Convention, together with two agreements annexed to it, that is the International Air Service Transit Agreement, and the International Air Transport Agreement. It became compulsory for this code to be applied by those aircraft described in the code which carry the flags of the member states to the Convention. The convention aims at improving aviation safety by introducing a series of measures to ensure that aircrafts are kept up to certain standards. Such measures include maintenance and testing of the aircraft and its equipment, and carrying out regular audits to make sure that the aircraft is constantly in compliance with the convention. In exchange the aircraft and the owning company will be provided with appropriate certificates to prove that the aircraft is in compliance with the requirement of the convention. In spite of the fact that the convention is not part of the Warsaw System of Conventions and the Montreal Convention, it is very important as far as this study is concerned because it covers mostly aircraft airworthiness while the latter dwell on cargo worthiness to give a complete meaning to the carrier's duty of airworthiness. Also, it will still be compulsory for all the aircraft carrying the flags of the member states. As a result of the convention, both parties to the contract of carriage will be able to prove whether the aircraft was airworthy or not, thanks to the compulsory detailed documentation of all incidents and procedures taken by the company, human factor, maintenance of crew to make the aircraft comply with the convention.

^{xviii} See Phillip, Forsang Ndikum. and Serge, Delors Ndikum, *Encyclopedia of International Aviation Law: Aviation texts, laws, protocols conventions and treaties, including lease and purchase contracts and aircraft refuelling indemnity (Tarbox) agreements*, Ndikum Publications London, England in collaboration with Trafford Publishing Indiana, United States, Vol. 2, 2014, pp. 619-756.

^{xix} See Daniel, Hedlund. "Toward Open Skies: Liberalizing Trade in International Airline Services", *Minnesota Journal of International Law*, 40, 1994, pp. 259-299.

^{xx} Postal history of the Chicago Convention, www.mirandalawfirm.com/uploadedfiles/20140401_417948.pdf, consulted on 09-08-2020 at 12:03 pm.

^{xxi} Paul, Stephen Dempsey, "The Chicago Convention as a source of International Air Law", <https://www.mcgill.ca/iasl/files/iasl/ASPL633-Chicago-Convention.pdf>, pp. 1-16, consulted on the 22/03/2022 at 6pm.

^{xxii} Ibid p. 10.

^{xxiii} The following main instruments were contained in this final act:

- The Interim Agreement on International Civil Aviation was opened for signature. Its purpose was that of a bridging mechanism to permit an early beginning of the global effort while awaiting the ratification of the Convention by the 26th State. This interim agreement was accepted by the 26th State on 6 June 1945. Thus the Provisional International Civil Aviation Organization (PICAO) was born on that date. It functioned remarkably well until the permanent organization came into force on 4 April 1947.

- The Convention on International Civil Aviation was opened for signature and designed to provide a complete modernization of the basic public international law of the air. After ratification by twenty-six States, it came into effect on 4 April 1947 with the constitution of the new permanent International Civil Aviation Organization, ICAO, thus bringing an end to PICAO.

- The International Air Services Transit Agreement or "Two Freedom" agreement, under which the aircraft of member states may fly over each other's territory and land for non-traffic purposes, e.g. refuelling. This document was a great step forward in the path of international air transport development over a large part of the world.

- The International Air Transport Agreement or "Five Freedoms" agreement. In addition to the first two freedoms of the agreement mentioned above, three freedoms concerning commercial transport rights were enacted.

- The Drafts of twelve Technical Annexes cover the technical and operational aspects of international civil aviation, such as airworthiness of aircraft, air traffic control, telecommunications, etc. The conference achieved real advances in technical matters that would make international flying much safer, more reliable and more straightforward than it had been before the Second World War. From twelve Technical Annexes defined by the Conference, eighteen Annexes to the Convention are now maintained to achieve standardization through a uniform application of international standards and recommended practices.

- A standard form of Bilateral Agreement for the exchange of air routes was prepared and recommended by the Conference as part of its final act.

^{xxiv} See https://applications.icao.int/postalhistory/1944_the_chicago_convention.htm, consulted on the 12/03/2021 at 6am

^{xxv} Paul, Stephen Dempsey, "The Chicago Convention as a source of International Air Law", supra p. 14

^{xxvi} as being:

"To develop the principles and techniques of international air navigation and to foster the planning and development of international air transport 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) Promote generally the development of all aspects of international civil aeronautics".

^{xxvii} See www.skybrary.aero/index.php/Airworthiness, consulted on 18-07-2021 at 10:48 am.

^{xxviii} airworthiness is the fitness of the aircraft in all respects, to encounter the ordinary perils of the journey, and deliver its cargo safely

^{xxix} See www.businessdictionary.com/definition/airworthiness.html, consulted on 18-07-2021 at 10:50 am.

^{xxx} See Pascal, Edie Diabe. "A Legal Analysis on the Air Carrier's Duty of Airworthiness under the carriage of Goods: Development in the Law and Stakes in Cameroon", *PhD Thesis (Unpublished) university of Dschang*, 2019, p.104.

^{xxxi} Ibid p. 254

^{xxxii} See Abeyratne, Ruwantissa. "The future of African Civil Aviation" Montreal, Canada, *Journal of Air Transportation World Wide*, Vol. 3, No. 2, 1998, pp.30-49.

^{xxxiii} Article 22 stipulates to this effect that:

"Each contracting State agrees to adopt all practicable measures, through the issuance of special regulations or otherwise, to facilitate and expedite navigation by aircraft between the territories of contracting states, and to prevent unnecessary delays to aircraft, crews, passengers and cargo, especially in the administration of the laws relating to immigration, quarantine, customs and clearance".

^{xxxiv} Airworthiness may be defined as the fitness of an aircraft to fly when it meets the minimum conditions laid down in its type certificate. This includes the design and construction in accordance with specific certification codes. An airworthy aircraft is one that is fit to fly and transport goods. Again, airworthiness can be considered as the legal and mechanical status of an aircraft in terms of its readiness and suitability for a flight.

^{xxxv} See Airworthiness Manual, Fourth Edition, 2020, Doc 9760, Published in separate English, Arabic, Chinese, French, Russian and Spanish editions by the INTERNATIONAL CIVIL AVIATION ORGANIZATION 999 Robert-Bourassa Boulevard, Montréal, Quebec, Canada H3C 5H7, <https://aviation-insight.aero/wp-content/uploads/2021/05/ICAO-9760-docs-4thEdition.pdf>, consulted on 23/03/2022 at 10am

^{xxxvi} Ludwig, Weber." Recent Developments in International Air Law", *Air and Space Law*, Volume 29, Issue 4/5, 2004, pp. 280-311.

^{xxxvii} Art. 18 (1). The carrier is liable for damage sustained in the event of the destruction or loss of, or damage to, cargo upon condition only that the event which caused the damage so sustained took place during the carriage by air.(2). However, the carrier is not liable if and to the extent it proves that the destruction, or loss of, or damage to, the cargo resulted from one or more of the following: (a) inherent defect, quality or vice of that cargo; (b) defective packing of that cargo performed by a person other than the carrier or its servants or agents; (c) an act of war or an armed conflict; (d) an act of public, authority carried out in connection with the entry, exit or transit of the cargo.(3). The carriage by air within the meaning of paragraph 1 of this Article comprises the period during which the cargo is in the charge of the carrier. (4) The period of the carriage by air does not extend to any carriage by land, by sea or by inland waterway performed outside an airport. If, however, such carriage takes place in the performance of a contract for carriage by air, for the purpose of loading, delivery or transhipment, any damage is presumed, subject to proof to the contrary, to have been the result of an event which took place during the carriage by air. If a carrier, without the consent of the consignor, substitute's carriage by another mode of transport for the whole or part of a carriage intended by the agreement between the parties to be carriage by air, such carriage by another mode of transport is deemed to be within the period of carriage by air. Art. 20 states that, " If the carrier proves that the damage was caused or contributed to by the negligence or other wrongful act or omission of the person claiming compensation, or the person from whom he or she derives his or her rights, the carrier shall be wholly or partly exonerated from its liability to the claimant to the extent that such negligence or wrongful act or omission caused or contributed to the damage..."

^{xxxviii} Royal Dutch Airlines, City Court, New York County, January 20, 1954; [1954] USAvR 74; *Avi*, Vol. 4 p. 17,257; IATA ACLR, No.25.

^{xxxix} Manufacturers Hannover Trust Company v. Alitalia Airlines, US District Court, Southern District of New York, April 16, 1977; *Avi*, Vol. 14. P. 17,710; IATA AGLR, No. 502.

^{xl} Batra, Jagdish Chander. "Modernization of the Warsaw System - Montreal 1999", *Journal of Air Law and Commerce*, Vol. 65, 2000, pp. 429-444.

^{xli} See Diederiks, Verschoor, I.H.Ph. *An Introduction to Air Law*, 5th Revised ed, Kluwer Law and Taxation Publishers, supra, pp.25-29.

^{xlii} This category includes anyone who normally performs his duties during the flight and whose presence on board throughout the flight is essential: the commander, the co-pilot and the flight attendance. In most national legislations flying personnel is sub-divided into the following: a) persons in charge of command, the actual flying or technical matters during the flight, and b) persons performing ancillary services, for instance cabin stewards.

^{xliii} (1) The carrier is not liable if he proves that he and his agents have taken all necessary measures to avoid the damage or that it was impossible for him or them to take such measures.

(2) In the carriage of goods and luggage the carrier is not liable if he proves that the damage was occasioned by negligent pilotage or negligence in the handling of the aircraft or in navigation and that, in all other respects, he and his agents have taken all necessary measures to avoid the damage.

^{xliv} If the carrier proves that the damage was caused or contributed to by the negligence or other wrongful act or omission of the person claiming compensation, or the person from whom he or she derives his or her rights, the carrier shall be wholly or partly exonerated from its liability to the claimant to the extent that such negligence or wrongful act or omission caused or contributed to the damage. When by reason of death or injury of passenger compensation is claimed by a person other than the passenger, the carrier shall likewise be wholly or partly exonerated from its liability to the extent that it proves that the damage was caused or contributed to by the negligence or other wrongful act or omission of that passenger. This Article applies to all the liability provisions in this Convention, including paragraph 1 of Article 21.

^{xlv} See part one-chapter VI of the Chicago Convention 1944.

^{xlvi} See art. 37 *ibid*.

^{xlvii} The Marion, [1984] A.C. 563. This case deals with having proper system of supervision with regard to updating charts, this case was long before the introduction of the ISM Code.

^{xlviii} International Civil Aviation Organization Airworthiness Manual, Secretary General, Montreal, Quebec-Canada H3C 5H7

^{xlix} Pascal, Edie Diabe, "A Legal Analysis on the Air Carrier's Duty of Airworthiness under the carriage of Goods: Development in the Law and Stakes in Cameroon", supra, p.301.

^l Ignatius, Sama. Juma. "Aviation safety and security challenges facing operators and regulators: The Cameroon experience", 2006, www.icao.int/meetings/liberalizationSymposium/Documents/2006-Symposium-Dubai/Ignatious.pdf, pp. 15-17. Consulted on 11/05/2021 at 5:12 am.

^{li} The CCAA has at its disposal a wide array of technical documentation sufficient enough for the guidance of technical personnel in the discharge of their duties. It has a library equipped with up to date ICAO documentation and pertinent publications and journals. A CCAA web site is also available and work is underway to have relevant regulatory texts and guidance material posted on the site. As mentioned earlier the Director General of the CCAA has also signed a number of decisions, circulars and instructions instituting procedures to guide its personnel and more procedures are being drafted.

^{lii} In 1997, Cameroon received a team of experts from ICAO within the framework of the voluntary ICAO safety oversight evaluation program. In 2000, Cameroon received a team within the framework of the Universal Safety Oversight Audit Program (USOAP).

^{liii} Diederriks, Verschoor, I.H.Ph. *An Introduction to Air Law*, 5th Revised ed, Kluwer Law and Taxation Publishers, supra, p. 181.

^{liv} Ibid

^{lv} Pascal, Edie Diabe, "A Legal Analysis on the Air Carrier's Duty of Airworthiness under the carriage of Goods: Development in the Law and Stakes in Cameroon", supra, p. 76

^{lvi} To this effect article 29 states that: "Every aircraft of a contracting State, engaged in International navigation, shall carry the following documents in conformity with the conditions prescribed in this Convention: (a) Its certificate of registration; (b) Its certificate of airworthiness; (c) The appropriate licenses for each member of the crew;(d) Its journey log book;(e) If it is equipped with radio apparatus, the aircraft radio station license;(f) If it carries passengers, a list of their names and places of embarkation and destination; (g) If it carries cargo, a manifest and detailed declarations of the cargo".

^{lvii} See also *Grand Champion Tankers Ltd. v. Norpipe A/s and Others (The Marion)*, [1982] 2 Lloyd's Rep. 52, p. 57. Mr. Justice SHEEN.

^{lviii} See also *Union of India v. N.V. Reederij Amsterdam, (The Amstelslot)*, [1963] 2 Lloyd's Rep 223. *Riverstone Meat Company, Pty., Ltd. v. Lancashire Shipping Company, Ltd., (The Muncaster Castle)* [1961] 1 Lloyd's Rep 57. *W. Angliss and Company (Australia) Proprietary, Limited v. Peninsular and Oriental Steam Navigation Company*. [1927] 2 K.B. 456.

^{lix} *Alfred C. Toepfer Schiffahrtsgesellschaft G.M.B.H v. Tossa Marine Co. Ltd. (The Derby)*, [1985] 2 Lloyd's Rep. 325, at p. 331.

^{lx} See also ISM Code S.11. Guidelines on the application of the IMO International Safety Management Code, Published by ICS/ISF 1994 p. 21 -22. The ISM does not specify the navigational documents, it deals with all the documents on board the vessel.

^{lxi} Paul, Stephen Dempsey, "The Role of the International Civil Aviation Organization on Deregulation, Discrimination, and Dispute Resolution", *Journal of Air Law and Commerce*, Vol. 52, 1986 - 1987, pp. 529-583

^{lxii} See www.wto.org/english/tratop_e/tpr_e/, consulted on 15/08/2014 at 7:13pm; see also CEMAC (2012a) Rapport intérimaire de la surveillance multilatérale pour l'année 2012 et perspective pour 2013, 24eme édition, Bangui.

^{lxiii} Andre, Kaftal, "The Problem of Liability for Damages Caused by Aircraft on the Surface", *Journal of Air Law and Commerce*, Vol. 5/issue 2, 1934, pp. 179-232.