

Table of Contents

About the Author	vii
Foreword	xi
Acknowledgement	xiii
List of Abbreviations and Acronyms	xix
Introduction	1
Chapter 1	
Defining Aviation Safety in View of the Global Interest	5
1.1 The Concept of Aviation Safety	6
1.2 Historical Development of Aviation Safety Regulations	8
1.3 Renewed Importance of Aviation Safety in Contemporary Society	15
1.4 Aviation Safety: The Raison D'être of ICAO	17
1.5 Concluding Remarks	21
Chapter 2	
Regulation of Aviation Safety by Means of a Technical Safety Code	23
2.1 Establishment of Safety Oversight Responsibility	23
2.1.1 Responsibility of the State of Registry and/or the State of the Operator	24
2.1.2 Responsibility of States in Their Respective Territories	34
2.1.3 Critical Elements of the Safety Oversight System	42
2.2 Formulation of Technical Regulations	44
2.2.1 Subject Matters Addressed by SARPs	45
2.2.1.1 Personnel Licensing (Annex 1)	46
2.2.1.2 Rules of the Air (Annex 2)	47

2.2.1.3	Airworthiness of Aircraft (Annex 8)	48
2.2.1.4	Operation of Aircraft (Annex 6)	49
2.2.1.5	Other Annexes	49
2.2.2	Criteria for Safety Regulations: Uniformity, Reliability, and Affordability	50
2.2.3	Processes for Formulating Technical Regulations	54
2.2.4	Juridical Nature of Technical Regulations	58
2.2.5	Scope of Application of Technical Regulations	65
2.3	Auditing of State Compliance with Technical Regulations	68
2.3.1	Universal Safety Oversight Audit Programme	69
2.3.2	Universal Security Audit Programme	71
2.3.3	Legal Issues Arising from ICAO Audits	72
2.3.3.1	The Principle of Consent and the Mandatory Nature of Audits	73
2.3.3.2	Confidentiality and Transparency	76
2.3.3.3	Implications for International Law and Practice	77
2.4	Concluding Remarks	81

Chapter 3

Protecting Aviation Safety from Military Operations 83

3.1	Prohibition of the Use of Weapons against Civil Aircraft in Flight	83
3.1.1	Article 3bis and Customary International Law	84
3.1.2	Reactions of ICAO to the Use of Weapons against Civil Aircraft	89
3.1.3	Freedom of Action in Times of War or National Emergency	92
3.1.4	Revisiting Article 3bis in the Context of 11 September 2001	94
3.2	Coordination of Potentially Hazardous Activities to Civil Aircraft	100
3.3	General Relations between Civil and Military Aviation	104
3.4	Concluding Remarks	109

Chapter 4

Strengthening Aviation Safety against Unlawful Interference 111

4.1	The Tokyo Convention	112
4.2	The Hague Convention	119
4.3	The Montreal Convention	126
4.4	The Montreal Supplementary Protocol	133
4.5	The MEX Convention	139
4.6	Addressing New and Emerging Threats after 11 September 2001	147
4.7	Characterization of Crimes against the Safety of Civil Aviation	150
4.8	Concluding Remarks	155

Chapter 5	
Enhancing Aviation Safety through the Rule of Law	157
5.1 Safety Obligations and Fundamental Norms	157
5.1.1 Safety and Obligations <i>Erga Omnes</i>	157
5.1.1.1 Obligations towards 'the International Community as a Whole'	159
5.1.1.2 'The Importance of the Rights Involved'	161
5.1.1.3 Concern of All States	163
5.1.1.4 Positive Prescriptions of Obligations <i>Erga Omnes</i>	164
5.1.2 Safety Obligations and <i>Jus Cogens</i>	167
5.2 Safety and ICAO'S Regulatory Function	174
5.2.1 The Legal Effect of ICAO Assembly Resolutions	175
5.2.1.1 Declaratory Resolutions	176
5.2.1.2 Interpretative Resolutions	178
5.2.1.3 Pre-legislative Resolutions	178
5.2.1.4 Directive Resolutions	181
5.2.1.5 Recommendatory Resolutions	183
5.2.2 Concept of Quasi-Legislation or Quasi-Law	187
5.2.2.1 Doctrinal and Constitutional Basis for Quasi-Law	187
5.2.2.2 Essence of Quasi-Law	192
5.2.2.3 Scope of Quasi-Law	194
5.2.2.4 Effect of Quasi-Law	195
5.2.2.5 Implementation of Quasi-Law	197
5.3 ICAO Enforcement and Implementation Functions	199
5.3.1 Enforcement Functions	200
5.3.1.1 Enforcement under Article 54(j) of the Chicago Convention	200
5.3.1.2 Other Enforcement Mechanisms	202
5.3.2 Implementation Functions	203
5.4 Implementation at the National and Regional Level	204
5.4.1 Implementation in National Law in General	205
5.4.1.1 Monism	205
5.4.1.2 Dualism	206
5.4.1.3 Sui Generis Approach	207
5.4.2 Regional Implementation	207
5.4.3 Global Ramifications of National and Regional Initiatives	210
5.4.4 Reverted Monism?	214
5.5 Checks and Balances under the Rule of Law	217
5.5.1 Checks and Balances in ICAO Quasi-Judicial Activities	222
5.5.2 Checks and Balances of ICAO Quasi-Legislative Activities	222
5.6 Concluding Remarks	226
General Conclusions	229
Selected Bibliography	237
Index	253