

Contents

1 How Not to Make Rules	1
1.1 Introduction	1
1.2 Cyber Terrorism	5
1.2.1 Definitions and Issues	6
1.2.2 Air Traffic Management Systems	9
1.2.3 The ICAO Role	10
1.2.4 The Work Of ICAO: Progress So Far	11
1.2.5 Exhortations to ICAO by Other Entities	15
1.3 Leasing and Transfer of Functions	18
1.3.1 Introduction	18
1.3.2 Transfer of Functions	20
1.4 State Liability at International Law	24
1.5 Remotely Piloted Aircraft Systems	28
1.5.1 Introduction	28
1.5.2 The ICAO Secretariat Study	30
1.5.3 Safety as an Unexplored Issue	34
1.6 Climate Change	41
1.6.1 Climate Justice and COP 21	44
1.6.2 ICAO'S Work	48
1.7 A Global Law on Competition in Air Transport	59
1.7.1 Introduction	59
1.7.2 Competition in Air Transport	62
1.8 Conclusion	71
References	78
2 Can ICAO Make Laws or Deliver Judgments?	81
2.1 Legislative Power of ICAO	82
2.2 Judicial Power of ICAO	86

2.3	The WTO Example of Adjudication	88
References		96
3	How to Make Rules	97
3.1	Nature of an Annex	102
3.2	Can the Council Make Law and Rules?	105
3.3	Rulemaking in Safety Oversight	109
3.4	Regional Safety Oversight	111
3.5	The Regional Safety Oversight Manual	114
3.6	Conclusion	115
References		118
4	Principles of Rulemaking	119
4.1	The United States Example	122
4.2	The Rulemaking Process	126
4.3	The ICAO Process	127
4.4	The European Example	134
References		156
5	Judicial Review of Rulemaking and Administrative Action	157
5.1	The Aviation Perspective	157
5.2	Treaty v. Regulation	161
5.3	ICAO as a Generic Example	165
5.4	Judicial Review of Commissions and Agencies	167
5.5	Principles of Natural Justice	174
5.6	Delegation in the United States and the United Kingdom	176
5.7	Democracy and Administrative Law	180
References		184
6	Interpretation of Air Transport Rules, Treaties and Guidance Material	185
6.1	Rules and Treaties	185
6.1.1	Internal Rules	185
6.1.2	Treaty Provisions	186
6.1.3	States' Responses to Consumer Protection Under the Warsaw and Montreal Conventions	189
6.2	Guidance Material	191
6.2.1	Airport Economics Manual Doc 9562	191
6.2.2	ICAO Policies on Charges for Airport and Air Navigation Services: Doc 9082	194
6.2.3	ICAO Policies in the Field of Taxation in Air Transport: Doc 8632	197
References		200
7	Conclusion	201

Appendix A: Extracts of Rulemaking Procedures in the Federal Aviation Administration (USA): Federal Register for 14 CFR Part 11	207
Appendix B: EU Regulations on Air Transport	221
Index	249