



**NEAR EAST UNIVERSITY
GRADUATE SCHOOL OF SOCIAL SCIENCES
DEPARTMENT OF LAW
MASTER'S PROGRAM**

MASTER'S THESIS

**AVIATION LAW IN KURDISTAN REGION/IRAQ
IN RELATION WITH INTERNATIONAL
AVIATION ORGANIZATIONS**

Ayoob Ali HUSSEIN

**NICOSIA
2016**

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ABSTRACT

This thesis aims to identify the Aviation Law in Kurdistan Region/ Iraq in relation with International Aviation Organizations. The thesis will shed light on the three Organizations, namely: International Civil Aviation Organization (ICAO), International Air Transport Association (IATA) and Arab Civil Aviation Commission (ACAC). The study will try to explain the history of the above Organizations, Objectives and membership rules according to their Conventions.

The study also aims to introduce the Kurdistan Region of Iraq as an autonomous unit; its history, economy and claim to independence under the principle of self-determination in international law.

In addition, this thesis will try to explain aviation law in Iraq and Kurdistan Region of Iraq, and discuss the importance of International Aviation Organizations for Kurdistan Region of Iraq. The thesis will also approach the legal ways of the Kurdistan Region of Iraq under which circumstances they may have relationships with International Aviation Organizations in the light of International Conventions and Iraqi Laws. The study found out that the Kurdistan Region of Iraq cannot be a member in the International Aviation Organizations (IAO) as it stands due to the principle of sovereignty. However, the Kurdistan Region can have the relationship with IAO through the Federal Government. The study also concluded that some sets of recommendation which includes the necessity to develop the Civil Aviation sector in the Kurdistan Region of Iraq.

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ABBREVIATIONS

ACAC: Arab Civil Aviation Commission

AOC: Air Operator's Certificate

Articles of Association: Articles of Association IATA, 1945

Chicago Convention: The Convention on international civil aviation 1944

Federal Government: Iraqi Federal Government

IATA: International Air Transport Association

ICAA: Iraqi Civil Aviation Authority

ICAN: International Commission for Air Navigation

ICAO: International Civil Aviation Organization

IAO: International Aviation Organizations

IOSA: IATA Operational Safety Audit

ISIL: Islamic State in Iraq and the Levant

KRG: Kurdistan Regional Government

KRI: Kurdistan Region of Iraq

Kurdistan: Iraqi Kurdistan

SARPs: Standards and Recommended Practices (ICAO)

UN: United Nations

INTRODUCTION

Indeed, the plane is a product of modern technology, and it has an international nature, so it requires an international coordination; namely an International Aviation Organizations. The coordination was absent universally until after the First World War; when some European Countries adopted the Peace Convention in Paris, and they founded the ICAN. Indeed, the resolution of the conference did not adopt the idea of (freedom of the air) but was in favour of the sovereignty of states in space above their Territories (ICAO, 2015).

Research shows that in November 1944, towards the end of the Second World War, representatives from fifty-four nations gathered in Chicago to design a blueprint for the worldwide regulation of post-war international civil aviation. The Conference agreed in the adoption of the Convention on International Civil Aviation (Chicago Convention) on 7 December 1944 and the establishment of the (ICAO) on 4 April 1947 when the Convention came into force. The main mission of ICAO is to “ensure the safe and orderly growth of international civil aviation throughout the world” (Huang, 2009, p. 1).

Regarding to Iraq, however, it ratified on the Chicago Convention in 1947 and became a member of ICAO. But for different reasons; the Iraqi governments did not evolve the aviation law in the country.

In 2005, Iraq became a Federation State, and KRI was founded as an autonomous unit. Iraqi Kurds had a significant role in creating a new Iraq when Saddam's regime ended.

The Kurdistan Regional Government (KRG) also ignored the Civil Aviation Sector like the Federal government. KRI has currently two International airports; without having their own civil aviation authorities. Actually, there has not been a good organization for the development of civil aviation sector in KRI.

This thesis chose this topic since there is no any study that talks about the Aviation Law in Kurdistan Region/ Iraq in relation with International Aviation Organizations, and to try to find answers for these questions:

What are the International Aviation Organizations? What is the legal status of KRI? How can the KRI benefit from the International Aviation Organizations?

Because of these reasons this thesis will shed light on the three international aviation organizations that are related to KRI; (ICAO) as a main international organization, IATA as an international civil aviation association and (ACAC) as a regional civil aviation organization. This thesis will identify the history of KRI and the importance of the international aviation organizations to the KRI. In addition, this thesis aims to explain the membership in International Aviation Organizations according to their conventions and Iraqi Laws.

Statement of the Problem

After the defeat of Saddam Hussein's regime in 2003, the new Iraqi constitution formalized the erstwhile de facto autonomy of the Kurds; and the Constitution gave certain authorities to the Kurdistan Region. The Kurds in the region usually hear from their leaders' speeches that the Federalism is not enough, that true independence is needed on the landlocked Region. However, the Kurdistan Regional Government has not been planning for the development of the civil aviation sector in the Kurdistan Region until this time whereas there was more than one legal way to do it.

As a result, the problem of the study focused around the introduction and importance of the International Aviation Organizations (IAO) to identify the legal ways which KRI can gain access to the IAO for the purpose of development of the civil aviation sector in the KRI.

Research Motivations

There is no doubt that the role of International Aviation Organizations (IAO) is one of the most important issues of interest to the civil aviation and international air transport, especially the aviation safety and security.

This study is expected to be useful by providing a theoretical study about the importance of International Aviation Organizations (IAO), especially for the KRI; because it is situated as a landlocked Region and its land border is usually not safe.

Actually, there is no study that addresses the domestic aviation law in relation to international aviation organizations, neither in the KRI nor in Iraq. For this reason, this study aims to identify the legal ways for Kurdistan Regional Government to make a relationship with IAO, and therefore, develop the civil aviation in the KRI.

Research Objectives

The research aims to identify the International Aviation Organizations (IAO), especially the history, objectives and membership in them. The research also aims to introduce the KRI and its situations, especially the civil aviation sector. Identify the legal ways for Kurdistan Regional Government (KRG) to access the IAO.

Research Plan

The study is planned according to the following steps:

Introduction: It includes the Introduction to the study, Statement of the problem, research motivations, research objectives, research plan, methodology and literature review.

Chapter 1: An overview to aviation law includes an introduction to international law and aviation law and definition and history of international aviation organizations.

Chapter 2: This chapter deals with three International Aviation Organizations (ICAO), (IATA) and (ACAC)). There are other international and regional organizations, especially in Europe but Iraq is not a member in them, therefore, they are unnecessary to be talked about in this thesis.

Chapter 3: This chapter covers the talking about the KRI, through several stages (The past, present and future), and it will mention some information about oil in Iraqi Kurdistan and the Kurdish claim to independence.

Chapter 4: This chapter will cover Aviation Law in Iraq and KRI and the Importance of International Aviation Organizations for KRI. It will identify the legal ways for KRI to access the above organizations and benefit from them.

Finally, the Conclusion aims to present the results, and recommendations for the future.

Methodology

The study utilizes the descriptive analytical approach which focuses on the legal aspects of International Aviation Organizations. The Research is based on the International Conventions e.g. (Convention on international civil aviation (Chicago Convention 1944), Articles of Association (IATA) 1945 and Arab Civil Aviation Commission agreement 1994), Laws concerning civil aviation; Iraqi Civil Aviation law for example, books, Articles, reliable websites like ICAO and IATA websites, Theses, Lectures and other sources.

Literature Review

Previous studies represent a key tributary of the resources of the theoretical and the practical knowledge as well as the experiences of former researchers and finding their most important achievements, results and recommendations. Their studies and their researches which have a significant impact on the enrichment of knowledge and information of the researchers, which assist in the formation of the background of the subject of this study which eases the accomplishment in better and more comprehensive way.

Actually, I didn't find any study that addresses the domestic aviation law in relation to international aviation organizations, neither in the KRI nor in Iraq. While and undoubtedly there are previous studies that have dealt with several aspects related to the International Aviation Organizations (especially ICAO) and Kurdistan Region of Iraq.

Ludwig Weber (International Civil Aviation Organization an Introduction 2007), Michael Sassella (The International Civil Aviation Organization- its contribution to International law 1972), Peter H. Sand, Jorge de Sousa Freitas and Geoffrey N. Pratt

(An Historical survey of International Air Law before the second World war), Kerim Yildiz (The Kurds in Iraq 2004), David McDowall (A Modern history of the Kurds 2007) and Benjamin Case and James Siebens (Kurdistan in Iraq- History and Future Prospects).

The current study is similar to the previous studies in its interest to identify the history, objectives, membership and Organs of International Aviation Organizations. While apart from (Ludwig Weber) no one focused on the membership of the Territorial Units (Regions) in the International Aviation Organizations.

CHAPTER 1

AN OVERVIEW TO AVIATION LAW

1.1 International Law

There are various terms for International law e.g. the law of nations (Ismail, 2010). This has been called the law of war and peace. Pascal called (the law of the human race). Higl called the (law of foreign policy), and the label is common (Bentham) called international law.

International Law can be defined as a body of rules which governs the relations between states (Rashid, 2009). In another definition, the term 'International law' will be read as "that body of legal rules which applies to relations between sovereign States and also between such States and other international Organizations which have been endowed with international legal personality." (Sassella, 1971, p. 41).

1.1.1 Sources of International Law

There is only one provision in the statute of the International Court of Justice, which lays down what the court has to apply while deciding on disputes submitted to it. There are main sources and subsidiary sources of international law. The main sources are international conventions, international custom and general principles of law. While the subsidiary sources are international judicial decisions and the teachings of the most highly qualified publicists of the various nations.

On the other hand and according to Article 38 Paragraph 2 of the statute of International Court of Justice, the court may decide a case according to justice, equity and, good conscience if the parties agree thereto (Hmdi, 2010; statute of International Court of Justice, 1945, art. 38).

The Article 59 of the statute of International Court of Justice while referring to that the decision of the court has no binding force except between the parties at dispute who are members and in respect of that particular case.

1.1.2 The History and Development of International Law

The origins of international law were emerged in 19th-century through the works of some scholars e.g. Bluntschli, Lorimer, and Westlake, and then traces out its development into the 20th century. The Nineteenth-century international law was forged entirely in Europe. The law was made to reflect the expression of a European consciousness and culture and was geographically located within the community of European peoples.

The emergence of the Ottoman Empire In the mid-19th century saw the Empire gain entry into the international-law community. The next to join the international community were Japan and China. International law was remained a (European) and (Christian) law until the 1856 Treaty of Paris, from that point it extended to other civilizations and religions, too.

In the post–World War II period, the international law expanded beyond Europe and came to include a larger community of nations. These nations and other civilizations gave their consent for these laws to be applied for their mutual existence and benefit. Their consent accounted for the existence of international law, which was now being applied, or at least invoked, to assert various differences among them.

In an effort to foster unity among nations and engender the acceptance of these laws among nations, the 1955, Bandung Conference was held among Asian and African countries for the purpose of promoting cooperation among themselves and opposing colonialism. This conference gave birth to the Asian Legal Consultative Committee. The committee was steered by India and which set out the further cooperative objective of encouraging participants to play a more active role in the development and codification of international law. In 1961, the committee took part in the Vienna Convention on diplomatic relations, presenting recommendations on the rights of refugees, and these recommendations would then become the substance of the United Nations Declaration on Territorial Asylum of 1967. This certainly became the major contribution of countries of Asia and Africa to the development of international law with a view to its universalization (Gozzi, 2007).

The United Nations was founded in 1945. Today it is like the home to different Societies to development of international law. It is observed that more than 500 multilateral treaties have been deposited with the Secretary-General of the United Nations as a result of the growing number of membership as well as the growing complexities of the relationship. Many other treaties are deposited with governments or other entities (United Nations, 2015).

1.2 Aviation Law

“Aviation Law is a body of rules governing the use of airspace and its benefits for aviation, the general public and the nations of the world” (Verschoor, 2012, p. 1). In another Definition, “Aviation Law is a body of legal rules governing the use and activity of aircrafts, and the consequence relations on that use and activity” (Alwa, 2012, p. 10).

Air law or Aviation law?

Historically; the Air law term was used by Paris High School for Aviation in 1909, while the Aviation law term used by Italian Jurists. There is a disagreement between Jurists on Air law meaning; some Jurists used it for Air relations without identifying (Alwa, 2012). So I decided to use the term of Aviation law since the thesis deals with international civil aviation activities.

1.2.1 The Relationship between Aviation Law and International Law

The aircrafts may fly over states’ territories and their skies during its flight this is because the notion of air transport is an international one. Many international air treaties have been concluded in order to regulate the matters regarding air transport (Helilibya association, 2015). Therefore the issue of sovereignty lies at the very heart of international aviation because all aviation relations are built upon it. States will open their airspace for the purpose of commercial and air transport activities through international treaties only (Erotokritou, 2012).

Aviation law, because of the nature of air travel is generally considered a matter of international law. As a result of their nature, the business aspects of airlines and their regulation also fall under aviation law. At the international level, the (ICAO)

provides general rules and mediates international concerns to an extent regarding aviation law (Miller & company advocates, 2015).

1.2.2 Characteristics of Aviation Law

Aviation law has the following characteristics:

a. Aviation Law is a modern law: Since an aircraft is a produce of 20th centuries' modern technology which requires new legal rules. Thus codification of code of conduct had a significant role in the development of aviation whilst custom could not find that way of law making.

b. Aviation law as an independent law: Some of jurists have opinions to the extent that the aviation law is a branch of Maritime law. It must be pointed out that indeed the aviation law is not a branch of Maritime law nor other laws, It cannot borrow the rules of Maritime law to be applied on aviation law in the present because the plane cannot be defined as a ship. Air risks are different from the risks of the sea and the age of the existence of the ship is longer than that of the aircraft. In the beginning of the aviation industry, there was quotation of some of marine legal rules to be applied on the plane but it cannot be applied now on the developed aircrafts business. This is because the air laws have reached a stage of maturity. The measurement and metaphor with the other branches of the law may not be necessary (Moontada altalib, 2015).

c. Aviation law has a dynamic structure and is always in progress (Bakr, 2015).

d. Aviation law has peremptory norms: the international treaties which are related to aviation are peremptory norms and must be respected by the States members; in particular those rules which are related to airports, air traffic, safety and security (Star times forums, 2015).

e. Aviation law has an international nature: The aircrafts may fly over the states' territories and their skies during its flight; because the notion of air transport is international. There have been concluded many international air treaties for regulating those matters (Helilibya association, 2015).

1.2.3 Sources of Aviation Law

It has been found that “Air law has taken on its international character and emerged on an international plane almost from the very beginning. Due to the rapid developments in aviation and with the lawmakers attempting to keep pace, custom has largely been bypassed as a source of law, but the result that Air Law is mainly consisting of written law” (Fong, n.d. 2).

Aviation law has Formal Sources and subsidiary sources. The formal sources of aviation law are legislation and the air custom. The legislation includes international treaties and domestic law. International treaties which are related aviation law issues are the results of Paris Convention 1919, Chicago Convention 1944, Geneva Convention 1956, Tokyo Convention 1963, Hague Convention 1970, Montreal Convention 1971 and Montreal Convention 1991. International treaties which are related to private law issues are the Warsaw Convention 1929, Rome Convention 1933, Geneva Convention of 1948, Rome Convention 1952, Guadalajara Convention 1961 and Montreal Convention 1999.

Regarding domestic law, most States have national legislation to regulate legal relations air traffic such as England in 1920, France in 1924 and Italy in 1942.

The subsidiary sources of aviation law are:

- a. Aviation Unions: such as: I. A. T. A
- b. Judicial Decisions.
- c. Jurists opinions (Moontada altalib, 2015).

1.2.4 The History and Development of Aviation Law

2016 is precisely 113 years since the Wright brothers flew the first engine-powered flight successfully. The national rules of various nations make it possible for us to review the development of the industry in the various nations.

1910 was the first time that attempt was made at codification at the international level when the German balloons made repeated flights over French territory. The French Government believed that it would be wise and reasonable to for the two

nations involved to engage in meaningful discussion and agreement in order to solve the problem. Because of this reason, the Paris Conference of 1910 was convened. The resolution at the conference did not welcome the idea of freedom of the air but was in favour of the sovereignty of states in the space above their territories, which was reflected on the draft convention at the plenary session of the conference (Fong, n.d.).

1.3 International Aviation Organizations

There is no exact definition for international aviation organizations (IAO). So firstly, I refer to the definition of International Organizations and the definition of Aviation Law in the above, accordingly IAO will be defined later on.

An international organization can be defined, following the International Law Commission, as an “organization established by a treaty or other instrument governed by international law and possessing its own international legal personality” (Peace palace library, 2015).

In the light of the above definitions; the IAO can be defined as an organization established by a treaty governed by international law, and aims to provide a role in the development of Aviation field between members of the Organization.

1.3.1 Historical Background of International Aviation Organizations (IAO):

1910 was the first time that attempt was made at the creation of an international aviation organization when the German balloons made repeated flights over French territory. The French Government believed that it would be wise and reasonable to for the two nations involved to engage in meaningful discussion and agreement in order to solve the problem. Because of this reason, the Paris Conference of 1910 was convened (Fong, n.d.).

Historically the ICAN is known as the first international aviation organization, it was founded under (The Paris Conference 1919). As earlier stated the conference resolutions were more in favour of the sovereignty of individual states, their territory and the space above their territories.

Aeronautical Commission was subsequently formed out of the Peace Conference which came about because of Inter-Allied Aviation Committee created in 1917 as a result of the Peace Conference of 1919. The countries represented at the Commission were: Belgium, Brazil, the British Empire, Cuba, France, Greece, Italy, Japan, Portugal, Romania, the Kingdom of the Serbs, Croats and Slovenes, and the United States. At the first meeting, the Commission agreed to produce a set of basic principles in preparing the Convention and its Annexes. The established three Sub-Commissions which were legal, technical, and military. These three were aided by draft conventions submitted by France, Great Britain, and the United States; Italy submitted a draft proposal for aerial navigation laws. The Convention was signed by 27 States on 13 October 1919.

This new Convention (with texts in French, English and Italian) consisted of 43 articles that dealt with all technical, operational and organizational aspects of civil aviation and also foresaw the creation of the ICAN, under the direction of the League of Nations, to monitor developments in civil aviation and to propose measures to States to keep abreast of developments. The Convention came into force on 11 July 1922. The Convention was ultimately ratified by 37 States, ICAN was by no means the first international organization designed to further the growth of aviation.

In 1944 International Civil Aviation Organization (ICAO) was established under the Chicago Convention and in 1945 IATA was founded (ICAO, 2015). Both organizations will be examined in chapter two.

CHAPTER 2

INTERNATIONAL AVIATION ORGANIZATIONS

There are many International Aviation Organizations (IAO), however only three organizations (ICAO, IATA and ACAC) will be our main concern regarding the aim of this study.

2.1 International Civil Aviation Organization (ICAO)

The (ICAO) is a UN Specialized Agency; it is the world and universal forum for civil aviation. ICAO works to achieve its vision of safe, secure and sustainable development of civil aviation through cooperation amongst its member States (Horg, 2015). Currently; ICAO has 191 Member States (ICAO, 2015).

2.1.1 Historical Background

Initially, The United States invited 55 states to the Chicago Conference in order to achieve the conclusion of the Convention on International Civil Aviation which was signed on 7 December 1944. The ICAO came into being on 4 April 1947 upon entry into force of the Convention. Part 2 of the Convention sets forth the constitutive provisions regarding ICAO, including its objectives, organs and institutional structure and status as an international Intergovernmental organization (Weber, 2007).

The Chicago Convention has important impacts like the establishing of a new International Aviation Organization and revocation of the following Organizations and commissions:

- a. ICAN, it was founded according Article 34 of the Paris Convention in 1919;
- b. International Technical Committee of Aerial Legal Experts;
- c. Pan American Convention of Aerial Navigation(the Convention on Commercial Aviation signed at Havana on February 20, 1928);

d. Provisional International Civil Aviation Organization (PICAO), it was founded according Chicago Convention 1944 to remain in existence until the permanent organization (ICAO) was created (Convention on international civil aviation, 1944, art. 80).

2.1.2 Objectives of ICAO

ICAO's Objectives under Article 44 of the Chicago Convention:

- a. Ensure 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. Development of airways and airports;
- d. Meet the needs of the peoples of the world for safe and economical air transport;
- e. Promote safety of flight in international air navigation;
- f. Promote generally the development of all aspects of international civil aeronautics (Convention on international civil aviation, 1944, art. 44).

In order to achieve these objectives "ICAO works with the Convention's 191 Member States and global aviation organizations where they have developed international Standards and Recommended Practices (SARPs). The member states are obligated to reference the SARPs in developing their legally-enforceable national civil aviation regulations. The Chicago Convention has over 10,000 SARPs which is over seen by ICAO and these are reflected in the annexes of the Chicago Convention., the provisions of this Convention as well as ICAO's complementary policy, auditing and capacity-building efforts are reasons that today's global air transport network is able to operate close to 100,000 daily flights, safely, efficiently and securely in every region of the world" (ICAO, 2015).

2.1.3 Membership

a. Acceding to membership: According Article 92, Para (a and b) of the Chicago Convention, the Acceding to membership in ICAO is easy for States members of the

United Nations, For that purpose; they can send a notification to the Government of the United States of America and acceding shall take effect as from the thirtieth day from the receipt of the notification by the Government of the United States of America, which shall notify all the contracting States. While admission of other States, need to approval by any general international organization set up by the nations of the world to preserve peace. And four-fifths vote of the Assembly (Convention on international civil aviation, 1944, art. 93).

b. Signature and Ratification: There are two applicable articles on this subject; article (91) is applicable on those States that had been ratified on the convention before 4 April 1947, because on that date the convention came into force. That was when the last instruments of ratification were deposited in the archives of the Government of the (USA) and thirty days period on the deposit of the twenty-sixth instrument of ratification. While article (92) is applicable on the states that want to be ratified on the convention after it came into force. However, they are expected to sign before their entry into the association. They are expected to provide a notification to the Government of the (USA), and they will be admitted into its membership after thirty days from the receipt of their membership request. It should be noted that this article refers to members of the (UN) alone.

c. Suspension and Termination of Membership: Suspension and termination of membership are regulated in Articles 93 bis to 95 of the Convention. A special suspension provision is also found in chapter 18 (disputes and default), namely in Article 88.

In accordance with Article 49 Para (k) of the Convention, it is for the ICAO Assembly to decide on Suspension or termination of membership in ICAO.

Suspension of membership of a State is foreseen in the case of Article 93 subparagraph (c), where a State has been suspended from membership in the United Nations and a request is made by the United Nations that the State be also suspended from membership in ICAO. In this case, the State shall be suspended from membership accordingly.

Termination of membership of a State may be the result of any of the following action:

When the United Nations General Assembly has decided to suspend state, the State is to be debarred from membership in United Nations agencies (Article 93 bis paragraph (1); or expulsion of the State from membership of the United Nations (Article 93 bis paragraph (2); or failure of the State to ratify an amendment on the Convention which the Assembly has resolved requires to ratification (Article 94(b); or denunciation of the Convention by a State by giving notice to the Government of the (USA), under Article 95 of the Convention (Weber, 2007).

2.1.4 Organs

ICAO has its own organizational structure as every international organization. It is made up of an Assembly, a Council, a Secretariat, and such other bodies as may be necessary (Convention on international civil aviation, 1944, art. 43). The principal officers of ICAO are the President of the Council, and the Secretary General (Dempsey, 2008).

2.1.4.1 The Assembly

The Assembly is the Sovereign body of ICAO, it is composed of representatives from all member States, and each member has one seat and one vote in the Assembly. Now; ICAO has 191 Member States (ICAO, 2015).

The Assembly meets every three years in order to review in detail the working of the Organization. They also meet to set the policy for the forthcoming years and passing a triennial budget that will be used to run the association for the three years period. The Assembly also use the assembly meetings to elect the members of the Council and the governing body for a three-year term. It approves budgets and financial arrangements (Convention on international civil aviation, 1944, art. 93).

A quorum for the meeting of the Assembly is achieved by a majority of the contracting States during their meeting. The decision of the Assembly shall be taken by the majority in attendance and is binding on all through the casting of votes (Convention on international civil aviation, 1944, art. 48).

2.1.4.2 The Council

The ICAO Council, in most ways the most powerful organ of ICAO, is constituted in chapter 9 of the Chicago Convention, Under Article 50 Para (a) the Council "shall be a permanent body responsible to the Assembly. It shall be composed of thirty-three contracting States elected by the Assembly. An election shall be held at the first meeting of the Assembly and thereafter every three years, and the members of the Council so elected shall hold office until the next following election" (Sassella, 1971, p. 56).

The Council has mandatory functions and permissive functions as follows:

a. Mandatory functions:

Article 54 of the Convention has imposed some Mandatory functions on the Council; e.g. submit annual reports to the Assembly, Carry out the Assembly directions and respecting its obligations according of the Convention. It must write the rules of procedure for itself, determine the Air Transport Committee duties and which shall be responsible to the Council, Establish an Air Navigation Commission, Administer the finance affairs of the ICAO in accordance with the Convention, Inform the ICAO member States through a report about any infraction of this Convention, if the state failed to take appropriate action; the Council will inform the Assembly about the infraction, etc.

b. Permissive functions:

According to Article 55 of the Chicago Convention; the Council has some

Permissive functions like creating subordinate air transport commissions. The Council can give additional authorities to Air Navigation Commission. It also has the function to conduct research for any related purpose to air transport and air navigation and inform ICAO members about the result, and also investigate on any matter or situation to the development of international air navigation when there is a request by a member.

2.1.4.3 Secretariat

The Secretariat is headed by a secretary-general (chief of executive officer), among the many functions of the Secretary General is the day to day running of the Secretariats which includes: the management and effective work and performance of the activities assigned to the Office of the Secretary General relating to Finance, Evaluation and Internal Audit, Communications, and overseeing the activities of the Regional Offices in Bangkok, Cairo, Dakar, Lima ,Mexico, Nairobi and Paris (ICAO, 2015).

2.1.5 The General Principles of the ICAO

According to the Chicago Convention; the general principles are as follows:

- a. Sovereignty: The acceptance of the independence and sovereignty of states over their airspace is a status that all members must respect. This is stated in Article 1 of the Convention;
- b. The Convention shall be applicable only to civil aircraft. Article 3;
- c. Use civil aviation according of the ICAO objectives. Article 4;
- d. In case of war and time of emergency, the ICAO member States affected have a freedom to apply the provisions of the Convention or not. Article 89;
- e. Designation of routes and airports: Each contracting State may, subject to the provisions of this Convention, designate the route to be followed within its territory by any international air service and the airports which any such service may use. Article 68;
- f. Search of aircraft: The appropriate authorities of the ICAO member States have the right without unreasonable delay, to search aircraft of the other member states on landing or departure, and to check the documents. Article 16;
- g. Prohibited areas, Cargo restrictions and Photographic apparatus. Articles 9,35 and 3.

2.2 International Air Transport Association (IATA)

“IATA is an international trade association for the world's airlines” (Capa centre for aviation, 2015). IATA is an international industry trade group of airlines headquartered in Montreal, Canada, close to the ICAO. (IATA) has an on-going interaction with ICAO (ICAO, 2015).

2.2.1 The History and Development of IATA

The former IATA (International Air Traffic Association) was a small organization in the beginning. It was also limited to a European dimension. This body was formed at The Hague on August 25, 1919, the first year of domestic and international air service. The representatives of five air transport companies met at The Hague, Netherlands from 25 to 28 August 1919 and signed an agreement to form the International Air Traffic Association (IATA). By 1929, members had been increased to twenty-three, and on the eve of the Second World War, there were thirty members. IATA ceased to function officially during the Second World War. It was resuscitated at Chicago in 1944 under the name of the IATA. A meeting of international operators was held in Chicago on 7 December 1944 to appoint a drafting committee to prepare the draft of the organization and articles for an international air transport association. This committee met in Washington, from 11 to 14 December 1944.

Forty-one airlines from 31 countries met in Havana, Cuba from 16 to 19 April 1945 for the International Air Transport Operators Conference and founded the new IATA named: International Air Transport Association, they adopted the Articles of the Association. The Havana Conference decided that the first annual meeting be held in Montreal. In October 1945; 300 representatives from the aerospace, aviation, and aircraft industry met from 16 to 19 October for the first IATA Annual General Meeting.

IATA is celebrating its 71th anniversary in 2016! At its founding, IATA had 57 members from 31 nations, mostly in Europe and North America. Today it has some 260 members from 117 nations in every part of the globe. Carrying 83% of the world's air traffic (Peter, n.d.; IATA, 2015).

2.2.2 Mission and Aims of IATA

The mission of IATA is to represent, lead and serve the airline industry. In carrying out this mission IATA shall:

- a. Promote safe, reliable and secure air services for the benefit of the peoples of the world;
- b. Provide means of collaboration among Airlines in compliance with applicable law;
- c. Cooperate with the ICAO and other relevant international organizations (Articles of Association of IATA, 1945, art. 4).

IATA performs very important functions. One of the important functions it performs is clearing-house, handling the ticketing clearing for airlines' account under the responsibility of its financial committee since 1947 in London. Later, it moved to Geneva. The other function of IATA is to fix tariff rates for international air transport, its activities find their expression in Resolutions and Recommended Practices adopted by the Traffic Conferences which become binding on the member when approved by interested governments (Fong, n.d.).

2.2.3 Membership

The Membership is open to any airline which owns a nationality from a State which has right to be a member in ICAO (Alwa, 2012). Upon application for IATA membership, an Applicant Airline shall submit to the Membership Office the following:

- a. A valid IATA Operational Safety Audit (IOSA) Registration or equivalent as it may be renamed from time to time;
- b. a copy of the Air Operator's Certificate (AOC), or its equivalent, valid for a minimum period of six (6) months, issued and certified by the relevant authority in the Applicant Airline's country of registration, together with any applicable operational specifications;

c. other supporting documentation as specified in the membership form provided by the Membership Office;

d. Fees and Dues in accordance with Article 5 Para 5.

Regarding the process for approval of membership; it may be as follows:

a. Applications for IATA membership shall be made in the form provided by the Membership Office, include the documents required and be submitted together with the application fee to the Membership Office. When the application is completed, the Membership Office shall submit the application to the Board, along with its recommendation. Only the Board can approve the membership of a new member.

b. Membership shall become effective once payment in full of all Fees and

Payment of Dues for the current year are received and upon approval by the Board.

c. Any Applicant Airline whose application for membership is not approved by the Board may appeal the decision to the next Annual General Meeting, the decision of which shall be final (Articles of Association of IATA, 1945, art. 5).

2.2.4 Organs

The head office of IATA is in Montreal and it has 63 offices in 60 countries, the Executive Office is in Geneva and Regional Offices in Amman, Beijing, Brussels, Johannesburg, Madrid, Miami, Moscow, Singapore, and Washington. It represents some 260 airlines from 117 Countries (Capa centre for aviation, 2015).

Generally; IATA is administrated by Annual General Meetings, Board, the Director General and the Corporate Secretary.

General Meetings will be held by a majority of members that are registered at a General Meeting and they shall constitute a quorum for the duration of that General Meeting. The Annual General Meeting is a top authority in IATA, and each member has the right to exercise one vote. The Annual General Meeting has the authority to elect its President, elect members of the Board, Establish IATA Conferences and such groups and subordinate bodies as it considers appropriate. It also has the right to

confirm the appointment, term of office and duties of the Director-General and Etc (Articles of Association of IATA, 1945, art. 10&12).

The Executive Committee is constituted by the Board within the meaning of the Act of Incorporation and shall be composed of not more than thirty-one (31) eligible persons elected by the Annual General Meeting. The Board has some functions e.g. elect the Board Chair, Shall be vested with executive powers and duties, including (the general management and control of the business, affairs, funds and property of IATA), Shall appoint the Corporate Secretary and other officers, the Board Shall establish subsidiary corporations, branches, regional and other offices of IATA anywhere in the world as it considers appropriate, it also Shall consider for approval, applications for membership of IATA (Articles of Association of IATA, 1945, art. 14).

The Director-General is the Chief Executive Officer of IATA and has the authority, to supervise, direct and control the business and affairs of IATA under the authority of the Board, as well as to perform such other functions and duties that a General Meeting or the Board may delegate or assign to the Director-General.

On the other hand, the Corporate Secretary duties as are responsibilities that are specifically assigned to the Corporate Secretary in the Statute of IATA and as may be determined by the Board or the Director General. In addition, the Corporate Secretary shall act as the Secretary of General Meetings and of the Board (Articles of Association of IATA, 1945, art. 15&16).

2.3 Arab Civil Aviation Commission (ACAC)

ACAC was established by the League of Arab States in June 1996 as a regional organization in order to foster coordination and cooperation among Arab countries. The body is expected to forge the desired unity and collaborations with other parts of the world in the field of civil aviation. ACAC works on develop national civil aviation policies including regulations, training and research of its member States. It also works closely with the ICAO. ACAC based in Rabat, Morocco, as of 2011 was composed of 18 Arab member countries, includes the Republic of Iraq (Unterm, 2015; ACAC, 2015). According to Article 3 of the Arab Civil Aviation Commission agreement, the Membership shall be open for admittance of members of the League of Arab States (ACAC Agreement, 1994, art. 5).

2.3.1 Objectives of ACAC

ACAC has the following objectives:

- a. Making a general planning to development and safety of civil aviation in Arab Countries;
- b. Promotion of the cooperation and coordination between the Member States, regarding civil aviation;
- c. Work towards the development of the Arab Civil Aviation in a manner that responds to the needs of the Arab nation and providing them a safe and regular air transport (ACAC Agreement, 1994, art. 5).

2.3.2 Organs

ACAC is made up of an Assembly, an executive council, and a general administration. The Assembly is composed of the representative of member states, it meets every two years. The General Meetings will be held by a majority of Members, and the simple majority decision (ACAC Agreement, 1994, art. 8). The Assembly has the following powers:

- a. Elect a President for the Assembly;
- b. elect members of the Executive Council;

- c. appointment of the Director General for the Commission;
- d. determination of rules; regarding administration, finance, budget, the organizational structure of the Commission;
- e. establish new centres and branches for the Commission;
- f. modification of the convention by two-thirds of Member States;
- g. admission of new members by two-thirds of Member States (ACAC Agreement, 1994, art. 9).

The Executive Council is composed of five representatives of member states, the Executive Council meets twice each year, at least at the Commission headquarter. The General Meetings are held by a majority of Members, and the simple majority to decision (ACAC Agreement, 1994, art. 10). The Executive Council has the following powers:

- a. Elect from among its members a President and Vice-President, for a period of two years;
- b. Determine its own rules of procedure, and submitting to the Assembly for ratification;
- c. Follow up the implementation of Assembly decisions;
- d. Propose the appointment of the Employees in accordance to the Assembly rules;
- e. Propose the establishment of new centres and branches for the Commission (ACAC Agreement, 1994, art. 11).

The general Administration is composed from a Director General and other employees like technicians and administrators. The general Administration has to take all measures regarding Commission affairs and the implementation of its decisions, in particular:

- a. The preparation of research and reports and submission to the Assembly and the Executive Council

b. the general Administration has communications with all ACAC member States, and other Organizations; International or regional, regarding the affairs of the Commission(ACAC Agreement, 1994, art. 11).

CHAPTER 3

KURDISTAN REGION/ IRAQ UNDER INTERNATIONAL LAW

The Kurdistan Region of Iraq (KRI) is currently an autonomous region in federal Iraq. It is recognized by the Constitution of Iraq (Constitution of the Republic of Iraq, 2005, art. 117). KRI is bordered by Syria to the west, Iran to the east and Turkey to the north (KRG, 2015).

I will talk about KRI through three stages; The Past, Present and Future.

3.1 The Past

3.1.1 General Information on Kurds and Kurdistan Region of Iraq

The Kurds are native inhabitants of the land and as such there are no strict (beginnings) for Kurdish history and origins. In modern times, the Kurds as an ethnic group are the end product of thousands of years of evolution stemming from tribes such as the Guti, Kurti, Mede, and Khaldi, and the migration of Indo-European tribes to the Zagros mountain region some 4,000 years ago. The name Kurd was used to describe the nomadic people who in the region of Mesopotamia during its conquest by the Arabs in the seventh century AD. The term (Kurdistan), meaning the land of the Kurds (Yildiz, 2004).

Regarding to the language; the Kurdish language is a member of the Indo-Iranian language group which is a branch of the Indo-European family (al-khatib & Ali, n.d.). Kurdish is the most widely spoken language in the KRI. Kurdish and Arabic are the official languages of the Kurdistan region. They are the official languages of government and education (KRG, 2015).

Regarding to the religion; the Kurds do not have homogeneous religion. Sunni Muslims are the majority and they adhere to the Shafi 'i school rather than the Hanafi school which was the official religion of the Ottoman Empire. There are a number of other different religions, like Jews, Christians, Yazidis, and other sects (Yildiz, 2004).

Regarding to the Population; according to a United Nations Development Program (UNDP) report in 2007, Iraq's population stands at approximately 34 million, out of which 5 million people live in the Kurdistan Region (The United Nations Development Programme in Iraq (UNDP), 2015).

Regarding to the geography; KRI comprises four governorates, namely Erbil, Sulaymania, Duhok and Halabja. It has borders with Syria to the west, Iran to the east, and Turkey to the north. It's Area is 40,643 square kilometres. The climate of the Kurdistan Region is semi-arid continental: very hot and dry in summer, and cold and wet in winter, while spring is the most beautiful season in KRI and the time when Kurds celebrate Nawroz, the Kurdish New Year. Autumn is dry and mild (KRG, 2015).

3.1.2 The Kurds in the Age of Tribe and Empire

3.1.2.1 Kurdistan Before the Nineteenth Century

The Kurds came out of political oblivion with the coming of the Arab conquests. Their emergence marked the end of their existence in obscurity as well as serving as a strong evidence of the political strength and confirming the longevity of their reputation for political dissidence. The Kurds first encountered the Arab armies during the Arabs' conquest of Mesopotamia in 637. The Kurdish tribes had been an important element in the Sassanian Empire, and initially gave it strong support as it tried to withstand the Muslim armies, between 639 and 644. Once it was clear that the empire was doomed, the Kurdish chiefs one by one submitted to the Arab armies and to the new religion (Mcdowall, 2007; Yildiz, 2004).

In the 16th Century, the Kurds cleverly allied with the Ottoman Empire against the Persians in order to avoid war on two fronts with the Persians and the Ottoman Empire. This manoeuvre saved them from being at war on two fronts (Case & Siebens, 2007).

3.1.2.2 The End of the Ottoman Empire and Redrawing the Map

By the end of the WWI, Ottoman Empire too collapsed. This collapse gave the Kurds greater hopes of statehood and independence. The western powers who had

control of the territories wanted to conveniently create a Kurdish state in eastern region of Turkey leaving out a large Kurdish population and Kurdish areas in British-occupied Iraq and French-occupied Syria. In accordance to the Treaty of Sevres 1920, between the Allied Powers and Imperial Ottoman, Kurdistan region was scheduled to have a referendum to decide its fate, which, according to Section 3 Articles 62–64. However, the Turkish War of Independence curtailed Western cartography in the region and put an end to the goal of carving off part of Turkey for a Kurdish state, in 1923 the Allied Powers and Turkey signed on the Treaty of Lausanne. The Kurds remained an oppressed minority, divided by the newly created borders of Turkey, Iraq, Iran and Syria (Yildiz, 2004; Treaty of Sevres, 1920, art. 62–64; Treaty of Lausanne, 1923).

3.1.3 Kurdistan Region/Iraq between 1991- 2003

The level of lack of cooperation from the Kurdish minority in Iraq, the national hopes of the Kurdish people made the Kurds natural allies for the US in their 1991 invasion of Iraq. The US again raised Kurdish hopes of statehood by encouraging the Iraqi people to rise up against Saddam Hussein, but when the Kurds rose up against the regime, the US failed to support them, and Saddam quickly moved to crush the Kurdish rebels after the first Gulf War ended. The US eventually doubled-back under UN auspices after the Kurdish rebels were routed and it became clear that a humanitarian disaster was underway. The US set up a no-fly zone to prevent Saddam from using Iraqi airpower against the Kurds, and also sent ground forces to provide security for Kurdish refugees fleeing from the Iraqi military (Case & Siebens, 2007).

Following the prompting by France, Turkey and Iran, the UN Security Council convened a meeting on 5 April 1991 to deliberate on the adoption of a resolution that would condemn in clear terms the repression by the Iraqi government of its own people. The UN Security Council adopted Resolution 688, and Iraqi Kurdistan became under the protection of the international community (Yildiz, 2004). This Resolution guaranteed some kind of autonomy for the Kurds and permitted the Kurds to form the government that would transform eventually to be known as the Kurdish Regional Government (KRG). Ironically, the autonomy of the Kurdish region saw

the springing up of many political factions and an increased violence among the various political divides. This resulted in open fighting between Kurdistan Democratic Party (KDP) and Patriotic Union of Kurdistan (PUK). The Kurdistan Region of Iraq was divided by these parties into two zones; each party administrated a zone until 2006. Indeed; the division still has not finished completely in practice (Case & Siebens, 2007; (Mustafa, 2012).

3.1.4 Operation Iraqi Freedom and the Voluntary Federation 2003

The KRI also supported the 2003 invasion and occupation of the US. However, the lack of Turkish support for the invasion prevented the US from fully capitalizing on the support they enjoyed among Iraqi Kurds by sending a second invasion force across the Turkish border and accessing Iraq through the Kurdistan region. After the defeat of Saddam Hussein's regime, the new Iraqi constitution gave formal recognition to the erstwhile de facto autonomy the Kurds had exercised within the Iraqi state, without granting them independence (Case & Siebens, 2007).

3.2 The Present

3.2.1 Governing Structure of Kurdistan Region/ Iraq

After Saddam Hussein's regime in 2003, the Kurds leadership has chosen to remain part of a new Federation of Iraq despite its own achievements in self-governance. In 2005 the Kurds people voted for a new Iraqi Constitution, in which Article 117 Para (1) of the Constitution of Iraq refers to " This Constitution, upon coming into force, shall recognize the region of Kurdistan, along with its existing authorities, as a federal region." On the other hand, Article 120 also requires "Each region shall adopt a constitution of its own that defines the structure of powers of the region, its authorities, and the mechanisms for exercising such authorities, provided that it does not contradict this Constitution."

The KRI powers consist of the legislative, executive, and judicial powers and they shall exercise their competencies and tasks on the basis of the principle of separation of powers. The Kurdistan Parliament is the Region's democratically elected legislature. The parliament consists of one elected chamber. Its three main functions are: to examine proposals for new laws, scrutinize government policy and administration and debate the major issues of the day (Kurdistan Parliament law, 1992, art. 56).

3.2.2 Oil in Kurdistan Region of Iraq

Oil in KRI was first discovered around the city of Kirkuk in the early parts of the twentieth century. The first concessions for oil prospecting were granted to Turkish Petroleum Company in 1925, in which British Petroleum was a partner, along with Royal Dutch/Shell, and a French company which was precursor to TotalFina Elf (Yildiz, 2004).

After 2005, the Kurdistan Regional Government (KRG) signed a deal for oil exploration without the federal government's approval. This action made the KRG to appear confrontational to the federal government and made it look like they are saying that they are not part of an Iraqi nation, the fact that they are independently signing agreements with foreign companies from North America and Europe

indicates that they see themselves as fully autonomous. The Kurds' problems are further complicated by the fact that they are landlocked geographically. Therefore, access to the point of the oil extraction by the companies that they do business with, can only be done through the federal government, Turkey or Iran. Finally, The Kurdistan Regional Government (KRG) chose the Turkey as its route. This because Turkey has deep economic ties to KRI, and wields significant influence with the KRG as a result of the KRG's desire to establish and strengthen its own foreign relations and economic independence (Case & Siebens, 2007).

Many Iraqi major oil pipelines run through KRI. Oil from the Turkish fields is piped to a main line, which used to run to the Mediterranean Sea at the port of Ceyhan (T.O'Shea, 2004).

KRI is strategically situated at the crossroads of the Middle East and Europe. By its location, the Kurdistan Region is to become a significant contributor to the world's energy supply. As an increasing number of companies transit from exploration to production, Kurdistan is set to become an oil production destination for global energy markets. KRI has 45 billion barrels of estimated oil reserves. The Region has attracted more than 45 companies from over 30 countries since 2003. A total of 18,614,798 barrels of crude oil (an average of 620,478 barrels per day (bpd)) was exported by Kurdistan Regional Government (KRG) in the month of September 2015. This was done through the Kurdistan pipeline network to the port of Ceyhan in Turkey. The region is aiming to produce 2 million barrels per day by 2019 (KRG-Ministry of natural resource, 2015).

The exploitation of Kurdistan's oil remains a permanent source of conflict between the federal government and KRG. This because Iraq wants to impose that all decisions must be centralized while the Kurdish Region believes in the freedom to manage of its own wealth. In 2014, the Federal Government decided on the frizzing of Kurdistan Region's budget. This caused some financial crisis to emerge. The KRG was not able to pay its employees as it says it would. On the other hand, some political parties and Academic persons have noted many concerns on the KRG policy regarding transparency in the oil sector (Institute Kurde, 2011).

3.2.3 National and Foreign Relations of the Kurdistan Region of Iraq

3.2.3.1 Kurdistan Regional Government in Relation with Iraqi Federal Government

In many areas in the Middle East, the borders drawn by European colonial powers in the weakened Ottoman Empire in the early twentieth century rarely coincided with boundaries of pre-existing communities. Ethnic and regional diversities, as well as local loyalties to tribes or sects proved to be formidable obstacles to the integration of the people living within artificial state boundaries into one nation (Buitelaar, 2015).

Regarding to Kurdistan Region Government and Iraqi Federal Government Relationships, the situation is a precarious one for the Kurds in Iraq. The current state of instability in Iraq appears to represent an unprecedented opportunity for the Kurds to increase their autonomy, and even declare independence if they can unite. Today there are many problems between the KRG and Federal Government regarding the exploitation of Kurdistan's oil, Budget, borders, Kirkuk and foreign relations (Case & Siebens, 2007).

3.2.3.2 Foreign Relations of the Kurdistan Region of Iraq

Article 121 Para (4) of the Constitution of Iraq says on " Offices for the regions and governorates shall be established in embassies and diplomatic missions, in order to follow cultural, social, and developmental affairs." The Kurdistan Regional Government established the Department of Foreign Relations (DFR) in September 2006 in order to conduct relations with the international community. Today, the DFR is an integral part of the government, with a wide ranging portfolio of responsibilities with several representative offices worldwide. The KRG Department of Foreign Relations is mandated to promote the interests of the Kurdistan Region and its people with regard to relations with the international community and in accordance with the Region's legislation and the Constitution of the Republic of Iraq (KRG-department of foreign relations, 2015).

Today more than thirty Consulates and Foreign Offices are available in Kurdistan Region of Iraq, for example:

- Consulate General of the Islamic Republic of Iran
- Consulate General of the Republic of Turkey
- Consulate General of the United Kingdom
- Consulate General of the United States of America
- Consulate General of the Hashemite Kingdom of Jordan
- Consulate General of the United Arab Emirates
- Consulate General of the State of Kuwait
- Embassy Office of the Republic of Korea
- Embassy Consular Office of the Republic of Italy
- Embassy Office of the Kingdom of Sweden
- Consular Office of Romania
- Commercial Office of the Republic of Bulgaria
- UNAMI Regional Representation Office
- ICRC Regional Office

On the other hand; the Kurdistan Regional Government has these offices abroad:

- KRG Representation in Commonwealth of Australia
- KRG Representation in the Republic of Austria
- KRG Mission to the European Union
- KRG Representation in the Republic of France
- KRG Representation in the Federal Republic of Germany
- KRG Representation in the Islamic Republic of Iran
- KRG Representation in the Republic of Italy

- KRG Representation in the Republic of Poland
- KRG Representation in Russian Federation
- KRG Representation in the Kingdom of Spain
- KRG Representation in the Kingdom of Sweden
- KRG Representation in the Swiss Confederation
- KRG Representation in the United Kingdom
- KRG Representation in the United States of America (KRG-department of foreign relations, 2015).

3.2.5 The Current Security Situation of Kurdistan Region of Iraq

Unfortunately, the security situation is not normal in Iraq and KRI. Today Iraq is a base of many powerful terrorist groups including Islamic State in Iraq and the Levant (ISIL) (BBC news, 2014). Most analysts agree that Iraq's present situation is the result of the fall of Saddam Hussein, this because the fall of Saddam is implied as the fall of Sunni rule in Iraq. Under the supervision of the U.S. army, state control was handed over to the country's majority group of Shi'a Muslims. Members of Saddam Hussein's Ba'ath network, including police, teachers and the whole army were sacked. Eventually, the US policy of favouring the Shi'a and marginalizing the Sunni resulted in a Sunni insurgency and an outburst of sectarian violence. The Prime Minister (Maliki) regime adopted the attitude of the winner taking it all. Sunni leaders were imprisoned and tortured, and no civil services were supplied in the Sunni region. Consisting of Shi'a Muslims from the south, the army that was supposed to defend the northern territory against jihadist groups was not strongly motivated, nor did it get much support from the local population. The army more or less collapsed when in the spring of 2014, the jihadist group, known by the name of ISIL took over control in the north in collaboration with Sunni tribes that were disappointed in the Shi'a-led Iraq regime (Buitelaar, 2015).

On August 2014, the ISIL fighters attacked the KRI, firstly they captured the city of Sinjar, and they killed many Civilians there. The ISIL fighters also wanted to

capture the Kurdistan Regional capital (Erbil), Kurdish forces and (ISIL) fighters clashed in a town only 40 kilometres southwest of Erbil in northern Iraq (Al arabiya news, 2014). In 8 August 2014, The U.S. military conducted a targeted airstrike against ISIL near Irbil, two F/A-18 aircraft dropped 500-pound laser-guided bombs on a mobile artillery piece near Irbil, ISIL was using this artillery to shell Kurdish forces defending the city (U.S. Department of Defense, 2014).

Now the Kurdistan Region has 1,000 kilometres of border with the terrorists. This constituted a huge threat to them. From August 2014 to 22 March 2015, 1152 Kurdish soldiers were killed and 5633 others were wounded. On the balance, Kurdish leaders believe that they will succeed in the war against ISIL. They remained optimistic about their territorial and political gains, and believed that the Kurdish security forces will be able to prevent ISIL attacks. Their efforts to navigate the situation will have a major impact on both the struggle in Iraq and the regional strategic situation (Jamestown foundation, 2014).

3.3 The Future

3.3.1 The Kurdish Claim to Independence

With the fall of Saddam Hussein's autocratic government, following the US led invasion of Iraq in 2003, a great opportunity was created for Kurds to achieve their goal of creating an independent state by granting Iraqi Kurds formal but limited autonomy in the form of KRI within the Iraqi state. However, the changing political situation in after the recent withdrawal of American troops and circumstances for the minority Kurdish ethnic group has continued to worsen (Case & Siebens, 2007).

The Kurdish leaders have repeatedly said we want independence from Iraq. Therefore on 23 Jun 2015, The Kurdistan Parliament; legislated the Law No. 4 (Elections and Referendum Law, 2014).

3.3.1.1 The Self-determination to KRI in Accordance with International law

Self-determination – the right of the peoples to freely determine their political status and to pursue their economic, social and cultural development – is a compelling legal concept for many groups seeking greater autonomy. The protection of the people and their freedom from a repressive authoritarian regime is a desire that is expressed by the people collectively. The right of self-determination is now generally accepted as a recognized international legal principle, even if its precise scope is unclear (Yildiz, 2004).

Article 1 of the Montevideo Convention refers to that the state as a person of international law should has a permanent population, a defined territory, government, and capacity to enter into relations with the other states (Montevideo Convention, 1933). The third principle of the Atlantic charter; respects the right of all people to choose the form of government under which they will live. And it wishes to see sovereign rights and self-government restored to those who have been forcibly deprived of them (Atlantic Charter, 1941). The Article 1 of the International Convention on Civil and Political Rights, (1966) reads as "All peoples have the right of self-determination." Articles 1, 2 and 55 of The Charter of the United Nations (1945) are also regarding to the Self-determination.

Moreover, there are many resolutions which were issued by the United Nations, and regarding to the Self-determination, for example, resolution 421 on 4 December 1950, resolution 545 on 5 February 1952, resolution 2625 in 1970 and...etc (Abdulkhaliq, 2012).

In the light of the above, I noted that the KRI has the right to self-determination and there are no any Contraindications in international law to stopping KRI; in the declaration of an independent State. However, it is not easy at the moment, because the national, regional and international situations are not conducive. Moreover and from 1992 to this moment; The Kurdistan Regional Government has failed to make a good reform plan at various sectors. Further, it doesn't own a National Army because it was divided on the both Political parties KDP and PUK after Civil War 1992. Further, the Kurdistan Region has a war with the ISIL on its boarder. On the other hand, the Federal Government and some Iraqi political parties are rejecting the Kurdish Independence (Rudaw news, 2015).

Regarding regional response, Iran rejected the Iraqi Kurdish independence (Middle East eye, 2014); while the Turkey's position is not clear as I see it today.

CHAPTER 4

AVIATION LAW IN KURDISTAN REGION/ IRAQ IN RELATION WITH INTERNATIONAL AVIATION ORGANIZATIONS

4.1 Aviation Law in Iraq and KRI

Historically the aviation field like other fields has been ignored by Iraqi governments because Iraq has been engulfed by problem from its creation up to this moment. On the other hand, the development of aviation law started from Europe after the Second World War.

In 1947, Iraq ratified on the Chicago Convention and became a member of ICAO. In 1996, Iraq became a member of ACAC (Iraqi Civil Aviation law, 1974, art. 1).

Civil Aviation is administrated by Ministry of transportation (Iraqi Civil Aviation Authority) according to the Civil Aviation Law No. 148 of 1974 and the system No. 6 of 1996.

Regarding KRI; the federal civil aviation law is applicable there, however, KRI legislated the law of establishment of civil airports in KRI (Law No. 18 of 2008), but the establishment was not established yet.

4.1.1 Iraqi Civil Aviation Authority (ICAA)

The agency responsible for the coordination and ensuring compliance with laid down regulation is the (ICAA). It operates under the provisions of Annex 9 (Facilitation) of the Chicago Convention. The ICAA is responsible for coordinating with other Iraq agencies for the development and implementation of policy and coordination of ICAO matters. The (ICAA) is the specialist aviation regulator in Iraq. The activities of the ICAA include airspace policy, flight permissions, safety regulations and economic regulations. New carriers wishing to operate in Iraq must receive full approval from ICAA prior to flight commencement (ICAA, 2015).

4.1.2 The Importance of Ministry of Transportation of Iraq for KRI

The KRI has numbers of Ministers in the Federal Government because the Iraqi government runs a Consensus government between the Iraqi Components. The KRI can choose the ministry of transportation, for the purpose of development of civil aviation in KRI, because the ministry of transportation especially the Iraqi Civil Aviation Authority (which is a branch of the Ministry of transportation) is a relevant authority to regulate the civil aviation affairs in Iraq and the KRI. The ministry of transportation has the function of supervising the transport and communications sector (Iraqi Ministry of Transportation and Communications law, 1994). Moreover, and according to the Iraqi Civil aviation law (Law No. 148 of 1974); namely Article 5; ICAA is responsible for all civil aviation Affairs in the Country. It also has the other important functions and, in particular, the following functions:

- a. Iraqi Civil Aviation Authority holds the drawing of air transport policy in Iraq;
- b. Recommending to join the international civil aviation agreements, or to sign it, and the proposal to hold bilateral air agreements with other countries (Iraqi Civil Aviation Law, 2000, art. 4);
- c. Approve on applications which are submitted for the purpose of establishing new airlines in the Country;
- d. Ensure the safety of civil aviation under the laws and regulations (Iraqi Civil Aviation Law, 1996, art. 2).

4.1.3 Airports in Kurdistan Region of Iraq

There are in KRI; two Airports, both Airports are International.

- a. Erbil International Airport: Erbil International Airport is located Northwest of Erbil. The airport is built on the same location with where the Al-Ba'th regime uses as her airfield for their military base until 1991. With the collapse of the former regime in Iraq in 2003, the KRG decided to build a civil airport to serve as her connection to the rest of the world. The construction of the commenced On July 1st, 2003, and on December 15th, 2003 the first aircraft landed at Erbil airport and

flight between Kurdistan Region and the neighbouring countries started afterwards until 2005 when direct flights from Kurdistan to Europe started by Kurdistan Airlines. On 26th, May 2005 the Airport was given an ICAO code (ORER). The IATA code (EBL) (Erbil International Airport, 2015).

b. Sulaymaniyah International Airport: On December 2003 the construction work Sulaymaniyah International Airport was started in December 2003 by a Turkish company in accordance to the ICAO specifications requirements for international airports. The airport was officially opened for flight operations to all types of aircraft and all flights (Passengers and Cargo) on 20th July 2005. The airport is located North West of Sulaimaniyah city at a distance of approximately 15 km from city centre. The total area of the airport is approximately 13.5 square kilometres. The ICAO code is (ORSU) while IATA code is (ISU) (Sulaymaniyah International Airport, 2015).

4.2 The Importance of International Aviation Organizations for the KRI

Indeed, the aviation law has an international nature, so the International Aviation Organizations are very important because they have the duty and function of codification of the principles and techniques of international air navigation and development of air transport. Iraq and KRI like other states; need to IAO; for development of their air transport sector. Moreover, the KRI is a landlocked region and has plans for its independence but its land borders are usually not safe.

KRI is situated as a landlocked Region; it borders Syria to the west, Iran to the east and Turkey to the north (KRG, 2015). This means that in order to export and import, it needs to do that through the land borders through an agreement with its neighbours. As it stands now, all borders are not safe because there are hostilities close to KRI borders, the federal government of Iraq and Syria have hostilities with the Islamic State in Iraq and the Levant (ISIL), Iran with Party for a Free Life in Kurdistan (PJAK) and Turkey with the Kurdistan Workers' Party (PKK). So I believe that the Air transport is safer than land transport.

On the other hand, the KRI has a plan to independence but there is no any particular plan for the development of the aviation field yet. The federal government is governing the aviation matters in the country, the Kurdish representatives in the federal government have failed to adopt a new aviation law and identity for KRI authorities regarding to Aviation.

4.3 Aviation Law in Kurdistan Region of Iraq in Relation with ICAO

ICAO is a specialized agency of the United Nations (European commission, 2015). It was established under an international Convention (Chicago Convention 1944). If KRI has the plan to seek membership in ICAO; it should be in accordance to the Chicago Convention and Iraqi laws.

4.3.1 Membership in ICAO between the Chicago Convention and Iraqi Laws

Although the Chicago convention does not contain a specific membership clause, Article 91-93 bis are predicated on the principle that only sovereign states may adhere, or be admitted, and thereby become a member of ICAO. Therefore territorial units of sovereign states, even if they enjoy a large degree of autonomy, cannot become members of ICAO in their own right. The question that keeps coming up as early as 1948 in the case of application of Trieste, which could not be entertained, as Trieste was not a sovereign state. The practice of the organization in relation to the question of whether a candidate state is to be regarded as a sovereign State has relied largely on the practice of the United Nations. This applies also in relation to Taiwan, or as it is also referred to, Taipei-China. As the People's Republic of China maintains the one-China theory under which Taiwan is part of one China, along with Hong Kong and Macao, the United Nations and hence ICAO do not recognize separate statehood for Taiwan. Consequently, Taiwan is neither a member of the UN nor of ICAO (Weber, 2007).

Regarding Iraqi laws; the federal government has the authority to submit an application to the international organizations regarding the membership in them. Article 110 of the Constitution of Iraq reads as "The federal government shall have exclusive authorities in the following matters (First: Formulating foreign policy and

diplomatic representation; negotiating, signing, and ratifying international treaties and agreements)". On the other hand; and according to Iraqi civil aviation law; the Iraqi Civil Aviation Authority has functions to recommending to join the international civil aviation agreements, or to sign it, and the proposal to hold bilateral air agreements with other countries (Iraqi Civil Aviation Law, 2000, art. 4).

Although the KRI has the department of foreign relations and offices in Iraqi embassies and diplomatic missions in some Countries, and they may be interesting to itself; while the KRI does not have the power to signing, and ratifying international conventions; because the federal government owns the mentioned authorities (Constitution of the Republic of Iraq, 2005, art. 110).

4.3.2 Kurdistan Region of Iraq May Has Representative of Iraq in ICAO

Since 2005, the federal powers have been divided into basic components according to their agreement; the Prime Minister for Shia, the Speaker of the Parliament for Sunni and the President of the Republic for Kurds. KRI also has some ministers in the federal government. The Kurdish leadership can try to have the seat of the representative of Iraq in ICAO because it is important for KRI. The KRI will have direct contacts with the representative of Iraq in ICAO. The Ministry of Transportation and Iraqi Civil Aviation Authority are also important for KRI because they have powers to regulating the civil aviation matters in Iraq (Iraqi Civil Aviation law, 1974, art. 2)

4.4 Aviation Law in Kurdistan Region of Iraq in Relation with IATA

IATA as an international association for the world's airlines; has a big role in air transport, especially the safety, security, foster air commerce and to study problems connected therewith by means of collaboration among airlines engaged directly or indirectly in international air transport service (Fong, n.d.). Today it has some 260 members from 117 nations in every part of the globe. Carrying 83% of the world's air traffic (IATA, 2015).

According to IATA Articles (Articles of Association 1945), the Membership in IATA is open to Iraq and KRI airlines like any airline (Alwa, 2012).

4.4.1 Membership in IATA Accordance to IATA Articles and Iraqi Civil Aviation Law

The Article 5 of Articles of Association; contains some criteria for eligibility. An applicant Airline must meet those criteria to be eligible for IATA membership. According to Article 5; the following documents are expected to be submitted by airlines that are applying for membership: evidence showing that you have operated an Air Service, Maintain a valid IATA Operational Safety Audit (IOSA) Registration or equivalent, has operated an Air Service for a period of not less than two (2) years, a copy of the Air Operator's Certificate (AOC), or its equivalent, valid for a minimum period of six (6) months, issued and certified by the relevant authority in the Applicant Airline's country of registration, together with any applicable operational specifications (Articles of Association of IATA, 1945, art. 5).

Regarding KRI, the question may come up; is KRI or federal government the relevant authority to issue and certify the Air Operator's Certificate (AOC) in KRI? Although the Constitution of Iraq 2005, does not contain a clear answer to the above question; while the article 125 refers to "All powers not stipulated in the exclusive powers of the federal government belong to the authorities of the regions". In practice, the Iraqi civil aviation law (No.148 of 1974) is applicable in the federal government and KRI. According to the Iraqi Civil aviation law; namely Article 5 "The Civil aviation authority is responsible for all civil aviation Affairs in the Country". On the other hand and according to Article 5 of the Iraqi Civil Aviation Law (No.55 of 2000); the Application for establishing the national airlines must be submitted to the civil aviation authority, and it has the authority to approve or modify or reject (Iraqi Civil Aviation law, 1974, art. 5).

Further; the Article 7 of the law of Establishment of Civil Airports in KRI (Law No. 18 of 2008), contains that the relationship between the Establishment of Civil Airports in KRI and international Organizations will be in coordination with the Iraqi Civil Aviation Authority.

The problem came up; when Kurdish parliamentarians in Federal Parliament failed to discuss and issue a new civil aviation law for Iraq; and in the light of the

federal constitution 2005; because the Iraqi civil aviation law was issued from 1974; when Iraq was not Federation State.

4.4.2 The Procedures to Establish an Airline Company in Kurdistan Region of Iraq

Indeed, the Iraqi Civil Aviation law and ICAA rules are applicable in KRI, and ICAA has the duty and function to approve and establish the new Airlines in Iraq and KRI. While Article 7 of the law of Establishment of Civil Airports in KRI refers to that the KRI authorities have an authority to give the working licenses to those Aviation Companies who want to open their offices in KRI.

All new carriers desiring to operate in or over Iraq must provide an application containing the information to the Iraqi Civil Aviation Authority (ICAA, 2015).

ICAA must approve the landing, departure, and overfly Iraq of all aircrafts. In order to fulfil this task, documentation that is required is provided directly ICAA as required by their statutes. Flights that must overfly the Iraqi airspace must obtain all the necessary permission to do so. Furthermore, only civil operators and state flights approved by the ICAA are authorized to overfly Iraqi airspace. On the other hand; the Application of first intended flight if applied through diplomatic channels should be done at least fifteen days with all the necessary documents before the flight or, at least, seven days to the ICAA prior to the commencement of the first intended flight, and the carriers must be approved by the ICAA (ICAA, 2015).

4.5 Aviation Law in Kurdistan Region of Iraq in Relation with ACAC

ACAC is an Arabic specialized Organization of the League of Arab States; it is a Regional Organization which aims to foster coordination and cooperation between the Arabic States (ACAC, 2015).

Although the Kurds in Kurdistan Region of Iraq (KRI) have their languages and their cultures, and they are not a part from Arabic Nation but they need to have relationships with Arab Countries, because the KRI is still a part from Iraq, and Iraq is part of Arabic Nation, and is also a member of the League of Arab States and ACAC.

4.5.1 Membership in ACAC Accordance to Arab Civil Aviation Commission Agreement

The scope of applicability of the Arab Civil Aviation Commission agreement is within the Arab States only; namely the members of the League of Arab States. In the light of Article 2 and Article 3 of the Arab Civil Aviation Commission agreement; KRI does not have right to be a member of the League of Arab States nor of ACAC, because it is not a State (it is a regional government within a state) and it is not in scope of Arab States. The only way to access ACA is through the federal government (ACAC Agreement, 1994, art. 2 and 3).

4.5.2 Kurdistan Region of Iraq May Has Representative of Iraq in ACAC

As I referred before, Iraq is a member of ACAC. And according to Article 8 of the Arab Civil Aviation Commission agreement; the Director General of ICAA is the representative of Iraq in ACAC (ACAC Agreement, 1994, art. 8).

I explained before that the powers and Authorities in the federal government are divided into the basic Components according to their agreement after every election. So the Kurds can negotiate with other Components with regard to the administration of ICAA. If they agree to give the administration of (ICAA) to Kurdistan Region it will as the representative of Iraq in (ACAC) directly.

CONCLUSION

The conclusion aims to present the results of the study in the light of the International Conventions and Iraqi domestic laws, which dealt with the subject in, order to arrive at recommendations to help the Kurdistan Regional Government (KRG), to make a good plan to create relations with international aviation organizations and develop the civil aviation sector in KRI.

This thesis made the following important findings:

1. International aviation organizations (ICAO, IATA and ACAC) aim to encourage the development of airways, airports, and air navigation facilities for international civil aviation. ICAO is a UN specialized agency. It is the global forum for civil aviation. And IATA is an international trade association for the world's airlines. Finally; the ACAC is a regional organization for establishing coordination and cooperation among Arab countries.

2. The KRI is a landlocked autonomous region in the Republic of Iraq. It borders Syria to the west, Iran to the east, and Turkey to the north. It has the plan and desire for independence from Iraq but the national and regional situations are not conducive at this moment and its land borders are not safe. Moreover the Kurdistan Regional Government (KRG) like the Federal Government didn't have the plan for the development of the civil aviation sector in the KRI until this moment; however there was more than one legal way to achieve it.

3- The International Aviation Organizations predicated on the principle that only sovereign states may become a member of them. Therefore territorial units of sovereign states, even if they enjoy a large degree of autonomy, cannot become members of IAO in their own right. Indeed there is a link between the principle of sovereignty and membership of territorial units in the IAO. I think this Idea was born after Second World War; namely in the Paris conference 1919, because the resolution of the conference did not adopt the idea of (freedom of the air) but was in favour of the sovereignty of states in the space above their Territories.

There is a second legal alternative for KRI; it can have the relationships with the International Aviation Organizations (IAO) through the federal Government.

Here are some recommendations in order to give the best solutions for the development of the Civil Aviation sector in the KRI.

1- Activating the role of Kurdistan Regional Government (KRG) in all sectors; especially in the Civil Aviation field.

2- There is need for establishing an independence of Civil Aviation Authority in KRI and develop strategies for work with Iraqi Civil Aviation Authority and international aviation organizations. The Kurdistan Regional Government has authority to do it; because the Constitution of Iraq of 2005; does not contain any Article regarding to the Civil Aviation affairs; while the article 125 refers to " All powers not stipulated in the exclusive powers of the federal government belong to the authorities of the regions".

3- There is need to modify the Iraqi civil aviation law; because it was issued from 1974; when Iraq was not a Federation State. The Kurdish parliamentarians in the Iraqi Parliament; should try to do the modification of the above law.

4- There is need to start the negotiations with the Federal Government regarding to administration of Ministry of Transportation and Iraqi Civil Aviation Authority; because the Civil aviation authority is responsible for all civil aviation affairs in the country, and the application for establishing the national airlines must be submitted to the civil aviation authority, and it has authority to approve or to modify or to reject.

Moreover the Iraqi Seats (Representatives) in ICAO and ACAC are also important for the KRI, The KRI can claim to have those seats; at least through rotation with the Federal Government.

5- There is need to open the department of Civil Aviation at the national universities, and taking experience from international universities and institutes regarding to Civil Aviation.

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