NEAR EAST UNIVERSITY
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MASTER'S THESIS

THE ROLE OF INTERNATIONAL CONVENTIONS IN AVIATION LAW

FATHI ZEROO ZEROO

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PREPARED BY

FATHI ZEROO ZEROO

20144814

SUPERVISOR

ASST. PROF. DR. RESAT VOLKAN GUNEL

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We certify the thesis is satisfactory for the award of degree of

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Fathi Zeroo Zeroo

Examining Committee in charge

Asst.Prof.Dr. Reşat Volkan Günel	Near East University Faculty of Law
Asst.Prof.Dr. Derya Aydın Okur	Near East University Faculty of Law
Dr. Tutku Tugyan	Near East University Faculty of Law

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Assoc.Prof.Dr. Mustafa SAĞSAN

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SOSYAL BİLİMLER ENSTİTÜSÜ
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ABSTRACT

The study investigates the role of international conventions in aviation law. The primary purpose of this research is to discover the international regulation of aviation law through international conventions. The next research objective is to explore the national regulation of aviation law in the Federal Republic of Iraq including the Kurdistan Region. Third aim is to determine the position of new states toward international aviation conventions which were signed by the state of which it was a part of or by which it was represented in international relations before independence. The Qualitative research method was used in this study. The result of this study demonstrated that the International conventions consider the primary source of aviation law, but neither all states are parties to the conventions, nor all issues covered by them. Thus, bilateral agreements have been concluded to fill this vacuum. In addition, in the Federal Republic of Iraq there is neither a provision in its constitution nor a new aviation law issued after the establishment of new Iraq to regulate airspace between the federal government and regional government. Furthermore, there was significant difference between public and private aviation convention regarding the position of new states, by which the public international aviation conventions are not bound by new States unless they accept by them, and the private international aviation convention continue to apply to new states except if officially disapproved by the relevant provisions of the convention concerned.

***Keywords**:* International regulation of aviation law, National regulation of aviation law, and Position of new states toward international aviation conventions.

ÖZ

Bu çalışma havacılık hukukunda uluslararası anlaşmaların rolünü incelemektedir. Bu araştırmanın temel amacı havacılık hukukunun ulusal düzenlemelerini uluslararası havacılık anlaşmaları aracılığıyla keşfetmektir. Araştırmanın diğer bir amacı Kürdistan Bölgesi dahil olmak üzere Federal Irak Cumhuriyetindeki havacılık hukuku ulusal düzenlemelerini keşfetmektir. Üçüncü amaç, yeni devletlerin bağımsızlık öncesi uluslararası ilişkilerde temsil edildiği veya parçası olduğu devlet tarafından imzalanan uluslararası anlaşmalara karşı pozisyonunu belirlemektir. Bu çalışmada nitel araştırma yöntemi kullanılmıştır. Bu çalışmanın sonucu Uluslararası anlaşmaların havacılık hukukunun temel kaynağı olduğunu, ancak tüm ülkelerin anlaşmaların tarafı olmadığını ve tüm sorunları kapsamadığını göstermiştir. Bu nedenle bu boşluğu doldurmak için ikili anlaşmalarla sonuçlandırılmıştır. Buna ek olarak, Federal Irak Cumhuriyetinde federal hükümet ve bölgesel hükümet arasındaki hava sahasını düzenlemek amacıyla ne anayasada bir hüküm ne de yeni Irak'ın kuruluşundan sonra geçen yeni bir havacılık yasası bulunmaktadır. Ayrıca, kabul ettikleri durumlar haricinde kamu uluslararası havacılık anlaşmalarının yeni Devletlere bağlı olmayacağını belirleyen yeni devletlerin pozisyonu konusunda kamu ve özel havacılık anlaşmaları arasında anlamlı bir fark vardı ve özel uluslararası havacılık anlaşmaları, ilgili anlaşmaların uygun hükümleri tarafından resmi olarak kabul edilmediği durumlar haricinde yeni devletler için de geçerli olmaya devam etmektedir.

Anahtar Kelimeler: Uluslararası havacılık hukuku düzenlenmesi, Havacılık hukuku ulusal düzenlemeleri ve Uluslararası havacılık anlaşmalarına karşı yeni devletlerin pozisyonu.

DEDICATION

Every challenging work needs self efforts as well as guidance of others specially those who were very close to our heart.

My humble effort I dedicate to my sweet and loving

Father and Mother,

Whose affections, love, encouragement and prays of day and night make me able to get such success and honor,

Along with support, patience and tolerance of my beloved wife and lovely son.

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LIST OF ABBREVIATIONS

ACI _____Airports Council International

EUROCONTROL ___European Organization for Safety of Air Navigation

ECJ _____European Court of Justice

ECAC _____European Civil Aviation Conference

EIA _____Erbil International Airport

FRI _____Federal Republic of Iraq

ICJ _____International Court of Justice

ICAO _____International Civil Aviation Organization

IATA _____International Agency for Trade Aviation

ICAA _____Iraqi Civil Aviation Authority

KRG _____Kurdistan Regional Government

KCAI _____Kurdistan Civil Airports Institution

KRI _____Kurdistan Region of Iraq

PICAO _____Provisional International Civil Aviation Organization

U.A.E _____United Arab Emirate

CBNW _____Biological, Chemical and Nuclear Weapon

CHAPTER I

INTRODUCTION

1.1 Introduction

The invention of aircraft by man enables him to utilize airspace and to trespass the border of different states each has its sovereignty which leads to emerging problems and legal relations at the international level.

Therefore, the international community initiated to hold international conferences and bilateral negotiations to find a resolution for this issue and to regulate this activity. Consequently, international multilateral conventions in both public and the private aviation law had been concluded. But due to the economic or political reason neither all States became parties to the conventions, nor all issues covered by them. Thus, bilateral agreements between states were adopted.

Also, the rapid development of air technology engendering new queries, which requires a new treatment, thus, the conventions were amended, and supplement protocols added to them. Moreover, at the national level, each state issued its national aviation code. Another point is the position of new states toward international conventions that signed by the state of which it was a part of or by which represented it in its international relations before independence.

Besides, another problem might arise in federal states regarding legal regulation of airspace between the federal government and federal regions which typically organize by the constitution. But, sometimes the Constitution does not contain any provision regarding legal regulation of airspace between the federal government and the regions, such as occurred in Iraqi constitution of 2005.

We will discuss all of these matters in a four-chapter thesis work. In the first chapter an introduction to the subject, literature review, statement of problems, aim of the study, the significance of the research, questions about the study, theoretical

framework, methodology, terminology, definitions, concepts and historical background of the research are well laid-out.

In the second chapter, we discuss the role of international conventions in both public and private law in regulating aviation in international level. The third chapter consists of national regulation of aviation law in the F. R.I and K.R.I. In the fourth chapter, we examined the position of new states toward international aviation conventions, all of which to determine the future of aviation in K.R.I. Finally, in the conclusion we concluded the results, recommendations, and suggestions for future studies.

1.2 Literature Review

To configure the conceptual framework of the current study, we scanned the previous studies that have the direct relation to the subject, and these studies thoroughly presented.

Gu & Jaf, (2011), in their Conference proceeding discussed the legislation in the F.R.I and K.R.I after 2003 between the reality and ambitious: legal regulation of airspace of the K.R.I. They indicate that the K.R.I is a federal region approved by the Iraqi Transitional Administrative Law of 2004 and the Iraqi Permanent Constitution of 2005. However, through examining the provisions of both of them we found out that there is no provision to determine the relation between the F.R.I and K.R.I regarding legal regulation of airspace, and the transportation whether by land, sea and air is not concluded in the exclusive competence of the federal government. Therefore, the K.R.I has authority to regulate its airspace, to adopt aviation law and to establish aviation authority. It differs from my study in that; this study investigated the legal regulation of airspace and civil aviation in K.R.I within the F.R.I according to its new constitution. But my study related to the role of international conventions in the regulation of aviation law and the position of the new state; the future of K.R.I as an example (Gul, M & Jaf, J, 2011, pp. 45-53).

Maulud, (2016), in his thesis discussed the regulatory and supervisory rights of civil aviation in the international air commercial transportation. He states that there are commercial aviation rights in place to regulate and coordinate commercial aviation activities at the international level which derived from international conventions.

Meanwhile in national level each state has its national aviation law to regulate and oversee commercial flights. Also, the regulation of aviation in F.R.I and U.A.E are compared and many disparities between the two countries concluded in which Emirate has given more power to regional provinces than Iraq. It differs from my study in which it is related to the regulatory and supervisory jurisdiction of the civil aviation in the international conventions and national legislations. However, my study determines the role of international conventions in the regulation of aviation law, national regulation of aviation in F.R.I and KR.I and finally the position of new states in international aviation conventions; Future of Aviation in K.R.I as an example (Maulud, 2016, p. 1).

Mankiewiczt, (1963), in his article under the title the international air law conventions and new states, examined the position of new states toward international aviation conventions. He indicates that the public international aviation conventions do not apply to new states unless it has accepted by them. But, the private international aviation convention continues to apply to the new states unless if it has denounced of them according to the related provisions of the concerned convention. This study differs from my study in that; it is related to the position of new states toward international aviation conventions at the time of decolonization. But, my study is about the role of international conventions in the regulation of aviation law and national regulation of aviation in F.R.I and K.R.I and finally the position of new states in international aviation conventions, future of K.R.I as an example (Mankiewiczt, 1963, p. 64).

1.3 Statement of the Problem

The problem of this study lies in the role of international conventions in the regulation of aviation law, the national regulation of aviation in the F.R.I and K.R.I and the position of new states in this regard, future of K.R.I as an example.

As we know, there are many international aviation conventions in place to regulate the aviation law in both public and private law. These conventions contain the rules and regulations related to the air navigation, air transportation, air accidents, rights on aircraft and so on, which we will study in depth. Additionally, when one state separates from another state and acquires the territory from that state, it gains a part of its territory. Consequently, it acquires the sovereignty of airspace over that part of

the territory and enables it to exercise the civil aviation authority in that part. But, the question is that, which of the rights and obligations of the mother state pass to the new state?

What happens to the international multilateral conventions and bilateral agreements, in the scope of aviation law.

1.4 Aim of the Study

This study seeks to stand on the role of the international conventions in regulating aviation law and determining the national regulation of aviation law in F.R.I and K.R.I as well as the position of new states; Future of K.R.I in this regard.

1.5 Importance of the Study

This study is important since it is one of the modern legal studies related to an important type of navigation and transportation means which is characterized by the continuous development and requires the fast development of related rules. This study limited in the legal status of the aviation. The studies provided in this area are far from being enough, to give rise to the issue of aviation law problems.

1.6 Questions about the Study

1-What is the role of international conventions in the international aviation law?

2-How is the national aviation law regulated in the F. R.I and the K.R.I?

3-What is the position of the new states toward international aviation conventions?

1.7 Theoretical Framework of the Study

The study divided into five chapters and such as presented in an orderly format. The first chapter covers introduction, the statement of problems, aims, importance, questions, limitations, determinants, the literature review, methodology, terminology, definitions, concepts and historical background of aviation law. The second chapter singled out the international regulation of aviation through the International conventions in both public and private international law. The third chapter consists of national regulation of aviation in the F.R.I and K.R.I. The fourth chapter discusses the position of new states in international aviation conventions, future of K.R.I as an example. Finally, in the conclusion, we conclude the results, recommendations, and

suggestions for the future studies. The bibliography, appendices are placed at the end of the thesis.

1.8 Methodology

This study adopted the qualitative research method. The advantage of qualitative research method is that, the researcher explores in-depth information. This approach will make it easier for the researcher to identify the main difficulties that is facing during the study (Given, 2008, p. 54)**.**

1.9 Terminology

Air Service – means any scheduled air service performed by an aircraft for the public transport of passengers, mail or cargo.

Air Services Agreement- an agreement between States containing an internationally approved legal framework upon which international air services operated.

Contracting State – a state that has consented to be bound by a treaty whether

or not the treaty has entered into force.

European Aviation Safety Agency- established by Council Regulation (EC) No. 1592/2002, which puts in place common rules on aviation safety and common standards to ensure the highest level of safety, to monitor their uniform application across Europe, and to promote them at world level.

European Civil Aviation Conference- an autonomous body set up in 1955 by the Council of Ministers of the Council of Europe. It is an autonomous organization that is neither an entirely independent organ nor a body subordinate to the (ICAO) and integrated with it.

International Air Service – an air service which passes through the air space over the territory of more than one state.

Airline - means any air transport enterprise offering or operating an international air service.

1.10 Concepts and Historical Background of Aviation Law

1.10.1 Definition of Aviation Law

"*Aviation Law is a series of rules governing the use of airspace and its benefits for aviation, the general public and the nations of the world*. *This definition is the more acceptable one, but do not apply without exception, the utilization of "air transportation*" which was sometimes used, represents just one section of aviation law and indicates very tight interpretation.

The idiom "*aeronautical law*" is also used in the Roman language, however during this thesis the expression of "*aviation law*" is employed (Verplaetse, J, 1958, p. 1).

1.10.2 Origins of Aviation Law

The origins of aviation law traced back to Hugo Grotius in the seventeenth century when he placed the foundation of freedom of high seas in his treaties, "*Mare Liberum*". After that the jurists believe that the Grotius's doctrine does not apply only to the high seas, but also to any transportation means which is physically located outside of the territory of a state.

They interpreted his doctrine, which state has no sovereignty over the airspace, because it is not within the territory of a state, compared to the high seas which the state has no sovereignty over it. Thus, both of the high seas and airspaces should be free. The law of the sea has used for a long time as a basis for aviation law. At the outset of the twentieth century, the states turned to the legislation of the sea to set up rules for civil aviation. The law of the sea played a major role in the formation of the principles of aviation law which laid down in both Paris and the Chicago Conventions (Parets, n.d, pp. 2-3).

1.10.3 Sources of Aviation Law

The aviation law is mainly consisting of written law, and custom has by passed as a source of aviation law, because of the fast development of air technology. Treaty law covers all international treaties. Thus, multilateral conventions are the essential source of aviation law. The other sources of aviation law are the bilateral agreements, national codes, the contract between states and airline companies or between airline

companies with each others, and the general principles of international law (Fong, n.d, pp. 2-3).

1.10.4 Main Principles of Aviation Law

Aviation law composed of three essential principles including; the sovereignty, the aircraft nationality and the Cabotage.

1.10.4.1 Sovereignty

According to Article one of the Chicago Convention of 1944," every state has complete and exclusive sovereignty over the airspace above its territory" (Art.1 of the Chicago Convention of 1944). Furthermore, the Sovereignty is the most important issues of international aviation law (Erotokritou, 2012). Likewise, the Principle of Sovereignty was first adopted in the Paris Convention of 1919, after that both the Havana Convention of 1928 and the Chicago Convention of 1944 overtook the principle from the Paris Convention (Engvers, 2001).

1.10.4.2 Aircraft Nationality

"The relationship to a given state somewhat similar to the relationship of an individual to the state of which he owes allegiance" (Sassella, 1971). Likewise, the principle of aircraft nationality adopted in the Paris Convention of 1919 for the first time and then stabilized in the Chicago convention of 1944 as a principle of aviation law. According to this principle, any aircraft must hold the nationality of the state which is registered in. Moreover, it is not possible to register in more than one state, but it is possible to change the state of registration. Furthermore, every aircraft engaged in international air navigation must hold its nationality and registration marks and abide by the laws of states in which it is operating (Verplaetse, J, 1958, p. 1).

1.10.4.3 Cabotage

The cabotage is the carriage of Passengers, Cargo, and Mails by aircraft of a contracting states within the territory of another state. Each of the contracting states has the right to refuse permission to such aircraft (Art.7 of the Chicago Convention of 1944).

1.10.5 Characteristics of Aviation Law

The aviation law characterized by associated attributes which date back to the nature of means that revolve around, it is the aircraft or dates back to the environment which operates in, and that is the airspace. These characteristics classified as follows:

• ***It is a modern law:*** *The aviation law is a technological law because the aircraft is a new invention which human body did not reach to it until the forefront of this century. The aircraft did not use for the commercial purpose until the wake of world war one. As we know, the birth of any legal rule depends on it's necessity, and the formation of aviation law had not emerged till the emergence of civil aviation. It is a necessity to organize the air navigation and determining the conditions and necessary restrictions for the safety of aircraft and other issues raised by air navigation.*

• ***It is a fast developed law****: The aircraft as a navigation instrument is in a continuous development due to the fast development of aviation technology and the invention of modern engine powered aircraft which opened the wide horizons to increase the speed of aircraft and its capacity.*

• ***It is an international law****: The rate of an airplane enables it to pass through political and geographical borders of different states in ultra short time, which other transportation instruments are not able to do so. The legal relations arising in international level are also of international character. Therefore, it should be treated by unified international legal solutions. The states may realize that the emergence of air navigation in international level makes the rules which organized it also characterized by the same character.*

The states invited to international conferences to reach an agreement about ratifying the conventions which, previously laid down and initiated to hold private agreements with their neighbors to regulate the operation of aviation between themselves. In the field of aviation law, we can say that the international rules overcome the national rules, but the domination of international character does not mean deprivation of national legislation from all authorities in this branch of law. There are still some issues that are not regulated internationally, thus do not apply to them except domestic legislations.

• ***It is a compulsory law:*** *The use of aircraft surrounded by risks. Therefore, the aviation law whether international or national has taken the mandatory character. This attribute is a result of the insurance of safety of aviation which is regulated by the similar regulations in any part of the world.*

It did not give the national legislator the complete freedom to organize legislation for operation and use of aircraft but also identified what is the complete authority of state and what should organize by regulations outlined in treaties or to those laid down by the entrusted bodies. Such as the establishment of airports, their technical specifications, their standard status, management, air navigation control, the aircraft and its validity to fly and eligibility and validity of those who based on it and other vital issues which affects the security and safety of aviation and passengers (Mehyo, 1992, pp. 8-9).

1.10.6 Relationship of Aviation Law with other Areas of Law

The aviation law intertwined with different areas of law. It is a part of international law and has the relationship with the constitutional law, civil law, commercial law and criminal law (Verplaetse, J, 1958, p. 2).

1.10.7 Framework of Aviation Law

The framework of the aviation law includes the legal status of the aircraft in regarding nationality, rights on aircraft, and legal relationship which arise from the use of aircraft. The framework of aviation law does not stand at this point but extends to include determining the legal system of the land property of air navigation such as airports and its facilities.

Alongside with all of these, aviation law contains several subjects which are inherently related to public law as the extent of the right of aircraft to overfly airspace of different countries. Drawing the borders of air navigation about the state sovereignty over the airspace as different rules related to customs, health preventions, and the administrative setting is outlined (Mehyo, 1992, p. 9).

1.10.8 Main International and Regional Aviation Organization

There are international and regional aviation organizations to regulate and administer aviation law which composed of states and/or airline representatives such as:

• The International civil aviation organization (ICAO) which founded on April 4, 1947, in Montreal, Canada, under the sponsorship of the Chicago Convention of 1944. It became the particular agency of the United Nations and set the standards for the wellbeing, consistency, and proficiency of international civil aviation.

• The International air transport association (IATA), initially established in 1919 in the name of International Air Traffic Association. It has 280 airline members, which covers 95 % of the passenger activity in the world.

• The European Civil Aviation Conference (ECAC); was founded on the coordination of Air Transport in Europe in 1953 as a result of the discussion between ICAO and the Council of Europe.

• The Airports Council International (ACI); established in 1991, which structured in six geographical regions: Africa, Asia, Europe, Latin America, Caribbean, North America, and the Pacific.

• EUROCONTROL; it is the European organization for the safety of air navigation which founded in 1960 by international convention relating to cooperation for the safety of air navigation, and it is a civil and military organization and has 37 member states (Tomas, 2008, pp. 6-7).

1.10.9 Dispute Settlement in International Aviation Law

The settlement of public international law conflicts differs from the resolution of private international law disputes.

The International Court of Justice (ICJ) has jurisdiction on the airspace disputes 9(Art.36 92) of the Status of the International Court of Justice of 1945).

It has jurisdiction over interpretation of aviation conventions (Hague Convention of 1970). Moreover, it has jurisdiction over advisory opinions/appeals to and from ICAO Council (Art.84 of The Chicago Convention of 1944).

The European Court of Justice (ECJ) has jurisdiction over the cases which have been brought by the Commission or by an EC member state for violation of EC Treaty or disputes between EC member states regarding issues of EC treaty. The ECJ can give

the initiative ruling about the interpretation of a treaty and validity of acts of EC institutions (Art.220, 226, 227, 234& 239 of EC Treaty of 1957).

The Council of ICAO may act as an arbitrator between contracting States of the Chicago Convention on matters concerning flight and execution of the Chicago Convention and special arbitral tribunals gave by treaty or agreed by the parties to a dispute (Art.84 of the Chicago Convention of 1944). But, in practical experience, the ICAO Council used in contention resolution few times and the arbitration procedures also under the Chicago convention has experienced the little success. Therefore, the legal committee of the ICAO has been used most of the time because it has less formal means to resolve disputes and create a resolution. State courts may resolve private international aviation disputes or settled by arbitration according to the agreement of parties or by contractual provisions or by multiple systems of national law and international treaties such as multiple states dispute arising from a single incident. Sometimes jurisdiction limited under a determined treaty and damages are governed by domestic law (Tomas, 2008, pp.6-7).

1.10.10 Historical Background of Aviation

1.10.10.1 The History of Flying

The history of flying naturally falls into two periods: Legendary and historical. In the legendary time, many legends described the human ability to fly, such as, "*winged horses from the sun*" and *"dragon flying out of Demeter"*.

The historical period began 400 years B.C by attempts of man to fly which started from wooden pigeon "*hidden air*" by Archytas of Tarentum, and then by Simon Magus in the time of Nero, Roger Bacon in the thirteenth century and Johan Muller in the fifteenth century. After that, the principles of the parachute found by the Leonardo da Vinci, and a hand flying machine made by him.

It continued in the latter part of the fifteenth century by Giovanni Dante, who flew several times over Lake Trasimene, by artificial wings which attached to his body. In the seventeenth century, Francesco de Lana, a Jesuit, imagined a flying boat. The first air navigation by men during the history started by balloon in 1783, and then dirigibles made in the eighteen-fifties and gliders in eighteen nineties. Finally, the first engine-powered flight was successfully made by Wrights Brothers in 1903.

The modern era of aviation started on July 25, 1909, with the crossing of the English Channel by Jean Bleriot. Charles K. Hamilton flew from New York City to Philadelphia on June 13, 1910. In the latter half of 1910 airplane flights were widely known both in the United States and Europe. After that, the competition on duration, distance, number of passengers carried, and altitude was started. The airplanes used for the military purpose by French for the first time in 1912, and then Germany, the Russia, Japan, Austria, Italy, and finally England and the United States. At the end of the First World War the United States thought of the commercial possibilities of the airplane. In 1918, the Post Office Department started an airmail route from New York to Washington and on July 1, 1924, an air mail route was established between New York and San Francisco. On July 1, 1925, an additional route was begun between New York and Chicago. The utilization of aircraft in crop dusting, plant surveys, aerial photography, forest patrol and timber cruising come into existence later (Wenneman, 1931).

1.10.10.2 The Legislative History of Aviation Law

The history of codification of aviation law comprised of three periods; Aviation Law before the end of First World War (before 1919), aviation law between the First and Second world wars (1919-1938) and aviation law after the Second World War (since1944).

1.10.10.3 Aviation Law before the End of First World War (1919)

The history of aviation law before the end of world war one in national level consisted of Decrees and Statues, Court Decisions and Doctrines. In international level comprised of Work of International Juridical Societies, Diplomatic Documents and International Conferences and International Practices (Sand, Fritas, & Pratt, 1960-1961, pp. 33-42).

1.10.10.4 Aviation Law between Two World Wars (1919-1938)

The history of aviation law during two world wars in national level consisted of domestic laws, which differed from one state to another and in international level comprised of conferences, multilateral conventions, bilateral agreements, protocols and the international and regional aviation organizations.

Thus, three international multilateral conventions on the public aviation law including Paris Convention of 1919, Ibero-American Convention of 1926, and Pan-American Convention of 1928 were concluded. Three International multilateral conventions on the private aviation law consisting of Warsaw Convention of 1929, Rome Convention of 1933, and the Brussels Convention of 1938 were adopted. The aviation industry was organized and become the fast legally regulated industry throughout the world. (Sand, Fritas, & Pratt, 1960-1961, pp. 25-33)**.** The codification of international aviation law did not consist only of multilateral conventions, but bilateral agreements also had an important role in constituting it (Hudson, 1930, p. 236).

In addition, four international conferences on the private law including; the Paris conference from October, 27 to November 6, 1925, the Warsaw conference from October 4 to 12, 1929, the Rome conference from May 15 to 25,1933 and the finally the Brussels conferences from September 19 to 30, 1938, been held between two world wars, and the International Air Traffic Association (IATA) was established at the Hague on August 25, 1919 as the first international organization in aviation field (Sand, Freitas & Pratt, 1960-1961, pp. 126-160).

1.10.10.5 Aviation Law after the Second World War (Since 1944)

After the Second World War, five international conventions on public law including the Chicago Convention of 1944, Tokyo Convention of 1963, Hague Convention of 1970, Sabotage (Montreal) Convention of 1971, and the Beijing Convention of 2010 was concluded. The international conventions which found on private aviation law were as follows:

The Geneva 1948, the Rome 1933, the Rome 1952, Geneva 1953, Hague 1970, Montreal 1971, Montreal 1999, Cape Town 2001, Montreal 2009, was also adopted (Public Air Law Treaties and Conventions, 2015), and international multilateral transport agreements were concluded. Moreover, when the plurality of states refused to join the multilateral transport agreement, the commercial freedoms were granted by the bilateral negotiation.

CHAPTER II

INTERNATIONAL REGULATION OF AVIATION LAW

Aviation law at international level has been regulated by public and private law. (Tomas, 2008, p. 1). The public international aviation law is a group of legal rules which govern the relations among states and international organizations engaged in operations and utilization of airplane. But, the private international aviation law is that set of legal rules which pertained to relations among private individuals which engaged in activities and the use of the airplane (Fong, n.d).

2.1 Meaning of the Convention

The word "Convention" implies a treaty, and it is the only meaning which utilized in International law and international relations in general. Occasionally, there are distracting among conventions and conference and conventions in international law with the conventions of the constitution in British constitutional law.

Alternative synonymous for a treaty, or for particular types of treaties are *"agreement, pact, understanding, protocol, charter, statute, act, Covenant, declaration, engagement, arrangement, accord, regulations, and provisions"*. Some of these idioms have a meaning other than treaties, which makes them more confusing (Malanczuk, 1997, p. 36).

2.2 Definition of the Treaty

A treaty is a binding agreement purposely set up by, and, among, two or more topic of international law, which has treaty-making power. It is a record managed by international law when it enters into force the parties will have lawful binding, vary from those which emerged under the national legislations. The Vienna Convention of 1969 applies to treaties in written form.

A treaty can be oral, in a single written record or few written records, it may arise out of the meeting of a conference, collateral bipartite negotiates, casual governmental

dialogs, an interchange of letters, an interchange of notes, or any other wherewithal, which have been selected by the parties.

The majority of the treaties made among states, but there are sometimes several persons who have an international personality such as international organizations entering into the agreement either with states or with themselves.

Conventions or Treaties are considered one of the most important sources of the international law. They are symbols for a practical way by which states can make binding legal directives in a willful and mindful method. Thus, a determined group of rules ought to be developed by international law which the only aim of them is to organize the creation, operation, and termination of treaties. The law of treaties is that set of international law which governs the procedural and material rules regulate the utilization of treaties as a source of international law. The law of treaties covers many aspects, such as rules governs entry into force, termination, interpretation, reservations or derogations and the relationship among treaty law and custom (Verplaetse, J, 1958, pp. 7-9).

Moreover, the international conventions which fall within the scope of public international aviation law are clearly differentiated from those who occur in the field of private international aviation law, as follows: (Latchford, 1936, p. 202).

Every international treaty or agreement which concluded by the United Nations member states should be registered in the Secretariat and be published by it, and those treaties and agreements that are not registered cannot be invoked before any organ of the United Nations (Art.102 of the United Nations Charter). All treaties and international agreements registered or filed and recorded with the Secretariat since 1946 are published in the UNTS (United Nations Treaty Collection, 2016).

2.3 Public International Aviation Conventions

2.3.1 International Regulation of Air Navigation

The conventions which concluded in public law mainly interested in organizing air navigation, crimes committed on board aircraft and air accidents (Mehyo, 1992, pp. 11-12). The most important international aviation conventions in public law are as follows:

2.3.1.1 Paris Convention of 1919

The Paris Convention, which was concluded in Paris in 1919, and entered into force by its fourteenth parties on July 11, 1922, was the first international convention in the field of public aviation law. This Convention first defined the term "aircraft". The general structure of international aviation law was also adopted by this convention and the rules and regulations of the new international air transport system codified by it (Parets, n.d, p. 9). The main principles of international aviation law which concluded in the Paris Convention are as follows:

The complete sovereignty over the territory of states, the free innocent passage in peace times, equality of treatment between aircraft of all contracting states, and "an international commission for air navigation" to be established to organize the airplane rules among the parties and to overseeing the implementation of the conventions" (Legal rules for international aviation, 1945, p. 271).

2.3.1.2 Madrid (Ibero-American) Convention of 1926

Due to the disagreement of some states to the Paris Convention of 1919, a conference on the invitation of Spain was held in Madrid on November 1, 1926, which resulted in the Ibero-American Convention of 1926. This convention sometimes was called the C.I.A.N.A and it consists of the Spain, Portugal, and many other South American states. The convention did not entirely approve because only five of the signatory states ratified it. The Spain itself signed the Paris Convention, so the Madrid convention is not completely inactivating. The U.S neither signed the convention nor adhered. In this manner, the convention is of historical interest only and has not an important role on international aviation law (Legal rules for international aviation, 1945, p. 273).

2.3.1.3 Havana Convention of 1928

The Havana convention of 1928 or Pan American Convention signed on February 20, 1928, among twenty American states as a result of the refusal of the U.S.A to join the Paris Convention of 1919. The convention applied solely to private aircraft, not to the government aircraft. The main principles and rules for air traffic, such as "complete and exclusive sovereignty over the airspace above states territory and adjacent territorial waters" adopted by this convention.

Articles of the Convention legislated airlines which were owned by the USA to operate its services in South and North America. The interplay freedoms for air traffic was the principle of this Convention, there was no effort to uniform technical standards, nor any provisions for recurrent discussion on collective troubles by the agency of a constant organization. No rules for persistent administrative machinery and it assured particular duties of assortment to the Pan American Union, especially to its conference that held every five years was found. There were no annexes to the convention, all rules covered by the Convention itself, aircraft regulation adopted according to the national law of each state, and there was no attempt to uniformity. The Convention was successful to some extent since it was signed by twenty- one country and ratified by sixteen of them in 1944.

The Paris and Havana convention rendered a useful aim. But they also caused misrule in their real practice since they were two detached bodies of rules. However, it is no longer appropriate for the period after Second World War because of the significant development in air transportation during the war. The two conventions were replaced by Chicago convention on December 7, 1944 (Havana Convention of 1928).

2.3.1.4 International Sanitary (Hague) Convention of 1933

The international sanitary convention on air navigation was signed at Hague on April 1, 1933. The signatory states have the right to force special sanitary and quarantine regulations in the face of communicable disease by aircraft of a contracting state entering the territory of another state. The provisions adopted for the sanitary of airports, medical services and supplies and reservation are made for inspection in special points to prevent expanded delay upon entry of aircraft.

This convention was not an aviation convention, but some of its provisions related to passengers that were traveling through the air by which they must be possess the certificate of vaccination to show the immigration authority at the airport of entry. It consists of various regulations related to measures to prevent the spread of plague, cholera, yellow fever, Typhus, and smallpox. Some of its provisions have been amended by the sanitary convention signed at Washington on December 15, 1944, with a protocol of this Convention signed on April 23, 1946 (Legal rules for international aviation, 1945, pp. 276-277).

2.3.1.5 Chicago Convention of 1944

The Chicago Convention, which is known as international civil aviation convention signed on December 7, 1944, by fifty-two states and came into force on April 4, 1947, (Art. 84 of Chicago Convention of 1944).

The convention was divided into four parts containing 22 Chapters and 96 Articles (Sand, Freitas & Pratt, 1960-1961, p. 128). Moreover, the Chicago Convention is a dual purpose treaty. It provides an "international civil aviation code" and also, it establishes the *"constitution of the International Civil Aviation Organization"* (Mankiewiczt, 1963, p. 54). This convention concluded to replace both Paris and Havana conventions. It considers the universal constitution for civil aviation, which put the main lines to organize and to plan the basis for modern international civil aviation throughout the world.

The international civil aviation organization (ICAO) which is now considered as a specialized agency of the United Nations, founded under the Chicago Convention to administer the principles of the convention and implement the rules and regulations which were came later in the annexes to the Convention and other supplementary documents since 1944. The principle of airspace, aircraft registration and safety also adopted and the air- fuel exempt from tax by Chicago convention.

The sovereignty of airspace of each state above its territory, together with five freedoms which run the freedom to operate air transport flights across, into and within the airspace of other states adopted by the convention. But just two of these freedoms applicable automatically to signatory states, the other three freedoms require national agreement. Additionally, four personal freedoms joined to them later, and they became nine privileges. The matter and admission of certificates are also a part of the convention.

Due to the unexpected issues at the first Chicago convention of 1944, several other conventions had been adopted to set up the international agreement on different aspects of aviation. The Chicago convention of 1944 found the framework and a system for organizing and standardizing international airline.

It digested the general principles and set up the international air structures. The convention incorporated by 18 annexes which constitute the summary of standards

and recommendation practices covering all aspects of aviation (Mehyo, 1992, pp. 11-12). The convention resulted in two other agreements, the international air service transit agreement, and the international air transport agreement, which signed in Chicago on December 7, 1944.

The Chicago Convention had been amended several times including in 1947, 1954, 1961, 1962, 1968, 1971, 1974, 1977, 1980, 1984, 1989, 1990, 1995 and 1998 (Air law treaties and conventions, 2007, p. 176). The convention signed by Iraq on December 7, 1944, and ratified on June 2, 1947, by Iraqi Law No.6 of 1947, (Iraqi Law No.6 of 1947). Likewise, the current legal basis of international air transportation is the result of the Chicago Convention of 1944. The main principle of the Convention is the principle of complete control of each state over its airspace. The main aims of the Convention which were laid down in part I and II of it are as follows: The first one is the adoption of rules which govern air navigation also dictates the particular ambit of air transportation. The second purpose of the convention which adopted in part II is the constitutional provisions related to the foundation, systematization, and the role of the International civil aviation organization (ICAO).

The provisions of the Convention, which related to air navigation and air transportation divided into four main provisions as *(a) General provisions, (b) rules related to air navigation, (c) rules related to air transportation, and (d) rules related to the framework of application.* One of the main general principles of the Convention related to the application of national laws and regulations. It states that the Convention does not replace the national legislation of the signatory states. Just in a sidelong way tries to force essential international rules on states parties. The Convention also points out what will apply to passengers, goods, and aircraft by national laws and regulation in international flights. The other general principle related to equality of dealing with aircraft of signatory states (Barrie, 1974).

2.3.2 International Criminal Regulation of Aviation

The safety of civil aviation has been jeopardized by terrorism, as well as by numerous other unlawful acts conferred by persons with differing inspiration. The international community has attempted to give a secure and safe air transportation system for general individuals and in this way has developed aviation security

system in the legal and specialized fields to battle and keep the purposeful man-made damage against civil aviation. The legal instruments are the fundamental different multilateral convention, resolutions, and declarations. All of them focusing on how to dispose safe sky of unlawful performers against civil aviation, secure the safety of passengers and crew and encourage the resumption of influenced aircraft (Yool, 2005, p. 1).

There are three international conventions on the crime and other acts committed on board aircraft. "The Tokyo Convention on offenses and special other acts committed on board aircraft," was signed at Tokyo on September 14, 1963, "The Hague Convention for the suppression of unlawful seizure of aircraft," was done at Hague on December 16, 1970, and *"the Montreal Convention for the suppression of unlawful acts against the safety of civil aviation"* was also signed at Montreal on September 23, 1971. The offenses committed on board aircraft are expressed only in Hague and the Tokyo Convention, the Montreal Convention is the one to overcome the other unlawful acts against the safety of civil aviation (Fong, n.d, p. 5).

2.3.2.1 Tokyo Convention of 1963

The Tokyo Convention of 1963 is a Convention on offenses and certain other acts committed on board aircraft which was concluded at Tokyo on September 14, 1963, entered into force on December 4, 1969. It consists of seven chapters with twenty-six Articles organizes the viable law on crimes and certain other acts committed on board aircraft (Tokyo Convention of 1963). The convention was amended by Montreal Protocol of April 4, 2014 (Montreal Protocol of 2014). The Tokyo Convention of 1963 ratified by Iraq by law No.89 of 1980 which issued on April 23, 1980 (Iraqi law No.89 of 1980). The Scope and Purpose of the Tokyo Convention are as following: It applies to offenses against penal law, acts which, regardless of whether they are offenses, might or do endanger the safety of the airplane or persons or property in that or which imperil good order and discipline on board. The airplane utilized as a part of the military, customs or police are departed from the general extension, (Tokyo Convention of 1963).

2.3.2.2 Hague Convention of 1970

The Convention for the Suppression of Unlawful Seizure of Aircraft concluded in the city of Hague on December 16, 1970, was a result of the several conferences raised by illegal seizure of aircraft by force and changing its route. It identifies the scope of applying it, punishable acts, and obliged the state parties to put the maximum penalties on the perpetrators and take the necessary measures to arrest them and to trail them or their extradition (Abramovsky, 1974-1975). The convention ratified by Iraq on February 22, 1971.[1] The Hague Convention of 1970 proclaimed that hijacking should consider as an international "offense" and demanded the states to extradite or exert jurisdiction over the hijacker and prosecute him if an airplane is hijacked, and impose on him "seven penalties "if he is sinful (2008, p. 658).

2.3.2.3 The Montreal (Sabotage) Convention of 1971

It is a *"convention for the suppression of unlawful acts against the safety of civil aviation",* which was signed on September 23, 1971, and entered into force on January 26, 1973. The convention consists of 16 Article that explains in detail the unlawful act that threatens the safety of civil aviation and necessary measures applied by contracting states to prevent such acts against civil aviation (Sabotage Convention of 1971). The offenses committed on board aircraft are expressed solely in Hague and Tokyo Convention, the Montreal Convention of 1971 is the one to overcome the other illegal acts against the safety of civil aviation (Fong, n.d, p. 14). But, the primary aim of the Montreal convention was to arrive at an acceptable method of dealing with alleged perpetrators of an act or unlawful interference with aircraft (Reser, 1997-1998).

2.3.2.4 The Bonn Declaration of 1978

The Bonn Declaration of 1978 grants the contracting nations, the ability to act against states which either rejected to penalize or support terrorist attacks against commercial aircraft. It is unlike the prior attempts to control international terrorism tried to add a punitive element against states not complying with extradition or prosecution requests. Unfortunately, the agreement was not well-represented which stated problems of compliance on the part of none- contracting states (Reser, 1997-1998).

The Tokyo Convention of 1963 organizing the crimes and acts committed on board aircraft, the Hague Convention of 1970 constituting the suppression of unlawful seizure of aircraft, and finally, the Montreal Convention of 1971, criminalize the acts which endanger the safety and security of airplane, passengers, and other issues. These three conventions attempted to combat and deter perpetrators of acts of unlawful seizure and interference with aircraft and to facilitate the resumption of affected flights.

The Tokyo, Hague and Montreal Conventions endeavored to battle and prevented culprits of acts of unlawful seizure and interference with aircraft, and to encourage the resumption of influenced flights. To fully operate these conventions, it is necessary for states to be obliged to it, even if very few states can nullify the effect of the agreements by serving as havens to charged culprits. Repetition accidents in the previous decade have exhibited that states which systemically support and harbor offenders are not going to ratify the previously mentioned conventions and that even if they were to do so, they would not comply with the provisions therein.

There is another convention on the suppression of unlawful acts relating to international civil aviation concluded in Beijing on September10, 2010. Thus, there exist currently four international conventions and one declaration regarding criminal regulation of air (Abramovsky, 1974-1975, p. 405).

2.3.2.5 Beijing Convention of 2010

The Beijing Convention of September 10, 2010, develops and integrates the Montreal Convention of 1971 and the Supplementary Protocol of February 24, 1988. It criminalizes the acts of using civil aircraft for the purpose of causing death, severe body injury or damages. To use the civilian airplane to release or discharge any biological, chemical or nuclear weapons or similar substances to cause death, serious body injury or serious damage and of using any BCN weaponry or same materials on board or against civil aircraft. It further criminalizes the unlawful transport of any BCN weapons, related material or other dangerous materials. Cyber crimes on navigation facilities constitute an offense under this Convention (Beijing Convention of 2010).

2.4 Private International Aviation Conventions

2.4.1 International Regulation of Air Transportation

The private international aviation law consists of; the Warsaw Convention of 1929 on air carriers liability, Montreal Convention of 1999 on carriers liability, the Rome Convention of 1933 on the responsibility caused by aircraft to third parties on the surface, Brussels Convention of 1938 on assistance and salvage, Rome Convention of 1952 on damages caused to third parties on the surface, the Geneva Convention of 1948 relating to the rights in aircraft, Plastic Explosives Convention of 1991relating to plastic explosives for the purpose of detection, the Cape Town Convention of 2001 regarding aircraft financing, and Montreal Convention of 2009 on compensation for damages to third parties results from acts of unlawful interference with aircraft (Private international aviation Conventions, 2016). A strong tendency in the international market is seen towards expanding liberalization of the air transport section. This tendency is increasing all over the world (Bashor, 2005, p. 1).

2.4.1.1 The Warsaw Convention of 1929

The Warsaw Convention of 1929 was the main convention in private aviation law which regulates the air carrier's contract, and it is considered the constitution of private aviation law in all contracting states, as well as considers the nervous of the international commercial aviation (Alkendery, 2000, pp. 1-2).

The Warsaw Convention consists of five chapters and eighty Articles as follows: The Article one of the first chapter determines the scope and definitions, the second chapter from Article 2 to Article 16 is the document of the carriage, the third chapter from Article 17 to 30 liability of the carrier, and finally the fourth chapter from Article 31 to Article 80 related to provisions regarding combined carriage (Verplaetse, 1958, p. 409)

The Warsaw Convention is an international convention that commands responsibility for the international transport of passengers, baggage, and cargo by air. It was created in 1929 to insulate the fledgling airline industry from aviation accident liability and promote industry growth (Beiersdorf & Guidea, 2007).

The convention mentions the instrument of the carriage, from the liability of the carrier and to the legal relations between the parties engaged in the transport of

goods, liability is set up on the fault of the carrier or of his employees or his operators (Barrie, 1974, p. 120).

The purpose of the Warsaw Convention to protect the airline industry at the time of injury or loss was thought to be a result of imperfect air technology. The Warsaw Convention dealt more with the economic protection of the aviation industry in the event of an accident and is outdated in its treatment of innocent passengers. It is the first example of international cooperation in the airline industry. Later, the international community would have to deal with the terrorist attacks that were occurring with more and more frequency (Reser, 1997-1998, p. 824).

The primary aim of the Warsaw Convention was to unify the rights and liabilities of international air carriers and the passengers and goods in the state parties to the convention. It is regarded as a private international law convention with 147 state parties until the enactment of the Montreal Convention on June 30, 1999. It suffered a lot of critics and amendments in particular by the United States which refused to sign the convention due to the low limit of the liability.

As an outcome of the Second World War, the ICAO held a diplomatic conference in 1955 at Hague to amend and raise the limit of responsibility to 250000 gold francs for the carriage of persons and to 250 gold francs per kilogram for registered baggage, and cargo by Hague Protocol of 1955. But keep the liability limit for the personal handbag in 5000 gold franc per passenger. Due to the low liability limit the Hague Protocol refused by the United States. Finally, the Montreal agreement of 1966 raised the responsibility to 75000 U$ including the legal costs for death or injury to a passenger. The Montreal agreement was neither a convention nor a Protocol to the Warsaw Convention. But it was a two-sided agreement between the United States and international air carriers operating from or via the United States and included the US citizen passengers solely.

Under the Montreal agreement of 1966, the United States remained in the scope of Warsaw convention system, but it did not resolve the problems of private aviation law. Thus, the Warsaw Convention of 1929 was amended by Guatemala protocol of 1971. However, it did not acquire the amount of thirteen states of entry into force.

Furthermore, the monetary reflection and insecure of gold price related to fixing the gold price in US dollars, modification of the liability limit and supplementary agreements to the Warsaw convention needed. It amended by four additional protocols of 1975 which inserted special drawing rights as a unit of exchange for the Poincare Franc (Betar, 1999-2000, pp. 429-433). The Iraq ratified the Warsaw Convention on June 28, 1972.

2.4.1.2 The Montreal Convention of 1999

The Montreal Convention of 1999 superseded the Warsaw Convention of 1929 (Tomas, 2008, p. 3). The Montreal Convention of 1999 is not an amendment to the Warsaw Convention, in fact, it is entirely a new convention which integrates and substitutes the system of liability of the Warsaw Convention. The Convention "applies to all international carriage of persons, baggage or cargo delivered by aircraft for the grant. It applies to gratuitous carriage by aircraft performed by an air transport undertaking (Andersen, 2009).

The universal problems of the Warsaw system require global resolution, this should, therefore, be the advancement at the level of governments, the framework of a comprehensive, a global, a unified and sophisticated that complies with conventions of international law. On this basis, the ICAO initiated to form a private group related to the unification of Warsaw system and its modernization.

The group bestowed its report to the ICAO in the shape of identified convention which based on old Warsaw system with its cross-cutting and branching amendments to it, to examine the new convention in a diplomatic conference during the 10 to 28 May 1999. As a result, the Montreal Convention of 1999 on the unification of some rules related to air carrier was adopted (Alkendery, 2000, pp. 1-2).

The Montreal Convention of 1999, which came into effect in the United States on November 4, 2003, consolidated and modernized the scheme that had governed the liability of international air carriers under the Warsaw Convention. Also, it contains many of the same provisions as the Warsaw Convention. There are several differences of particular interest those relating to the liability of an air carrier for passenger bodily injury or death, and the creation of a "fifth jurisdiction (Beiersdorf & Guidea, 2007, p. 4). The convention drawing out better preservation for

passengers, facilitate operations for air cargo loader and more reliable for airlines, (Montreal Convention of 1999).

2.4.2 International Regulation of Air Accidents

Four international conventions adopted in the scope of the air accident. The Rome Convention of 1933 relating to damages produced by foreign aircraft to third parties on the surface. The Rome Convention of 1952 regarding the damages caused by foreign aircraft to the third party on the surface. The Brussels Convention of 1938, to unify some rules related to assistance and salvage of aircraft or of aircraft at sea, and the Montreal Convention of 2009 to compensate damages to third parties emerging from acts of unlawful interference involving aircraft.

2.4.2.1 Rome Convention of 1933

The Rome Convention adopted on May 29, 1933, and came into force in 1942. The convention consisted of 28 Articles explained in detail damages caused by aircraft to persons or property on the ground and its compensation on proof that the damage exists and directly caused by aircraft. The convention replaced by Rome Convention of 1952 (Rome Convention of 1933). Iraq ratified the convention on July 19, 1972.

2.4.2.2 Rome Convention of 1952

The Rome Convention of 1952 superseded the Rome Convention of 1933 which came into force in 1958 and applied solely to the foreign aircraft. It provides for rigorous liability which is limited to certain levels specified in the convention and laid down by the aircraft. The Rome Convention of 1952 has not ratified in a wide range. At the time this convention does not apply, the national laws of States have developed.

Increased limits of liability were stipulated in the Montreal Protocol of 1978 to amend the Rome Convention of 1952, the convention which was laid down on the damages caused by foreign aircraft to the third party on the surface. This protocol entered into force in 2002, the discussion continuous currently to update the Rome Convention to provide a system to recompense the victims and tolerate against baleful events, and it obliged the acceding countries to take the necessary measures to put the prescribed rules into the practice (Tomas, 2008, p. 3).

Dissatisfaction states of the Rome Convention in 1952 to compensate for damage caused by aircraft on the ground, which for many reasons, most notably the lack of compensation amounts provided for the Convention on the injuries. Thus, the "ICAO" hastened to adjust the amount of compensation by the Montreal Protocol of 1978 as an amendment to the provisions of the Convention.

However, the agreement did not widely accept at international level, so the attention of ICAO went to modernize the Rome Convention in 1952, to ensure that the injured persons on the surface get an appropriate compensation, especially after the events of September 11, 2001. The guided ICAO to two projects represent two new agreements, the two draft agreement on compensation for damage to third parties, and the project to compensate the damage caused to the Convention on aircraft to third Parties (Ghanam, 2013).

The modernization of the Rome Convention of 1952 by ICAO's special group produced two draft conventions. The first one in the name of Convention on compensation for damage caused by aircraft to third parties in case of illegal interference and the second one was the convention on damage affected by aircraft to third parties in the name of General Risk Convention (Martineau, 2009).

2.4.2.3 Montreal Convention of 2009

The Montreal Convention on the compensation of damages to third parties resulting from acts of unlawful interference of aircraft which was known as (unlawful interference Convention) adopted on May 2, 2009, in Montreal, Canada. The convention consists of eight chapters with 47 Articles focused on the severe outcomes of illegal interference with aircraft which produces damages to third parties and property (Montreal Convention of 2009).

2.4.3 International Regulation of Assistance and Salvage

Brussels Convention of 1938

The aircraft may be at risk when flying in the air or after landing on the land or falling to the water. The salvage of airplane at risk is a primarily humanitarian and international duty. The Chicago convention of 1944 and before it the Paris Convention of 1919 obliged the contracting states to provide what they practically can do to assist the airplane at risk on the airspace of their territory. However, it may

bear expenses and incur losses. Therefore, it raises a set of legal issues, first of all, the relation between the affected airplane and the assistant.

The majority of states decided to apply the rules of assistance and salvage which known in the law of the sea on the support of airplanes. As did the civil aviation law of 1949 in Britain which in its Article 51 requires applicable of the assistance and salvage which is known in the law of the sea on the assistance and rescue of airplanes, if it occurs in the sea or over the territorial waters.

As did also the French aviation law of 1924 and the Paris Convention of 1919 in Article 23 provided that in the case of salvage of aircraft when it falls into the sea, the principle of the law of the sea will apply, when there is no another treaty in contrast.

The issue of salvage of ships which are at risk, regulated after the Brussels Convention of 1910 on the unification of rules of assistance and salvage concluded on September 23, 1910. According to this Convention the rescue ship does not gain any reward just in case of the good result or in the case of salvage of all the ship or the goods in all or in partial. For information, it does not gain the reward of rescuing persons, because the relief of persons is an absolute humanitarian duty.

But, in all situations, it is not possible to compare the provisions of the law of the sea in case of assistance and salvage and airplane at risk, because the airplanes frequently explode or burn or dives into the water, and no effect remains of it. The assistance limited just to rescue of crew members and passengers, and it is not rewarded under the Brussels Convention of 1910.

As a purely humanitarian duty and the disadvantage of lack of international legislation in this area during the different accidents which occurred, the legal aviation experts laid down a project for assistance and salvage in 1932. Then the committee agreed on the preliminary project in 1936 till the adoption of the Brussels Convention on September 24, 1938, to unify some rules related to assistance and salvage of aircraft or of aircraft at sea. However, the convention did not ratify by all of the signatory states. Therefore, it does not applicable. The convention applies to assistance and salvage when ship or aircraft registered in the territory of a state of the contracting states.

Article 2 of the Convention set up a general obligation on the commander of all the planes and the captain of each ship eliminates the necessity of assist anyone in the sea confronted with a threat to his life. As noted the assistance is mandatory for the people, but not obligatory for the property and then support extends to include the travelers of the ship and its navigators. Also, continues to include passengers and navigators of aircraft which fall into the sea. The convention also has created an exchange in the assistance between maritime and aviation navigators.

The assistance means all aid can be made to a person at sea even if through the supplied of information. Assistance does not entail mandatory to which if the plane or ship during the trip or poised to travel. The duty of assistance signed on the responsibility of airplane commander and ship's captain, but the owner or the investor do not question for a violation. The Convention had left the determining supports of criminal to the national laws to ensure the implementation of this commitment (Mehyo, 1992, pp. 328-329). The Convention of the Brussels of 1938 is not applicable to military, customs and police vessels and aircraft (Latchford, 1945).

2.4.4 International Regulation of Plastic Explosives

Plastic Explosives Convention of 1991

The Convention on the Marketing of Plastic Explosives for the Purpose of Detection was signed at Montreal in 1991 and entered into force on June 21, 1998. The motivation behind the convention was to forbid and endeavor to keep the assembling and development of unmarked plastic explosives in or out of the domain of every contracting state (Tomas, 2008, p. 5).

2.4.5 International Regulation of Aerial Collision

There is no convention in the scope of international aviation law to administer the liability arising out of aerial clashes, but where a collision takes place over the territory of a state, the act of that state should apply (Tomas, 2008, p. 3).

2.4.6 International Regulation of Rights on Aircraft

The Geneva Convention of 1948

The rights on aircraft regulated by the Geneva Convention, which signed at Geneva on June 19, 1948, and entered into effect on September 17, 1953. It consists of 23

Articles dealing with the rights on aircraft such as the right of property in the airplane, right of purchase, possession of the plane, the right to lease aircraft for six months or more, mortgages, possessory and other rights that are made in the contract as guarantee for the repayment of debts (Geneva Convention of 1948).

The purpose of the Geneva Convention was the proprietary and other rights on aircraft, and it would be protected in all contracting states. (Barrie, 1974). The convention ratified by Iraq on January 12, 1981.

2.4.7 International Regulation of Aircraft Finance

Cape Town Convention of 2001

The financing of aircraft, especially mobile equipment, has a tendency to be resource shortfall. Subsequently, international recognition of ownership rights and protection of security interests are the constant issue. In 1948, the Geneva Convention on the International Recognition of Rights in Aircraft endeavored to determine these problems, but its adequacy required the approval by all States, which never performed. There have been other international instruments set up, but they demonstrated lacking to give adequate assurance to agents.

Thus, the convention on international interests in mobile equipment adopted in the city of the Cape Town on November 16, 2001, and entered into force on March 1, 2006. The Convention makes an international register of rights and interests to diminish vulnerability for airplane agents and at last the expense of borrowing.

The Cape Town Convention depends on the common law, however, permits civil law states to implement additional juridical remedies and to oblige creditors to get court leave. The two supporting associations behind the convention are the International Institute for the Unification of Private Law ('UNIDROIT') and ICAO. The convention furthermore, builds up a global register, managed by ICAO in Ireland, in which different interests in aircraft can be enrolled to set up priority (Tomas, 2008, p. 5).

CHAPTER III

NATIONAL REGULATION OF AVIATION LAW IN THE F.R.I AND THE K.R.I

3.1 Historical Background of Aviation Law in the F.R.I

The aviation in Iraq started in 1924 when the government decided to establish the Iraqi air force to protect its airspace. The first flight of Iraq began in April 1931 from London to Baghdad via Paris, Istanbul, and Ankara, Retrieved from (History of aviation in Iraq). The first civil aviation law in Iraq was the Iraqi Air Navigation Law No.41 of 1939 and after that the Law of Passengers Fee in Iraqi Civil Airports No.32 of 1964. Both laws repealed by the Iraqi Civil Aviation Law No.148 of 1974 (Iraqi Civil Aviation Law No.148 of 1974).

3.2 Current Situation of Aviation Law in the F.R.I

The only applicable domestic aviation law in the F.R.I at the present is the Iraqi Civil Aviation Law No. 148 of 1974, which issued on October 12, 1974, and consists of (17) chapters with (211) Articles. Chapter one from Article 1 to 15 of dedicated to general provisions, which consists of the definitions, sovereignty and state authorities, and general principles of aviation. Chapter two from Article 16 to 30 devoted to airports and navigation services, which comprised of construction, management and use of airports, aerial easements, and protection of airports, aircrafts, and navigational assistance.

Chapter three from Article 31 to 70 assigned to aircrafts which comprised of aircraft registration, ownership and the aircraft lease, seizure of aircraft, and airworthiness. Chapter four from Article 71 to 79 allocate for airspace regulations. Chapter five from Article 80 to 87 earmarked for permissions and flight education. Chapter six from Article 88 to 93 reserved for certifications and registrations. Chapter seven from Article 94 to 122 dedicated for commercial air transportation, which consists of laws, rules, applicable regulations and field of application, Operating specifications

and preliminary flights, Operating evidence, crew, devices and equipment of aircraft, loading of aircraft, and air operations. Chapter eight from Article 123 to 134 appropriated for commercial transportation and commercial acts, which comprised of civil aviation authorities, jurisdictions, and the provisions of air mails. Chapter nine from Article 135 to 139 devoted to aviation fees. Chapter ten from Article 140 to 151 dedicated to Air accident. Chapter eleven from Article 152 to 169 assigned for assistance and salvage. Chapter twelve from Article 170 to 188 allocated to liability and guarantees of aircraft investment, which consists of contractual responsibility of air carrier, responsibility for damages caused by aircraft to the third party on the ground, insurance and safeguards to cover the responsibilities and guarantees.

Chapter thirteen from Article 189 to 190 reserved for crimes and acts committed against the safety of civil aviation. Chapter fourteen from Article 191 to 193 dedicated to the contradiction of laws. Chapter fifteen from Article 194 to 203 devoted to penalties and sanctions. Chapter sixteen from Article 204 to 206 earmarked for military aircraft, and chapter seventeen 207 to 211 which is the final chapter reserved for final provisions (Iraqi Civil Aviation Law No.148 of 1974).

The basic provisions of the law related to civil aviation in the F.R.I, including airports and aircraft, its Articles do not apply to state aircraft without a special provision. Furthermore, the provisions of the law do not apply in the scope of the applicable international convention in the F.R.I except when the contrary provisions exist. The provisions of the Chicago Convention of 1944, considers an integral part of the Iraqi civil aviation law. Furthermore, the civil aviation regulations exist in Iraq which match to standards and recommended practices (SARPS) included in Annex 9 of the Chicago Convention (Art. 3 of the Iraqi Civil Aviation Law No.148 of 1974).[2]

The only specialized aviation regulator in the country is the Iraqi Civil Aviation Authority (ICAA) that administered by the ministry of transportation and has responsibility for airspace policy, flight permissions, safety regulations and economic regulations. New carriers that want to operate in Iraq must receive full approval from (ICAA) before flight commencement. The agency is responsible for coordinating with other Iraqi agencies for the development and implementation of policy and coordination of the ICAO matters which established under the provisions of Annex 9, of the Chicago convention (Iraq Civil Aviation Authority). The Chicago

Convention of 1944, with all of the annexes, documents, protocols and amendments, ratified by Iraq by the Law No.6 of 1947 (Iraqi Law No.6 of 1947). Following the fall of Al-Baath regime, no new civil aviation law was issued in the country to comply with the new political and legal system and to respond to the new development in air technology. This indicates that civil aviation sector neglected by Iraqi legislators and Iraqi governments.

3.3 Historical Background of Aviation Law in the K.R.I

Aviation in the K.R.I started on July 1, 2003, after the fall of Iraqi Al-Baath regime. The first International Civil Airport has built in Erbil in the same location which used as a military base until 1991 by Iraqi former governments. The aim of the civil airport was to be the gateway towards the world. On December 15, 2003, the first aircraft landed at Erbil International Airport, and flights between the K.RI and neighboring countries started afterward until 2005 (Erbil International Airport). The construction of the Suleimaniah International Airport was commenced on December 23, 2003, and accomplished on November 15, 2005 (Suleimania International Airport).

After that, direct flights from Kurdistan to Europe started by Kurdistan Airlines and as the number of travelers and flights increase, the K.R.G decided to expand the Erbil international airport terminal and to reconstruct the runway. It opened on April 29, 2005, and then acquired an (ICAO) code (ORER) on May 26, 2005 (Erbil International Airport).

Due to the importance of the air transportation for the K.R.I and to support the Kurdistan Airlines and to develop the Erbil civil airport to enter an international standard, a new airport was constructed to be the biggest airport after the fall of the former regime. The new airport was designed by the British Company, Scott Wilson and implemented by (Makyol Cengiz) company with the ministry of municipalities in K.R.G, (Erbil International Airport). The airport regulated by Erbil Civil Airport Law No.20 of 2003 issued by the Kurdistan region's parliament (Erbil Civil Airport Law No.20 of 2003).

There are currently two international civil airports in the K.R.I, the Erbil, and Suleimaniah International Airport and the third one is under the construction in the

city of the Duhok. The new airport will be constructed to have a capacity of one million passengers on a close area of 42000 m2. The project constitutes the terminal building, towers, cargo and VIP building, other auxiliary building, runway and apron, the installation of all electronic, mechanical and flight control system (Cengiz insaat). Most flights from Europe and the Middle East come to Kurdistan directly without going through Baghdad. The airlines are members of the International Air Transport Association (IATA). The Erbil and Suleimaniah International Airports continued growth despite challenging aviation and economic environment. For example, in the Erbil International Airport, the number of passengers increased from 1,193,783 in 2013 to 1,566,000 in 2014, (Erbil International Airport).

3.4 Current Situation of Aviation Law in the K.R.I

The Iraqi Constitution of 2005 has come to change the political system of the Iraqi state from simple unitary state to a federal state, with new characteristics and principles differs significantly from what it was under the previous system (Abutabigh, n.d, p. 9)

According to Iraqi Transitional Administrative Law of 2004 and Iraqi Constitution of 2005, the Iraqi Federation consists of federal government and federal regions and there exist only one region till now in Iraq, and that is the Kurdistan Region. The system of federal states based on the distribution of sovereignty between the federal government and regional governments.

The legal regulation of airspace between the F.R.I and the K.R.I typically must be regulated by the Iraqi Constitution of 2005 or by issuing new civil aviation law which complies with the new legal and political system. However, there is neither a provision in the constitution nor a new civil aviation law issued in the country.

Iraqi Constitution of 2005 in Art.117 (1) approved the K.R.I and its authorities as a federal region and devoted chapter four for the regional authorities, as it provides in the general, exclusive and common competencies (Gul, M & Jaf, J, 2011, pp. 45-51).

The federal authorities will have exclusive powers (Art. 110 of the Iraqi Constitution, 2005). The federal regions will have regional authorities (Art.117 of the Iraqi Constitution of 2005), and there is common competence between the federal government and the federal regions (Art.114 of the Iraqi constitution 2005). The

transportation whether by land, by sea and by air is neither introduced as an exclusive competence of the federal government nor considered as common competence between the federal government and federal regions. On the other hand, the authorities not stipulated in the exclusive authority of the federal government consider the power of federal regions and in a case of contradiction on common competence the regional law overpowers (Art.115 of the Iraqi Constitution, 2005).

According to Art.110 and 115 of the Iraqi Constitution of 2005, the regional authorities, for economic, commercial and practical needs should regulate security and military issues in coordination with federal government and the participation should be activated by compatibility and non-monopoly governance, as did the former regimes.

The K.R.I has the right to exercise executive, legislative and judicial powers, and the right to open offices in embassies and diplomatic missions to follow cultural, social and development issues, (Art. 121 of the Iraqi Constitution of 2005). Thus, the regional authorities have the power to regulate their airspace and civil aviation affairs.

In the light of all of the above-mentioned issues, the Law of the Institution for the Civil Airports of the K.R.I No.18 was issued on December 22 of 2008 which is consisting of four chapters with 30 Articles regulating in detail the civil airports in the K.R.I.

The chapter one from Article 1 to 3 explained the general provisions, which consists of definitions, and scope of application of the provision of the law. In chapter two from Article 4 to11 regulated the civil airport institution, which comprised of the establishment of civil airport institution, Objectives and functions of the institution, board of directors, and authorities of the board of directors and president of the institution, financing of the institution. Chapter three from Article 12 to 23, regulate the Airports and navigational facilities services, which composed of Establishment and management of airports and their use. The chapter four from Article 24 to 30 allocated to final provisions and the reasons for issuing the law was explained at the end.

Under the Article four of the law an institution must be established in the name of Institution of Civil Airports in the K.R.I which is connected to the ministry of transportation, but unfortunately, it is not established yet (Law of the Institution for Civil Airports in the K.R.I No.18 of 2008).

The Iraqi civil aviation law No.148 of 1974 issued under the central totalitarian system and expressed the political philosophy of that time. But, the Iraq changed to a federal state after the fall of Al-Baath regime in 2003 and the K.R.I acquired a broad range of competencies namely on the adoption of laws related to authorities which are not confined exclusively to the federal government (Maulud, 2016, p. 1).

The foreign political and commercial affair in general which restricted to the federal government does not include aviation affairs, just included the policy of international trade (Art.110 (1) of the Iraqi Constitution of 2005).

The establishment, preparing, utilization and investment of civil airports in Iraq are not permitted without prior permission of the Iraqi civil aviation authority (Art. 16 of Iraqi Civil Aviation Law No.148 of 1974). This law did not give any power to regional governments. Thus, this Article is currently opposite the Iraqi constitution of 2005 and the law of institution for civil airports in the K.R.I No.18 of 2008. The K.R.I Parliament approved a legislation to create the Kurdistan Civil Aviation Association in 2010, but it has still not formed.

CHAPTER IV

INTERNATIONAL AVIATION CONVENTIONS AND THE POSITION OF NEW STATES

4.1 Position of New States toward International Aviation Conventions

After the Second World War, the subject of the succession of the new states to international conventions became one of the important issues in international law (Udokang, 1974, p. 286). Moreover, one of the most famous characters of a new state is the recognition by the international community by which the recognized entity acquires the legal status in international law (Hillgruber, 1998, p. 492).

Additionally, the difficulties connected with the changes in national sovereignty and finally ratification of treaty obligations result from the complexity of the type of land classification exit. In other words, what happens to the international legal obligations of a state with sovereign control over a particular domain upon the surrender, either by consent or refusal of that power to another state (Beato, 1994, p. 531).

The question under discussion is that when one state is acquiring the territory from another state, which of the rights and obligations of the mother state pass to the new state? What happens to the multilateral conventions and bilateral agreements? (Malanczuk, 1997, p. 531).

"*According to a principle of international law, a new state is not bound by any treaty entered into by the state of which it was a part of or by which represented in its international relations before independence*."

However, due to the increasing of the authority of international organizations, growing complication of the establishing treaties and international service regulations and all kinds of exchanges, the unlimited implementation of this principle may create many obstacles to other states. This principle may disserve the constant functioning of these services by depriving the application of the related rules in the

territory of new emerging states (Mankiewiczt, 1963, p. 52). Additionally, *" when a part of the territory of a state breaks off and becomes a state and an international person itself, succession takes place about such international rights and duties of the predecessor as are locally connected with the part of the territory broken off"* (Oppenheim, 1955, p. 159).

Some difficulties may arise in a new state if it does not accept the rights and duties of the mother state. Therefore, it is necessary to divide the subject to public and the private international aviation conventions. The public international aviation conventions are not applicable to new states aside from when they unequivocally accepted by them. However, the private international aviation conventions keep applying on new states, aside from when officially disapprove by the relevant provisions of the convention concerned. Among these Conventions, the Rome Convention of 1952 has a particular situation, and there is no special rule except in the Rome Conventions regarding the application in a territory of which has become independent.

According to Article 36 of the Rome convention, this convention like others applies to all territories which a contracting state is responsible for the foreign relations unless a declaration, in contrast, had been made by the contracting state at the time of deposit of its instrument of ratification or adherence. *The convention further, stipulates that a contracting state has the right to denounce a convention "separately" for any of the territories for the foreign relations of which it is responsible* (Art.36 of the Rome Convention of 1952).

The position of the newly independent state settled in explicit terms by Article 37, paragraph 2 of the Rome Convention which provides that; *"this Convention shall cease to apply to such territories from the date that it becomes independent* (Art.37(2) of the Rome Convention of 1952). The model which set up for the first time by the Warsaw Convention has followed most of the time by which provided for in Article (40) that (Art.40 of the Warsaw Convention of 1929):

(a) Any Contracting State may at the date of deposit of ratification or accession declare that its acceptance of the Convention "does not apply to all or any of its colonies, protections, under mandate regions, or any other territory subject to its sovereignty or its authority, or any territory under its suzerainty";

(b) Any State may subsequently adhere separately to the Convention in respect of any or all of such colonies and territories.

(c) It may denounce the Convention separately for all or any of them. Similar rules adapted to the changes which have subsequently in the international status of dependent territories founded in Article XXIII of the Geneva Convention of 1948, (Art. XXIII of the Geneva Convention of 1948)*, and Article XXV of the Hague Supplementary Protocol to the Warsaw Convention of 1955,* (Art. XXV of the Hague Supplementary Protocol 1955)*, also Article XVI of the Guadalajara Convention of 1961* (Art. XVI of the Guadalajara Convention of 1961).

4.2 Future of the K.R.I toward International Aviation Conventions

After the withdrawal of the United States from Iraq, the tension between the F.R.I and the K.R.I increased, the K.R.I which its international legal status is not determined by international law, dealt as a sub-state in the regional relations. It is in continuous conflict over energy projects with the federal government. Consequently, an oil pipeline which linking the K.R.I to Turkey changed the status quo and physically allowed the K.R.I to export oil to regional and international markets which creates new tensions between the federal government and the federal region.

Despite the difficulties acted by the tensions, the Kurdistan region's oil sector began to grow independently over recent years. The K.R.G's independent oil policy, reached its peak at the end of 2013 when it commenced pumping oil to Turkey through the ITP (Özdemir& Raszewski, 2016).

This subject made the federal government act against the development of the K.R.G. The first reaction was cutting the financial share of the K.R.I off, and then, abstained to support Kurdish Peshmerga forces against ISIS. Furthermore, the Iraqi civil aviation authority suspended commercial flights into and out of Erbil and Suleimaniah international airports, by various excuses many times.

The failure of Iraqi federal government to implement the Articles of the Iraqi constitution of 2005 and to marginalize and non-participating Kurds in the real governance of Iraq placed them between two choices; the first one is to remain with the F.R.I. In this case, all of their rights approved by the Iraqi constitution of 2005 should be ensured, including complete control of the airspace above its territory.

The second choice is to decide on their self-determination, according to Article (3) of the Iraqi Constitution of 2005 which provided in that; *the real partnership is the essential element of guaranteeing the unity of Iraq*. It means Kurds and other components are not obliged to bound by the unity of Iraq if the provisions of the constitution do not implement, and their rights are not ensured (Art. 3 of Iraqi constitution of 2005). In this case, it acquires the north part of its territory which consists of the Erbil, Suleimaniah, Duhok, Halabja, Kirkuk governorate and other disputed areas of Kurdistan. Consequently, it acquires the sovereignty of airspace over that part of the territory.

Thus, the future of aviation in the K.R.I is a matter of consideration in the years to come, because it is landlocked and reliant on its neighbors for the passage of goods and people. Furthermore, it faces many international conventions which were signed by Iraq. In this case, we will have the right to join public international aviation conventions which comply with our political and economic interests, and denounce from those that opposite our interests. But, the private aviation conventions continue to apply except if officially disapprove by the relevant provisions of the convention concerned. We would have the right to become a member of ICAO and IATA and make necessary bilateral agreements with other states. Additionally, we will have the right to issue civil aviation law under which to establish the Civil Aviation Authority, to opened aviation colleges and to study aviation law in the colleges of law, to participate in subsequent international conferences, to do research and studies and make a plan to develop civil airports.

CONCLUSION

This chapter contains the summary of findings from the preceding research, then the chapter discusses the recommendation for regulation of aviation at international level and also at national level in the F.R.I and K.R.I and finally the position of new states, furthermore, it proposes suggestions for further research in this field.

Findings

• The history of aviation law dates back to the seventeenth century. However, it developed in the twentieth century.

• The primary source of aviation law are the multilateral conventions; the other sources are bilateral agreements, national laws, general principles of international law, contracts between states and airline companies, and between airline companies with each others, and the custom which is the most important source of international law has bypassed as a source of aviation law due to the rapid development of air technology.

• There are three most important principles concerning aviation law, the sovereignty, aircraft nationality, and the cabotage.

• Aviation law characterized by modern, fast developed, international, and mandatory attributes.

• Aviation law is a part of the international law and covers many aspects such as constitutional law, civil law, commercial law, and criminal law.

• The international aviation law governed by a combination of public and private law, private international aviation law is a series of rules about the relations among private persons involved in the operation and use of aircraft while public international aviation law is the corpus of legal norms related to the relations concerning states and international organizations in respect of those activities.

• The public international aviation conventions mainly interested in air navigation and crimes committed onboard aircraft, but the private international aviation

conventions interested in air transportation, air accident, assistance and salvage of aircraft and rights on aircraft.

• There are two international aviation organizations; International Civil Aviation Organization (ICAO) and International Air Transport Association (IATA) and some regional aviation organizations such as ECAC, ACI, and EUROCONTROL.

• Public aviation law disputes usually settle by an international court of justice, the European Court of Justice, and ICAO Council, but private aviation law disputes commonly settle by state courts and arbitration.

• Not all issues covered by international aviation convention, nor all states are parties to these conventions, thus this vacuum treated by bilateral agreements.

• There is litigation between national and international law or it between private and public law in aviation law.

• Alongside with all international regulation of aviation through multilateral conventions and bilateral agreements each state has its national aviation law, but in federal states, it may arise problem on the regulation of airspace between the federal government and federal regions such as occurred between F.R.I and K.R.I.

• There is a difference between public international aviation conventions and private international aviation conventions regarding new state. The public international aviation conventions do not apply to new states unless explicitly accepted by them, but private international aviation conventions continue to apply to new states, except when formally denounces by the relevant provisions of the convention concerned.

• The history of aviation in Iraq dates back to 1924 when Iraqi state decided to establish the Iraqi air force to protect its airspace, the first flight of Iraq was on April 1, 1931, from London to Baghdad. The first law regarding aviation in Iraq was the Air Navigation Law No.41 of 1939 and the law of passenger fee by air in Iraqi civil airports No.32 of 1964, which were repealed by the Iraqi civil aviation law No.148 of 1974, but after the establishment of new Iraq as a federal state, no new aviation law was issued to comply with new political, legal and technological status.

• In 2010, there was a draft code for new Iraqi civil aviation law but refused by Kurds members of parliament, because it did not get any authority to the K.R.I.

• Aviation in the K.R.I started in 2003 after the fall of Iraqi Al-Baath regime, when the first airport built in Erbil in the same area which was used as an airfield by the former regime, the airport was regulated by Erbil Airport Law No.20 of 2003, which replaced by Kurdistan civil airports institution law No.18 of 2008.

• The K.R.I is a federal region approved by the Iraqi Transitional Administrative Law of 2004 and the Iraqi constitution of 2005, however through examining the provisions of both of them and Iraqi aviation law No.148 of 1974, we find out that there is no Article to determine the relation between the F.R.I and K.R.I regarding legal regulation of airspace, and the transportation is not concluded in the exclusive competence of the federal government. Therefore, the K.R.I has authority to regulate its airspace and adopt its aviation law and establish its aviation authority.

Recommendations

Since the civil aviation is considered the fastest way for transportation of people, goods and mails in the world and it play a great role in the growth of economies of all states specially those that are landlocked and are not connected to high seas, it is essential to pay more attention to this sector, thus I recommend the following recommendation:

• In international level as we have seen during the recent years, the number of aerial accident increased, whether by act of man as hijacking or terrorist attacks on civil airports or due to technical problems, thus it is necessary for international community to increase the safety and security of civil aviation through holding more international conferences on the subject to find a better mechanism to face this issue.

• As we concluded from the study, the Iraqi governments did not pay sufficient attention to the civil aviation sector, so I recommend to adopt a new civil aviation law in Iraq to comply with new technological, legal, political and economical situation in Iraq, to give the K.R.I more power to regulate their airspace and to establish its civil aviation authority, to participate in international aviation conferences and to become member of non-governmental organizations of air transportation according to Art.110, 114, 115, and 121 of the Iraqi Constitution of 2005.

• Aviation in K.R.I is under two choices, the first one is to stay with Iraqi Federal State, in this case, we must ensure all rights regarding regulating of airspace and air transportation according to the Iraqi constitution of 2005, and to activate law of institution of civil airports in Kurdistan Region No.18 of 2008 and to establish its civil airport institution according to the aforementioned act, and to take full competence over airspace of K.R.I. It is necessary to manage, run, develop the civil airports in the K.R.I in order to develop technological operational and economical standards of air transportation and organize and manage air traffic working on the ground and over airspace of civil airports in the Region, including achievement of safety and security standards in accordance with international and local standards according to Art.6 of the law.

• The second choice is secession from Iraq, in this case it is necessary to legislate its national civil aviation law, under which establish its civil aviation authority, to accept the public international aviation conventions which are complying with its interests, and continue to apply private international aviation conventions, which are complying with its interests and international interests and try to become the member of international aviation organizations specially ICAO and IATA, enter in bilateral agreement with other states, to open aviation colleges to prepare pilots, crew, and other air staffs, studying aviation law in the colleges of law, try to take part in the international aviation conferences which will be held in the future, to hold the researches and studies and make a plan for development of civil airports.

Suggestions for further research

Since the current study is not sufficient to respond all needs of international community and national regulation of aviation in F.R.I and K.R.I, because development continues in air technology and new problems emerging in international level, and new political and legal system come to existence at national level thus, the researchers should expand their studies in this area particularly in the K.R.I.

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APPENDICES

[1]

Status of Iraq with regard to international aviation instruments				
No	Name of the instrument	Date of signature	Date of ratification or accession	Effective date
1	Chicago Convention on International Civil Aviation,1944	7/12/1944	2/6/1947	2/7/1947
2	International Air Service Transit Agreement,Chicago,1944	7/12/1944	15/6/1945	15/6/1945
3	International Air Transport Agreement, Chicago, 1944	-	-	-
4	Protocol On The Authentic Trilingual Text Of The Convention On International Civil Aviation, Buenos Aires,1968	-	4/4/1977	4/4/1977
5	Protocol On The Authentic The Quadrilingual Text Of The Convention On International Civil Aviation, Montreal, 1977	-	-	-
6	Protocol On The Authentic The Quinquelingual Text Of The Convention On International Civil Aviation, Montreal, 1995	-	4/11/2002	-
7	Protocol On The Authentic Six-Language Text of The Convention On International Civil Aviation	-	-	-
8	Article 93 bis Montreal 1947		9/12/1950	20/3/1961
9	Article 45 Montreal, 1954		25/3/1955	16/5/1958
10	Article 48(a),49and 61,Montreal 1954		25/3/1955	12/12/1956
11	Article 50(a) Montreal 1961		3/10/1973	3/10/1973
12	Article 48(a)Rome,1962		26/4/1977	26/4/1977
13	Article 50(a) New York, 1977		10/2/1976	10/2/1976
14	Article 56,Vienna 1971		10/8/1972	19/12/1974
15	Article 50(a) Montreal 1974		10/2/1976	15/2/1980
16	Protocol of amendment(final paragraph, Russia text		31/8/1978	17/8/1999
17	Article 83bis ,Montreal, 1980		4/3/1982	20/6/1997

18	Article 3 bis Montreal, 1984		20/3/1998	1/10/1998
19	Article 56 Montreal,1989		-	-
20	Article 50(a)Montreal 1990		20/3/1998	28/11/2002
21	Protocol of amendment(final paragraph, Arabic text, Montreal,1995		8/10/2002	-
22	Protocol of amendment(final paragraph, Chinese text, Montreal 1998		-	-
23	Convention on international recognition of rights in aircraft, Geneva ,1948		12/1/1981	12/4/1981
24	Convention on damages caused by foreign aircraft to third parties on the surface, Rome 1952		19/7/1972	19/7/1972
25	Protocol to amendment the Rome convention of 1952,Montreal,1978	-	-	-
26	Convention for the unification of certain rules relating to international carriage by air, Warsaw, 1929	-	28/6/1972	26/9/1972
27	Protocol to amend the Warsaw convention of 1929	-	28/6/1972	26/9/1972
28	Convention supplementary to the Warsaw convention, for the unification of certain rules relating to international carriage by air performed by person other than the contracting carrier Guadalajara,1961	-	27/7/1972	25/10/1972
29	Protocol to amend the Warsaw convention of 1929 as amended by the Hague protocol of 1955, Guatemala city, 1971	-	-	-
30	Additional protocol No.1, Montreal 1972	-	18/10/2002	16/10/2003
31	Additional protocol No.2, Montreal 1975	-	18/10/2002	16/10/2003
32	Additional protocol No.3, Montreal 1975	-	-	-
33	Additional protocol No.4, Montreal 1975	-	-	-
34	Convention for the unification of certain rules for international carriage by air, Montreal 1999	-	-	-

35	Convention on offences and certain other acts committed on board aircraft, Tokyo, 1963	-	15/5/1974	13/8/1974
36	Protocol to amend the convention o offences and certain other acts committed on board aircraft, Montreal, 1970	-	-	-
37	Convention for suppression of unlawful seizure of aircraft, The Hague, 1970	22/2/1971	3/12/1971	2/1/1972
38	Convention for the suppression of unlawful acts against the safety of civil aviation, Montreal, 1971	-	10/9/1974	10/10/1974
39	Protocol for the suppression of unlawful acts of violence at airports serving international civil aviation, supplementary to the convention for the suppression of unlawful acts against the safety of civil aviation, Montreal, 1988	-	31/1/1990	2/3/1990
40	Convention on the marketing of plastic explosives for the purpose of detection, Montreal, 1991	-	11/4/2014	10/6/2014
41	Convention on the suppression of unlawful acts relating to international civil aviation, Beijing, 2010	-	-	-
42	Protocol supplementary to the convention for the suppression of unlawful seizure of aircraft, Beijing, 2010	-	-	-
43	Convention on international interests in mobile equipment, Cape Town, 2001	-	-	-
44	Protocol to the Convention on international interests in mobile equipment on matters specific to aircraft equipment, Cape Town, 2001	-	-	-
45	Convention on compensation for damage caused by aircraft to third parties, Montreal , 2009	-	-	-
46	Convention on compensation for damage caused by aircraft to third parties, resulting from acts of unlawful interference involving aircraft, Montreal, 2009	-	-	-
47	Convention on the privileges and immunities of the specialized agencies, 1947-Application to ICAO9Annex III), 21/6/1948	-	9/7/1954	9/7/1954

[2] Iraqi Civil Aviation Regulations

Iraqi Civil Aviation Regulations No. 2, "Rules Of Aircraft Accident And Incident Investigation"	0
Iraqi Civil Aviation Regulations No. 3, "Air Operator Certification and Administration"	Rev 3, Mar 2011
Iraqi Civil Aviation Regulations No. 4, "Rules of the Air"	Rev 0, 2014
Iraqi Civil Aviation Regulations No. 5, "Airworthiness"	0
Iraqi Civil Aviation Regulations No. 10, "Foreign Air Operators "	Rev 0, 2014
Iraqi Civil Aviation Regulations No. 12, "Certification of Aerodromes"	Rev. 1, 2012
Iraqi Civil Aviation Regulations No. 18, "Approved Maintenance Organizations"	Rev. 0, 2009
Iraqi Civil Aviation Regulations No.19, "Aerial Work"	0
Iraqi Civil Aviation Regulations No. 20, "Operations"	Rev 0, 2009
Iraqi Civil Aviation Regulations No. 20, "Operations Part B Helicopters"	Rev 0, 2014
Iraqi Civil Aviation Regulations No. 21, "Aviation Training Organizations"	Rev. 0, 2010
Iraqi Civil Aviation Regulations No. 22, "Safety Management System"	Rev 0, 2011
Iraqi Civil Aviation Regulations No.23, Instruments and equipments	0
Iraqi Civil Aviation Regulations No. 24,"Carriage of Dangerous Goods By Air"	Rev 0, 2013
Iraqi Civil Aviation Regulations No.25, "Search and Rescue 2014"	
Advisory Pamphlet ICAA-AP-001, "Certification of an Air Operator"	2, April 2008
Advisory Pamphlet ICAA-AP-002, "Quality System Programme"	2, April 2008

Advisory Pamphlet ICAA-AP-003, “Aircraft Mass and Balance Control”	2, April 2008
Advisory Pamphlet ICAA-AP-004, “Aircraft Ground Handling and Servicing”	2, April 2008
Advisory Pamphlet ICAA- AP-005, “Aircraft Fuel Control”	2, April 2008
Advisory Pamphlet ICAA- AP-006, “Passenger Safety Information Briefing and Briefing Cards”	2, April 2008
Advisory Circular - Extended Range with Twin Engine Operations	

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