

Flying in crisis areas: regulatory aspects

Aviation Law Afternoon Workshop

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23 June 2015

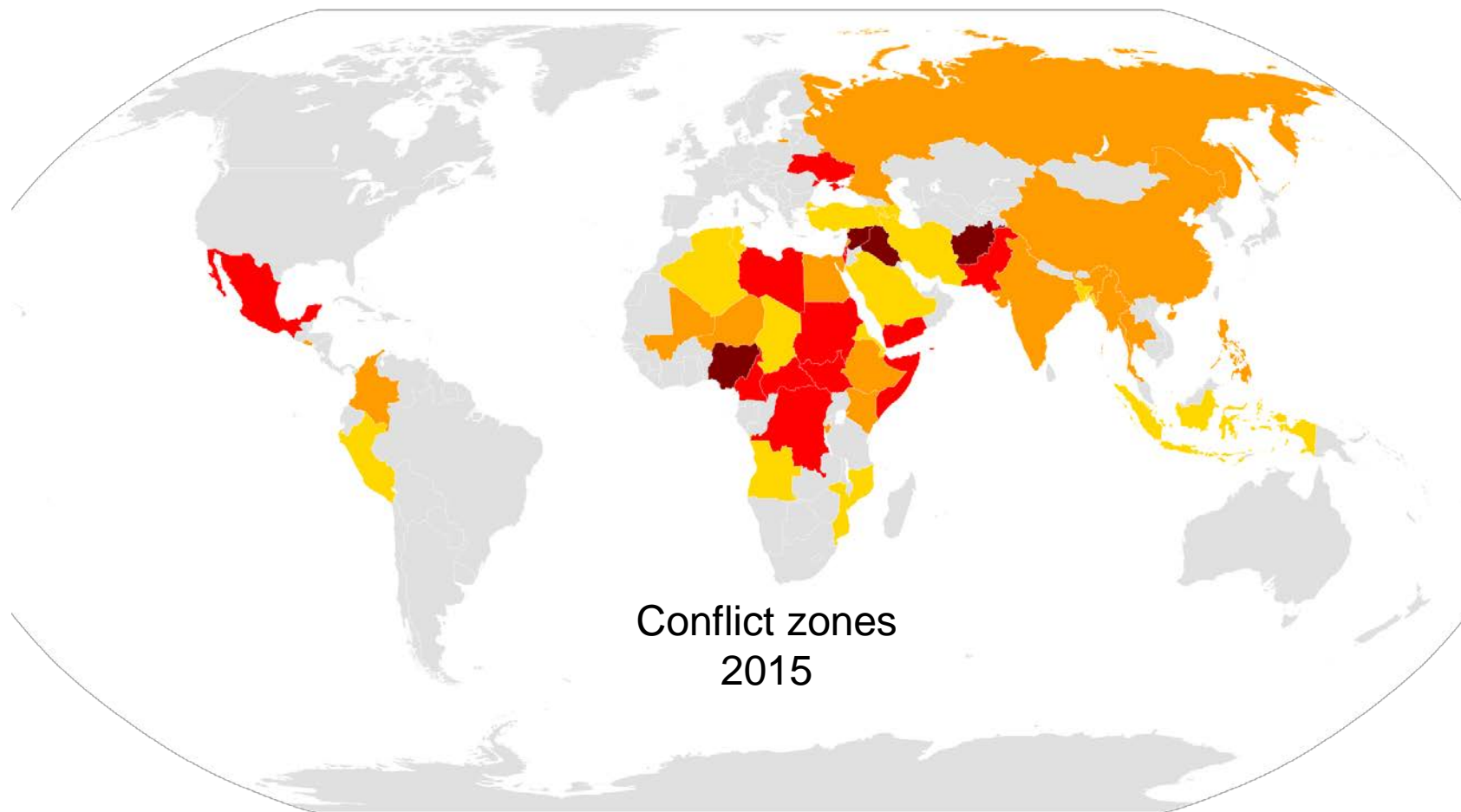
Synopsis

- Introduction – what is a crisis area?
- Regulatory aspects
 - International framework
 - Actions by ICAO
 - Actions by states

- 2009, Boko Haram insurgency: Nigeria, Cameroon, Niger and Chad
- 2011, Arab Spring: Tunisia, Algeria, Lybia, Egypt, Syria, etc
- 2014, war in Donbass



Introduction – what is a crisis area?



Introduction – what is a crisis area?

- It is not a legal concept
 - Related legal concepts
 - Armed conflict
 - Unlawful interference

ICAO Annex 17, Security

Acts of unlawful interference. These are acts or attempted acts such as to jeopardize the safety of civil aviation, including but not limited to:

- unlawful seizure of aircraft,
- destruction of an aircraft in service,
- hostage-taking on board aircraft or on aerodromes,
- forcible intrusion on board an aircraft, at an airport or on the premises of an aeronautical facility,
- [...]

Introduction – what is a crisis area?

- Tentative definition for the purpose of these presentations:
 - An area where political unstabilities, a hostile regime and/or conflicts create hazards to aviation and/or aircraft
 - Loss or seizure of aircraft
 - Death, injury or illegal confinement of their occupants

Introduction – excluded geographic areas as per LSW617G



KILN GEOGRAPHIC AREAS EXCLUSION CLAUSE (03/08/11) LSW617G

1. Notwithstanding any provisions to the contrary and subject to clauses 2 and 3 below, this Policy excludes any loss, damage or expense howsoever occurring within the geographical limits of any of the following countries and regions:
 - (a) Algeria, Burundi, Cabinda, Central African Republic, Congo, Democratic Republic of Congo, Eritrea, Ethiopia, Ivory Coast, Liberia, Mauritania, Nigeria, Somalia, The Republic of Sudan, South Sudan.
 - (b) Colombia, Ecuador, Peru.
 - (c) Afghanistan, Jammu & Kashmir, Myanmar, North Korea, Pakistan.
 - (d) Georgia, Nagorno-Karabakh, North Caucasian Federal District.
 - (e) Iran, Iraq, Libya, Syria, Yemen.
 - (f) Any country where the operation of the insured Aircraft is in breach of United Nations sanctions.

Regulatory aspects

- International legal framework
- Actions by ICAO
- Actions by states

International legal framework: Chicago Convention



Art 1 Sovereignty

The contracting States recognize that every State has complete and exclusive sovereignty over the airspace above its territory.

International legal framework: Chicago Convention



Art 3 *bis*

The contracting States recognize that every State must refrain from resorting to the use of weapons against civil aircraft in flight and that, in case of interception, the lives of persons on board and the safety of aircraft must not be endangered. [...]

International legal framework: Chicago Convention



Art 9 Prohibited areas

- Permanently prohibited or restricted areas
 - for reasons of military necessity or public safety
 - no national discrimination in respect of scheduled air services
 - reasonable extent and location so as not to interfere unnecessarily with air navigation
 - communication to ICAO and states parties
- Temporarily prohibited or restricted areas
 - in exceptional circumstances or during a period of emergency, or in the interest of public safety
 - without distinction of aircraft nationality
 - with immediate effect

International legal framework: Chicago Convention



Art 44 Objectives

The aims and objectives of the Organization are to develop the principles and techniques of international air navigation and to foster the planning and development of international air transport [...].

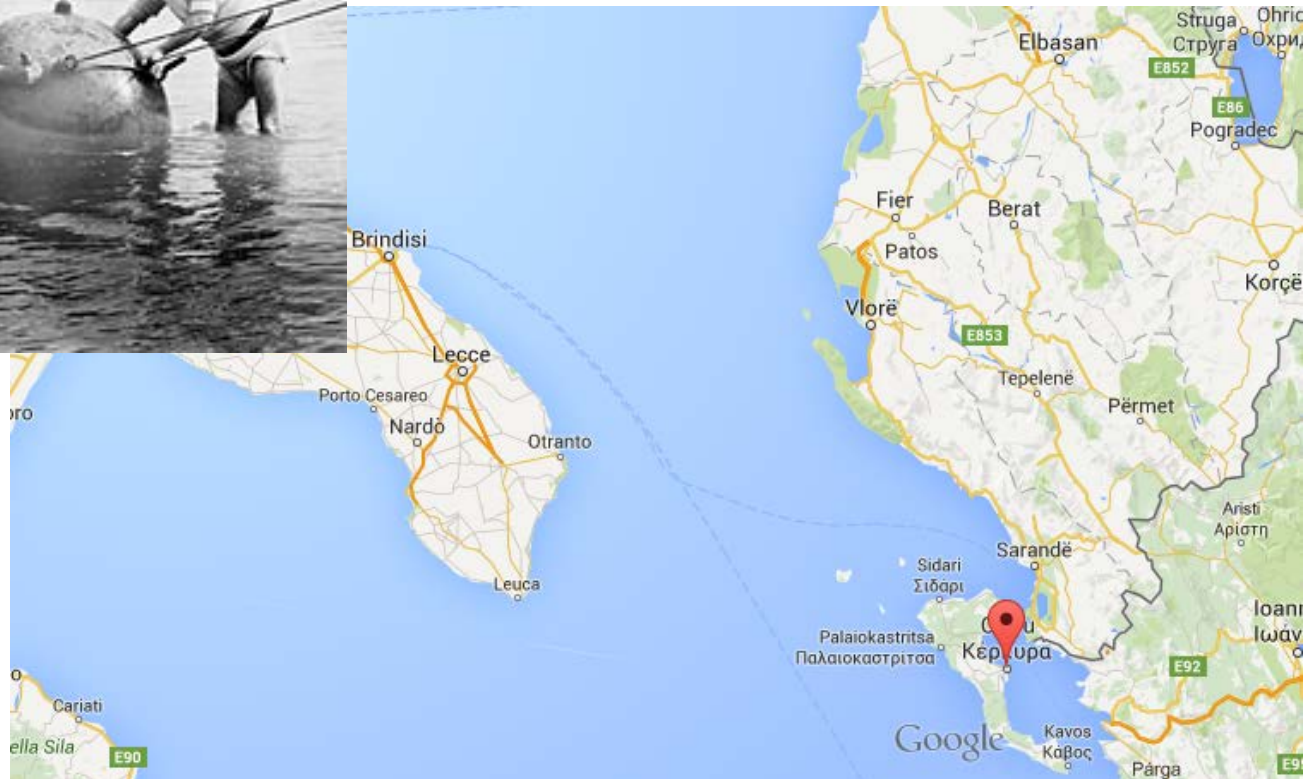
International framework: Chicago Convention



To summarise...

- ICAO may not itself take measures to prohibit flights into specific areas (Art 44 Chicago).
- As a consequence of state sovereignty (Art 1 Chicago), only states may do so (eg by enacting prohibited areas – Art 9 Chicago).
- In the aftermath of the downing of MH17, ICAO sent a state letter to its Member States, reminding them it was their obligation to ensure that their airspace is safe.
- Are states obliged, as a matter of international law, to ensure security/safety of aviation, by prohibiting access to or publishing information on crisis areas?

ICJ, 09.04.1949, *Corfu Channel Case*, ICJ Reports 1949, p 4



International framework: Chicago Convention



ICJ, 09.04.1949, *Corfu Channel Case*, ICJ Reports 1949, p 4

The obligations incumbent upon the Albanian authorities consisted in notifying, for the benefit of shipping in general, the existence of a minefield in Albanian territorial waters and in warning the approaching British warships of the imminent danger to which the minefield exposed them. Such obligations are based [...] on certain general and well-recognized principles, namely : elementary considerations of humanity, even more exacting in peace than in war ; the principle of the freedom of maritime communication ; and every State's obligation not to allow knowingly its territory to be used for acts contrary to the rights of other States. [at 22]

International framework: Chicago Convention



ICAO Annex 11, Air Traffic Services

2.30 Contingency Arrangements

Air traffic services authorities shall develop and promulgate contingency plans for implementation in the event of disruption, or potential disruption, of air traffic services and related supporting services in the airspace for which they are responsible for the provision of such services.

Attachment C

4. Preparatory action

[...] assessment of risk to civil air traffic due to military conflict or acts of unlawful interference with civil aviation [...]

International framework: Chicago Convention



ICAO Annex 17, Security

2.1.1 Each Contracting State shall have as its primary objective the safety of passengers, crew, ground personnel and the general public in all matters related to safeguarding against acts of unlawful interference with civil aviation.

2.1.2 Each Contracting State shall establish an organization and develop and implement regulations, practices and procedures to safeguard civil aviation against acts of unlawful interference taking into account the safety, regularity and efficiency of flights.

2.1.3 Each Contracting State shall ensure that such an organization and such regulations, practices and procedures:

- a) protect the safety of passengers, crew, ground personnel and the general public in all matters related to safeguarding against acts of unlawful interference with civil aviation; and
- b) are capable of responding rapidly to meet any increased security threat.

International framework: Chicago Convention

ICAO Annex 15, Aeronautical Information Services

Member States' obligation to provide:

- AIP (Aeronautical Information Publications)
- NOTAMs (Notices to Airmen)
- AICs (Aeronautical Information Circulars)

Actions by ICAO

- From time to time ICAO has issued state letters warning of certain hazards.
- In the aftermath of MH17, ICAO set up a *Task Force on Risks to Civil Aviation arising from Conflict Zones* (TF RCZ).
- TF RCZ was assigned two tasks:
 - improve the Notice to Airmen (NOTAM) system already in place between States and operators so as to share urgent and critical conflict zone risk information
 - establishing on ICAO level a new centralised system for the prompt sharing of conflict zone risk information

Actions by ICAO (cont'd)

- These efforts resulted in the creation of the *Conflict Zone Information Repository*,
<http://www.icao.int/czir/Pages/default.aspx>
- Web-based solution enabling ICAO Member States to publish on ICAO's website information regarding conflict zones
 - NOTAMs
 - AICs
 - AIP SUPs
- Centralises information thus made accessible to the public
- Still a prototype

Measures by states

- Measures by states in respect of their own air space
 - Enacting prohibited or restricted areas
 - Switzerland:
 - Art 7 Aviation Act
 - Traffic restrictions
 - For public order and safety reasons, or for military reasons, the Federal Council may permanently or temporarily prohibit or restrict the use of Swiss airspace or the overflight of certain areas.

Measures by states (cont'd)

- Measures by state of the **aircraft or of its operator** in respect of operations in foreign crisis areas
 - Switzerland
 - Art 19 Aviation Act
 - Flight in foreign countries
 - ¹ The FOCA may restrict or prohibit flights of Swiss aircraft in foreign countries if required for operational safety reasons; the same applies to flights by foreign aircraft, whose operator has its principal place of business or permanent residence in Switzerland.
 - ² If measures as per par 1 are warranted by political reasons, the FOCA shall take them in consultation with the competent office of the Department of Foreign Affairs.
 - France https://www.sia.aviation-civile.gouv.fr/dossier%5Caicfrancea%5CAIC_A_2015_05_FR.pdf
 - USA https://www.faa.gov/air_traffic/publications/us_restrictions/#restrictDZ

Thank you for your attention!

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