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Struggle for Sovereignty in the Air Space: An Analysis of Regulatory Developments and Current Challenges in Establishing "Air Sovereignty"

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Abstract

Achieving air sovereignty has no escape from the challenges of globalization; hence, numerous regulatory frameworks have been established to create a unified institution for maintaining air sovereignty in international aviation. This paper intends to explore the "air sovereignty" concept's regulatory development from the Roman period to the 21st century, as well as the challenges in implementing it in the modern day owing to uncertainties in the legislation controlling it and issues involving national security. The first part of the paper identifies the concept's roots in Roman law as well as the significant contributions made by scholars between the 16th and 19th centuries. The next part of the article discussed the Paris Convention's initiatives and the efforts made in the 20th century to develop the idea of "air sovereignty" in accordance with the Chicago Convention's rules, while highlighting the legal drawbacks of the Chicago Convention. The paper concludes by analyzing the current challenges in the pursuit of air sovereignty caused by a lack of legal agreement on the terms "airspace" and "aircraft" within the convention provisions, as well as those created by the use of force action, using examples of fatal aircraft destructions such as Malaysian Flight MH-7, Korean Air Lines Flight 007, and Iran Air Airbus A-300B.

***Keywords**: Air sovereignty, Paris Convention, Chicago Convention, National security, Air space*

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Introduction

The fundamental tenet of international air law is that each state has the right to control its own territorial airspace, which is called "total and exclusive sovereignty in the air." In the contemporary period, it is commonly accepted that a state has a sovereign claim over the airspace above its land and territorial waters, regardless of whether it can be considered a part of its territory. As a result, the sovereignty conundrum lies at the core of all aviation relations. Literally thousands of years have been spent debating who owns the air. The sovereignty over the air above their agricultural fields was a point of contention among the Romans. They believed that natural resources like air and water are "*communia omnium*," or shared by all mankind, and therefore cannot be possessed[1]. The idea gained even greater significance as the number of states and interest in flying increased in the 18th and 19th centuries.

A hot-air balloon designed by the French brothers Montgolfier and launched in 1783 was the first aero plane to fly. The first recognized aeronautical law was published in April 1784, a year after the maiden flight, and it forbade balloons from circling Paris without authorization[2]. It was only a police directive, and it created the first aviation regulation in an effort to protect the residents of the French capital. At the beginning of the twentieth century, engine-powered aircraft quickly advanced, especially with the deployment of air power in the two world wars. Many pilots became disoriented during the fights, which led to the first cases of aircraft intrusions. Lawyers were interested in the problem as soon as aircraft began violating a nation's airspace. Therefore, it was anticipated that governmental or civilian aircraft incursions might happen in both peace and war. As a result, debates about airspace management began, and lawyers began to make the case that the idea of state sovereignty needed to be incorporated into the law governing air navigation. The

[1] John Cobb Cooper, "*Explorations in Aerospace Law: Selected Essays, 1946-1966*" (Ivan A Vlasic Ed, Mc Gill 1968) 104-106

[2] Ron Bartsch, "*International Aviation Law a Practical Guide*" (2nd Edn, Routledge 2018)3-4

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Paris Convention[3] was the initial attempt at regulation to deal with the question of sovereignty over airspace.

It also included significant ideas like absolute sovereignty over the air and unfettered freedom of innocent passage, demonstrating even stronger support for total and exclusive authority over the airspace. The importance of aviation to all nations became vividly apparent during the Second World War. But first, the regular growth challenges had to be surmounted. For instance, how can a plane from one state fly over the airspace of another state without encroaching on that state's territory or requesting permission each time? In search of a remedy, the international community chose to create a single set of legislation in order to unite aviation sovereignty. This rigid approach was later reinforced, and the 1944 Chicago Convention adopted nearly all of its provisions verbatim.[4]

Even though sovereignty of airspace has been highlighted as one of the most pressing outstanding issues of public international law today, the concept hasn't been fully defined despite several attempts by experts. As a result, in the age of globalization, the basic ideas of sovereignty in aviation law frequently run into problems due to ambiguous legal terms, the use of force in national security, etc. With that, this study is intended to investigate how the idea of air sovereignty gradually evolved as a result of important statutes that were concerned with advancing sustainability in aviation law and to identify the current difficulties facing the achievement of air sovereignty under existing aviation law.

The first part of the paper seeks to provide a brief overview of the evolution of the concept of "air sovereignty" from the Roman era to the nineteenth century. The second section examines the provisions of the Paris and Chicago Conventions in the context of twentieth-century efforts to uphold the concept and principle of air sovereignty. Thirdly, the paper examines the challenges the current aviation law framework

[3] The Paris Convention for the Regulation on Aerial Navigation ,1919
[4] The Chicago Convention on International Civil Aviation,1944

poses for preserving air sovereignty from a legal and national security perspective. The final part of the paper carries the conclusion.

Regulatory developments of the Concept of "air sovereignty"

It has been said that air law is the "latest born of legal notions." Its earliest beginning, which established its regulatory nature, dates back to the era when classical Roman law was introduced.

Roman concept

"As far back as the Roman Empire, the state was thought to have legal authority over the airspace over its territory, and the Romans developed the maxim *cujus est solum, ejus est usque ad coelum*, which means the "right of land ownership brings with it rights of ownership of the airspace above that land."[5] The space above the Roman state's territories was recognised as an important component of the habitable planet. As a result, there was a distinction made between the concepts of air and air space in Roman law. Physical elements such as air and water were seen as "*communia omnium*," or belonging to all humans[6], and could not be possessed. In contrast, the airspace did not have the same legal status as the physical element of air. The Roman legal system seems to have seen utilising the skies as a utility right subject to state sovereignty.

Ideology of "air sovereignty in" 16th to 19th century

In the 16th century, circumstances emerged in which private property rights were established before national supremacy. Iacobus Cuiacius (1522–90) believed that both land and air should have the same legal standing. If any of their statuses were to change, the other's status would also need to alter. Regarding the topic of airspace rights, Hugo Grotius (1583-1645) argues that the terrestrial area and the airspace above it are one indestructible entity. By the end of the seventeenth century, most scholars were in favour of granting sovereignty to the state above all

[5] Rafael Domingo, "*Roman Law: An Introduction*", (1st Edn Routledge 2018) 30 -49
[6] ibid

else[7]. Obviously, such an idea is no longer viable since it is incompatible with the requirements of the current air transportation sector as the airspace turns into a public highway.

The first flight to leave the earth took place at the end of the 18th century in a hot-air balloon built by the French Montgolfier brothers in 1783. After a year of inaugural hot-air balloon flights, a lieutenant de police in Paris named Lenoir passed the first air legislation on April 23, 1784, outlawing balloon flights without express approval[8]. The directive's main goal was to forbid balloons from flying above Paris without permission in order to protect the state's citizens and maintain control over the state's airspace. This 1784 piece of legislation has since become the first and earliest form of legislation in the field of aeronautical law. However, because aeronautical law was still emerging, the question of "full" and "absolute" sovereignty over the airspace was of little importance at the time.

As the number of eventualities involve in aviation matters increased in the 18th century the concept of air sovereignty gained even greater significance but was not adhered to common footing. The first reported case of 19th century was in the common Law referring to air navigation was ***Pickering v. Rudd*** [9], decided in 1815. It remains an example private of claims brought under the right over private property in contention over air-space. In deciding such claims, Lord Ellenborough questioned whether an aeronaut would be liable "to an action of trespass *quaers clamsom fregit* at the suit of the occupier of every field over which his balloon passes in the course of his voyage."[10] The "Lord Ellenborough" perspective in the aforementioned case appears to be in favour of restricting a state's sovereignty over the airspace. Additionally, it conveys the appearance that 18th century jurists prioritized private property

[7] Cooper (n2)
[8] Bartsch (n3)
[9] [1815] 171 ER 70
[10] ibid

rights over governmental rights in matters involving air space.[11]

From the standpoint of a state's sovereignty over airspace, there has been an equally wide divergence of opinion. Hence It is obvious that the concept of freedom of the air in the first decade of 19 century was of limited value and no sooner collapsed of the short lived.

The 20th century's attempts to achieve "air sovereignty"

At the beginning of the 20th century, the number of engine-powered aircraft increased significantly; these aircraft were used widely and for a broad range of operations, including aerial combat, reconnaissance, bombing, ground attacks, and naval warfare. As a result, the ideology supporting national sovereignty over the airspace had also matured, and people were aware of the link between national security and airspace sovereignty. Meanwhile, scholars in Europe debated the issue of total freedom and total sovereignty. In 1901, the French legal scholar Paul Fauchille wrote an article entitled "***Le domain aerien et le régime juridique des aerostats***," in which he referred, inter alia, to the freedom of the air[12]. In accordance with Fauchille's theory, states should only be granted rights up to the amount required to ensure their preservation during peacetime and times of conflict. Fauchille proposed a "freedom of the air" that would be comparable to Hugo Grotius' "freedom of the high seas," along with other authors like Lyckama á Nijeholt and Ernest Nys [13]. This school of thinking has long believed that the airspace should be free, just as the open seas should be. Paul Fauchille's idea of "freedom of the air" was coming under more and more fire from academics and politicians. Both Professor Harold Hazeltine of England and the Dutch-born Johanna Nijeholt strongly opposed the idea in their books The Law of the Air (1911) and Air Sovereignty (1910), respectively[14]. As a result, Fauchille's opponents were firmly in favour of total national sovereignty

[11] Robert M. Jarvis, "*Aviation Law: Cases and Materials,*" (Carolina Academic Press 2006)
[12] Pablo Mendes De Leon, "*Introduction to Air Law,*" (10th Edn Kluwer 2017) 2-10
[13] ibid
[14] cf Jarvis (n12)

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over airspace.

The very first defenders of total sovereignty over airspace focused their arguments largely on national interests and concepts of national security in light of the escalating international political tensions and the genuine threat of war in Europe. This paved the way for new legal guidelines and aviation freedom accords. The first initiative was the Convention Relating to the Regulation of Aerial Navigation (also known as the "Paris Convention"), which was ratified in 1919, codifying public international air law for the first time. Later, the most significant effort took place once the Convention on International Civil Aviation (also known as the Chicago Convention) was ratified in 1944 and served as the second codification. Both treaties' introductory provisions entrench the idea of national sovereignty, according to which every state has complete and exclusive control over the airspace above its territory.

The Paris convention

The 1919 Paris Convention was the first multilateral instrument to consecrate the victory of the theory of "air sovereignty" in a similar way as it is construed today. The preamble to the Paris Convention included the words "to encourage the peaceful intercourse of nations by means of aerial communications" and "to prevent controversy."[15] There were not many laws governing aviation before 1919, so this development was particularly significant in regard to issues of air sovereignty concept. The Convention's **Article 1** recognized the complete and absolute sovereignty over the airspace of the underlying state.

"*The High Contracting Parties recognise that every Power has complete and exclusive sovereignty over the air space above its territory*"[16].

This article confirmed what had become customary law and was thus also applicable to countries that had not signed the 1919 Convention.

[15] ibid (n4) preamble
[16] ibid art 1 (i)

Further, Article implies a categorical rejection of the perspectives on airspace freedom discussed above, including those that called for the division of airspace. As reiterated later in Article 1 of the 1944 Chicago Convention, its fundamental principles continue to serve as the cornerstone of contemporary aviation law. The Paris Convention's **Article 2** is unique in that it addresses the freedom of innocent passage. It stated that "regulations imposed by a contracting state relative to the admission of aircraft of other contracting states over its territory should apply without distinction of nationality."[17] Thus, this Article, which is based on the idea that an aircraft could only be assigned one "nationality" based on its registration, is identical to Article 11 of the 1944 Chicago Convention, which bears the same idea.

The language used in the 1919 Paris Convention demonstrated the intention to formally establish an existing principle that would be binding on all countries in addition to the contracting parties. Thus, the "*usque ad celum*" sovereignty principle is depicted as being both global and independent of the desire of the signatories, giving it the status of customary international law, if only through crystallisation. In fact, a concept of balance between the needs of international civil aviation and the rights of sovereign governments served as the foundation for the Paris Convention. As a result, the 1919 Paris Convention's authors took a considerably more practical approach than that advocated by academics in the early 20th century, and this spirit of balance still prevails today.

The Chicago Convention

On December 7, 1944, the Chicago Convention on International Civil Aviation was ratified, and it became law on April 4, 1947. It is a global agreement "on certain principles and practices in order that international civil aviation may develop in a safe and orderly manner and that international air transport services may be established on the basis of equality of opportunity and run soundly and economically."

[17] ibid art 2

It founded the International Civil Aviation Organization (ICAO), an intergovernmental body whose objectives are to enhance the development of international air navigational principles and procedures as well as the planning and expansion of international air travel. ICAO eventually got affiliated with the United Nations.

Article 1 of the Convention states that
"*The contracting States recognize that every State has complete and exclusive sovereignty over the airspace above its territory*." [18]

This was a repetition of similar clauses from the 1919 Paris Convention. This Article recognizes each state's complete and exclusive sovereignty over the air space above its territory. It appears that the Convention, by its scope, tends to speak for all states, even non-contracting states. The terms "total" and "excusable" emphasize that no right of innocent passage exists. As a result, there is no "freedom of the air" above the territory of a state; liberty exists only in the airspace over the high seas and EEZ.

According to **Article 2** of the Chicago Convention, the lateral limits of air territory, i.e., "air space," include the air above land areas and surrounding territorial seas over which a state exercises sovereignty, suzerainty, protection, or mandate.[19] Additionally, when it comes to the topic of national territory, the same article defines territory as "land areas and territorial seas exclusively." Article 55 of the Law of the Sea Convention 1982 states that the Exclusive Economic Zone is separate from the territorial waters. Simply put, a state's proclaimed territorial sea width and clearly defined land borders correlate to the area of its territorial airspace over which it has exclusive sovereignty. In addition, the height of a state's sovereignty over its domestic airspace is only as high as the boundary with space itself. However, the convention terminology makes no distinction between national airspace and outer space.

[18] ibid (n5) art 1
[19] ibid art 2

The Chicago Convention's **Article 3**, which addresses both state and civil aircraft[20]. However, Article 3 does not establish a definition of either the concept of state aircraft or civil aircraft. Article 3(b) of the Convention edicts that "aircraft used in military, customs and police services shall be deemed to be state aircraft.[21] This is not a definition, but only a presumption since the word "deemed" is used. In interpreting Article 3(b), both the nature of the enumeration and the nature of the presumption must be correctly ascertained. Using a broad interpretation of Article 3(b), the enumeration would not be limitative but would serve as an example of what would be considered to be a state aircraft. The result of such an interpretation is to reduce the exception and expand the scope of applicability of the Chicago regulatory system.

Article 5 of the 1944 Chicago Convention confirms the states' non-scheduled airline rights to fly across or halt continuously without receiving prior authorization[22]. However, **article 6** mandates that states acquire approval from the contracting state before engaging in scheduled air service[23]. Furthermore, **Article 7** of the Chicago Convention of 1944 establishes cabotage as a practice component of the Chicago Convention in order to satisfy the sovereignty concept[24]. This article establishes that each contracting country has the authority to refuse the license provided to aircraft passengers, freight, and mail by receiving payment or renting it from one location to another. Article 1 of the 1944 Chicago Convention, as well as Articles 5, 6, and 7, constitute the foundation of all international civil aviation systems today[25].

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[20] ibid art 3
[21] ibid art 3(b)
[22] ibid art 5
[23] ibid art 6
[24] ibid art 7
[25] Ruwantissa Abeyratne, "*Convention on International Civil Aviation : A commentary*," (Springer 2014)

Under **Article 9(a)** of the Chicago Convention, states have the power to restrict or forbid overflight over particular areas of their territory[26]. This provision is based on the concept of sovereignty, which is the bedrock of the Convention and one of its most eloquent expressions. The existence of certain conditions and the fulfilment of specific legal criteria, however, are necessary for the authorized use of the authority under Article 9(a) to establish restricted zones. The wording of the provision states that the following uses are the only ones for which "**no-fly zones"** may be established:

(a) reasons of military necessity; or
(b) reasons of public safety.[27]

Such "**no-fly zones**" must also be reasonable, proportionate, and respect both geographical and temporal requirements. Additionally, if a state wants to restrict access to its airspace, it must do it in a way that "does not unreasonably interfere with air navigation." This shows that while safety is the primary concern, the use of the sovereignty principle to protect airspace must be proportionate to the threat.

The Chicago Convention's legal standing has been hotly contested for many years since it was created. Does the Convention include clauses that recognize ICAO's legislative, or law-making, powers? If so, how far may the Convention be used to pass such a law? All contracting states are required by Articles 37 and 38 to establish uniform standards, rules, practices, and organizational structures in order to enhance air navigation as per convention. As a result, the Chicago Convention's embedded concept of "air sovereignty" comes with a number of associated obligations for governments, notably in the areas of national security and flight safety. In addition, it seems that the Chicago Convention also fails to a certain extent to offer a distinctive legal framework for the

[26] ibid (n5) art 9
[27] ibid

formalities of air travel[28]. The Convention only applies to civil aircraft, according to its wording, and each state continues to have its own authority to regulate other planes. The Chicago Convention may remain in force for many years to come as long as flying operations are restricted to the use of "airspace" and flight instruments—which do not depend on atmospheric reactions—are not used[29]. But given the state of affairs right now, international worries could be detrimental to the future.

Current challenges of maintaining "air sovereignty" of state

Despite all the advancements made by the global aviation industry and all the laws passed pertaining to establishing air sovereignty, from the Police Directive of 1784 to the Chicago Convention of 1944, the question of how much a state can claim sovereignty over airspace still dominates the international community today. Of course, most of the challenges of aviation sovereignty exist in theoretical frameworks, including legal, political, economic, and national security aspects. As such, this study is limited to analyzing the legal and national security challenges that states face when establishing air sovereignty under the current aviation law regime in the contemporary period.

Legal challenges to agreement on the terms "airspace" and "aircraft"

A number of legal interpretations that are based on the different interests of each state have evolved as a result of the lack of a legal consensus on the terms "airspace" and "aircraft." In light of these concerns, the author offers his analysis and perspectives, which are, in essence, as follows:

Problem concerning the determination of "airspace" under state sovereignty

It has been highlighted that the Chicago Convention of 1944, in particular, never defines what the term "airspace" implies. In addition, the 1967 Space Treaty, which governs the use of space, makes no mention of what

[28] Stepen M. Shrewsbury, 'September 11th and The Single European Sky: Developing Concepts of Airspace Sovereignty', [2003] 68 Journal of Air Law and Commerce, 115.
[29] Abeyratne (n26)

outer space is or where it begins. However, every state has complete and exclusive sovereignty over the airspace over its territory, as stated in Article I of the Chicago Convention. As a result, we erroneously assume that the border between space and airspace is present. The absence of a natural line dividing space from the air is the primary basis for the difficulty in establishing a state's vertical sovereignty. This is analogous to how there are no physical lines separating "international seas" from the "territorial waters" of a state. Therefore, it might be claimed that the Chicago Convention's Article 1 expresses total state sovereignty over airspace only up to the point where flying by conventional aircraft and balloons is feasible. There hasn't yet been a definite international agreement on what constitutes "air space."[30] As a result, states have included references to the boundary between Earth and space in their domestic laws. Uncertainty in the law and fragmentation are unavoidable results of such unilateral delimitations. For instance, the downing of Malaysia Airlines MH-7 over Eastern Ukraine in 2014 has highlighted a sensitive subject regarding aerial sovereignty and the scope of airspace. The passenger plane was flying from Amsterdam to Kuala Lumpur when it was shot down over the conflict-torn Ukraine. Ukraine had shut off its airspace up to a height of around 9,750 meters.[31] The Ukrainian authorities said that they had not received any more warnings about dangers in the upper areas' airspace, where MH7 was flying at a height of about 10,000 meters. The fact that this was insufficient caused all 298 individuals to die The Dutch-led joint investigation team (JIT) held that the States must guarantee the safety of the airspace above their territory.[32] However, in the event of armed conflict on the territory, such a guarantee would be difficult to provide. The incident complicated the protection aspect of national sovereignty over airspace. As a result, airspace delimitation is essentially concerned with the question of where airspace ends and what, as the province of all humanity, begins. The answer to this question

[30] Gbenga Oduntan "*Sovereignty and Jurisdiction in Airspace and Outer Space*" (Routledge 2011) 68-72
[31] "MH17 Ukraine plane crash: What we know," (*bbc.com*, 26 February 2020) < https://www.bbc.com/news/world-europe-28357880> accessed 02 November 2022
[32] ibid

is significant in order to determine which activities are indeed construed to determine air sovereignty rights.

Problem of classifying aircraft.

Although it did not fully define the term "plane" outside of Article 3, the Chicago Convention of 1944 distinguished between state and civil aircraft. "State aircraft" refers to aircraft used by the military, customs, and police. Therefore, state-owned aircraft that are used for purposes other than those mentioned above are not regarded as state aircraft, in accordance with Article 3 of the Chicago Convention. Both the Paris Convention and the Chicago Convention have failed to define the term "aero plane." Instead, they simply specify the categories of aircraft that they regard as "state aircraft." But both conventions offer a functional definition of "state aircraft" that does not include prior ownership. It appears that the interpretation is left up to the respective state. Some states maintain that because of the absence of an exact interpretation, they use the term "aircraft."[33] As a result, convention has placed a self-imposed constraint on its rules, stating that they do not apply to airborne flight instruments unless such instruments can obtain support in the environment through air reactions[34]. This classification issue in turn leads to a national security challenge, as explained hereinafter.

National security challenge-use of force restriction

One of the primary reasons for establishing the concept of total and exclusive sovereignty over the airspace was to protect national security. However, current aviation law faces a significant threat to maintaining aerial sovereignty due to actions like the use of force. The following cases involve planes that were shot down because they were deemed a threat to the security of sovereign states.

[33] Ruwantissa Abeyratne, "*Air Navigation Law*" (springer2012)10-18
[34] Abeyratne (n26)

Korean Air Lines Flight 007(KE007), a passenger plane, entered Soviet airspace on September 1, 1983, and was shot down by the Soviet Union (now Russia). It was believed that the civilian aircraft was an American intelligence aircraft on a reconnaissance flight over the Kamchatka peninsula. Soviet fighter jets destroyed their target, and all 269 passengers and crew on board were killed. The Soviet authorities claimed they acted in accordance with their national legislation (use of force for self-defense); however, the proceeding concludes that the Soviet interceptors did not follow ICAO standards and recommended practices before attacking KE007.[35]This creates an issue of balance between the safety of civil aviation and the air sovereignty of the state. Following the incident, the Chicago Convention's **Article 3 bis** was adopted, which forbids nations from employing force against civilian aircraft. It only applies to civilian aero planes that are "in flight," nevertheless.
The article 3 bis (a) states that:

"The contracting States recognize that every State must (a) 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. This provision shall not be interpreted as modifying in any way the rights and obligations of States set forth in the Charter of the United Nations".[36]

The provision embedded that states in the international community are obliged to adhere to the international norms of protecting and guaranteeing the safety of the civil aircraft of other nationals when in the sovereign airspace of their state. Indeed, customary law says that using weapons on a civil aircraft is not legal. Even if Article 3bis is the first provision to make clear what actions may be taken in case of an intrusion, it only declares what has been known and accepted for a

[35] Farooq Hassan, "A Legal Analysis of the Shooting of Korean Airlines Flight 007 by the Soviet Union",(*scholar.smu.edu.Com,1984*)<https://scholar.smu.edu/jalc/vol49/iss3/3>accessed02 November 2022
[36] ibid (n5) art 3bis (a)

longer time. Also, 3bis expresses common sense in dealing with intruders. However, the long and rather clumsy provisions **(b) to (d) of Article 3 bis**[37] are an expression of the conception that a proportionate reaction by the infringing state against a grave danger or a severe violation shall be allowed in order to restore sovereignty in the airspace. Hence, the risk of the loss of lives is so great if the provisions in the article are not followed that it should deter the offended state from using armed force against the aircraft.

This complication was experienced in a later case ***Islamic Republic of Iran v. United States of America(USA)*** decided at International Court of Justice (ICJ).[38] In 1988, an **Iranian Airbus A-300B** travelling from Dubai to Iran was shot down in the Persian Gulf by the USS Vincennes of the American navy. All 290 people on board, including crew members, died. In assuming that the aircraft was a military aircraft, the US commanders erred. Iran accused the USA of violating the Chicago Convention and the Montreal Convention of 1971 by shooting down the aircraft in a case taken before the ICJ. Even though written pleadings on preliminary objections were filed, the case was settled and dismissed before to the beginning of oral hearings.[39] Subsequently the USA offered compensation ex gratia to the relatives of the victims. It has been established via the ICJ proceedings and ICAO investigation that this incident was a gross violation of the terms of Article 3 bis of the Chicago Convention[40]. As a result, this indicates that, although the principle of complete air sovereignty is recognised in the fundamental introductory Article 1 of the Chicago Convention, states have exercised their sovereign powers in a dynamic fashion. Hence, when it comes to airspace sovereignty, states appear to take a literal stance against allowing outside encroachment.

[37] ibid art 3bis (b) to (d)
[38] Aerial Incident of 3 July 1988 (Iran v. U.S.), [1996] I.C.J. 9 (Order of Feb. 22)
[39] ibid (n39)
[40] ibid

Invading aircraft over their territory are sometimes regarded as an act of aggression, prompting a response by the violated state, and in many cases, the penetrated state has resulted in the downing of such aircraft, sparking the need in the international community for a demarcation between civilian and military aircraft. In such case, article 3bis is not at all relevant under article 3 of the same convention**.**

Conclusion

As early as the Roman Empire, the state was believed to have legal rights to the airspace over its territory. Since the start of the 20th century, as the international air transportation industry has grown, more traditional notions of a state's sovereign power over its territorial airspace have emerged. By ratifying the Chicago Convention on December 7, 1944, which becomes the Magna Carta of civil aviation participation, a static approach to air sovereignty is envisioned. Today, modern airspace sovereignty gives each state exclusive rights to its own airspace, and aircraft that enter that zone without permission are seen as intruders. Though the concept and formalities of air sovereignty are still alive, its application and interpretation have undergone changes, limiting the competencies of states. This study found that aerial sovereignty is not as complete and exclusive as it was when the Chicago Convention was drawn up. Of even more importance, the Convention does not provide legal terminology for the term "aircraft." Nor does it define the term "airspace." Being primarily concerned with questions of aviation sovereignty, the Chicago Convention lacked the ability to establish a concrete legal regime. It just established the foundation for how nations define the regulations for international flight, allowing any nation to determine its own aviation industry regulations at will. Due to these gaps in primary air laws, it has become increasingly difficult to maintain air sovereignty while balancing safety and security. Further, in today's context, decisions on international air sovereignty have been mostly influenced by economic and national security factors. Notably, the use of legal force in self-defense against intruders has created a destructive experience in preserving air sovereignty rather than achieving a positive outcome today.