

The International Legal Status of the Athinai FIR

Angelos Yokaris*

RÉSUMÉ

Cet article examine le statut légal du FIR d'Athènes à un moment où la Turquie conteste le droit de la Grèce à un espace aérien de dix milles. De ce qui est exposé, il est clair que la position de la Grèce est solide sur le plan légal et se base sur les conventions internationales adressées par des organisations. Par ailleurs, la Turquie a aussi consenti à cette délimitation du FIR d'Athènes par sa participation aux rencontres internationales pour la navigation aérienne de Paris (1952) et de Genève (1958) qui ont déterminé les limites du FIR d'Athènes et d'Istanbul, sans exprimer aucune réserve.

ABSTRACT

This article focuses on the legal status of Athinai FIR at a moment when Turkey contests Greece's right to have a ten-mile air space. From what is exposed, it is clear that Greece's position is legally solid and based on international conventions and international practice endorsed by international organizations. On the other hand, Turkey also consented to the delimitation of the Athens FIR at ten miles and participated in the Regional Air Navigation Meetings of Paris (1952) and Geneva (1958) which determined the limits of the Athinai and Istanbul FIRs without expressing any reserve.

Article 1 of the 1944 Chicago Convention on international civil aviation¹ reconfirms the customary and established international principle for the complete and exclusive sovereignty of each State over the «air space above its territory». The terms «complete» and «exclusive» used for the characterization of the State's exercise of its sovereignty rights specify two specific principles. The first principle is that the State's sovereignty rights extend to unlimited height in the air space; the second, that a generally established freedom of overflight through national air space does not exist—with the sole exception of the right of transit which is recognized by the Convention and the two Agreements attached to it, but only for the contracting parties and only for civil aircraft. This is the meaning and consequence of the distinction between civil and state aircraft established in Art. 3 of the Chicago Convention and of the submission of the military aircraft admission in the national air space of a third State to a previous concession of a State authorization which in fact is granted through diplomatic channels.²

Freedom of flight for all aircraft (civilian or state including military) exists only in the international air space over the high seas, under the condition of compliance with the international aeronautical regulations, observance of which falls under the jurisdiction of the coastal State's authorities for the Flight Information Region (FIR) under its responsibility.

*University of Athens, Greece

A. Sovereignty and Jurisdictions within the National Air Space

The Chicago Convention acknowledges the right of each contracting state to issue legislative and administrative enactments concerning matters of air traffic regulation and control, delimitation of air corridors and of entrance and exit points from the national air space (Art. 9 par. 2, 10 and 11), determination of customs airports for landings and take offs or of security matters, as the establishment of prohibited areas (Art. 9 par. 1).

The Chicago Convention also acknowledges the jurisdictions and competences of the coastal State to a larger area of the international air space, above the high seas in a FIR under its responsibility for reasons of control and regulation of air navigation.

1. The Delimitation of the National Air Space in Relation to the Sovereign Rights of the Coastal State.

The delimitation of the lateral limits of the Hellenic air space was formalized by presidential decree of 1931 based on the relevant authoritative provisions of Law 5017/1931 «for civil aviation».

According to the single article of the presidential decree issued the 6/18-9-1931 «for the delimitation of the lateral limits of the territorial waters concerning the matters of aviation and air police» (Official Journal 325 A'), the lateral limits of the territorial waters were defined in a distance of ten nautical miles from the state's coasts (Art. 2, Law 5017 / 1931).

As a result, the lateral limits of the Hellenic air space were defined in ten nautical miles, with reference to the delimitation of a special subject territorial zone of ten nautical miles, serving the requirements of aviation and air police.

The above-mentioned system was adopted by the Air Law Code in its Art. 191, which provides (par. 1) for the delimitation of the Hellenic air space, the lateral limits of the territorial waters is defined by presidential decree, issued after a proposal of the Council of Ministers. Until its issue, the presidential decree of 1931 remains in force. The only difference consists in the fact that the 1931 presidential decree makes explicit reference to the «State's coasts» as a method of delimitation, that is the normal base line of the lower «shallow waters.» On the contrary, Art. 191 of the Code does not follow this method. Consequently there is the possibility of adopting other methods of delimiting the lateral limits of the territorial waters.

2. The Notification of the Hellenic Air Space Delimitation at Ten Nautical Miles According to International Procedures

Delimiting the lateral limits of the national air space and setting its boundaries on aeronautical charts constitute a unilateral act of the state which, to have legal effect on international level towards the other neighbouring states, must be both in accordance with international law³ and noted at the international level according to the relevant provisions of the Chicago Convention and international aeronautical regulations.

Based on the compulsory Law 602/1937 concerning the «movement of aircraft over the Hellenic territory» (o.j . 136 A') and in view of the relevant obligation of Greece deriving from Annex «F» of the 1919 Paris Convention on air navigation concerning the «aeronautical charts», notification to the CINA (Commission internationale de navigation aérienne) of air space charts, delimitation of «air ways» (according to the terminology of that time) and points of «transit» of the north and east borders has taken place. These charts were published in Annex I of the presidential decree 7/14-8-1931 (O.J. A'273) concerning Air traffic Regulation.

The first aeronautical charts of ICAO were published in 1949 after Annex 4 of the Chicago Convention concerning Aeronautical Charts came into effect. These charts were based on the CINA charts. In their second publication in 1955, new aeronautical charts were included. These were published by Greece with a clear description of Greek national air space boundaries. It should be noted that the corresponding Turkish aeronautical charts also show the boundaries of the Hellenic air space, according to the provisions 2.10 .1 of Annex 4 of the Chicago Convention, which stipulate that the international boundaries must be shown on the aeronautical charts.

The limits of the Athinaí FIR were determined during the Regional Air Navigation Meetings of Paris (1952) and Geneva (1958) based on the external limits of the territorial waters and the boundaries of the adjacent FIRs (Istanbul and Athinaí) of the neighbouring States. Turkey participated to these Regional Meetings without reservation. During these meetings, the relevant Air Navigation European Plan chart was approved.

It must be noted that in the minutes of the 1958 Regional Meeting, explicit reference⁴ is made to the Hellenic aeronautical charts of which the ICAO was notified in 1955. These charts describe, among other things, the limits of the Hellenic air space (international boundaries of the Balkan Region and European part of Turkey) as ten nautical miles. In the 1958 Meeting, Turkey participated without reservation.

Finally, it must be emphasized that the official notification of the Hellenic air space delimitation, with reference to the 1931 presidential decree, was published in the Aeronautical Information Manual edited, according to Annex 15 of the Chicago Convention, by the Civil Aviation Authority: AIP Greece, vol. 1, RAC 0-1.2.1. «in connection with Civil Aviation and Air Police, the territorial waters extend up to ten¹⁰ NM from the coast».

The differentiated status of the external limits of territorial waters and the lateral limits of the national air space was still in force from 1931 when the relevant presidential decree was issued and uniformly applied without any contestation of its legitimacy from third party countries, according to the procedures provided by ICAO or even the institutions of the Civil Aviation Organization and in particular by the Council (Articles 54 and 84 of the Chicago Convention).

B. International Air Space - The Flight Information Regions

International air space lies above the high seas and other sea zones except the territorial waters and the internal waters of each state. Its legal status is based on the principle of free overflying for each aircraft, with the one reservation of observance of air traffic regulations of the International Civil Aviation Organization. Article 12 of the 1944 Chicago Convention concerning International Civil Aviation, which founded ICAO, stipulates that above the high seas the rules of air navigation issued by the ICAO Council, according to the procedures provided by the Convention, are applied.

As a result, the Chicago Convention provides for freedom of overflying in international air space and the international aeronautical regulations, to which Article 12 refers, are included in Annexes 2 and 11 of the Convention concerning the «Rules of the Air» and «Air Traffic Services» respectively.

Annex 2 in particular includes the air traffic rules for aircraft flying above the high seas and imposes the strict observance of instructions of the Air Traffic Control Centers of each Flight Information Region, according to the provisions of Annex 11.

The air space, national and international, has been divided into nine Air Navigation Regions, each one including several Flight Information Regions (FIRs) which are submitted to the jurisdiction of the States of the Region.

1. Technical Characteristics and Criteria of Delimitation

The FIRs above the high seas or in an air space of undetermined sovereignty (e.g. the Antarctic), as well as the FIRs which are composed of national or international air space zones, are delimited by Regional Air Navigation Agreement (Annex 2: 2.1.2. and Annex 11: 2.1.2.) which must be approved by the ICAO Council.

Annex 11 of the Chicago Convention and the Regional Plans of Air Navigation contain specific rules on the delimitation of FIRs. They require that the delimitation of the FIRs be made on the basis of technical and operational criteria in order to ensure greater efficiency in the exercise of air navigation control and aircraft flights. On the other hand, according to Annex 11, 2.9.2.1, FIRs must be determined in order to cover all the structures of the air ways of each FIR area. Lastly, it is recommended (Annex 11, 2.9.1) that the delimitation of the FIR Regions be made considering carefully the structure of the network of the air ways of the FIR Region, in each particular case, as well as the national borders. It is recommended in this point (Annex 11, 2.9.1, Note 1) that the conclusion of agreements concerning the delimitation of FIRs along national borders must prevail, if this fact facilitates the provision of air navigation services. From this perspective, the delimitation of FIR borders by tracing direct lines would be preferred, as far as the qualitative application of the rules determining the provision of air navigation services is concerned.

2. The Procedure of Determining FIRs and Their Limits

The Flight Information Regions (FIRs), their limits and the State whose «competent authority» will have the responsibility of providing the air navigation services above the high seas, in the international air space, are determined by ICAO Council decisions following the conclusion of a Regional Air Navigation Agreement within the framework of a Regional Conference on Air Navigation (Annex 2: 2.1.2. and Annex 11: 2.1.2). In the footnotes of rules 2.1.2. of Annexes 2 and 11, respectively, it is specified that «the phrase Regional Air Navigation Agreement refers to an agreement approved by the Council of ICAO, normally on the advice of a Regional Air Navigation Meeting». We must conclude that this procedure can take place outside the framework of a Regional Meeting with the sole participation of the interested states.

The power and authority of the ICAO Council for the approval of the procedures prescribed in Annexes 2 and 11 of the Chicago Convention concerning the determination of the FIRs, the definition of their limits and the establishment of the competent authority of the State which will be in charge of controlling air navigation find their basis in the provisions of Articles 49 and 54 of the Convention. These articles specify the roles and powers of the General Assembly and the Council of the ICAO.

The competence of the ICAO Council for the division of the total air space in Air Navigation Regions, each one including a certain number of FIRs, is based on the same provisions.

Today, there are nine Air Navigation Regions, including the European Region. The latest revision took place in 1967, when the ninth—the North American—region was added, after a Council decision.

The determination and delimitation of the Air Navigation Regions is made by ICAO Council decisions upon recommendation of the Air Navigation Commission (ANC).

3. The Delimitation of the Athinai FIR

The institutional and procedural arrangements for the delimitation of the FIRs of the European Air Navigation Plan took place at the third (Paris 1952) and the fourth (Geneva 1958) Regional Air Navigation Meetings.⁵

The preparatory work for the delimitation of Athinai and Istanbul FIRs was completed during the Second Middle East Regional Air Navigation Meeting (Istanbul, October - November 1950).

In the Final Report to the ICAO Council⁶ the «Rules of the Air and Air Traffic Control Committee» submitted to the Council, the first recommendation refers to the delimitation of the eastern limits of the Athinai FIR and the western limits of the Istanbul FIR, whose limits coincide with the Greek-Turkish sea borders, in the eastern Aegean Sea. In fact, in point 2. 1 of the Final Report to the Council (including the first Recommendation) it is noted that both the Turkish and the Greek delegations indicated the coordinates of their sea boundaries in eastern Aegean (eastern sea boundaries of Greece and western sea boundaries of Turkey) in order to delimit their respective FIRs. The respective coordinates coincide absolutely. The Final Report and Recommendation 1 included in point 2.1 were unanimously approved by the ICAO Council during its session on December 14, 1950.

The delimitation of the Athinai FIR is based on the first Recommendation of the 1952 regional meeting and Recommendation 9/2 of the 1958 meeting. The layout of its limits was reported on Chart 7 of the Air Navigation Plan for the European Region. The Recommendations of the regional conferences of 1952 and 1958 were unanimous; in other words, with the consent of Turkey. The Athinai-Istanbul FIR border coincides with the Turkish western frontiers in the Aegean sea, as shown in the relevant ICAO map, number 7, and by the 1953 official Turkish international Air Navigation Map published in Ankara. (See Annex/Maps V and VI)

During sessions on June 23, 1952 and May 15, 1958, the same Council decisions, based on the Recommendations of the Regional Meetings, delimited the Regions of responsibility for search and rescue operations. These limits coincide with those of the corresponding FIRs.⁷

It should also be noted that, as reported in point 2.6.2. of the Council Report of the fourth Regional Navigation Meeting of 1958, during the delimitation of the Athinai FIR, the aeronautical charts that Greece had published in 1955

covering the Balkans and the western part of Turkey looking onto the Aegean and the eastern part of the Mediterranean placed the lateral limits of the Hellenic national air space at ten nautical miles. These details were taken into consideration without any objection from Turkey.

C. The Jurisdiction of the Air Traffic Control Services (ATS) Authority in the FIRs

1. The Control and the Provision of Air Traffic Services

In international practice, when the FIRs are delimited and within their limits are included parts of international air space over the high seas, then air traffic control is confined to the coastal adjacent State which designates the competent ATS authority for the provision of air traffic services (Annex 2, 2.1.2 and Annex 11, 2.1.1. and 2.1.3). In this case, the air traffic control services, flight information services, centres of flight information control of the coastal state (Annex 11, 2.3. and 2.6) cover the national air space and the parts of international air space that are included in the FIR under the jurisdiction and the responsibility of the coastal state.

A problem arises in the case of simultaneous air traffic control and the provision of flight information services in an air space, which for the needs of air navigation in conformity with the objectives set out in Annex 11, point 2.2.; namely, security, efficiency and regularity of air navigation, constitutes a unified air space. This situation is problematic because the FIR under the jurisdiction of the coastal state is composed of units of air space which do not fit in any unique legal regime. In the FIR, which includes the national air space, the coastal state exercises sovereign rights under international law and the Chicago Convention. The same state therefore has the right to apply the international aeronautical regulations with the reserve of national regulations, in all cases where the latest ones are different from the international regulations. The procedure of how differences are reported must be carried out as set out in Article 38 of the Chicago Convention.

On the contrary, in the part of the FIR which contains parts of the international air space, the coastal state and the ATS competent authority exercises its jurisdiction strictly within the limits set by Annexes 2 and 11 of the Convention. These Annexes cover surveillance of the application by aircraft of the «rules of the air» set by Annex 2 without any deviation, air traffic control and provision of air traffic control services (ATS).

The differentiation of the authority which the coastal state exercises on the part of the international air space of its FIR—not sovereignty rights but a limited jurisdiction—led to ICAO's General Assembly's specifying in Resolution A29-7 that approval by the Council of a Regional Navigation Agreement attributing control rights to the coastal state in a FIR comprising a part of international air space does not entail a recognition of the sovereignty of this state in this part of the international air space.

As detailed in Annex 11, the international body considers the FIRs of a coastal state—comprising parts of national and international air space—a unique air space. It thus recognizes strictly limited expansion of the national jurisdiction to this part of the FIR which comprises a zone of international air space only for the provision of air traffic services (e.g. flight control for reasons of security, efficiency, and regulation of air navigation).

This limited expansion of the national jurisdiction in the international air space must be approved by the other States belonging to the same Air Navigation Region and must be based on a Regional Agreement, approved by the ICAO Council (Annex 11, 2.1.2).

2. The Provision of Search and Rescue Services by the Authorities of the FIR Region

The obligation to provide search and rescue services for aircraft in danger within the national air space of each contracting state is defined in Art. 25 of the Chicago Convention. This article declares that each contracting state is obliged to take all feasible measures to assist aircraft in danger over its territory and, subject to the control of its own authorities, to permit the owners of the aircraft or the authorities of the state where the aircraft is registered to take all necessary measures of assistance according to the circumstances.

Each contracting state undertaking the search for an aircraft which has disappeared will co-operate with the co-ordinated measures which might be recommended in accordance with the Convention.

The provisions of Article 25 of the Convention were completed by the aeronautical regulations included in Annex 12 of the same convention concerning search and rescue in the Regional Plans of Air Navigation, like the Air Navigation Plan of the European Region (ICAO doc. 7754, Part IX-SAR, Search and Rescue Services), and by the Directives included in the Manual of ICAO concerning search and rescue missions (ICAO, doc. 7333).

The obligation of providing search and rescue services was expanded by Annex 12 to the international air space over the high seas by the establishment of Search and Rescue Regions subject to the responsibility of each adjacent coastal State

(Annex 12, 2.1.1 .1.). The delimitation of the SAR Regions was made by Air Navigation Regional Agreements which were approved by the ICAO Council (Annex 12, 2.1.1.1. and Resolution A 29-7 of the ICAO General Assembly. Appendix 0, point 7), that is by similar procedures to these provided in Annexes 2 and 11 concerning the delimitation of the FIR Regions.

It is stipulated that the contribution of a coastal State to a SAR Region for the provision of search and rescue services in the international air space and the corresponding zone of high seas does not entail any recognition of sovereignty rights on the delimited zone. The delimitation of this SAR Region must be based on technical and operational criteria and, finally, that the limits of the SAR Region must correspond to those of the corresponding FIR subject to the responsibility of the same coastal state both for the air traffic control and for search and rescue services (Annex 12, 2.2.1.1. and Resolution A29-7). The adopted procedure was followed for the delimitation of the SAR Regions of the Air Navigation Plan for the Region of Europe. During the third (Paris 1952) and fourth (Geneva 1958) Regional Conferences of the Regional Bureau of ICAO in Paris, it was agreed that the limits of the SAR Regions would be drawn in order to conform to the limits of the corresponding FIR Regions.⁸

The Regional Navigation Agreements were submitted as Recommendations to the ICAO Council and were approved during the sessions held June 23, 1952 and May 15, 1958.

After the delimitation of the Search and Rescue (SAR) Regions for Europe, their limits were depicted on ICAO aeronautical charts for SAR Regions (Recommendation 11/1 of the Council Report in 1958, table of SAR Regions 1, attached to the 1958 Report and chart SAR-1, attached to the Air Navigation Regional Plan for the Region of Europe, ICAO doc. 7754, Part IX-SAR).

Thus, the limits of the responsibilities of the competent Hellenic authorities for the provision of SAR services within the national and international air space conform to those of the Athinaí FIR. This aeronautical information has been published in accordance with Annex 15 concerning the aeronautical information, at the AIP Greece, vol. 1, point 1.1.

3. The Jurisdiction of the «Competent Authority» of the Flight Information Region for Military Activities in the Air Space

As a general principle we must consider the provision contained in the Rules of the Air and Air Traffic Services, point 2.6.3, according to which temporary air space reservations, either stationary or mobile, may be established for the use of large formation flights or other military air operations. Arrangements for the reservation of such air space will be accomplished by co-ordination between the

user and the appropriate ATS authority. Co-ordination will be carried out according to the provisions of Annex 11 and completed early enough to permit timely promulgation of information in accordance with the provisions of Annex 15.¹⁰

These procedures reflect the international practice and the position of the doctrine. The right to conduct exercises or other military operations in peacetime, within the air space of a FIR Region is not absolute since, on the one hand, an exercise is subject to a series of very rigid conditions and on the other hand, the exercise is not left exclusively to the discretionary power of the military authorities, since it is the competent authority of the concerned FIR Region which has the power to concede, temporarily, the requested national or international air space zone, where the military activities will take place and for the conduct of which the competent ATS services have the exclusive right and obligation to promulgate the relevant information (NOTAM) after the co-ordination with the military authorities responsible for the conduct of the operations.

The common use of the international air space in the FIRs by the civil and military aircraft (the imperative of co-ordinated use which should satisfy both the specific military requirements and the security the regularity and efficiency of the international civil air traffic) led the ICAO institutions, the Council and the Air Navigation Commission, to publish a set of regulatory provisions concerning the co-ordination of civil and military procedures, which should be followed and applied when there is a temporary concession of an air zone for military use.

This regulation was incorporated, basically, in Annex 11 of the Chicago Convention and in the Air Navigation Regional Plan, as in the Navigation Plan for the European Region.

The basic principle of the provisions concerning civil and military coordination is the postulate for the establishment and maintenance of close co-operation between the military authorities relevant to such activities as military exercises that might affect the flight of civil aircraft, and the ATS authorities which are competent in the concerned FIR Region.¹¹

More specific to those activities which might present a potential danger to civil aircraft, e.g. activities which are planned and conducted by military authorities, the basic rule is the one provided in point 2.17¹² of Annex 11. In accordance with point 2.16.1, activities presenting a potential danger to the civilian aircraft, either over the territory of a State or over the high seas, will be co-ordinated with the competent ATS authorities of the FIR which is affected by the military activities.

The provisions of Annex 11 concerning the coordination between the civil and military authorities are of a great importance since activities presenting a potential danger for the civilian aircraft in flight are taking place outside the national air space, within an international air space zone of a FIR Region subject to the jurisdiction of another state.

In any case, the rule is that the initiative of the coordination process belongs to the military authority which takes over actions that could present a potential danger for the civil aircraft in flight. This is also true for cases in which the military organization taking over the manoeuvres belong to the state that has the responsibility for air traffic control services charged with the control and administration of the FIR whose national or international air space zone would be affected by the progress of the exercises. This is, however, also true for cases in which the military authorities of a state are planning to conduct military exercises in an international air space zone within a FIR subject to the jurisdiction of a neighbouring state by virtue of a Regional Air Navigation Agreement and the ATS services of that state which assume the air traffic control. In this case, according to the provisions of point 2.17.1.1. of Annex 11, if the competent ATS authority with which the military authority must cooperate is not that of the state where the organization planning the activities is located, initial coordination shall be effected through the ATS authority responsible for the air space over the state where the organization is located. This provision was raised from simple recommendation to a mandatory norm (standard) by an ICAO Council decision.¹³

The procedure of coordination is concluded by the publication of a NOTAM of international distribution. In accordance with Annex 15 of the Chicago Convention, each State undertakes the obligation to organize an Aeronautical Information Service whose mission is to make available to the other State Aeronautical Information Services all necessary information for the security, efficiency and regulation of civil aviation.¹⁴ Included is the obligation to distribute all information concerning the events that might affect air navigation and all information on any activity that might present a potential danger for civil aircraft in flight, including the conduct of military exercises.¹⁵

The responsibility of each Aeronautical Information Service is extended to the national and international air space zone of a FIR for which the ATS organ of a state undertakes the responsibility of administration and control.¹⁶ This means that even if dangerous activities, e.g. military exercises, are held by the military authorities of a neighbouring state, the Aeronautical Information Systems of the state whose ATS services monitor the affected FIR are accountable and have the duty to publish by NOTAM through international distribution the information on the dangerous activities that will take place.

4. Reconnaissance - Interception of Aircraft

Annexes 2 and 11 of the Chicago Convention include provisions that rule the procedures of reconnaissance and interception of unidentified aircraft violating the national air space or not observing the «rules of the air» and the international

aeronautical regulations which govern air navigation in the FIR, either in the national air space or in the international air space of the FIR under the jurisdiction of each coastal state.¹⁷

The possible reactions of national ATS, which are responsible for air traffic control, the provision of air traffic services and the security, efficiency and flight of aircraft in the FIR Region under their jurisdiction, are reconnaissance, interception and forced landing (in the last case only for aircraft flying in the national air space) procedures which are justified by general public international law and are explicitly detailed in the provisions of Annexes 2 and 11.

These provisions are found in points 3.8.1 and 3.8.2 of Annex 2 (3.8: Interception), point 2 of Appendix A of Annex 2 (2: signals for one in the event of interception), Appendix B of Annex 2 (Appendix B: Interception of civil aircraft), Attachment A to Annex 2 (Attachment A: Interception of civil aircraft) and the directives (guidance material) contained in the «Manual concerning interception of civil aircraft» (ICAO doc. 9433-AN/926 of 13-12-1987).

We must note, however, that in accordance with point 3.8.1 of Annex 2, national authorities also have the right to issue national regulations and administrative directives for the reconnaissance and interception of aircraft, this set of internal regulations must conform to the normative framework ruling on this matter as given in Annexes 2 and 11.

For the uniform application of national regulations with the principles and directives of Annex 2, its Appendixes and Attachments, when the relevant air traffic services of the coastal state have recourse to the reconnaissance and interception of aircraft in the international air space of the FIR under its jurisdiction, directives are provided in the Procedures for Air Navigation Services (Rules of the Air and Air Traffic Services, PANS-RAC, ICAO Doc. 4444, Chapter 3-22, point 19). Greece is applying the procedures in conformity with the international regulations of ICAO, which are outlined in the AIP Greece, vol. 1, 15-11-1976, RAC 8.1.1.

After the unanimous adoption by the ICAO General Assembly, during its extraordinary session of 1984, of an additional Protocol to the Chicago Convention, Article 3 bis was added. Referring to the case of interception, this addition prohibits the use of weapons against civil aircraft in flight and stipulates that the security of the aircraft and the lives of the passengers on board must not be endangered (point A of Art. 3 bis).¹⁸

NOTES

1. Convention on International Civil Aviation, 7.12.1944, 15 UNTS 295, International Air Services Transit Agreement, 7.12.1944, 84 UNTS 389, Agreement on International Air Transport 7.12.1944, 171 UNTS 387.
2. Chicago Convention, art 3 (c): «No state aircraft of a contracting State shall fly over the territory of another State or land thereon without authorization by special agreement or otherwise, and in accordance with the terms thereof».
3. In the Anglo-Norwegian Fisheries Case, the International Court of Justice outlined that: «... although it is true that the act of delimitation is necessarily a unilateral act, because only a coastal State is competent to undertake, the validity of the delimitation with regard to other States depends upon international law» (1951, ICJ Rep. p. 116, 132).
4. Point 2.6.2. of the Report of the European Regional Bureau to the ICAO Council, Document 7870 EUM/IV.
5. Report of the third European Mediterranean Regional Air Navigation Meeting, Paris, February - March 1952, ICAO doc. 7280, EUM II 1; see also Report of the fourth European Mediterranean Regional Air Navigation Meeting, Geneva 28 January - 21 February 1958, ICAO doc. 7870 EUM IV.
6. Final Report of the Rules of the Air and Air Traffic Control Committee, Second Middle East Regional Air Navigation Meeting (Istanbul, October - November 1950), ICAO Doc. 7055, MID/2 - Rac, ICAO Publ. February 1951
7. Points 2.2.1. of 1952 and 1958 Council Reports.
8. Point 2.2.1 of the ICAO Council Report of the Third Conference on Regional Air Navigation (Paris 1952): «In preparing the search and rescue plan there was unanimous agreement to observe, in principle, Recommendation 3.1.2 of Annex 12 in defining the search and rescue area boundaries to conform to those of the flight information regions recommended by the RAC Committee»; see also Council Report of the fourth Conference on Regional Air Navigation (Geneva 1958), point 11.1.1: «The attached Table SAR - 1 indicates the proposed lateral limits of the search and rescue areas. Each of them corresponds generally to a single flight information region of the lower air space».
9. Rules of the Air and Traffic Services, ICAO doc. 4444RAC.
10. Annex 15: Aeronautical Information Services
11. Annex 11, Air Traffic Services, point 2.16.1; Air Navigation Plan, European Region, Part V ATM, 3.PC. 4.3.
12. Annex 11, point 2.17 «Coordination of activities presenting a potential danger for the flight of civil aircraft».

13. Air Navigation Commission Minutes 120-8, 17-2-1989. Attachment B to state letter AN 13/1.8, AN 13/13-5-89/51.
14. Annex 15, points 3.1.1 and 3.1.3
15. Annex 15, point 5.1.1.1., «c».
16. Annex 15, point 3.1.1.1.
17. Annex 2 contains a formal provision (3.3.1.2. submission of a flight plan) recognizing the rights of ATS Services of a FIR Region to request the submission of a flight plan even for the international air space zones of the FIR Region. This concerns even military aircraft of a third State, when they are flying an adjacent FIR Region.
18. See also Attachment A to Annex 2, point 8: Refraining from the use of weapons, point 8-1: «The use of tracer bullets to attract attention is hazardous, and it is expected that measures will be taken to avoid their use so that the lives of persons on board and the safety of aircraft will not be endangered».