Introduction

Article 1 of the Chicago Convention, which acknowledges that "every State has complete and exclusive sovereignty over the airspace above its territory," establishes the sanctuary of sovereign airspace as a fundamental component of international aviation. However, this domain is not entirely used peacefully. States may restrict air navigation for public safety or military necessity (Chicago Convention Art. 9). These provisions aim to balance state security interests with the safety of civil aviation. This balance was shattered on July 17, 2014, when Malaysia Airlines Flight MH17 was shot down over conflict-affected eastern Ukraine, killing all 298 on board. The tragedy raised urgent questions: Did Ukraine and others fulfill their duty to protect civilian aircraft? What legal reforms are needed to prevent such incidents in the future?

This essay analyzes the Malaysia Airlines Flight MH17 tragedy through the framework of the Chicago Convention, particularly Articles 1 and 9, and ICAO Annexes 11 and 15. It explores the balance between state sovereignty over airspace and the safety of civil aviation in conflict zones. The essay questions whether Ukraine and others met their due diligence obligations and examines global responses, including from ICAO, the EU, and India. Highlighting persistent flaws in the NOTAM system and drawing on recent conflicts in the Caucasus, Gaza, and Ukraine (2024–25), it proposes legal reforms to enhance civil aviation safety in hostile airspace.

Legal Framework: Chicago Convention and ICAO Annexes

Sovereignty and Airspace Regulation

The Chicago Convention (1944), which created the International Civil Aviation Organization (ICAO), sets the baseline legal regime for civil aviation. Article 1 confirms that each state has complete and exclusive sovereignty over the airspace above its territory.[1] In practice, this means a state can decide who may fly through its skies. States generally grant overflight rights by bilateral or multilateral agreement, but they retain ultimate authority. As per Articles 5 and 6 of the Convention distinguish non-scheduled and scheduled flights, respectively, always subject to each state's permission and the right to impose conditions or require landing.[2] In armed conflict or emergencies, this sovereign prerogative becomes especially salient, as states confront the possibility of using their airspace for hostile activities or facing attacks from above.

Article 3bis: Prohibition on Weapons Against Civil Aircraft

In response to Cold War shootdowns of passenger planes (e.g. KAL 007, 1983), the Chicago Convention was amended in 1984 by adopting Article 3 bis. This provision codifies a declaratory principle of international law: states "must refrain from resorting to the use of weapons against civil aircraft in flight".[3] Article 3 bis also requires that any interception of a civil aircraft must not endanger the lives of those on board, and permits only innocent passage-type enforcement – such as forcing a landing at a designated airport if the aircraft is flying without authorization or for prohibited purposes.[4] In other words, military authorities are banned from shooting down or disabling ordinary passenger or cargo flights. This absolute ban applies to all civilian aircraft, regardless of nationality, above international airspace or any territory. The downing of MH17 by a surface-to-air missile was thus a direct violation of Article 3 bis, as even commentators noted that the use of force against that innocent aircraft was "strictly prohibited" by international law.[5]

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[1] Convention on International Civil Aviation, art. 1, Dec. 7, 1944, 61 Stat. 1180, 15 U.N.T.S. 295.
[2] Art. 5, 6, *Ibid.*
[3] Mehrnoush Emamiamin, *Legal Analysis of State Responsibility in Civilian Aircraft Accidents: Downing of Ukrainian International Airline Flight PS752*, 26 (2023).
[4] Art. 3(Bis), Supra note 1.
[5] Supra Note 3.

Importantly, Article 3 bis is phrased as an obligation *of conduct* for all states, reflecting the recognition that such incidents threaten the very foundations of civil aviation safety.[6]

Article 9: Airspace Closures and Restrictions

While Article 3 bis forbids shooting at civil aircraft, Article 9 of the Chicago Convention addresses the separate issue of when and how states may close or restrict airspace.[7] Article 9(a) grants each state the right to "restrict or prohibit uniformly" foreign aircraft from flying over specified areas for reasons of military necessity or public safety.[8] Such Prohibited Areas must be reasonably limited in extent to avoid unnecessary disruption of air navigation, and their descriptions must be promptly communicated to other states and to ICAO.[9] Article 9(b) goes further, allowing a state to, in emergencies, temporarily close or restrict its entire territory or any part thereof with immediate effect, again on a non-discriminatory basis.[10] During such times, Article 9(c) even empowers the state to require any aircraft entering these closed areas to land at a designated airport.[11]

Crucially, Article 9 is permissive – it uses language such as "may restrict or prohibit". There is no explicit obligation in the Convention for a state to close its airspace in a given situation, even if armed conflict is raging.[12] However, state responses to conflict zones depend on national decisions.[13] After MH17, for example, Ukraine had declared certain eastern regions as dangerous and closed some lower-altitude airspace, but it did not close all higher-altitude airspace used by overflying international flights.[14] Whether that choice violated any binding duty is debatable under the Convention. However, states exercise their rights under Art.9 in light of other considerations,

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[6] *Ibid.*
[7] Art. 9, Supra Note 1.
[8] Art. 9(a), Supra Note 1.
[9] Federal Aviation Admin., Aeronautical Information Publication (AIP), Part 2, ENR 5.1: Prohibited, Restricted and Other Airspace (May 25, 2023).
[10] Art. 9(b), Supra Note 1.
[11] Art. 9(c), Supra Note 1.
[12] Supra Note 7.
[13] United States Department of the Air Force, *Air Force Doctrine Publication 3-52: Airspace Control* (Aug. 20, 2020), ttps://www.doctrine.af.mil/Portals/61/documents/AFDP_3-52/3-52-AFDP-AIRSPACE-CONTROL.pdf.
[14] OPSGROUP, *MH17, AC759, and the Limits of Safety Systems* (July 17, 2022), https://ops.group/story/mh17-ac759/.

e.g. depending on the various ICAO annexes, Air Traffic Control and etc, which even includes obligations to inform and protect.[15]

ICAO Annex 11 and Air Traffic Services

ICAO Annex 11 (Air Traffic Services) sets global standards for air navigation services. Although it does not explicitly address war zones, recent amendments (Amendment 52, 2022) have introduced provisions related to conflict activities.[16] [17] For example, Annex 11 §2.19 (Coordination of activities hazardous to civil aircraft) directs that any military or other activities posing risks must be coordinated early with the relevant ATS authority.[18] This amendment, driven by the ICAO Task Force on Risks from Conflict Zones, aims to ensure that information about potentially hazardous military activities is shared with civilian controllers in time to promulgate warnings (typically via NOTAM under Annex 15).[19] Furthermore, Annex 11 requires ATS authorities to develop contingency plans for disruptive events and maintain direct communications with airspace users.[20]

ICAO Annex 15 and Aeronautical Information Services

Annex 15 mandates the global system for aeronautical information, including Notices to Airmen (NOTAMs), Aeronautical Information Publications (AIPs), and bulletins.[21] Annex 15 Standard 6.3.2.3(n) specifically requires States to promulgate safety-related information, including those affecting airspace usage, in an "appropriate format" through such channels. As ICAO notes, issuing NOTAMs is a state responsibility: they arise from "the State's responsibility to provide aeronautical information about its sovereign and delegated airspace".[22] NOTAMs are meant to notify operators promptly of hazards or changes (e.g., closures, military exercises) that are of

[15] Supra Note 7.
[16] International Civil Aviation Org. (ICAO), *Annex 11 to the Convention on International Civil Aviation: Air Traffic Services*.
[17] International Civil Aviation Org. (ICAO), *Annex 11 to the Convention on International Civil Aviation: Air Traffic Services*, Amendment 52.
[18] ¶ 2.19, Supra Note 16.
[19] Supra Note 17.
[20] Supra Note 16.
[21] International Civil Aviation Org. (ICAO), *Annex 15 to the Convention on International Civil Aviation: Aeronautical Information Services*.
[22] Int'l Civil Aviation Org. (ICAO), *Annex 15 to the Convention on International Civil Aviation: Aeronautical Information Services*, Standard 6.3.2.3(n).

temporary nature or short duration.[23] In principle, a conflict zone or sudden threat should trigger NOTAM issuance under Annex 15.[24]

The interplay of Annexes 11 and 15 is critical: military or security threats to aviation should be communicated through ATS (Annex 11) and disseminated to pilots via AIS (Annex 15).[25] The recent ICAO Risk Manual (Doc 10084, 2023) underscores the need for transparency and coordination among the state managing the airspace, the aircraft operator, and others in risk communication.[26] For example, it praises practices such as Spain's Directorate (AESA) meeting quarterly with airlines on conflict-zone risks, and highlights Canada's model where a Civil Aviation Conflict Zone Information Office conducts continuous monitoring and issues NOTAMs/AICs with graded risk levels.[27] These examples illustrate how Annex 11/15 structures are put to use – but also point out that states' implementation of these standards varies greatly.

Principles of Due Diligence and State Responsibility

Beyond ICAO rules, general international law imposes obligations on states to prevent harm to foreign nationals and property on their territory. The *Chorzów Factory* principle, established by the Permanent Court of International Justice in 1927, holds that a responsible state must make full reparation for illegal acts and "wipe out all the consequences" of an injury to the injured party.[28] While *Chorzów* concerned expropriation of property, its core – ensuring a state cannot benefit from wrongdoing – has been applied broadly.[29] More relevant is the customary due diligence obligation: a state must not knowingly permit its territory to be used for acts infringing others' rights.[30] In the context of aviation, this suggests a duty to take reasonable preventive measures against foreseeable threats to civil aircraft. As one analysis notes of the Iran shootdown (Flight

[23] Int'l Civil Aviation Org. (ICAO), *Risk Assessment Manual for Civil Aircraft Operations Over or Near Conflict Zones*, ICAO Doc 10084, 3d ed. (2023), https://www.icao.int/Security/SFP/Documents/Doc.10084.Third%20edition.pdf.
[24] Supra Note 21.
[25] See ICAO Annex 11, *supra* note 17, Amendment 52; ICAO Annex 15, *supra* note 22, Standard 6.3.2.3(n). Annex 11, 15, *The Convention on International Civil Aviation.*
[26] Supra Note 23.
[27] Int'l Civil Aviation Org. (ICAO), *Risk Assessment Manual for Civil Aircraft Operations Over or Near Conflict Zones*, ICAO Doc 10084, 3d ed. (2023), Example 4, App C 4, https://www.icao.int/Security/SFP/Documents/Doc.10084.Third%20edition.pdf.
[28] Factory at Chorzów (Ger. v. Pol.), Judgment, 1928 P.C.I.J. (ser. A) No. 17, at 47 (Sept. 13).
[29] *Ibid.*
[30] Michael N. Schmitt, *Wired Warfare: Computer Network Attack and the Jus in Bello*, 84 N.Y.U. J. Int'l L. & Pol. 537, 558 (2009), https://www.nyujilp.org/wp-content/uploads/2018/07/NYI204.pdf.

PS752), "while Article 9 grants state the right to restrict flights for safety, that right is still bound by other provisions… including the obligation not to endanger the lives of aircraft occupants".[31] Thus, even if not explicitly mandatory, state inaction in the face of a known airspace hazard could ground liability under general international law. If a state fails to warn airlines or shut down its sky in a clear emergency, causing civilian deaths, principles of state responsibility and equitable reparation (as in *Chorzów*) would support claims that it breached its duties.[32]

UN law also touches on the issue. The UN Charter bans the use of force against another state (Art. 2(4)), which encompasses shooting at civil aircraft. The downing of a passenger jet involves force under Article 2(4) and is "strictly prohibited" absent self-defense or UN authorization.[33] Moreover, Security Council Resolution 2166 (2014) on MH17 condemned the act and called for "accountability" for those responsible.[34] These principles reinforce that states may not violate sovereign airspace of others (Art. 1), must not use force against civilian planes (Art. 3 bis), and arguably ought to take all feasible steps to avert such violations if foreseeable.[35] [36]

The MH17 Case: A Tragedy of Unprotected Airspace

Malaysia Airlines Flight MH17 was en route from Amsterdam to Kuala Lumpur on 17 July 2014. Its planned path took it across eastern Ukraine at FL330 (approximately 33,000 feet). That region had been the scene of heavy fighting between Ukrainian forces and Russia-backed separatists. Crucially, Ukraine's State Air Traffic Services (UkSATSE) had designated the eastern oblasts of Donetsk and Luhansk as dangerous for flights below FL260 and thereby closed that lower airspace, but *not* the higher altitude.[37] At the time, many international carriers routinely flew over eastern Ukraine above FL260, viewing it as safe due to the absence of any NOTAM prohibiting flight at higher altitude.[38]

[31] 30, *supra* note 3.
[32] 43, *supra* note 3.
[33] 11, *supra* note 3.
[34] S.C. Res. 2166, U.N. Doc. S/RES/2166 (July 21, 2014),
[35] *Supra* note, 1.
[36] *Supra* note, 4.
[37]Mark Zee, *Case Study: Malaysia Airlines Flight MH17*, Code 7700, https://code7700.com/case_study_malaysia_mh17.htm
[38] *Ibid.*

MH17 was struck by a Buk SA-11 surface-to-air missile, which detonated just above the cockpit, causing catastrophic destruction.[39] The Ukrainian government and US intelligence reported that the missile launcher came from territory held by separatists backed by Russia. All 283 passengers and 15 crew were killed.[40] After the incident, airline operators and states re-evaluated: some airlines immediately ceased overflying Ukraine, and EU Member States began advising airlines on conflict risks. But at the time of the shootdown, MH17's crew had no indication of risk. The NOTAM system had failed: as one commentator put it, the "anemic international NOTAM system" had "failed to convey a known danger to an unsuspecting aviation community".[41]

Legally, MH17 sparked global inquiries. The Dutch Safety Board blamed a missile from separatist-held territory. Key legal debate centers on Ukraine's failure to close FL330 airspace—was it lawful discretion under Article 9 or a breach of duty? Some argue Ukraine had the power, but not the obligation, to act.[42] Others note that Ukraine's failure to communicate accurate risk to international partners (e.g. through timely NOTAMs or ICAO advisories) contributed to the danger.[43] Russia's alleged role in supplying the Buk system led to criminal indictments, though it denies state responsibility. In 2025, the ICAO Council held Russia liable under the Montreal Convention for damages to MH17 victim families.[44] Meanwhile, a Dutch-led case at the International Civil Aviation Organization (ICAO) is examining whether any state breached Chicago Convention rights – notably, it considers if Ukraine violated Art. 9 by failing to act, and if Russia violated Art. 3 bis by allowing the missile to be launched.[45]

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[39] Dutch Safety Board, *Crash of Malaysia Airlines Flight MH17: Hrabove, Ukraine, 17 July 2014* (Oct. 2015), https://onderzoeksraad.nl/wpcontent/uploads/2023/11/debcd724fe7breport_mh17_crash.pdf.
[40] *Ibid.*
[41] National Transp. Safety Bd., *Accident Report: Air Canada Flight 759, Overflight of Taxiway, San Francisco International Airport, San Francisco, California, July 7, 2017*, NTSB/AIR-18/01 (Sept. 25, 2018), https://www.ntsb.gov/investigations/AccidentReports/Reports/AIR1801.pdf.
[42] *Supra* Note 7.
[43] 51, *supra* note 3.
[44] ICAO Council, *Findings and Decision under Article 84 of the Convention on International Civil Aviation regarding Russia's failure to uphold its obligations under Article 3 bis in relation to Malaysia Airlines Flight MH17*, May 12, 2025
[45] European Civil Aviation Conf. (ECAC), *The Chicago System: A Steadfast Legal Blueprint for World Civil Aviation*, https://www.ecac-ceac.org/news/articles/the-chicago-system-a-steadfast-legal-blueprint-for-world-civil-aviation

Failures of the NOTAM System

NOTAMs and Information Sharing

NOTAMs are intended to be the primary mechanism for disseminating urgent airspace information to pilots before flight (Annex 15, Ch. 6).[46] In theory, Ukraine could have issued broader NOTAMs warning of missile threats above FL320, but in practice, it only warned of risks below that, implying safety at cruising altitudes.[47] Ironically, MH17 was at FL330, above 32,000. The operators of MH17 (and many other flights that day) read the NOTAM as clearance to cross at cruise altitude. Eight aircraft turned back, but 160 continued.[48]

Recent NOTAM Disruptions

Even outside conflict contexts, NOTAM infrastructure has proven fragile. In January 2023 the entire U.S. NOTAM system suffered a multi-hour breakdown due to database corruption.[49] On 10 January, FAA's NOTAM system failed overnight, causing misformatted bulletins and prompting a nationwide ground stop from 07:15 to 09:07 to prevent chaos.[50] This incident (caused by a contractor's error) revealed that the U.S. system was running on 30-year-old software and vulnerable architecture.[51] It underscored that reliance on outdated technology could itself become a safety risk. In response, the FAA accelerated a cloud-based NOTAM replacement, targeting full modernization by 2025.[52] This U.S. example shows how even routine aeronautical data distribution can fail, let alone under the stress of conflict.

Problems in Practice

Key deficiencies in the global NOTAM regime include:

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[46] Ch. 6, Annex 15, *The Convention on International Civil Aviation.*
[47] Dutch Safety Board, *Crash of Malaysia Airlines Flight MH17: Hrabove, Ukraine, 17 July 2014*, at 277 (Oct. 2015), https://onderzoeksraad.nl/wp-content/uploads/2023/11/debcd724fe7breport_mh17_crash.pdf.
[48] Annexure A.
[49] U.S. Department of Transportation, *Federal Aviation Administration's NOTAM System Failure and Its Impacts on a Resilient National Airspace* (Feb. 2023), https://www.transportation.gov/federal-aviation-administrations-notam-system-failure-and-its-impacts-resilient-national-airspace.
[50] *Ibid.*
[51] *Ibid.*
[52] *Ibid.*

- **Volume and Noise:** Pilots face an overload of NOTAMs, and in MH17's case, crucial warnings were buried, only 8 airlines avoided the danger while 160 flew through it.[53]

- **Lack of Standardization:** Different states issue NOTAMs in varying formats and languages. ICAO's Risk Manual notes calls to standardize formats, especially for conflict risks. The FAA outage also revealed that U.S. NOTAMs were scattered across legacy and newer systems, requiring harmonization.[54]

- **Incomplete Coverage:** States often issue NOTAMs with a domestic focus, overlooking foreign operators. On 17 July 2014, Ukraine failed to prohibit international flights above FL260 despite the threat. While ICAO guidance (App. B) urges conflict zone risk-sharing, if a state like Ukraine sees no threat, critical warnings may never be issued.[55]

- **Delays and Fragmentation:** States often share conflict zone risks via military or diplomatic channels instead of timely NOTAMs, and no global database exists. EASA's CZIB system emerged to fill this gap, as national advisories alone proved insufficient for pilot safety.[56]

State Responses and Regulatory Practices

Montreal Convention and International Law

The Montreal Convention (1999) unifies carrier liability rules for passenger injury or death. It makes carriers strictly liable for proven damages up to roughly 128,821 Special Drawing Rights (SDR) per passenger.[57] Above that cap, carriers may escape liability only by proving they were not negligent. In practice, however, carriers often find themselves unable to rely on a war-risk exclusion. For example, in *Ontario (Canada)* an Ontario court held that Ukraine International

[53] *Supra* note 38.
[54] Pg. VII, *supra* note 23.
[55] Pg. 24, Ch. 2, *supra* note 23.
[56] Eur. Union Aviation Safety Agency (EASA), *Conflict Zone Information Bulletins (CZIBs)*, https://www.easa.europa.eu/en/domains/air-operations/czibs
[57] Ashley N. Konecny, *The Tragedy of Ukraine International Airlines Flight PS752 and the Montreal Convention: A Case Study*, Gardiner Roberts LLP (Feb. 17, 2021), https://www.grllp.com/blog/The-Tragedy-of-Ukraine-International-Airlines-Flight-PS-752-and-the-Montreal-Convention-A-Case-Study-682

Airlines (UIA) was strictly liable for the Jan 2020 downing of Flight PS752, since UIA failed to prove it had no negligence in allowing the flight to depart amid warnings.[58] As a result, UIA's liability under the Montreal Convention was ruled unlimited.[59] More generally, Montreal's Article 17 liability for "accidents" has been interpreted to cover even hostile acts (such as a missile strike), unless clearly proven to be solely the airline's fault. In PS752 the court treated the shoot-down as an "accident" under Montreal and focused on UIA's negligence in risk assessment.[60]

Under international law, states also bear obligations. The Chicago Convention (1944) obliges states to supervise their airspace and compensate for damage caused by their military aircraft.[61] While airlines may not sue a foreign government under Montreal, states can pursue remedies for "unlawful acts" under other treaties. Notably, several countries have invoked the 1971 Montreal Convention (for the Suppression of Unlawful Acts) or general state responsibility to hold Iran accountable for PS752.[62] In July 2023 a *Coordination Group* of victim-states filed an ICJ case against Iran under the 1971 treaty for its troops' shoot-down of PS752.[63] Such cases underline that—even if carriers evade liability—international law requires states to investigate, compensate, or prosecute when civilians are harmed by military or terrorist acts.[64] However, enforcement is diplomatic or judicial (e.g. UN courts) rather than through an aviation body. In short, Montreal ensures uniform carrier liability, but ultimate accountability often hinges on state actions and international justice processes rather than automatic sanctions.[65]

EU Member States and EASA

The EU has adopted a precautionary stance. EASA issues Conflict Zone Information Bulletins (CZIBs) and lower-level Information Notes to warn airlines of high-risk airspace.[66] A CZIB is a

[58] S. v. Ukraine International Airlines JSC, 2024 ONSC 3303.
[59] *Ibid.*
[60] *Ibid.*
[61] *ICAO Legal Committee Commentary on Article 3bis*, ICAO Doc 10084, 3d ed. (2023)
[62] Global Affairs Canada, *Flight PS752: Canada's Response*, https://www.international.gc.ca/world-monde/issues_development-enjeux_developpement/response_conflict-reponse_conflits/crisis-crises/flight-vol-ps752.aspx?lang=eng
[63] *Ibid.*
[64] *Case Concerning Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*, Compensation, Judgment, 2018 I.C.J. Rep. 157 ¶ 158 (holding state "obliged to compensate" for unlawful acts)
[65] *Supra* note 65.
[66] European Union Aviation Safety Agency (EASA), *Conflict Zone Information Bulletins (CZIBs)*, https://www.easa.europa.eu/en/domains/air-operations/czibs

public advisory for zones deemed "high risk" by the EU Aviation Security Risk Group. By regulation these bulletins are advisory only – airlines are not legally banned from flying there – but EU carriers overwhelmingly comply.[67] For example, EASA has issued CZIBs on airspace over Ukraine, Sudan, Yemen, and Gaza in 2018–2025 (with maps and detailed risk information). EASA explicitly notes that its CZIBs and recommendations are "information only" and "not mandatory", but they strongly influence carrier behavior.[68]

Still, EU law ties into Montreal's liability system. EU carriers may face Montreal claims in European courts if they fly dangerous zones and an accident occurs.[69] The *UIA PS752* case in Ontario is an example of EU-family law (Canada) applying Montreal liability.[70] Likewise, MH17 victims' families have sued Malaysia Airlines in the UK under Montreal/UK law. Meanwhile, EU states have worked to standardize threat assessments (post-MH17 Annex amendments on NOTAMs and hazard coordination have been issued, though without sanctions).[71] In sum, EU/EASA emphasize information-sharing and precautionary advisories, but rely on members and airlines to act in "good faith," rather than imposing universal bans by law.[72]

United States and FAA

The U.S. relies on a mix of diplomatic warnings, FAA rules, and cooperation with ICAO. The FAA regularly evaluates foreign airspace safety and issues flight restrictions for U.S. carriers (often via State Department NOTAMs or Federal Air Regulations). For example, after Iran's Jan 2020 missile strikes, the FAA promptly issued an emergency NOTAM banning all U.S. flights in the Tehran FIR.[73] Later, recognizing ongoing threats, the FAA formalized this via SFAR 117:

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[67] *Ibid.*
[68] Eur. Union Aviation Safety Agency (EASA), *Conflict Zone Information Bulletin No. 2017-03: Airspace of the Syrian Arab Republic* (Oct. 31, 2018), https://www.austrocontrol.at/jart/prj3/ac/data/dokumente/EASA_CZIB_2017_03_2018-10-31_101014.pdf.
[69] *S. v. Ukraine International Airlines JSC*, 2024 ONSC 3303, ¶¶ 4–5 (Can.), aff'd, Ontario Superior Court (June 27, 2024).
[70] *Ibid.*
[71] See ICAO Annex 11, *supra* note 17, Amendment 52; ICAO Annex 15, *supra* note 22, Standard 6.3.2.3(n).
[72] *Supra* note 74
[73] OPSGROUP, *Iran Airspace Risk Information*, SafeAirspace.net, https://safeairspace.net/iran/#:~:text=Jan%202020%3A%20Iranian%20Armed%20Forces,Oman%20with%20a%20SAM%20system

since 2020 U.S. carriers have been *prohibited* from flying in large parts of Iran's FIR.[74] Similarly, during the 2022–23 Gaza war, the FAA issued Temporary Flight Restrictions (TFRs) over Israel (reflecting rocket attack risks), while the U.S. DID NOT ban flights in peaceful Israel airspace – Israel's main airports remained open under its air-defence cover. The U.S. has also issued recurring SFARs banning U.S. flights over Yemen's airspace (to avoid Houthi missiles), and in past years it prohibited U.S. flights to Libya or Somalia when those airspaces were deemed unsafe.[75]

Domestically, the FAA is also modernizing its own safety infrastructure. A major NOTAM database outage in January 2023 spurred Congress and DOT to force a cloud-based upgrade.[76] In April 2025 the FAA announced an accelerated deployment of a new NOTAM system to ensure timely warnings.[77] This effort – while about domestic operations – signals U.S. recognition that robust airspace advisories are critical in crises.

In terms of liability, U.S. courts have not yet had a Montreal case on conflict-zone shootdowns, but victims often sue foreign airlines in U.S. or allied courts. On the other hand, states may seek inter-state remedies. Notably, the U.S., Canada, UK, Sweden and Afghanistan formed a "Coordination Group" to hold Iran accountable for PS752. After diplomatic talks failed, they invoked the Montreal 1971 Convention in the International Court of Justice.[78] (This is a distinct treaty from the 1999 Montreal Convention, but shows how states use aviation treaties in court.) Overall, U.S. policy combines precautionary flight bans (via SFARs and advisories) with diplomatic/legal pressure on offending states.

Legal and Policy Lacuna: A Hinderance to Make the States Liable

Several deficiencies in the current regime have emerged:

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[74] FAA, Special Federal Aviation Regulation No. 117—Prohibition Against Certain Flights in the Tehran Flight Information Region (FIR) (OIIX), 89 Fed. Reg. 74275, 74275 (Oct. 3, 2024), https://www.govinfo.gov/content/pkg/FR-2024-10-03/pdf/2024-22731.pdf.

[75] OPSGROUP, *Yemen Airspace Risk Information*, SafeAirspace.net, https://safeairspace.net/yemen/#:~:text=Plain%20English%3A%20US%20operators%20are,as%20being%20ok%20to%20use

[76] U.S. Dep't of Transp., *FAA Accelerates Critical Technology Upgrade* (Apr. 5, 2023), https://www.transportation.gov/briefing-room/faa-accelerates-critical-technology-upgrade#:~:text=A%20major%20NOTAM%20system%20outage,to%20speed%20up%20the%20modernization.

[77] *Ibid.*

[78] *Supra* note 70.

- **No Binding "Duty" to Close:** Article 9 of the Chicago Convention permits—but does not require—states to close their airspace during conflict. Thus, keeping airspace open, even amid hostilities, does not breach the Convention. As noted during the 2020 Iran conflict, the discretion means no legal responsibility attaches to omission.[79] Despite calls post-MH17 for a binding duty to close airspace when threats to civil aviation exist, no such amendment has been made. Civilian aircraft safety, therefore, often hinges more on state policy than legal obligation.

- **Reliance on Voluntary Information Sharing:** ICAO and states rely on each other to share threat information. If a state does not internally prioritize civil aviation safety, it may withhold or delay warnings. The ECA report noted that EU member states sometimes hesitate to share intelligence with EASA, leaving others in the dark.[80] The NOTAM system was not designed for real-time intelligence; it is too slow for emerging conflicts. The concept of *State responsibility* suggests that if one state's negligence (e.g. allowing a terrorist base to operate) causes cross-border harm, it should answer for damages.[81] However, proving that connection is difficult, and no international tribunal exists for "state negligence" short of conflict crimes.

- **Technical Shortcomings:** Legacy systems like the 1980s-era NOTAM network are outdated and poorly integrated, leading pilots to often ignore them. The FAA's recent failure showed even national systems are vulnerable. While private conflict intelligence services exist, they are ad-hoc and lack global reach. Though ICAO notes growing use of web tools and social media, a formal, secure global platform remains absent.[82]

The Way Ahead

To address these gaps, several reforms are recommended:

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[79] *Supra* note 3, 35.
[80] European Cockpit Association, *In the Aftermath of MH17: Assessing Risk and Sharing Information*, *Eurocockpit* (Sept. 10, 2014), https://www.eurocockpit.eu/news/aftermath-mh17-assessing-risk-and-sharing-information.
[81] International Law Commission, *Draft Articles on Responsibility of States for Internationally Wrongful Acts*, art. 2 & arts. 4–5 & app., in *Report of the International Law Commission on the Work of Its Fifty-Third Session*, U.N. Doc. A/56/10, at 43–45 (2001).
[82] *Supra* note 53.

1. **Clarify or Codify a Safety Obligation:** One long-term solution would be amending the Chicago Convention to convert Article 9's discretionary language into a mandatory obligation in cases of imminent danger. For example, inserting a clause requiring States to *"immediately and unconditionally suspend operations of civil aircraft"* over areas where military conflict poses a clear risk to such flights. Realistically, achieving a Convention amendment is daunting. Alternatively, ICAO could adopt a new Assembly Resolution or Council Declaration explicitly urging states to adopt an "in the interest of safety" duty to close airspace over active combat zones. Although it is true that there is hardly any enforcement mechanism but a system like WTO has for dispute resolution, ICAO can as well opt for the same, and in the cases of non-conformation, the countries can come forward and penalize the state by closing their airspace for any of its aircraft,[83] taking the principle of international emergency from GATT, the trade with that country might as well be withheld.[84]

2. **Enhance ICAO Coordination and Oversight:** ICAO's oversight could be significantly strengthened through the establishment of a permanent Conflict Zone Information Centre (CZIC) at its Montreal headquarters. Following the MH17 disaster, the ICAO Council convened a special Task Force on risks arising from conflict zones — a practice that could be institutionalized into a continuous global monitoring body.[85]

3. **Integrate Military-Civil Procedures:** Annex 11's new §2.19 highlights the need for civil-military coordination.[86] States should institutionalize liaison officers and direct communication channels between defense ministries and civil aviation authorities. For example, air navigation service providers should be required to notify airlines the moment a missile threat is detected, rather than waiting for full assessment, this is mandated by

[83] Convention on International Civil Aviation art. 1 (Oct. 7, 1944), reprinted in *7 A.T.S. 103 (1994)*, Id. art. 1, Id. art. 9(a)–(b).
[84] GATT, Article XIX: Emergency Action on Imports of Particular Products, paras. 1(a)–(b), 2 (allowing suspension, withdrawal, or modification of concessions when increased imports threaten serious injury).
[85] Dutch Safety Board, *Crash of Malaysia Airlines Flight MH17 Hrabove, Ukraine, 17 July 2014*, at 272–73, Recommendation Nos. 1–2 (Oct. 13, 2015), https://onderzoeksraad.nl/en/document/mh17-crash-recommendations/.
[86] ICAO, *Annex 11, Air Traffic Services*, ¶ 2.18–2.19 (8th ed. Nov. 2020), https://ffac.ch/wp-content/uploads/2020/10/ICAO-Annex-11-Air-Traffic-Services.pdf

FAA in case of MANPADs.[87] ICAO could issue new guidance on "immediate risk response protocols" when civil jets deviate or lose transponder.

4. **Encourage International Insurance and Indemnity:** A less direct reform is to involve insurers. If insurers were to refuse coverage for flights over known conflict zones, airlines would be forced to reroute, like many insurer chose to do in 2023 for the passengers flying over the airspace of Israel and Lebanon.[88] The Montreal Convention regime (governing carrier liability) combined with *Chorzów*-type claims could lead to litigation; states might prefer to avoid that by voluntarily adopting robust protective measures.[89] The EU's eventual pursuit of compensation from Russia for MH17 deaths may also incentivize change.[90]

Conclusion

The duty of states to protect civil aviation in conflict is both obvious and contested. The Chicago Convention provides states with broad sovereignty and options to restrict their airspace, yet stops short of an explicit safety obligation. In practice, as the MH17 tragedy showed, this gap can be deadly. International law principles of state responsibility and due diligence imply that states should not remain passive when civilian lives are at risk; *Chorzów* reminds us that injured parties deserve reparation and a restored safe situation.

Since MH17, the international community has taken steps – ICAO's Risk Manual, EU bulletins, and U.S. modernization efforts – but these measures are still piecemeal. The NOTAM system, in

[87] FAA, *Order JO 7110.65, Air Traffic Control*, para. 2-9-3 ("Report MANPADS threat/attack/post-event activity via the ATIS and/or controller-to-pilot transmissions until notified otherwise by the Domestic Events Network"), https://www.faa.gov/air_traffic/publications/atpubs/atc_html/chap10_section_2.html.

[88] Aviation War Insurers Cancel Some Cover for Israel, Lebanon, *Bus. Ins.* (Oct. 19, 2023), https://www.businessinsurance.com/article/20231019/NEWS06/912360276/Aviation-war-insurers-cancel-some-cover-for-Israel,-Lebanon.

[89] *Supra* note 28.

[90] European Court of Human Rights: Russia Responsible for Downing of Flight MH17, *Gov't of the Neth.*, July 9, 2025, https://www.government.nl/latest/news/2025/07/09/european-court-of-human-rights-russia-responsible-for-downing-of-flight-mh17.

urgent need of reform, remains the weakest link in alerting airlines. Diverse national practices further complicate matters. To truly safeguard passengers and crew, a more binding and coordinated regime is needed. This would involve both legal refinements (to clarify duties under the Chicago Convention and international law) and practical reforms (to NOTAM/AIS and inter-state information-sharing). Crucially, the solution must be global: while a single state can choose to close its skies, civilian safety ultimately relies on collective action. Only by strengthening the rule that “over our skies passes no weapon of any kind”, and by ensuring this message is shared by all states, can future avoidable tragedies be prevented.