

HISTORICAL DEVELOPMENT OF AVIATION LAW

INTRODUCTION :

When German air balloons continually trespassed over French territory, the first thought to establish an air law was undertaken about 1910. The French government desired that both governments should work together in order to find a solution to the problem. In 1909, the first flight from Paris to London took place. The Legal history of Aviation Law is divided into three periods: Aviation law prior to the end of World War I (before 1919), Aviation Law between World Wars I and II (1919-1938), and Aviation Law following World War II (since 1944). Since 1919 there have been significant changes in Aviation Law. In the International Public Aviation Law, various multilateral treaties were started. Multilateral conventions on Public Aviation Law were concluded and multilateral conventions on Private Aviation Law were adopted between World Wars I and II. There are three Principles of Aviation Law. Sovereignty, Aircraft Nationality and Cabotage.

Sovereignty : The Paris convention of 1919¹ was the first convention to establish the principle of Sovereignty and later it was superseded by the Chicago convention of 1944². The principle of Sovereign states that every state has complete and exclusive sovereignty over the airspace above its territory, including its territorial sea.

Aircraft Nationality : After the commencement of Paris convention of 1919 it was said that the aircrafts should have a nationality and later this principle was upheld in the 1944 Chicago convention. The Aircraft should have the nationality of the country in which they were registered, and no aircraft can be legitimately registered in more than one country.

Cabotage : Cabotage refers to air law and is derived from the French term *caboter*. It is

¹ 'Convention Relating To The Regulation Of Aerial Navigation Signed At Paris, October 13, 1919 (Paris Convention)' (*Library.arcticportal.org*, 2021)
<http://library.arcticportal.org/1580/1/1919_Paris_convention.pdf> accessed 20 October 2021

² 'Convention Relating To The Regulation Of Aerial Navigation Signed At Paris, October 13, 1919 (Paris Convention)' (*Library.arcticportal.org*, 2021)
<http://library.arcticportal.org/1580/1/1919_Paris_convention.pdf> accessed 20 October 2021

mentioned in the 1944 of Chicago convention that Cabotage is the right to operate a domestic flight, which means the transportation of passengers or freight between two airports inside a country's borders by an aircraft registered outside of that country.

In this paper i would explain about the overall Historical Development of Aviation Law in several Periods and the International multilateral contentions and treaties of Public International Aviation Law and Private International Aviation Law. I also aim to explain the International regulations on Air accidents.

Key words : Aviation Law, International Multilateral Convention, Historical development, International regulations, Air accidents.

AVIATION LAW BETWEEN WORLD WAR I AND II (1919 - 1938) :

PARIS CONVENTION, 1919 :

The convention was concluded in paris in 1919 and commenced on 11th July, 1929. It is the first international convention in the public aviation law. In 1919, the Paris Convention brought together the victors of the First World War with the aim of establishing an international charter for the control and development of air transport on a worldwide scale. The 1919 Paris Convention is no longer in force and has passed into history. Its pioneering contribution to the creation of several essential principles of air law, on the other hand, has survived and continues to be relevant.

IBERO AMERICAN SUMMIT :

IBERO-American Community conference is the 22 countries of Latin American and some European countries are participated in the conference. The first summit was held on 1991. In 1919 Paris convention some states are disagreed and a conference on the invitation of Spain was held in Madrid on 1st November, 1926.

This summit represents the historical link between IBERO-American and the Iberian Peninsula. And this is biannual high-level meetings. The summit is forum for addressing multilateral affairs. The summit brings together 19 Latin American countries in addition to Spain, Andorra and Portugal. The IBERO-American General Secretariat with Head Quarters in Madrid, was created in 2003. This summit mainly focuses on international presence and profile, promoting historical, cultural, social and economic ties between the regions. The growth of aviation activity between Spain and South-America and as a result of the failure by the USA and most Central and South American States to adhere to the Paris Convention, Spain decided to initiate a diplomatic counteraction and invited all Latin American and Caribbean States and Portugal to the Ibero-American Conference to be held in Madrid from 25 to 30 October 1926. To date Spain has organized three summits: In Madrid in 1992, in Salamanca in 2005, and in Cadiz in 2012. The summit also focuses on the Education policy and Quality education polity through universities of regions. This summit accomplishes the knowledge sharing across the countries.

HAVANA CONVENTION, 1928 :

The agreement was ratified on February 20, 1928, at the Sixth International Conference of American States in Havana. The convention consists of a Preamble and 29 Articles³. It does not apply to the government aircraft and only applies to the private aircraft and laid down rules and policies for aerial traffic, defining that almost every State had complete and exclusive sovereignty over the airspace above its territory and nearby territorial waters. This convention did not succeed in achieving some level of uniformity in air traffic regulations. The Havana convention was superseded in 1944 by the Chicago convention.

WARSAW CONVENTION, 1929 :

The convention was approved on October 12, 1929 in Warsaw, Poland. The convention is divided into seven chapters with a total of 57 articles. The Chapter I deals with the Scope of

³ 'Treaties, States Parties, And Commentaries - Havana Convention On Maritime Neutrality, 1928' (*Ihl-databases.icrc.org*, 2021) <<https://ihl-databases.icrc.org/ihl/INTRO/290>> accessed 20 October 2021

the application, Chapter II mentions about the Documentation and Duties of the Parties with respect to the Carriage of Passengers, Baggage and Cargo, Chapter III explains about the Liability of the Carrier and Scope of Compensation for Damage, Chapter IV discusses about the combined carriage, Chapter V explains about the Carriage by Air Performed by a Person apart from the Contracting Carrier, Chapter VI talks about the other provisions, Chapter VII talks about the Final clauses⁴.

The Warsaw Convention applies to all international carriage of passengers, baggage, or cargo by aircraft, according to Chapter I of the convention, which was revised in the Hague Convention of 1955. The goal of this convention is to create global consistent laws for claims originating from international aviation accidents and to restrict the responsibility of the air carrier in order to shield the then-nascent airline sector from the destructive repercussions of limitless liability for air disasters.

The rules were made ensuring the protection of the interests of consumers in International carriage by air, smooth flow of passengers, baggage and cargo. They also specify the circumstances under which airline could be held liable for the death or injury to passengers, loss or damage to baggage and delay.

CHICAGO CONVENTION, 1944 :

On December 7, 1944, the convention officially began in Chicago. The convention consists of a Preamble, 22 chapters and 96 Articles. Chapter I deals with the General principles and Application of the convention, Chapter II deals with the Flight over territory of contracting states, Chapter III deals with the Nationality of the aircraft, Chapter IV deals with the measures to facilitate air navigation, Chapter V deals with the Conditions to be fulfilled with respect to the aircraft, The International Standards and recommended practises are discussed in Chapter VI, Chapter VII focuses on the Organisation, Chapter VIII deals with the Assembly, Chapter IX deals with the Council, Chapter X deals with the Air navigation commission, Chapter XI deals with the personnel, Chapter XII deals with the Finance, Chapter XIII deals with the Other

⁴ 'CONVENTION FOR THE UNIFICATION OF CERTAIN RULES FOR INTERNATIONAL CARRIAGE BY AIR' (*Iata.org*, 2021) <<https://www.iata.org/contentassets/fb1137ff561a4819a2d38f3db7308758/mc99-full-text.pdf>> accessed 20 October 2021

international arrangements, Chapter XIV deals with the Information and reports, Chapter XV deals with the Airports and other navigation facilities, Chapter XVI deals with the Joint operating organizations and pooled services, Chapter XVII deals with the other Aeronautical agreements and arrangements, Chapter XVIII deals with the disputes and defaults, Chapter XIX deals with War, Chapter XX deals with Annexes, Chapter XXI deals with the Ratifications, Adherences, Amendments and Denunciations, Chapter XXII deals with the Definitions⁵.

The convention was created to encourage cooperation and create and preserve friendship and understanding among the nations and peoples of the world. The Chicago convention's goal is to show how the future development of international civil aviation may substantially aid in the creation and preservation of national goodwill and understanding, while its misuse can pose a threat to the general security, also it is desirable to avoid friction and to promote that cooperation between the nations and peoples upon which the peace of the world depends and The undersigned states have agreed on certain principles and arrangements in order for international civil aviation to flourish in a safe and orderly way, and for international air transportation services to be established on equality of opportunity and operated solidly and economically.

TOKYO COVENTION 1963 :

The convention is commenced at Tokyo on 14th September, 1963. It consists of seven chapters and 26 Articles. Chapter I deals with the scope of the convention, Chapter II deals with the Jurisdiction, Chapter III deals with the Powers of the aircraft commander, Chapter IV deals with the Unlawful seizure of aircraft, Chapter V deals with the Powers and duties of states, Chapter VI deals with other provisions, Chapter VII deals with the Final clauses.

The treaty stipulates that an aircraft's state of registry has jurisdiction over all offences and acts committed on board signatory aircraft. All states parties to the convention are obligated to take

⁵ 'CONVENTION ON INTERNATIONAL CIVIL AVIATION DONE AT CHICAGO ON THE 7 TH DAY OF DECEMBER 1944' (*Icao.int*, 2021) <https://www.icao.int/publications/documents/7300_orig.pdf> accessed 20 October 2021

all appropriate measures to regain and preserve control of an aircraft in flight in the event of an expected or actual unlawful takeover by a person on board. The Convention applies to criminal offences as well as activities endangering the safety of people or property on board civilian aircraft when they are in the air and engaged in international air navigation.

INTERNATIONAL REGULATIONS ON AIR ACCIDENTS :

International conventions have been adopted in case of the Air accidents :

ROME CONVENTION, 1933 :

The convention was commenced at rome on 29th May, 1933. While the Warsaw Convention addresses the carrier's liability when the passenger and the carrier have a contractual relationship, this convention addresses the carrier's liability to people with whom he has no contractual relationship. It is based on the premise of absolute but limited liability, with contributory negligence as a defence⁶.The convention defines in detail the damages caused by aircraft to people or property on the ground, as well as the compensation available if the damage is proven to have been caused directly by aircraft. Later, the Rome Convention of 1952 supplanted this convention.

ROME CONVENTION, 1952 :

The convention commenced at rome on 7th October, 1952. The convention consists of 6 chapters and 39 Articles. Chapter I deals with the Principles of Liability, Chapter II deals with the Extent of Liability, Chapter III deals with the Security for operator's liability, Chapter IV deals with the Rules of procedure and limitation of actions, Chapter V deals with the

⁶ 'The Rome Convention And Its Modernization' (*Applications.icao.int*, 2021)
<https://applications.icao.int/postalhistory/the_rome_convention_and_its_modernization.htm> accessed 20 October 2021

Application of the convention and general provisions, Chapter VI deals with the Final provisions⁷.

The convention was established to integrate, on an international level, the law relating to recovery by those who suffer damage to their property produced on the surface by foreign aircraft, while limiting the liability of those who cause such damage. The Convention also addresses a slew of other issues, including claim apportionment, financial security requirements, and jurisdiction and judgement enforcement.

MONTREAL CONVENTION, 2009 : The convention is commenced on 2nd May, 2009. The convention consists of 8 chapters and 47 Articles. The convention focuses on the serious consequences of illegal interference with aircrafts, which causes property and third-party harm.

CONCLUSION :

Aviation Industry has started in the eighteenth century with the development of the warm air ballon, the equipment capable of atmospheric movement through buoyancy. Some of the most important advances in the airr engineering came with this controlled gliding flight of otto lilienthal in 1896, so the huge measure in importance came with the structure of the first powered airplane by the wright brothers in the early 1900s. Since this time, air has been technologically revolutionized by the introduction of the airplane which permitted the great kind of transportation throughout the world.

The multilateral treaties are the fundamental source of aviation law, and there are three important concepts of aviation law: sovereignty, aircraft nationality, and cabotage. Since World War I, aviation law has grown tremendously.

⁷ 'CONVENTION ON DAMAGE CAUSED BY FOREIGN AIRCRAFT TO THIRD PARTES ON THE SURFACE, SIGNED AT ROME, ON 7 OCTOBER 1952 (ROME CONVENTION 1952)' (*Mcgill.ca*, 2021)
<<https://www.mcgill.ca/iasl/files/iasl/rome1952.pdf>> accessed 20 October 2021