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LAW OF AVIATION WITH SPECIAL REFERENCE TO UNMANNED ARIEAL VEHICLE: A STUDY WITH GLOBAL PERSPECTIVE

Saurav Kumar[1], Mr. Ashok Dobhal[2]

[1] B.A.LL.B. (H), Law College Dehradun, Faculty of Uttaranchal University. sauravsingh183773@gmail.com

[2] Assistant professor, Law College Dehradun, Faculty of Uttaranchal University. ashokdobhal19@gmail.com

ABSTRACT :

The rapid advancement of aviation technology, particularly the rise of unmanned aerial vehicles (UAVs), commonly known as drones, has presented unique legal and regulatory challenges worldwide. This study explores the evolving framework of aviation law with a special focus on UAVs, analyzing how international, regional, and national legal systems are adapting to address issues of safety, security, privacy, liability, and airspace management. While traditional aviation law, guided by the Chicago Convention of 1944 and the International Civil Aviation Organization (ICAO), primarily governs manned aircraft, the emergence of UAVs has necessitated new policies and guidelines to ensure safe integration into both controlled and uncontrolled airspace. This paper examines global responses, including the development of UAV-specific regulations in the United States, the European Union, China, and other key jurisdictions, highlighting differences in approaches to certification, registration, pilot licensing, and operational limitations. The study also considers the implications of UAV use for commercial, recreational, and military purposes, alongside ethical concerns related to surveillance and data protection. By providing a comparative global perspective, this research aims to contribute to a clearer understanding of the regulatory gaps and future directions in aviation law to ensure responsible UAV deployment across borders.

Keywords: Aviation Law, Unmanned Aerial Vehicles (UAVs), International Regulations, Drone Policy

INTRODUCTION

Since its inception, aviation has been subject to the general law, both International and domestic. The very first trace of aviation law in history was on 13 April 1784, by the Paris Police, forbidding flights of balloons without a special permission.1 The 100-year long history of space law is broadly international in character, where a large part of air law is either international law or international uniform law. Space (outer space) law was an idea without shape or substance for more than 20 years and it was first mentioned in a journal published in Paris in 1910. A few years after the Wright brothers' invention, the Paris Peace Conference, 1919, was convened and the important issue of putting together an international air law code was entrusted to a special Aeronautical Commission of the Conference.2 The first doctoral dissertation dealing with space law appeared in 1953. By 1954, expanding international exchanges were occurring among jurists and commentators who were then concerned about the need for clarifications and definitions of law, for the anticipated human activity in outer space. Significantly, when Sputnik-1 was launched on October 4, 1957, earlier proposed concepts were no longer conceptual ideas.3

Development of space law during the 20th century evolved through four interrelated phases:[6]

1. Development of concepts of space law earlier than Sputnik-1.
2. Clarification and adoption of basic applicable laws.
3. The increasing uses of international and national space laws. In addition, regulations to manage such uses, which has been a process starting since the late 1950s.
4. The regulation of human activities beyond the atmosphere, including the eventual development of law to manage settlements and societies existing off the Earth Regulation of such activities in space has only recently been seriously addressed.

At the meeting of the American Society (annual) of International Law in April 1956, an evening symposium was held on the topic of ―International Air Law‖. The annual International Astronautically Congresses held during the 1950s also had progressively increased participation by lawyers addressing space law issues.7

Neither international conventions nor customarily accepted practices have established a commonly acceptable line of demarcation between air space and outer space. Although the debate continued about where outer space begins after airspace ends and, the issue of whether or not sovereignty may be asserted in outer space has been generally settled by customary practice.8

The basics of private air law have been derived from the Roman law. Likewise the origin of governmental regulations of aeronautical activities goes back to the era of balloon flight; and those of public international air law (sovereignty) to the beginning of the 20th century when flight by heavier-than-air aircraft became technically possible.9

Significantly, the first concerted attempt at codification on an international scale took place before 1910, when German balloons repeatedly made flights above French territory.10 The French Government was of the opinion that for safety and security reasons, it would be desirable for the two governments to try to reach an agreement and to resolve the problem. As a result, the Paris Conference of 1910 was convened. It prodded for the sovereignty of states in the space above their territories.11

Treaty Law encompasses all international treaties in which multilateral conventions are the primary source of air law. It is important to note that the rights of participants like - the state, the owner, the operator, the passengers, the owner of the on-board goods, the mortgage holders, etc. are properly safeguarded by the achievement of the most important elements of Air Law. The provisions relevant to implementation are also found in the international agreements and conventions themselves. Other classifications relevant for Air Law are bilateral instruments, such as national Law, contracts between states and airline companies, or contracts between airlines companies, and general principle of International Law.12

Within the framework of the newly created United Nations (UN), scholars from all corners of the world formulated many legal principles and expressed them in several international treaties, agreements and declarations, laying the foundations for the international law of space and outer space.13

Air law and space law are distinct and separate branches of law, although they are occasionally treated as one ―Aerospace Law‖. Air law, the older of the two, is the body of public and private law, both national and international law that regulates aeronautical activities and other uses of airspace. Space law, on the other hand, regulates activities of states and private entities in outer space, primarily the use of satellites.14 The essential difference between air law and space law stems from the legal status of airspace and of outer space. Whereas airspace, except over the high seas and Antarctica, is under the sovereignty of subjacent states, outer space is governed by the regime of freedom. The question of boundaries between airspace and outer space is awaiting international agreement; it is virtually certain,

A further detailed study regarding historical perspective of air and space law is done in chapter 3.

Air Law

The law relating to air traffic has steadily developed in US and other developed countries right from the time when the first elementary aircrafts were introduced in these countries. One of the major reasons of globalization and vanishing of boundaries between distant continents has been the fact that air was developed as a medium of travel in the beginning of last century. While earlier, it was unthinkable that a person could travel from Asia to Europe in a matter of days with conventional means of transport, airplanes made it possible to navigate across high seas in a matter of few hours. This led to unprecedented development in inter-country trade and political interactions as well as provided impetus to imperialist tendencies of the US and the Europe. It, therefore, becomes necessary for us to understand the development and present status of air and space law in those countries. In Canada, for instance, legal regulation of air navigation is the exclusive competence of Parliament. The major, relevant legislation includes the Aeronautics Act (the cornerstone of the Canadian civil aviation regulatory system); the National Transportation Act (setting up the Canadian Transport Commission as the principal organ for the economic regulation of air transport): the Carriage by Air Act (governing the liability of air carriers relating to international carriage by air).16

Since much of air navigation takes place internationally, many legal norms governing the technical aspects of air navigation have been developed internationally and are implemented by national legislation. The International Civil Aviation Organization (ICAO), headquartered in Montréal, was established pursuant to the Convention on International Civil Aviation, which has a membership of 184 states. The exchange of commercial rights in international air transport is regulated mainly by hundreds of bilateral agreements, along with the multilateral International Air Services Transit Agreement of 1944 and certain provisions of the Chicago Convention.17

The next significant law adopted by the Congress of the United States was the International Telecommunications Satellite Act of 1978,18 anticipating the creation of the International Maritime Satellite Organization. Increased use of international and national programs of remote sensing of the Earth led to US adoption of the Land Remote Sensing Commercialization Act of 1984,19 and that same year, the US Congress adopted the Commercial Space Launch Act.20

The Warsaw Convention of 1929, amended by the Hague Protocol of 1955, is widely accepted and governs the liability of air carriers with respect to the international carriage by air of passengers, baggage, and cargo. Another important aspect of air law is concerned with the suppression of unlawful seizure of aircraft (the Hague Convention of 1970) offences and certain other acts committed on board aircraft (the Tokyo Convention of 1963), and the suppression of unlawful acts against the safety of civil aviation (the Montréal

Convention of 1971). Each of these conventions has been accepted by many states, including Canada.21

Significantly, there are two parts of air law:

1. Law relating to Aerial Navigation and
2. Law relating to Aircraft Hijacking

Law relating to Aerial Navigation

Modern aircraft routinely traverse international boundaries for private and commercial purposes. While the safety and ease of air transportation make international travel simpler, it sometimes complicates things when it comes to legal questions. For example if an aircraft that belongs to a US carrier is involved in an accident in France, do US or French laws apply? How can an aircraft with South African registry gain access to airports in Mexico.22 Over time, two distinct bodies of international aviation law have developed—public and private international aviation law.23

Public International Aviation Law

Public International Law, in an aviation context, refers to agreements and treaties among various nations related to issues such as:[24]

1. Landing rights
2. Over flight authorizations
3. Security and registration
4. Communications

The origin of public international aviation law is rooted in the period following the end of World War I. Before and during the war, aircraft were largely viewed and known as military weapons. In the aftermath of the war, lawyers, judges, and politicians from all over the world recognized the profound impact that air travel would have in challenging traditional notions of borders and ―ownership‖ of airspace. Some of the more significant aviation treaties, conventions (international agreements), and compacts related to public aviation law are outlined below.25

The Paris Convention, 1919

After World War I, the Paris Convention of 1919 was adopted. The Paris Convention marked the first formal efforts at establishing a rule of law related to sovereignty over airspace, registration of aircraft, standards for pilots, and movement of military aircraft. The Paris Convention also created the first formal organization for the oversight of international aviation activities, the Commission International de Navigation Aerienne. Although the Paris Convention was a start in the right direction, it became apparent that more extensive cooperation and legal infrastructure might be necessary to support a growing aviation industry. The Havana Convention of 1928 built on much of what was started in the Paris Convention and established several new legal principles upon which international aviation would be governed.26

The Havana Convention, 1928

From second to 19th of May 1927 the states had met in Washington on the topic of the Pan-American Commission on the aerial and commercial navigation, which had drawn up the project of

Pan-American Convention of Aerial Navigation. The majority of the states represented were the same ones that had come forward six months before for the Convenio Ibero Americano de Navegación Aérea (CIANA) also called the Ibero-American Convention on Air Navigation, signed in Madrid in October 1926). The Pan American Convention on Commercial Aviation had been finalized in Havana on early 1928 under the auspices of the Sixth Pan-American Conference (held in Havana, Cuba, from 16 January to 20 February 1928). The United States and twenty other States located in the Western Hemisphere signed the Convention on 20 February 1928. This new Convention weakened the International Commission for Air Navigation (ICAN‘s) international stature.27

The Chicago Convention 1944

The most significant agreements in public international aviation law are discussed during the Chicago Convention of 1944. One of the most noteworthy achievements of the Chicago Convention was the establishment of the International Civil Aviation Organization (ICAO), which continues to operate today. When the Chicago Convention came into force in 1947, it resulted in the termination of the Paris Convention of 1919 and the Havana Convention of 1928. It is probably fair to state that the Chicago Convention created the foundation for our current system of international transportation by air.28 The Chicago Convention states that each ―state has complete and exclusive sovereignty over the airspace above its territory‖.29
Although the multilateral Chicago Convention failed to create an open skies environment for international air transportation, it did spawn several bilateral agreements (agreements between individual nations) that have effectively created a more open skies type of approach over time. The first of these bilateral agreements was known as the Bermuda I agreement,30 entered into in 1946 and the sole parties involved were the United States and Great Britain. The Bermuda I agreement permitted the airlines of United States and Great Britain to operate to and from each country—but only to designated ―gateway‖ airports. Each airline was allowed as many flights as it desired.31

Open Skies Agreements, 1992

In 1992, in the United States, the Transportation Department initiated an ―open skies‖ initiative that would allow for a more liberal framework for air route selection, capacity determinations, fare setting, and frequency of flights.32 The first open skies agreement was introduced in October 1992 between the Netherlands and United States. Subsequently, the United States entered into open skies agreements with 13 European states.33 Open skies agreements were signed by states such as Canada, South America, Peru, Malaysia, Taiwan, New Zealand, and Singapore, among others.34

Private International Aviation Law

Private international aviation law is the body of law relating to agreements and treaties between different countries in which the responsibility of a party in one country to aviation injured party in another country can be established.35 In many ways, the development of private international aviation law is an effort to sort out the

The formation of a body of private international aviation law began in 1925 at the first Conference on Private Air Law, Paris. The conference established an International Technical Committee of Aerial Legal Experts. This committee was charged with providing an ongoing study of the issues involved with private liability stemming from international air transportation. The committee studied the legal landscape of international air transportation.36 The Warsaw Convention is the centerpiece of private international aviation law.37 It is discussed below along with some relatively new developments from the Warsaw Convention of 1929 and the Cape Town Convention of 2001.38

The Warsaw Convention, 1929

The Warsaw Convention 1929 was adopted in a conference; however, subsequent protocols amended the original convention. Currently, more than 135 nations are parties to the Warsaw Convention. The delegates to the Warsaw Convention had two major objectives.39 The first was the creation of a uniform system of regulation for issues such as baggage transport, ticketing, movement of cargo, and claims by passengers or customers concerning lost or damaged luggage or cargo40. The second primary goal of the convention was to cap the amount of damages an air carrier could incur in an accident with the offsetting limitation to the defenses that air carriers could invoke to avoid responsibility. In the end, the main concern of the Warsaw Convention drafters was protection of the fledgling international air transportation industry. 41

However, Warsaw Convention, 1929 has been substituted by Montreal Convention, 1999 which has provided more stringent provisions relating to aerial navigation.

Cape Town Convention of 2001

This Convention provides significant help in satisfying the unprecedented demand for new aircraft equipment over the next twenty years, with an estimated value exceeding US $1,200 billion.42

Some Important Concepts and Bodies Regarding Air Law

A. The Right to Fly

The Chicago Conference, 1944 had intended to provide rights for aircraft of the contracting states of Chicago Convention, whether engaged in scheduled air services or in non-scheduled flights, to fly into one another‘s territories. Some compromise was reached for non- scheduled flights,43 which in practice, however, has been honored more in its breach than its observance. This fact has been manifested in the failure to reach agreement on a multilateral exchange of rights for scheduled international air services by providing that they can be operated into a contracting State‘s territory only with the latter‘s authorization.44 The privilege covered by such authorization is often divided, in the jargon of the industry, into a number of so-called ―freedoms of the air‖.45 The first two such ―freedoms‖ consist of ―transit right‖, namely the right of transit without landing, and that of transit with stops only for technical purposes.

B. Airspace Sovereignty

The airspace sovereignty reaffirms the rule of general international law that ―every State has complete and exclusive sovereignty over the airspace above its territory‖.46 The principle of sovereignty over airspace is the point of departure for regulating most problems of international air law, for example, departure, and entry of aircraft, passengers and cargo, crew and jurisdiction over them for regulatory purposes or for the application and enforcement of both, general criminal law and special rules for the protection of international civil aviation.47

C. Aircraft

Aircrafts are defined in the Standards adopted by the Council of the International Civil Aviation Organization (lCAO) as ―any machine[s] that can derive support in the atmosphere from the reactions of the air other than the reactions of the air against the earth‘s surface‖;48 air cushion vehicles, such as hovercraft and ground effect machines, are not classified as aircraft. Aircraft may be lighter- than air (balloon) and power-driven (airship) or heavier-than-air (glider). The most common aircraft is an airplane - a power-driven heavier than-air aircraft, deriving its lift in flight chiefly from aerodynamic reactions on surfaces, which remain, fixed under given conditions of flight.49Helicopters are heavier-than-air aircraft supported in flight chiefly by the reactions of the air on one or more power-driven rotors on vertical axes.50

D. International Civil Aviation organization (ICAO)

At the invitation of the US of America, 52 States met in Chicago and signed the ―Chicago Convention on 7 December 1944. Chicago Convention is one of the most remarkable international legal documents of the 20th Century‖.51 The first time that sub-orbital flights were mentioned in ICAO was at the 35th Session of the ICAO Assembly in 2004 when Jurist Fabio said, ―100 years from now regular passenger flights in sub-orbital space and even outer space could be common‖.52 To this date, we have no definition where the air space ends and where the outer space commences and of course, no international treaty has been established in this regard. Jurist Fabio believes that there is no need to establish a special international organization for future commercial civil sub-orbital flights, not even for spaceflights.53 ICAO is very well structured to meet the necessary requirements for such development in the future by simply extending its mandate to cover this aspect of flights.54 Although there is no reference in the Chicago Convention to aviation security and environment, nevertheless these two items, together with safety, are top priority in the ICAO Program and well combined in ICAO activities. ICAO has developed two Annexes, one for the Environment55 and the other for Security.56 New Annexes could be developed to cover suborbital flights and space flights. Should an amendment be needed to cover the suborbital and ultimately, the outer space civil flights, of course, this could be done but it may take a long time for the amendment to enter into force.

E. Trial Procedure

Another important question that arises in the context of international air transportation is the place for a trial. Article provides the four possible places where a plaintiff may bring an action against an air carrier are the following:57

I. The place where the air carrier is domiciled
II. The primary place of business for the air carrier
III. The country where the contract of travel was made (as long as the air carrier does business in that country)
IV. The destination country

Law Relating to Aircraft Hijacking

It is important to note that 1968 till 1070 were the worst years for Aircraft Shipping, in 1968 there were 33 successful hijackings; in 1969, there were 70 successful Hijackings.58 September 1970 saw the most catastrophic hijacking so far: four aircrafts59 were held on the Cairo airport and in the desert of Jordan and were eventually blown up, after the passengers were freed. These events led to adoption of

Various international convention[60]. Lets briefly analyze these conventions:[61]

a) The Tokyo Convention, 1963

This Convention applies in terms of: (a) offences against penal law; (b) acts, (offences or otherwise)62 which may jeopardize the safety of the aircraft or of persons or property therein or which jeopardize the order and discipline on board.63 This convention also cover offences committed or acts done by a person on board any aircraft registered in a Contracting State, while that aircraft is in flight or on the surface of the high seas or of any other area outside the territory of any State. Under this Convention, ―an aircraft is considered to be in flight from the moment when power is applied for the purpose of take-off until the moment when the landing run ends‖.64

b) The Hague Hijacking Convention, 1970

It was only partly successful as its extradition65 prosecution formula, namely, aut dedere, aut judicare, gave freedom to the States Parties to extradite. In the case that the offender is not extradited, it is up to the States to prosecute and punish him/her or not.66

The Hague convention confirmed jurisdiction of domestic legislation and quasi-territorial jurisdiction in case of Hijacking. Significantly, the convention established _hijacking' as a crime punishable by international law. This means when offender is found in the territory of a state Party; the international recognition of the crime of _hijacking' and the recognition of jurisdiction that allows the application of domestic criminal law then will provide the legal framework to justly condemn the offender. According to this, the European Treaty also established substitutive jurisdiction in case the offender is not extradited.67

c) The Bonn Declaration of 1978

In 1978, during the G-768 summit in Bonn, a declaration was adopted which is known as the Bonn Declaration on Hijacking.69 The main aim of Bonn Declaration was to impose sanctions on States harboring offenders.

d) The 'Airport' Protocol of 1988 to the Montreal Convention, 1971

A great number of attacks at international airports, for instance, in Athens, Rome, Tel Aviv, Vienna Frank Furt, and Beirut, led to the initiative of Canada, in 1986, to propose the adoption of a new instrument for the suppression of unlawful acts of violence at airports serving international civil aviation.70

The Protocol aims at the suppression of acts of violence against facilities, persons and aircraft-not-in-service at airports serving international civil aviation, for which a new Article was added to the Montreal Convention.71

e) Convention on Marking of Explosive for the Purpose of Detection, 1991

Plastic explosives have been very difficult to detect using commonly available airport security equipment. However, less than two and one-half years after the threat posed by plastic explosives was made alarmingly clear, the international civil aviation community has taken a significant step regarding Aircraft hijacking.72

f) The Beijing Convention and the Beijing Protocol, 2011

September 11, 2001 inspired the adoption of Aviation Counter- Terrorism Convention and Protocol which prohibited use of the hijacked aircraft as a weapon for destruction. Significantly, under this Covention various serious offences were mentioned. Detailed analysis of the international air law is done in chapter

Space Law

The origin of space law can be traced after the launching of Sputnik I on 4 October 1957 by USSR, it was the first artificial Earth satellite. Since that time, the legal regulation of space and outer-space activities has been largely centered in the UN Committee on the Peaceful Uses or (scientific uses) of Outer Space.

The United Nations has played commendable role in enacting space law. Presently, following five international treaties or conventions are governing outer space.

(a) Outer Space Treaty, 1967

Among all UN treaties, the most important Treaty is the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and other celestial bodies

72 The Convention entered into force on 21 June 1998 and has 138 parties (2008). The text of this paragraph includes parts of an Article by R.D. van Dam, ―Defusing the Criticism‖, ICAO Journal, 7-8 (June, 1991).

1967, also known as Outer Space Treaty.73 The commendable feature of this treaty is that it clearly provided that outer space must be used for peaceful purposes. Apart from this, it has given certain important principles for activities in space.

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