

The Position of Aviation Law in Resolving Aviation Disputes Between Countries and its Effectiveness

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Abstract

Air law is a branch of law that deals with flight, air travel, and legal and commercial concerns. Some areas of concern overlap with maritime law, and in many cases, aviation law is considered a matter of international law due to the nature of air travel. However, airlines' commercial aspects and regulations are also subject to aviation laws. In the international scope, to some extent, the International Civil Aviation Organization (ICAO) provides general rules and overcomes international concerns about aviation laws. The present article examines the mechanisms for resolving aviation disputes between countries by examining the ICAO and the Chicago Convention and the effectiveness of these mechanisms.

Keywords: Aviation Law, Aviation, Dispute Resolution, ICAO, Chicago Convention

Statement of the problem

With the emergence of the aviation industry, along with all of its benefits, the resolution of potential disputes between the beneficiaries of the industry became a fundamental and vital issue. The formulation of various laws, rules, contracts, and conventions has attempted to overcome these problems to date. At the heart of all these laws and conventions are various methods of resolving disputes, one of the most useful of which is the resolution of disputes by arbitration, arbitration for reasons such as; Speed of scrutiny, Ease of scrutiny, lower cost than other methods and the absence of complex formalities that are very important in today's business. This paper attempts to examine the place of this vital institution in international aviation law [2].

ICAO is a specialized agency of the United Nations. In the United States and most European countries, aviation laws are considered a federal or state concern, so all the laws are regulated at these two levels. In the United States, states cannot directly oversee aviation issues in most cases, but instead, they look to federal law and jurisdiction. For example, a court recently overturned the New York Charter of Passenger Rights because aviation regulations have traditionally been a federal concern. However, aviation laws in the United States are not subject to the same federal jurisdiction as maritime law. While the US Constitution speculates for the administration of the maritime [1], it does not speculate on aviation law. States and municipalities have some indirect rules about aviation. For example, zoning laws can require the airport to be away from residential areas, and airport use can be restricted to certain times of the day. State product liability law is not overruled by federal law, and in most cases, aviation manufacturers may be seriously responsible for defects in aviation products. Space law, which governs extraterrestrial issues, is a relatively new field of law but already has its journals and academic support. Many space laws are related to aviation laws [2].

There is no doubt that the use of military weapons against foreign military aircraft that encroach on the sovereignty of states would be justified under international law and will be invoking the right of self-defense. Nevertheless, there are ambiguities about military action against invading civilian aircraft. It raises the question of whether the downing of aggressor civilian aircraft, by claiming to defend national sovereignty, such as the destruction of South Korean airliners by former Soviet military aircraft in 1983, or by claiming the right of legitimate defense, for example, the attack of the USS Vincennes on the Airbus passenger plane of the Islamic Republic of Iran with 290 passengers in 1988 can be considered a legal act according to international law?

Contemporary international law has not yet been able to give a definitive answer to the above question. There are two essential and contradictory issues in this regard; One is the sensitivity of governments to the principle of

national sovereignty, which is still one of the basic principles of international relations, and the other is the possibility of misusing passenger planes and using them for espionage and violating the security and sovereignty of other countries, which will lead to a strong reaction from governments. However, due to the numerous incidents in the aviation industry, most of which have led to a humanitarian catastrophe and the death of defenseless passengers, ICAO member states, especially after the downing of a South Korean airliner in 1983, sought to amend the Chicago Convention to provide more excellent protection to the airliner. Following this amendment, which led to the addition of Article 3 to the Convention, the use of force against civilian aircraft was banned; however, paragraph (d) of Article 3 of the Convention obliges member states to pay further attention to the safety and prevention of civil aviation hazards when setting regulations for their state aircraft [2].

International airspace

International law generally recognizes that the independent airspace of a country includes the airspace above a country and the airspace over the territorial waters of a country. Territorial waters stretch 12 nautical miles from a country's coastline. Airspace that is not within the territory of any country is considered international airspace. Under international agreements, a country may be responsible for controlling parts of international airspaces, such as those over the oceans or poles. For example, the United States provides air traffic control services in large parts of the Pacific and smaller parts of the Atlantic, even if the airspace is international. Canada, Iceland, and the United Kingdom are responsible for the rest of the North Atlantic airspace. At the same time, Canada and Russia are responsible for Arctic airspace.

There is no international agreement on the vertical boundaries of a country's airspace. It is generally considered that no country controls space, but there is no international agreement on the end of airspace and the beginning of space. Since countries move towards increasing spaceflight, and as the possibility of civilian spaceflight becomes more realistic, this area needs further attention [3].

Chicago Convention

Before World War II, international flights were regulated by hundreds of individual agreements between countries. The system was cumbersome and inefficient, but aviation technology was not yet advanced enough that air travel could fully compete with other known methods of international travel, such as trains and ships. On the eve of the war, much emphasis was placed on international flight agreements, as much attention was paid to de-escalating the growing conflict [5].

The war had the unintended consequence of removing the old geographical and political barriers to an international flight. With only the top three world powers remaining, it became possible to create a new framework for international aviation contracts. The war also led to significant advances in aviation technology that could be adapted for civilian use. During the war, aircraft became faster, more powerful, and more fuel-efficient, which had significant benefits for civilian air commerce. Due to wartime production needs, the necessary factories and skilled workers already existed to become the basis for a thriving civil aviation manufacturing sector [5].

World War II created not only a means to international air travel but also a will. The magnitude of the war made the governments of the world have a strong desire to start a new era of cooperation and peace. To that end, delegates from 52 countries signed the International Civil Aviation Convention shortly before the official end of conflicts in Europe. Since this Convention is signed in Chicago, it is generally considered as Chicago Convention. The Convention created a framework that eventually led to a standard system of international aviation law. It includes safety and environmental regulations and the rights and obligations of each country in relation to international airline operations.

The Convention was designed to replace hundreds of fragmented individual agreements with a standard system that allows international commercial aviation to flourish. This Convention only applies to international commercial air travel, and it should be noted that it does not apply to military operations, domestic, commercial air travel, or private jet operations.

International Civil Aviation Organization (ICAO)

There must be a uniform system of air regulations to have efficient and effective international air travel. A piecemeal approach is a barrier to the free flow of air traffic across international borders. The Chicago Convention

established an international governing framework called ICAO to strengthen the development of a uniform approach to aviation regulation. This Convention aims to "develop the principles and techniques of international air navigation and to strengthen the planning and development of international aviation."

ICAO is the United Nations organization responsible for developing uniform aviation standards for international flights. ICAO is divided into three branches. The Assembly is a representative branch that meets every three years to review ICAO's work, determine policy, approve the budget, and choose which member of the ICAO governing country, known as the Council, will have a seat. The Assembly is also responsible for approving any amendment to the Chicago Convention, which is then subject to ratification by either Member State.

The Secretariat is the executive branch of ICAO and is responsible for implementing the policies set by the Assembly. The organization is run by a secretary-general and is divided into five sections, each with its own area of expertise: Office of Air Navigation, Office of Aviation, Office of Technical Cooperation, Office of Law, and Office of Administration and Services. The various offices are responsible for implementing safety plans and environmental protection policies and monitoring the effectiveness of ICAO Standards and Recommendations Practices (SARPs).

The Council is the governing body of ICAO and is responsible for reviewing and adopting SARP for air travel. The Council receives technical and expert advice from various commissions and committees.

Competence of the ICAO Council in resolving disputes

The Council can deal with legal disputes over the interpretation and implementation of the Chicago Convention. There have been five disputes under Article 84 since the entry into force of the Chicago Convention. In addition to its dispute resolution functions, the Council has the authority to resolve disputes under Article 66 of the Chicago Convention. In addition, the Council, at its first meeting in 1947, was commissioned to act as an arbitral tribunal for disputes arising out of the Civil Aviation International Contracting Parties at the express request of all parties to the dispute. Several initial bilateral agreements designated the ICAO Council as the authority to resolve their disputes in any breach by one of the parties to such an agreement.

Today, bilateral air agreements have primarily ruled out any referral to the ICAO as an arbitral tribunal. Most disputes under bilateral agreements are now settled through arbitration. The Council also has a duty to report any violations of the Chicago Convention to the Assembly, and it can also investigate any matter relating to the Convention that any parties of the Convention have requested. Finally, at the request of any State Party, the Council can investigate any situation that appears to be an avoidable obstacle to developing international air navigation.

International Court of Justice (ICJ) and the settlement of aviation disputes

After World War II, the International Court of Justice replaced the Permanent International Court of Justice; This is one of the organs of the United Nations. The basis of the court's jurisdiction is the consent of the parties. However, it is the most difficult to reach, and it is not always available. The court's jurisdiction includes all the cases to which it has been referred. Optional jurisdiction stipulates that a State may grant compulsory jurisdiction to a court by making such a declaration in respect of any other State which makes a similar undertaking. Such a declaration may be made unconditionally or subject to reciprocity by governments or for a specified period.

ICJ is not without flaws. The biggest shortcoming is that the court cannot exercise its jurisdiction over a country unless the government agrees to its jurisdiction. Although it is considered a universal court, it cannot exercise jurisdiction over all countries as a matter of law. It has no universal jurisdiction.

Dispute over aviation under the International Civil Aviation Convention, 1944

The way participants in the international civil aviation industry communicate with each other or do not communicate with each other may be traced back to fifty years before the International Civil Aviation Conference held in Chicago in November 1944. The unpredictability of international relations then convinced many that stability could be guaranteed with systems that fostered cooperation between nations. It was precisely at this point that the Convention proposed the establishment of the International Civil Aviation Organization (ICAO). It replaced the International Air Navigation Commission (ICAN or CINA) and was established under the 1919 Paris

Convention and the US Permanent Aviation Commission (CAPA). An Inter-American Technical Conference on Aviation was held in 1937. The Convention sets out the rules for airspace, aircraft registration, and safety and details the signatories' rights to air travel. The Convention also exempts air fuels from taxes. After the war, at the Chicago Conference, almost all civilian aviation powers came together to reach a multilateral agreement governing international civil aviation. The purpose was to create a basis for the growth and regulation of the industry in the future and eliminate possible economic and technical problems. The drafts' hopes of reaching an agreement on economic regulations (i.e., routes, rates, frequencies, and capacity) and safety fell victim to economic and political competition, so the success of the meeting was limited to technical issues and the creation of the International Civil Aviation Organization (ICAO).

Chapter 18 of the Chicago Convention provides for the settlement of disputes by the ICAO Council. The statement stated: "If any dispute between two or more Contracting States concerning the interpretation or application of this Convention and its annexes is not settled by negotiation, the Council shall decide at the request of any State concerned in the dispute. None of the council members will vote on any dispute that the Council is on. Any Contracting State may, following Article 85, appeal against the decision of the Council to an interim arbitral tribunal agreed with the other parties to the dispute or the International Court of Justice. Any objection must be notified to the Council within sixty days after receiving the Council's decision." [4]

World Trade Organization (WTO) Aviation Dispute Resolution

The World Trade Organization (WTO) is an international organization designed to monitor and liberalize international trade. The WTO deals with trade laws between countries on an almost global scale. It is responsible for negotiating and implementing new agreements and overseeing member states' compliance with all WTO agreements signed by a majority of WTO members. The world's trading countries have been approved by their parliaments [7].

The WTO's practice of resolving trade disputes under a dispute settlement agreement is crucial to enforcing the rules and thus ensuring the smooth running of trade. Disagreements in the WTO are basically about broken promises. A dispute arises when one member state believes that another member state is violating an agreement or obligation it has made with the WTO. The authors of these agreements are the member states themselves, and the agreements are the result of negotiations between the members [5]. The ultimate responsibility for resolving disputes rests with the Member States through the Dispute Settlement Body.

WTO practice emphasizes the rule of law and makes the trading system safer and more predictable. The system is based on clearly defined rules, with a timeline for completing a case. There was a procedure for resolving disputes under the old GATT, but there was no fixed timetable, rulings were easily blocked, and many cases took a long time without result. The Uruguay Round Agreement introduced a more structured process with more specific steps. The law introduced more discipline for the length of time a case must be resolved, with flexible deadlines set at different stages of the procedure [6].

The agreement emphasizes that a speedy settlement is essential if the WTO is to act effectively, and also it determines in great detail that the procedures and timetable must be followed in order to resolve disputes. If a case goes through all the stages until the first vote if the case is appealed, it usually should not take more than a year and 15 months. If perishable goods are involved, it will be accelerated as much as possible. Uruguay's second agreement barred sentencing for the country against which the vote was taken. Under GATT's previous practice, rulings could only be passed by consensus, meaning that a single objection could prevent the ruling from being issued. Now, rulings are passed automatically, unless there is a consensus to reject a ruling, any country that wants to block a ruling must convince all other WTO members to share their views. [6].

Although many of these procedures are similar to the courts, the preferred solution is for the respective countries to discuss their problems and resolve the dispute themselves. Thus, the first stage is consultation between the relevant governments, and even when the case has reached other stages, consultation and mediation are still possible.

The Uruguay Round agreement also made it impossible for a country that lost the case to accept the ruling. Under GATT's previous practice, rulings could only be passed by consensus, meaning that a single objection could

prevent the ruling from being issued. Now, rulings are passed automatically unless there is a consensus to reject a ruling, any country that wants to block a ruling must convince all other WTO members to share their views [3].

Although many of these procedures are similar to a court or tribunal, the preferred solution is for the countries concerned to discuss their problems and resolve the dispute themselves. Thus, the first stage is consultation between the relevant governments, and even when the case has reached other stages, consultation and mediation are still possible.

Arbitration process

As the main solution to disputes in international civil aviation legal disputes, the arbitration process has contractual and practical support. The evolution of the various clauses for resolving international disputes in the Bilateral Air Service Agreements (ASA) followed a three-step process; Initially, governments refused to designate the ICAO Council as the Dispute Settlement Body. Subsequently, countries included both consultation and interim arbitration in bilateral ASA clauses. Finally, the Contracting States recognized arbitration as the only mechanism for resolving legal disputes under the ASA.

In the post-Bermuda era, there was a strong trend of countries refusing to appoint the ICAO Council as the Dispute Settlement Body. In the Bermuda Agreement, Articles 16 and 17 of the Agreement provide a two-tier formal consultation and arbitration mechanism. In the Open Skies Agreement between the United States and the European Union, Article 19 sets arbitration as the sole condition for resolving a dispute. Researchers between the United States and the European Union have systematically studied hundreds of bilateral agreements and noted the arbitration prioritization process since 1962 [6].

Conclusion

Despite all the obstacles, the dispute settlement mechanism set out in Article 84 of the Chicago Convention can still be cited in a possible dispute over sustainable development and environmental protection. As shown, it seems that the differences involving many countries are somewhat different from the previous ones.

They were regional and bilateral in nature. Nevertheless, this dispute resolution mechanism is relevant and appropriate for a highly political dispute like the EU-ETS, where compromise and mediation are prioritized.

Procedural barriers are significant. The willingness of ICAO members to base their decision on the principles of sustainable development is equally unclear. The Chicago Convention does not need this result, but it does not necessarily require the recourse to evolving environmental protection standards.

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