

AIR LAW AND ECONOMIC DEVELOPMENTS

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Civil aviation has a major impact on in 21st century. It shapes national economics. Trade is carried on by aircraft and air routes. Tourism promoted by aviation helps economics of countries like Thailand, Spain, Singapore, Malaysia, Nepal and many other countries in Europe, Africa and Asia. Aviation is an agent for change and progress as pointed out by the Secretary General of ICAO, S.S. Sidhu. On the role of modern aviation, he observed:

As you all know, civil aviation is one major field which is affected by the revolution in high technology. In a country like India which is a vast country with difficult terrain in certain areas, I think aviation has a special significance. This is all the more true when we are in a developing economy which has to progress rapidly.

It is impossible to imagine life today without these fast and safe airplanes crisscrossing all states irrespective of their claims of sovereignty. In spite of all their divisions, the world has been united as never before. Eminent jurist H. Lauterpacht had remarked that a solution to problems of international civil aviation was a matter of future. In the field of air law, security has been an overriding goal in aviation relations. The space exploration began in 1957 and the increasing confidence being shared by nations in recent years, there is greater emphasis on the economic and commercial benefits of aviation. Long ago, a very eminent scholar and jurist, Garner gave a long discourse in India in 1922 under the auspices of Tagore Law Lecturers, containing some very perceptive analysis on the developments of air law. Another jurist Hudson wrote a long article on aviation and international law in 1930. Most of these issues are being dealt with by UN and its specialized agency, the ICAO. It is of general interest to recapitulate the Charter of ICAO, its objectives and important role in the development of air law. These include issues connected with economic development, the Chicago Convention, regional developments, security aspects, bilateral agreements, impact of outer space on aviation and development of the space transport, some aviation policies of other leading countries, and perspectives on Indian air law mostly derived from international air law.

Approach to air law

Indeed, it is a multi-dimensional discipline and involves inter-dependent factors like (i) knowledge of aviation technology; (ii) economics; (iii) air space management; (iv) private air law; (v) public air law; (vi) law making by ICAO; (vii) security and safety laws; (viii) liability aspects; (ix) air routes structure; (x) regulation of air services and bilateral air agreements; and (xi) a complete

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knowledge of licencing of pilots, airports and regulation of aircraft components. The key word is "system"—for air transportation is a system, and a very complex one at that. It is made up of many parts, or subordinate systems, each closely related to another and each capable of creating a problem to the detriment of the other. Unless these many closely interrelated parts are made to work in harmony, one with the other, the imbalance of one part will upset the ability of the total system to fulfil its intended purpose.

The Chicago Convention of 1944 have set forth the essential principles of international air law which have helped develop air law in keeping with global community expectations. This convention is a charter of world aviation. As Justice Krishna Iyer says—combining history with new values, new policies, new perspectives, new conventions in super-aviation makes a contribution to legal futurology. Much less is however written on the Chicago Convention than it deserves to be. The following important legal principles of Chicago Convention which help us realize the goals of international civil aviation. The preamble states: The future development of international civil aviation can greatly help to create and preserve friendship and understanding among the nations and peoples of the world..... It stress cooperation, peace, safe and orderly manner in which international air service may be established. Article 1 represents the air sovereignty of states. It reads: The contracting states recognize that every state has complete and exclusive sovereignty over the airspace above its territory.

It merely reflects the history of aviation law ever since such an article was incorporated in the Paris Convention on civil aviation in 1919. Today air sovereignty is modified by space exploration. Security and privacy enjoyed by states as a result of air sovereignty is being substituted by international co-operation.

Article 2 refers to definition of territory which includes land areas and territorial waters. Article 3 differentiates civil and military aircraft. Article 4 prohibits misuse of aviation Article 5 the rights for non-scheduled flights for non traffic purposes without the necessity of obtaining prior permission and subject to the right of state overflow to require landing. Article 6 by special written permission of states. Article 7 prohibits sabotage. Under Article 8 pilots aircraft are not permitted to fly though this provision does not apply to spacecraft without pilots/astronauts. Article 9 prohibited areas. Article 10 makes it necessary for foreign aircraft to land at customs airports. Article 26 provides of international interest is investigation of accidents. The state in which an accident occurs institutes an enquiry into the circumstances in accordance with its laws and procedure recommended by ICAO. Some critics says the provision of Chicago Convention are mostly technical in nature.

Air Law and Economic Development

Air law is very intimately connected with modern economic development of states. Air transport is developed on factors like export and import of cargo,

passenger movement, tourism promotion and host of other national activities. In this manner air law looks to equality of opportunity between states. It helps facilitate competing interests between countries and ensures cooperation. Collection of statistics, forecasting on traffic development and other relevant factors call for application of a systems approach to international air law for creative process. Thus air law has to include a study of international organizations like ICAO and IATA. The former regulates world aviation as already described and the latter makes possible a plethora of tariff regulations and procedures which enable airlines to issue a single ticket transcending national boundaries. IATA is also a big clearing house for airlines. Therefore, international air law is to be explored and applied to day to day problems of aviation relations and help plan future growth of aviation order in the world.

The 26th session of ICAO Assembly in 1986 had the following agenda items relating to air transport problems of global interest: (i) model clause in bilateral agreement; (ii) regulation of non-schedule air transport; (iii) guidance material on sixth freedom; (iv) unilateral measures affecting civil aviation; (v) IATA paper on trade in services; (vi) unilateral application of competition laws; (vii) air transport fares rates; (viii) taxation in air transport industry and (ix) automation in airline industry.

In the matter of work programmes of the Legal Committee, the Assembly has emphasized the following problems for study: (i) development of instrument for suppression of unlawful acts of violence at airports serving international aviation. For this purpose a diplomatic conference was held in ICAO in 1988 and the Montreal Convention of 1971 was amended to include suppression of airport violence; (ii) the United Nations Convention on the law of the sea implication for the Chicago Convention and its annexes and other international air law conventions; (iii) liability of air traffic control agencies; (iv) study of instruments of the Warsaw Convention; and (v) preparation of a draft instrument on the interception of civil aircraft.

Conclusion

A great degree of uniformity is needed in national laws to enable mass air transport operate across national boundaries without delay. Time factor for travel in air and on ground handling has assumed great importance. Information and reservation systems in aviation are being overhauled with new computerized technology. Air law has to ensure equality of opportunity for airlines of the world as provided in the objectives of ICAO. Aviation has a major role in the economic development of states and people. International trade, economics and development that modern air law has a major contribution.