AIRCRAFT LAW Essay, Research Paper

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The problems regarding aircraft liability in the international realm primarily relate to resolving issues of legal status of international airline passengers and cargo. The issues are defined as follows: sovereignty over airspace, the impact of aerospace craft on the environment, the role of aerospace technology in the international system, weather modification, air safety and international aviation relations. Remarkable growth and development in the range of air transport services and technology earned the sector a distinctive international character. The latter is the most outstanding feature of the industry which allowed “every part of the world [to be reached] within a few hours of every other and, in doing so ? brought about a revolution in world trade, in business contacts, and in methods of diplomacy.” (1)

The principles of air law have been evolving at a rapid pace since the beginning of the Twenty-first Century, however, they also remain inadequate to meet the needs of contemporary society. Concern for this immense growth and the accompanying implications produced the impetus to devise a means to ensure orderly and appropriate development. Thus,

“The general policy of the world community in regard to emerging issues of air law demands the maintenance and promotion of a balance between technological advance in aviation and the preservation of a wholesome environment by providing adequate policies and prescriptions.” (2)

The initial governing treaty passed in 1929 is known as the Warsaw Convention. This is a multilateral treaty among nations that governs international air transportation. It was based on the idea that because aviation was in its infancy, there was a risk of destroying the carrier airline if there was a major crash. Therefore, it limits the liability for carriers. Unfortunately, this treaty also limited the liability for damages to injured persons. Because of the latter clause, the U.S. renounced its participation and proceeded to join the international aviation community in entering into the Montreal Agreement of 1965.

The Montreal Agreement was a special contract authorized by the Warsaw Convention which states that the parties can agree to engage in certain activities only if there is a consensus. The agreement also raised the limitation of liability, instituted absolute liability for any accident, and developed a criteria for recovery for which the injured party has to prove that the carrier was guilty of willful misconduct. This agreement only applies to flights that start, stop or end or those which connect with an itinerary that stops, starts or ends in the United States. (3)

A third and more comprehensive convention was the Convention on International Civil Aviation of 1944 also known as the Chicago Convention. This convention set out the general principles of international civil aviation and established a framework of international coordination, cooperation and regulation of services. It also addressed non-agenda items such as the technical aspects of air transportation affecting the environment including engine fuel emission and noise generated by aircraft engines.

The predominant external factor addressed in the aforementioned treaties is the influence wielded by the existence of powerful aviation-centered countries as opposed to the smaller, less self-sufficient aviation nation states. One of the most important and controversial arenas concerning air law liability is that of airlines privately owned by governments. Considering this fact, there is a tremendous impact on the government and privately owned airlines to compete with each other for air space. As such, there are many controversies associated with which country has jurisdiction over liability in airspace, common standards of safety, worldwide air traffic, and especially, who is responsible for payment of damages resulting from airline litigation.

The internal factors politicizing the arenas of aircraft liability are the economic competition issues resulting from anti-trust regulation of airlines. The traditional air law has not kept pace with problems associated with mass air transportation, the impact of global economy, the impact of aerospace industry on property rights and privacy, and noise and pollution. However, the industry has instituted important regulation governing monopolies within nations solely based on sovereign control of airspace. This is particularly evidenced in the doctrine arising out of the Chicago Convention.

The Warsaw Convention, the subsequent Chicago Convention and the Montreal Agreement serve as a balancing act for limiting aircraft liability within sovereign states. Therefore, the issues related to expansion of the role of national law in adjudicating claims arising in the course of international transportation are under the purview of these related conventions and treaties. Furthermore, the convention realized that the international aviation policy of the future has to encompass major problems of mass air transportation and the increasing degree of interdependence within the aviation community. As such, the existing conventions must rely on the responsibility of air traffic control services and regulations. Liability would then be based on proof of fault, however it would be limited in nature, and the convention would facilitate quick settlement of disputes placing less of a burden on the developing states.

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