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Ensuring the Safety of International Civil Aviation as a Main Principle of International Air Law

The authors researches a principle of ensuring the safety of international civil aviation which is understood as the sovereign right of each state to take technical, operational, organizational, air navigation and information measures that ensure the performance of international and domestic flights without jeopardizing life and health of people, the duty of the state to ensure a high level of safety in relation to any flights. The main attention is given to the code of "international flights", i.e. the Convention on International Civil Aviation (also known as Chicago Convention) signed on December 7th, 1944 in Chicago by 52 signatory states.

International air law is an integral system of interrelated and concerted principles and norms assigned between its institutions in accordance with specified legal and material features. Such institutions consist of a separate group of principles and norms specially purposed to regulate some of the homogeneous, relatively independent relations included in the subject of international air law.

The main document in the field of international air law, a code of "international flights" is the Convention on International Civil Aviation (also known as Chicago Convention) signed on December 7th, 1944 in Chicago by 52 signatory states [1]. The Chicago Convention norms in this area are extremely interrelated, mutually complementary and they regulate a relatively separate set of homogeneous social relations. The Chicago Convention established the International Civil Aviation Organization (ICAO), a specialized agency of the UN charged with coordinating and regulating international air travel. It received the requisite 26th ratification on March 5th, 1947 and went into effect on April 4th, 1947, the same date that ICAO came into being. In October of the same year ICAO became a specialized agency of the United Nations Economic and Social Council (ECOSOC). The Chicago Convention has since been revised 8 times (in 1959, 1963, 1969, 1975, 1980, 1997, 2000 and 2006). As of 2013 the Chicago Convention had 191 state parties which include all member states of the United Nations except Dominica, Liechtenstein and Tuvalu. The Cook Islands is a party to the Convention although it is not a member of the UN. The Chicago Convention has been extended to cover Liechtenstein by the ratification of Switzerland. The document establishes rules of airspace, aircraft registration and safety and details the rights of the signatories in relation to air travel [2; 3].

The core of international air law is the basic principles which mean "generally recognized norms of international law of the most general character". These principles are imperative and contain obligations erga omnes, i.e. commitments to each and every member of the international community. The principles unite the norms of different international air law institutions acting in relation to certain participants of intergovernmental air transport relations into a

single legal system. If there is a need to resolve new problems, the principles serve as criteria for legality of the newly adopted norms.

The principles are of great importance in assessing the actions of aircraft operators during flights over state territory. If, instead of the prescribed route, a foreign aircraft engaged in international air navigation follows a foreign route over a foreign territory, such actions are qualified as a violation of the principle of ensuring the safety of international civil aviation.

In the field of bilateral air services treaties the basic principles play the role of criterion for the legality of bilateral norms.

The basic principles are not always the exclusive product of international law. Some of them have a direct affinity to the principles of national air law. Such an important principle of international air law as the principle of sovereignty over the airspace is recognized by the Chicago Convention, but it is not fixed and established there, since this principle has been long fixed in the national legislation of many states. The Chicago Convention proceeds from the recognition of this principle. The same concerns the principle of ensuring the safety of international civil aviation. The basic laws on air law are permeated with imperative requirements to ensure the safety of civil aviation both in the air and on the ground. All norms regulating flights and transportations over the state territory are directed to its ensuring. In international law this national imperative norm is recognized as the basic principle.

The principle of ensuring the safety of international civil aviation is understood as the sovereign right of each state to take technical, operational, organizational, air navigation and information measures that ensure the performance of international and domestic flights without jeopardizing life and health of people, the duty of the state to ensure a high level of safety in relation to any flights.

In the international aspect obligations to ensure the safety of international civil aviation are entrusted to the states by international treaties. The Chicago Convention declares its main task to create such conditions for international civil aviation under which it can develop “in a safe and ordered manner”.

Almost all bilateral air services treaties include provisions on mutual obligations to ensure the adequate level of safety, as well as procedures for cooperation on eliminating or resolving situations involving acts or threats of unlawful interference against the safety of civil aviation.

In 1986 the ICAO Council adopted a model article on aviation safety and recommended to use it in the bilateral treaties. Together with the principle of ensuring the safety of international civil aviation, the international legal norms for the safety of civil aviation form an appropriate international legal regime.

In March 2006 ICAO held the Conference for Civil Aviation Chief Executive Officers on Global Strategy in the Field of Safety of Flights where they analyzed the current state of safety of flights and adopted new measures to consolidate safety of flights in global scale. It was recognized that the state is responsible for ensuring the safety of flights in the airspace over its territory, including the flights of aircraft of foreign operators and instructed ICAO to prepare the necessary provisions and guidance material on a uniform approach to the monitoring of flights of foreign aircrafts. The Conference also recommended the

states to include in their bilateral treaties articles for safety of flights based on the model article for safety of flights developed by ICAO.

In the internal perspective ensuring a high level of safety in the sovereign airspace is a function of the state. Disposing of its airspace the state is obliged to create and maintain the conditions necessary for its practical use. A key condition for such use is safety of flights as a fundamental principle of national air law. In accordance with this principle the state regulates the airworthiness of aircrafts, establishes technical requirements and standards for aerodromes and airports, airways, accepts flight rules and controls them, and determines the procedure for investigating accidents and incidents. Normative rules, regulations and requirements that states adopt for the safe use of their own airspace form the national regime for ensuring the safety of civil aviation. It particularly, they single out the rules concerning the procedure for the conduct of international flights over state territory which indicates that ensuring the security of international civil aviation is part of the national air law.

Thus, international and legal and national regimes of ensuring the safety of civil aviation closely interact with each other on the basis of the principle of ensuring the safety of international civil aviation [4].

International air law originated and developed exclusively as a right of flights. Until the middle of the 1920s the question of the right to fly was almost the only issue solved in interstate relations over air communications. The number of passengers, cargo and mail transported (the volume of transport), the vesting of one or more airlines with the authority to make international flights, the coordination of tariffs, the right to unload or take on board passengers at certain points and much more which is today the institution of “international air transportation law” remained outside the legal regulation for some time.

The principles of legal regulation of international flights reflect the basic principles and objective laws of the development of this institution of international air law, play a role of a system-forming factor in it, serve as criteria for the legality of specific legal norms in the field of international flights, determine the direction of codification and progressive development of the right to international flights, specificity of liability in case of violation of the procedure and conditions of their implementation.

Thus, the main principles are:

a) the licensing procedure for international flights in sovereign airspace establishing the legal grounds and conditions for entry into state territory, departure from its territory and flight within such territory;

b) freedom of flight in open airspace (over the high seas and Antarctica);

c) ensuring the safety of international flights;

d) the principle of mutuality in provision and realization of the right to international flight [1].

As in legal literature the question of the principles of the institution of any international law branch has not been sufficiently studied, it is necessary to determine the place of the principles we are considering in the system of international law in general and international air law in particular.

In international law it is necessary to distinguish the basic principles of international law, the basic branch principles and principles of the institution of the relevant international law branch.

The first one include the main generally recognized principles of international law, such as sovereign equality, the territorial integrity of states, non-interference in internal affairs, peaceful settlement of disputes, cooperation between states, etc., i.e. principles that are and should be observed by states in all spheres of international life, including in the field of international flights.

The principles of the institution of the international law branch refer to the third hierarchical level and directly follow from the branch principles, which, in turn, are related to the basic principles of international law. Special principles of the institution of international flights “work” only in this area of international relations. They form the basis of legal regulation of international flights, and without the practical implementation of these principles the realization of such flights would be difficult, if not impossible [4].

The safe conduct of international flight is the most important condition for the operation of aviation.

The implementation of air transportation of passengers, luggage, cargo and mail, the very maintenance of external relations of states through aircrafts depend on the safety of flight.

The correct explanation and interpretation of the principle of ensuring the security of international flights nowadays becomes acute in connection with the attempts of the Western states to prove their superiority over the principle of complete and exclusive sovereignty of states in sovereign airspace.

It should be noted that the principle we are considering has not been directly expressed in international air law, unlike, for example, the basic principles of general international law consolidated in the UN Charter and other documents. By the time of its formation and approval the principle of ensuring the safety of international flights lags far behind the commencement of such flights which is due to a number of objective circumstances.

International air law originated at first on a bilateral, then on a regional basis and only in the postwar period acquired the character of a universally operating international legal subsystem that is part of the general system of international law. At the same time, up to the 1960s the main obligations of states, both bilateral and multilateral, were to ensure the air navigation aspects of international flights, i.e. to ensure the normal course of the flight, as well as to eliminate the consequences of accidents.

Just in such “technical” meaning the term “safety” is used in the first multilateral treaty on civil aviation matters – Convention relating to the Regulation of Aerial Navigation (also known as the Paris Convention) signed in Paris on October 13th, 1919, in the Annexes to it and in the Additional Protocol of July 1st, 1925 [5]. Because of the regional nature of the Paris Convention, the absence in the majority of countries of Asia, Africa and Latin America of material means for ensuring the safety of international flights, the corresponding “technical” obligations of the state parties, this document can not be regarded as acting universally unlike the obligations of states under the Chicago Convention.

Moreover, at that time international law did not contain norms aimed at combating criminal jeopardizing of the safety of flights: acts of hijacking aircraft, diversions in air transport, etc. This “social” (or political) aspect, constituting one of the two most important parts of the principle of ensuring the safety of flights, acquired particular relevance only in the late 1960s, when the number of hijackings of planes sharply increased. Just during this period the norms relating to the “technical” and “social” safety were harmonized within international legal principle.

On the basis of their obligations under the Chicago Convention in ICAO states developed huge number of standards, recommended practices and procedures (international aviation regulations) in the “technical” field. The corresponding provisions were also fixed in many bilateral air services treaties. Simultaneously with the end of the 1960s they quickly developed a system of international air law norms related to ensuring the safety of international civil aviation from acts of hijacking aircraft, blackmail, air traffic sabotage, etc., generally called as the “acts of unlawful interference with civil aviation” [1].

International terrorist activity in the last 15 to 20 years sharply increased and became a truly global threat. One of the priority targets for terrorist attacks is public facilities transport. Especially attractive for terrorists are civilian objects aviation attacks, since terrorist attacks on air transport cause the greatest public response. Terror acts carried out on civil air transport, as a rule, are accompanied by many casualties, paralyze activities of the most important spheres of the economy and destabilize the situation in the society. Therefore, the international community is increasingly develops more and more requirements to standards of ensuring the safety of citizens. Wherein the volumes of passenger and freight traffic continue to grow and according to forecasts made by ICAO it will double by 2030 [6].

In general, the division of safety into “technical” and “social” may seem artificial. Ultimately, in any case a threat to the technical reliability of aviation equipment is created. You can only separate measures to ensure it. However, just in such separate meaning the formation and development of the corresponding two groups of norms in international air law took place, which eventually were united in principle of “ensuring the safety”, as well as the terminological differentiation of the two terms in English – “safety” and “security”, which are equally translated into Ukrainian as “safety”, however they have different meanings.

In the early 1970s within ICAO there was an intense debate over whether it was permissible to interpret the general obligations of states to ensure the safety of international civil aviation arising from the Chicago Convention as including obligations to ensure its security from the acts of unlawful interference with civil aviation. The purpose of such discussion was to determine the legitimacy of ICAO’s adoption of standards and recommendations, as well as other measures aimed at combating the acts of unlawful interference with civil aviation.

Positive and extremely important result of such discussion was approval by the ICAO Council in 1974 a separate Annex 17 to the Chicago Convention entitled as “Security: Safeguarding International Civil Aviation against Acts of Unlawful Interference” [7]. By adoption of this Annex a long and heated discussion on whether the term “safety” used in the Chicago Convention applies to measures to combat the acts of unlawful interference with civil aviation seems to be finished.

The majority of 156 ICAO member states accepted the Annex 17 without any provisos and implemented its provisions in their national laws and civil aviation practices. These provisions cover a wide range of issues not formally addressed by the Chicago Convention.

In addition to strictly technical measures of combating unlawful acts jeopardizing the security of international civil aviation, this and other ICAO documents establish the organizational and administrative basis for such a struggle at the state level.

Nowadays it is difficult to imagine any area related to international flights of civil aircraft which would not be subject to legal protection of international air law. In order to guarantee the safety of such flights the states parties of the Chicago Convention defined the general requirements to the flight rules (Article 12), the presence of identification marks on aircrafts (Article 20), the assistance to aircraft in distress (Article 25) and investigation of incidents (Article 26), providing the air navigation facilities (Article 28), the documentation on the aircraft (Article 29), its radio equipment (Article 30), certificates of airworthiness for flights (Article 31), the certificates for the crew members (Article 32) and recognition of the qualification standards of the crew members (Article 42), the adoption of international aviation regulations on safety of flights (Articles 37, 38, etc.), etc.

Bilateral air services treaties and other international treaties contain many specific norms specifying such mutual obligations of states.

Conclusions

As a general idea the necessity to ensure the safety of international flights of civil aircraft was shared by states from the very beginning of the aviation era. Just this idea determined the main trends in the formation and development of the institution of international flights law, its main features and the objectives of legal regulation. But only nowadays it has become possible to talk reasonably about the emergence and development of the principle of ensuring the safety of international flights, which is a concentrated expression of specific norms and mandatory rules of conduct for states in this field. Without considering in essence the arguments “for” and “against”, the principle of ensuring the safety of international flights is recognized and understood by the states as a norm the deviation from which is unacceptable and which can only be changed by the subsequent norm of general international law of the same nature. In accordance with this principle states are obliged to take all appropriate technical, organizational, legal and other measures aimed at ensuring the safety of flights of civil aircraft engaged in international air services.

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