Aeronomics And Law: Fixing Anomalies

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INTRODUCTION

The study of or pertaining to the study of the high atmosphere is known as aeronomy and Law is a set of guidelines that a nation or community recognises as governing the behaviour of its citizens and can enact by imposing sanctions: An anomaly is something that differs from what is usual, anticipated, or standard: or in a scientific manner, it is angular separation of a planet or satellite from its previous perihelion or perigee is said to have "a number of anomalies in the present system." The issue with air travel is that, despite being a commodity on the one hand, regulations governing it may limit the consumer's access to it by denying him the range of air travel options he might have under a more flexible system. In other words, state policy and safeguarding national interests come before the interests of air travel consumers. The only product that the aviation sector provides to the final consumer is air transportation. One can legitimately wonder why this commodity cannot draw unrestricted foreign direct investment (FDI), as do others in the agriculture, textile manufacturing, and energy sectors. This is due to three factors which are discussed further. One can legitimately wonder why this commodity cannot draw unrestricted foreign direct investment (FDI), as do others in the agriculture, textile manufacturing, and energy sectors. This is due to three factors. The first justification is that since 1919, States have claimed to have sole and total control over the airspace above their respective borders. The 1944 Chicago Convention, which was modelled after the 1919 Paris Convention, reaffirmed this principle by stating that each State has complete and exclusive sovereignty over the airspace over its territory. Sovereignty is a term that is frequently misinterpreted in both Statecraft and the context of aviation. Confusion is made worse, as will be described later, when this misunderstanding is applied to the Chicago Convention's ban on market access and This misunderstanding was well-explained by United Nations Secretary General Kofi Annan: State sovereignty, in its most basic sense, is being redefined, not least by the forces of globalisation and international cooperation. It is now universally accepted that states are tools at the service of their peoples, not the other way around. Annan goes on to add that a revived and expanding knowledge of individual rights has further bolstered state sovereignty, which is a genuine and palpable right recognised by the United Nations Charter. Unquestionably, sovereignty is no longer an absolute idea that would protect States from any wrongdoing against their population. States can no longer accept sovereignty as an absolute defence against outside influence in the international arena. Since a State is now answerable to both internal and external constituencies, it is no longer an absolute right but rather an obligation. Each State is considered sovereign and equal under legal theory, and the word sovereignty can be used to mean independence. However, no State can be completely sovereign to the exclusion of others in modern terminology because to the rapid development of telecommunications as well as global competitiveness and rivalries. However, no State can be completely sovereign to the exclusion of others in modern terminology because to the rapid development of telecommunications as well as global competitiveness and rivalries. In contrast to the eighteenth and nineteenth centuries, when strong, highly nationalised States first emerged, few restrictions on State autonomy were recognised. Today, the term "sovereignty" has a considerably narrower definition. There is barely a State today that has not agreed to limitations on its freedom of action in the interests of the international community.

Regina Jefferies, Bringing externalization home: the International Civil Aviation Organization and 'entry screening' in Australia, Globalizations,1, (2021)

LITERATURE REVIEW

This book begins with a modern analysis of how economics and law interact with regard to air transport, delving into the key problems that the sector faces. It demonstrates how some of the challenging and difficult problems could be resolved rationally. Among the topics covered are the paradox of the exponential rise of air travel, which keeps airline profitability low; the legal restrictions placed on direct foreign investment in the sector in the majority of countries; the puzzling and convoluted mess surrounding the economics of aircraft engine emissions; and the bizarre fact that, despite civil aviation's primary goal of serving the needs of people worldwide, State regulators have turned the rules upside down and given precedence to national interests over passenger interests. Both economists and solicitors who deal with matters relating to air transportation may find this book interesting as well as to researchers, students, regulators, airlines, and others in the field of transportation. Dr. Ruwantissa Abeyratne, Senior Legal Officer at the International Civil Aviation Organisation, has spent thirty years working in the field of aviation law and administration. Twenty books and countless journal articles on air law and economics have been written by him. The advice and information in this book are deemed to be true and accurate as of the publication date, but none of the writers, editors, or publisher can be held liable for any mistakes or omissions that may have been made. Regarding the information given here, the publisher disclaims any warranties, whether they be expressed or implied.

Ruwantissa Abeyratne, Commercial space travel: security and other implications, 6, Journal of Transportation Security, 257, (2013)

PROBLEM AREA

They wanted the Convention to address emerging problems, such the harmful impacts of aviation engine pollution, by adding new articles or amending existing ones. Only a few of these cases have thus far been addressed, and only a few revisions have been made. The aviation industry's indifference and unwillingness to "ruffle the feathers" of an outdated instrument that must evolve if its priceless utility is to continue lie at the root of the issue"

While this may very well be the case, a bigger issue is that regulatory bodies' view of the regulatory principles set forth in the Chicago Convention has not evolved in line with the times and is still the same as it was in 1944. When the international aviation community called for the International Civil Aviation Organisation (ICAO) to consider possible action in relation to the attacks on the United States on September 11, 2001, which involved only domestic aviation, it was assumed that the Chicago Convention should apply to all civil aviation. However, the Chicago Convention's title suggests that it only applies to international civil aviation. Confusion is made worse by the fact that many people still view the idea of State sovereignty as a closed virtue and a rigid principle whereby States can stop commercial air traffic within their borders as stated in Article 1 of the Chicago Convention. Article 1 of the Chicago Convention states that Contracting States to the Convention recognise that every State (not just Contracting States but any State) has complete and exclusive sovereignty over the airspace above its territory. Although in theory this might be the case, in practise it is both counterintuitive and too limiting. The 2008 credit crunch and soaring fuel prices compounded the issue by making capital even more difficult to come by. There are numerous instances of FDI restrictions that were put in place as early as the 1990s. The issue with air travel is that, despite being a commodity on the one hand, regulations governing it may limit the consumer's access to it by denying him the range of air travel options he might have under a more flexible system. In other words, state policy and safeguarding national interests come before the interests of air travel consumers. The only product that the aviation sector provides to the final consumer is air transportation.

Freedom of the Air- International Civil Aviation Organisation,https://www.icao.int/pages/freedomsair.aspx

HYPOTHESIS

This principle, which serves as the cornerstone of how States conduct themselves internationally, lays the groundwork for fostering global amity and governing how States behave both internally (inside their own borders) and externally (within other States). This principle effectively prevents States from pursuing their own interests without restraint and disregarding

norms established by international law. There have been a number of words employed in the Convention's vocabulary in different circumstances that could be confusing. For instance, different clauses use phrases that aim to express the meaning and goal of the treaty depending on how compelling they are. For instance, the contracting States "recognise" that each State has complete and exclusive sovereignty over the air space above its territory in Article 1, which deals with the issue of sovereignty. Given that sovereignty over national airspace was first recognised in the Paris Convention of 1919, the word "recognise" in this context implies that the legal acknowledgement of national sovereignty has already existed. The words "shall" and "shall not" are used by the Convention to designate mandatory legal requirements in Articles 2 and 3 that follow (for instance, Article 3 an of the Convention specifies that it "shall" apply solely to civil aircraft and not to State aircraft). The word "recognise" appears once more in Article 3 bis (a) and (b) of the Convention, which states that Contracting States recognise that each State shall refrain from using weapons against civil aircraft while they are in flight and that each State shall also recognise that each State shall have the right to require aircraft to land at specified airports. However, the necessary element of compliance is introduced in Article 3 bis c) by the sentence "Every civil aircraft shall comply with an order given in pursuance of paragraph b) of the Article." The Convention makes a little diversion in Article 4, which states that each Contracting State "agrees" not to use civil aviation for any objectives that are contrary to the goals of the Convention. The word "agrees" in this context suggests a consensus among all States. It might be argued that the way the word is used gives a State a chance to break their agreement if doing so would make it difficult for them to do so.

Freedoms of the Air- Wikipedia, https://en.wikipedia.org/wiki/Freedoms_of_the_air

The Chicago Convention's self-imposed restriction that no scheduled international air service may be operated over or into the territory of a Contracting State except with special permission or other authorization of that State, and the fact that the air transport product cannot be "traded" liberally like other transport products5 and for that matter any other products, are the second and third reasons why FDI is prohibited in the air transport industry. It goes without saying that this clause has promoted protectionism and impeded the liberalisation of trade in the aviation industry, prohibiting carriers from obtaining access to markets where they could effectively meet consumer demand for air travel while offering them additional options.

Understanding How the Freedoms of the Air Impact International Route planning, https://www.kambr.com/articles/understanding-how-the-freedoms-of-the-air-impact-international-route-planning

Although States have used the phrases freely in their bilateral air services agreements, there is a perceived paradox in the necessity of substantial ownership and effective control because neither term has been legally defined in any contemporary air law instrument. They continue to serve as a conduit for State policy, which treats the two phrases as a "catch-all" defence against FDI and pays lip respect to them with monotonous regularity. This safeguard is designed to prevent national carriers from losing what they consider to be their "market share" of traffic to foreign airlines.

India has signed Bilateral Air Service Agreement with 116 countries, https://www.insightsonindia.com/2022/08/02/india-has-signed-bilateral-air-service-agreement-with-116-countries/

One might make the case that the issue with air travel has always been that it has been more concerned with state policy and national interests than with consumer rights. This strategy is strengthened by restrictions on FDI enforced by rigorous ownership and control policies. FDI encourages economic expansion and fosters competition. India's earlier slow growth was partly due to a mistrust of foreign investors and a relatively low degree of foreign investment by multinational corporations, as noted by Nobel Laureate and Professor of Economics at New York University Michael Spence. Data for China and India, for instance, show significant disparities.

Ruwantissa Abeyratne, Connectivity, Regulation of Air Transport, (2014)

Obviously, with more options available in India, this is changing. Commercially, there is no reason why this viewpoint shouldn't apply to air travel if it does to the industrial world as a whole. When Marco Polo visited China in the 1270s, he was astounded by the amount of traffic on the Yangzi, and Niall Ferguson, a

professor of business administration at Harvard University, makes an interesting comparison. Polo noted that the Yangzi appeared more like a sea than a river due to the amount of merchandise being transported up and down. Ferguson contends that in contrast to this, the Thames was a backwater in the early fourteenth century.

Ruwantissa Abeyratne, Aeronomics and Law: Fixing Anomalies (2012)

According to customary international law principles, no State is required to allow foreign investment in all or a portion of its territory. But if a State allows foreign investment, a number of legal norms apply, primarily to safeguard the investor under the minimum requirements expected of the host State. First, international legal rules protect a foreign investor's property. According to others, the degree of this protection is strongly correlated with the level of protections provided by the host state for the belongings of its own citizens. Foreign investment is typically conducted via treaty, which frequently imposes higher conditions on the host State than the bare minimum. By boosting foreign direct investments there, state. The investor must typically be established under the laws of the nation where they are registered, unless the parties to a foreign investment treaty or agreement agree otherwise a corporation, partnership, or business association that is incorporated by the laws in effect in the territory of any contracting party where the place of effective management is located is referred to as a foreign investor's company. investing regimes must establish their individual jurisdictions ratione materiae, which is one of the fundamental conditions of investing. In the case of a bank guarantee he issued for the performance of equipment on the grounds that the guarantee was a typical element of a sales contract, it has been held by courts that a claimant cannot assert jurisdiction based on an investment.

Ruwantissa Abeyratne, Competition Law in Air Transport, Competition and Investment in Air Transport (2016)

As a result, a Party to the Agreement is now responsible for the investments, investors, and financial institutions of other Parties as a result of NAFTA. According to Brownlie, accountability is now seen as a universal principle of international law, accompanying both substantive regulations and the presumption that acts and omissions may be classified as unlawful by reference to the laws defining rights and obligations. The occurrence and effects of criminal conduct, specifically the payment of compensation for losses incurred, are addressed under the law of responsibility.

The "umbrella clause," which can be found in many investment agreements to safeguard the investor's rights, is another strong defensive measure. The use of language like "each contracting party shall observe any obligation it may have entered into with regard to investments of nationals or companies of the other Contracting Party" ensures the investor of obligations to be kept by the host State and covers all obligations stated in the treaty.45 The Investment Protection Treaty between France and Hong Kong of 1995 contains additional helpful language.

The significance of FDI to developing States is a crucial aspect of its involvement in air transportation. There may be many barriers in the context of Africa, parts of Asia, and South America that could prevent the optimisation of host country policies unless external action is taken to maximise FDI and reduce costs. International civic society, the corporate social responsibility sector, foreign donors, and multilateral lenders are mentioned as important factors in this equation by one analyst.47 It is evident from the discussion above that FDI offers the investor significant protection as well as greater opportunities for the air transport industry to provide better and more efficient services to its customers. Regulators would need to adopt a completely different attitude and come to the astonishing realisation that since the Chicago Convention was signed in 1944, everything they thought they knew about the economics of air travel has been turned on its head in order to liberalise the constrictive national ownership and control practise. According to President Roosevelt of the United States' letter to the States that convened the Conference in November and December 1944 that resulted in the adoption of the Chicago Convention, the Conference's goal was to use the large number of surplus aircraft from the war to connect cities and nations and offer air services to people all over the world.

While acknowledging national interests, we wish to promote initiative and efficiency because these traits serve both national and global objectives. And so, we want to motivate the effective while also inspiring the less effective. We can only cut and eventually remove

subsidies, putting civil aviation on a sound financial foundation and incidentally very significantly alleviating the tax payer, by collective action along some of the lines as stated.

(Abeyratne, Commercial Space Travel: Security and other Implications 3)

They thrive best in an environment of unrestricted competition.11 The introduction of air services to meet the demands of the travelling public appears to have been encouraged by the United Kingdom in a balanced manner that did not adversely affect the rights of States to have a fair share of traffic for themselves. India went on to say that it was crucial for air services to develop logically and that a certain amount of air freedom was a State's inalienable right. We believe that the granting of commercial rights, or the right to carry traffic to and from another country is most effectively negotiated and agreed to through universal reciprocity than through bilateral agreements. We believe that only such a deal will guarantee all nations the reciprocal rights that their respective interests demand. However, in our judgement, the granting of any such liberties and rights must be coupled with the establishment of a body that will control their exercise. Such authority will have the responsibility of making sure that the interests of the people, in both the most powerful and the smaller countries, are protected.

Therefore, India's position has been to advocate for a liberal strategy of universal reciprocity within the confines of oversight by a body that could guarantee that the smaller countries were safeguarded from being engulfed by larger States. It is crucial to remember that the (Abeyratne, Commercial Space Travel: Security and other Implications 3) (Abeyratne, Commercial Space Travel: Security and other Implications 3)Chicago Convention's economic significance is entirely derived from its main theme—meeting the needs of the world's people for affordable air transport, while preventing waste due to unfair competition and giving all concerned States an equal opportunity to operate air transport.

If the air transport sector is to be acknowledged as a significant contributor to the global economy and trading system and supported accordingly, two things must be done. The first is to view air travel as a tool for trading rather than as a luxury. In the case of air travel, a liberalised trade system must be used. It is undeniable that the liberalisation of air travel is a permanent, global trend that has been going on since the 1980s. The most important aspect of air services agreements between States continues to be the fluctuation of global economic conditions and their impact on the role and national approaches to market access in the liberalisation process. Should a State choose to significantly change its posture towards opening the skies, these elements continue to be essential to meaningful regulatory liberalisation. States always have to decide whether to liberalise market access to some extent, which determines how open the market should be in terms of granting traffic rights, and how to liberalise, which determines whether it should be done at a national, bilateral, regional, plurilateral, or multilateral level and at what rate.

Those who incorrectly interpret Article 7, which deals with cabotage frequently believe that it forbids cabotage. Only the right to deny authorization for aircraft from Contracting States to carry cabotage traffic is stated in the Article's language. The key phrase is "shall have the right" which, in the context of other various distinct terms used in the Convention which designate States' duties, would logically establish in the minds of the reader a presumption of prohibition.

Article 10 of the Chicago Convention gives a State the authority to require an aircraft that flies over its territory to land for customs purposes. Article 15 of the Chicago Convention, among other things, stipulates that airports will be open for use by aircraft of contracting States and that no State shall charge aircraft for the use of such airports on the basis of discrimination. In accordance with the grantor State's customs laws, Article 24 permits the duty-free admittance of aircraft. The same provision allows fuel, lubricating oils, spare parts, regular equipment, and aircraft stores on board an aircraft that arrive in the territory of a State and retains the aforementioned items at the time of leaving that State's territory to be exempt from customs duty, inspection fees, or similar national or local duties or charges. The same clause also exempts from customs taxes spare parts and equipment brought into the territory of a contracting State for incorporation into or use on an aircraft of another State.

At its Second Session in Geneva in June 1948, the ICAO Assembly issued Resolution A2-16, calling for further action on a Multilateral Agreement on Commercial Rights and resolving that contracting

States research and take the aforementioned factors into consideration.28 Due to the contracting States' inability to come to a multilateral agreement on consistency in the allocation of air traffic rights, two accords that sought to bind States into recognising a modest common framework for commercial aviation arose. The first, known as the Transit or Two Freedoms Agreement, was signed by 32 countries and permitted their aircraft to land or fly over each other's territory for non-traffic purposes without requesting permission from the grantor state in question.

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In order to operate between the EU and the US from any point within the EU (which translates to a seventh freedom50 right in operating from a country other than the carrier's national territory) and to extend that service to points within the US (which is the eighth freedom51 right or consecutive cabotage), is what European carriers would like. Additionally, the EU carriers are vying for the ability to control and own US airlines, which would allow them to provide air services between US locations, known as "stand alone cabotage" or the ninth freedom52 in the context of air law. The European carriers are requesting the removal of US nationals' ownership of US carriers in order to get these rights so that they (the European carriers) can draw cash from global money markets and engage in mergers and acquisitions of foreign carriers. The European carriers would still be required to operate on the basis that they remain "Community carriers" by virtue of their European ownership since they must be owned in the majority by EU member states or their nationals.