The American Journal of Political Science Law and Criminology
(ISSN – 2693-0803)
VOLUME 04 ISSUE 10 Pages: 21-28
SJIF IMPACT FACTOR (2020: 5. 453) (2021: 5. 952) (2022: 6. 215)
OCLC – 1176274523 METADATA IF – 7.659
Publisher: The USA Journals

Journal Website: https://theamericanjournals.com/index.php/tajpslc

Research Article

LEGAL REGULATION (FORMATION AND DEVELOPMENT) OF GENERAL AVIATION ACTIVITIES

Submission Date: October 01, 2022, Accepted Date: October 05, 2022,
Published Date: October 25, 2022 |
Crossref doi: https://doi.org/10.37547/tajpslc/Volume04Issue10-03

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ABSTRACT

The article examines the historical process of formation and development of national and international legal regulation of aviation activities used for non-commercial purposes. The article identified current problems that existed on the way to the further development of general aviation, and proposed ways to solve them.

KEYWORDS

National and international legal regulation, Civil Aviation, Commercial Aviation, general aviation.

INTRODUCTION

The development of international law, in particular, its sphere as International Air law, arose and is happening mainly as a result of scientific and technological progress, under the influence of which aircraft were created, the use of which in the airspace gave rise to social relations that did not exist before [17. P . 87].

December 17, 1903 is recognized as a historical date when the century of aviation began. On the same day, The Wilbur brothers and Orville Wright (USA) made the first manned flight on a heavier-than-air vehicle. As you know, the formation of all civil aviation begins with the flight of general aviation aircraft. The first commercialpurpose flight was carried out in 1919 [6. P. 128].

The term of general aviation flight defines as "off-flight airship flight associated with the performance of commercial air transport or Aviation Special Operations" [10. P. 1–6].

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Until the twenties of the twentieth century, the flights of its aircraft were carried out mainly for sports and experimental purposes and had an episodic character. Describing this stage of Aviation Development, professor I.S. Peretersky states that: "the legislation of this period is not yet based on the necessary experimental material; the legislator acts blindly, often not very regulating existing social relations, but striving to predict the future" [8. P. 10].

In 1909, The Wright brothers formed a company engaged in aircraft production and pilot training. At the time, the licensing authority was the New York Flying Club; the US federal Government had not yet entered aviation as a regulatory body. By 1911, several other US manufacturers had built the aircraft on a professional basis. Aircraft construction has developed in other countries, including Russia. Realizing that the aircraft could soon play a major role in military affairs and other areas, the governments of Russia, Germany, England and the United States began to allocate funds for the development of aviation. The activities of inventors have become more active. England in 1908-1909 (D. Dann, S. Code, A. Ray, J. De Havilland) and in Germany (G. Grade, G. Dornier, K. Yato) aircraft began to be produced [13].

In Russia, the Aviation Department of the Imperial Russian technical society began work in 1881. The delay in the field of aviation was explained by the fact that the Russian government was focused on the creation of aeronautical aircraft such as balloons, airships, heat balloons [13]. In March 1910, the Moscow Society of ballonists was created, and the first group flight was carried out on private aircraft of the Petersburg-Moscow route, in July 1913 the first air parade was held in Krasnoe Selo, P. N. Nesterov created the world's first dead cycle and Ya.Men. Nagursky began the development of the Arctic on the Farman aircraft [13].

Under the influence of sensational messages from France about the achievements of pilots, the number of aviation enthusiasts in Russia has increased significantly. In 1909, the first aircraft created by amateurs appeared in Russia, but the imperfection of the engines did not allow amateur designers to lift their aircraft into the air.

The first successes of Russian aviation date back to 1910: on June 4, a professor at the Kiev Polytechnic Institute, Prince A.S. Kudashev flew several tens of meters in a biplane of his design, on June 16, a young Kiev aircraft designer I.I. Sikorsky first took his plane into the air, and three days later, the engineer Y.M. Gakkel did it in biplane. Soon in St. Petersburg, the first Russian Aviation Association plant be gan serial production of aircraft on a sample of French models — Farman-3 and Bleriot-11 [13].

Flying clubs from different countries also played an important role in this process, they developed their own internal rules for the organization and execution of flights. Flying these rules were strictly adhered by the pilots and maintenance personnel of the clubs.

At a certain stage, such technical regulation helped to ensure the safety of air traffic, since almost all aviators were members of flying clubs, and it was mandatory for them to comply with these rules. The governments of the states in every possible way sponsored this basic regulation of the air movement, which helped to sort out the new business [8. P. 11].

In the future, the development of international legal regulation of flights began to be influenced by established international, including aviation, associations and societies. The Institute of international law was the first to go on the path of developing air law at the doctrinal level. At the Brussels session of 1902, this institute was held by P. Fauchil and

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he discussed the regulation drawn up by on the legal regime of balloons. At the Paris session of the Institute in 1910, P. Foxel presented a new, very extensive draft of the International Convention on peace and wartime air traffic. At the Madrid session of 1911, the Institute considered this project and made a number of decisions that determined the basic principles of air law.

In 1909, the international aviation legal committee was established at the French Aeroclub. This committee established three international legal congresses (in Paris in 1911, Geneva in 1912, and Frankfurt-na-Main in 1913), which developed an Air code containing provisions on the most important issues of air traffic law.

The creativity of the national norm had a great influence on the development of the legal regulation of general aviation. Initially, the norms of National Air law regulated only the Prohibition of flights in certain regions, and the permission and other procedures for the use of airspace, including the simplest rules for the control and operation of aircraft. [P. 115].

The first state to develop a legal document regulating cross-border air traffic was France, where in 1909 an administrative order was issued for foreign air balloons entering French territory [5. P. 50].

This act is the first attempt to establish the procedure for crossing the state border of the sovereign state and the rules for the flight of foreign aircraft from the territory of this state [15. P. 25].

After France, Germany began this movement, where an order was issued in 1910 Prussia and 1911 Bavaria to ban the flight of foreign aircraft over parts of the territory ("forbidden zones") by the ministers of the interior of the specified States of Germany [5. P. 50].

In England, the first law in this area was called "Air Navigation Act" in 1911. This law, in particular, gave the military department the right to declare certain territories prohibited for foreign aircraft [15. P. 25].

At the beginning of Aeronautics, Russia's legal acts regulating aircraft flights also had a largely prohibitive nature. An example of Russian legislation, which formed the legal regime of the airspace by the state, is the law "on changing the current laws on treason by espionage", which was adopted in 1912. The law gave the ministers of the military and Navy the right to contaminate prohibited air zones [5 . P. 51].

Almost simultaneously, in 1912, the Council of Ministers of the Russian Empire issued a decree authorizing the minister of war to prohibit the flight of foreign aircraft from the western border in agreement with the minister of Foreign Affairs. On June 18, 1914, by order of the Russian government, all flights over the western border were prohibited [5. P. 51].

At the beginning of the 20th century, the idea of creating a clear system of norms of air law was formed, which could be fully implemented in the middle of the 20th century. [3]. In Russia, and then in the USSR, this was expressed in the adoption of the USSR air code in 1932 [12]. After the USSR air code of 1932, decree of the Central Executive Committee and the Council of people's commissars of the USSR of 08/07/1935 No. 14/1713 [9], decrees of the Presidium of the USSR Armed Forces of 12/26/1961, 05/11/1983 [9] and the air code of the USSR of 1935, 1961 and 1983 [14]. [P. 95].

As correctly noted in the scientific literature, the main disadvantage of the Soviet air codes adopted in 1932, 1935 and 1961 was the expansion of their influence only to commercial civil aviation. State Aviation and aviation activities, as well as other activities in the airspace (shooting, rocket launches, etc.), which are used to

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test research and design work, experimental work and aviation equipment, are not regulated by the laws of the USSR [7]. In this regard, to correct the current situation, in 1983, the USSR air code was adopted, the articles of which were determined to apply to all Aviation of the USSR.

Austria, The Netherlands, Switzerland, Sweden, Norway and Serbia also adopted internal regulations governing air traffic issues. At that time, there was no federal law on air travel transport in the United States. However, some individual states and cities with legislative autonomy filled this gap. Air transport laws were passed by the state of Connecticut on January 1, 1912, by the state of Massachusetts on May 13, 1913, and by the city of Kissimi (Florida) on July 17, 1908 [8. P. 12].

Professor V.E.Grabar believes that the first source of International Air law is the agreement between France and Germany on June 26, 1913 [15. P. 25]. This agreement made it possible to recognize the right of contracting states to dispose of the air space above their territory.

With the outbreak of World War I in 1914, several aircraft manufacturers that existed at the time began to compete in the military aircraft market, and pilots began to use these aircraft in combat operations. During the World War I (1914-1918), the activities of private aviation enterprises and their associations completely ceased. After the end of the first World War, a number of international treaties were concluded, in many of which one of the parties to the agreement was the state that signed the Charter of the league of Nations.

In 1919, at the Paris Peace Conference, the Convention on the regulation of Aeronautics (hereinafter referred to as the Paris Convention of 1919) was signed, which, according to experts, ate the first multilateral treaty that formed the basis of the entire international "law of air movement", in particular, the airspace regime and the one that regulated its implementation [18. P. 9].

According to A.I. Travnikov, the Paris Convention of 1919 could not regulate the commercial activities of civil aviation, since at the time of its adoption, the states practically did not carry out International Air Transport for payment or hiring of passengers, cargo or mail [18. P. 9]. In fact, practice shows that the delivery of cargo through the first International Air Line along with the transportation of commercial passengers began only on August 25, 1919 [6. P. 128]. The Paris Convention of 1919 was aimed entirely at regulating the private aviation sector, such as general aviation.

All this time, general aviation consisted of low-cost military aircraft, which were used by entrepreneurs for rent and participation in air exhibitions. By 1925, air accidents forced the use of such military aircraft to cease, and for rest, the fliers needed new and improved aircraft. In this regard, several new companies such as "Waco", "Travelair", "Laird" and "Cessna" began to produce aircraft for personal use.

During the Second World War (1939-1945), the production of general aviation aircraft ceased. A small number of these aircraft, which continued to be produced, were converted into military purpose training, reconnaissance aircraft and light military transport aircraft.

Although the US Department of Civil Aeronautics in 1944 predicted a sharp increase in the aviation industry, this forecast turned out to be erroneous. With

the end of the war, the "boom" in the production of military aircraft also ended. Although there was an

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opportunity for private customers to produce more aircraft, in 1945 airports srni in the United States, in general, was not enough.

Shortly before the end of World War II, on December 1944, an international conference on Civil Aviation was held in Chicago, as a result of which the International Convention on Civil Aviation (next to it is called the Chicago Convention of 1944) was formed. It is considered an international treaty in the area of air law, which is now in force, replacing the Paris Convention of 1919.

The Chicago Convention of 1944 plays the role of a unifying, regulatory fundament, on the basis of which regulatory legal acts are subsequently developed, modified and developed [2. P. 72].

The Chicago Convention of 1944 did not mention general aviation, so this type of Aviation remained outside the scope of international legal regulation. Only on December 2, 1968, standards and recommended practices for the use of general aviation aircraft were adopted, which were included in the 1944 Chicago Convention as Annex 6th "International general aviation".

ICAO standards and recommended practices are defined differently in specialized legal literature. For example, professor Y. A. Shibayeva compared them to "technical standards", professor A.S. Gaverdovsky - " technical regulations", professor V. Moravetsky - "directives", professor T. Buergenthal - " technical legislation", professor A. Manin uses the terms "regulations of ICAO" [15. P. 154]. In general, determining the legal status of international regulations, professor G.I. Tunkin stated that after recognition by these states they were legally binding unanimity for the states [19. P. 118]. In our opinion, this fully applies to the rules of international aviation [16. P. 36].

The general aviation industry produced 18,962 general aviation aircraft in the United States in 1978, and that same year this figure reached the top of the sleeve. After this recovery, the general aviation industry experienced a sharp decline. The period from 1980 to 1987 is characterized as a deeply depressed period for general aviation: the production of general aviation aircraft in the United States decreased by almost 90% [20. P. 52]. Such a sharp deterioration of the general aviation industry led to disastrous consequences: while aircraft production work in other aviation sectors of the United States decreased by 20,000, the number of jobs decreased by about 80,000.

While inflation and rising oil prices were one of the factors that led to this extraordinary recession, general aviation aircraft manufacturers were largely to blame for the increase in insurance costs arising from product liability claims. At that time, general aviation aircraft manufacturers could be sued, regardless of how long the aircraft served. In 1987, manufacturers such as "Cessna", "Beech" and "Piper" estimated their annual liability costs from $ 70,000 to $ 100,000 per aircraft.

The solution to this problem came to an end in the United States with the adoption of the general aviation Recovery Act of 1994, which set an 18-year limitation period for product quality, which paid off throughout the United States. Thus, steel manufacturers were able to defend against a huge number of unreasonable claims. It can be said that it brought a huge positive effect. In 2001, the U.S. Department of General Budget Control stated in its report that 25,000 jobs were restored in the field of general aviation aircraft re-production [20. P. 52]. Thus, the dying general aviation industry in the United States was brought back to life.

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The last decade of the existence of the USSR was marked by the rapid development of amateur aircraft construction. Following the general prohibitions, support for the construction of amateur aircraft within the framework of the scientific and technical creativity of young people-an action that covered the whole country during the perestroika period — caused an explosion comparable to the strong eruption of the sleeve of a long — sleeping volcano [11. P. 14]. In 1983, an instruction was issued by the commander-in-chief of the USSR Air Force allowing the flights of amateurmade aircraft. On December 17, 1988, with the active assistance of amateur pilots, amateur constructors, aviation enthusiasts and aviation constructors, engineers and test pilots of the USSR Ministry of Aviation, the "Russian Federation of aviation enthusiasts" was reached.

The regulatory framework governing the activities of general aviation has gradually developed in many countries. Every year, the number of private owners of civil aircraft and helicopters used for various non-commercial purposes is increasing [18. P. 6]. Currently, many countries have developed and are actively working on national laws and regulations governing the activities of general aviation. The most developed legislative base in this area was formed in the United States, as well as in the member states of the European Union. Russian legislation, although the development process has achieved certain success, lags behind Western law and there are many differences from it.

The problem is that at the international level there is a universal international treaty that regulates and takes into account the peculiarities of general aviation activity in yemas. The absence of uniform international norms leads to the emergence of countless legal barriers of national laws regulating the activities of general aviation in different ways. The variety of national approaches to the regulation of general aviation activities hinders international business and humanitarian cooperation and prevents the further development of this type of aviation in general [3. P. 32].

At present, such important issues as the introduction of general aviation aircraft into foreign airspace, the responsibility of general aviation aircraft owners (former owners) for damage to the Life, Health and property of persons on board such aircraft, and the threat of the use of general aviation aircraft remain outside the scope of international regulation for illegal purposes, including for terrorist purposes. The problem of the use of general aviation aircraft for terrorist purposes is especially relevant now.

Experts say that most of the crimes regulated by the Convention on the fight against illegal actions against International Civil Aviation (Beijing convention, 2010) can be carried out only with the help of a civilian aircraft specially equipped for these purposes, officially belonging to general aviation. One cannot disagree with the idea that exactly such aircraft can be described as "terrorist aircraft" [1. P. 57].

The solution to these problems appears in the creation of international legal norms that take into account the specifics of general aviation activities. The implementation of this idea can be carried out in several ways. The sleeve logical solution to the problem would be to change the Chicago Convention of 1944, but in practice such a solution, apparently, is not supported. Scientists argue that "ICAO and a number of aviation's leading countries, and primarily the United States, would be highly euthanized, albeit negatively, from the revision of the 1944 Chicago Convention" [17. P. 88]. Therefore, the way out is seen in the adoption of a new universal International Convention on general aviation, which regulates the

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above issues. It is advisable to transfer the basic standards and recommended practices related to general aviation to such a convention, making them mandatory for the states participating in the new convention. The development of such a convention should be carried out within the framework of ICAO with the active participation of international non-governmental organizations in the field of general aviation, in particular, the International Council of the Association of aircraft owners and pilots (IAOPA).

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