Table of Contents

» Old and New Disputes in Aerospace Law

This paper is part of the special issue on "Old and New Disputes in Aerospace Law" prepared by:

Prof. Yun Zhao
Faculty of Law, The University of Hong Kong
View profile

Dr. J. Górski
City University of Hong Kong
View profile

OLD AND NEW DISPUTES IN AEROSPACE LAW

International Aerospace Disputes As "Justiciable" Proxies For (Geo)Political Disputes

Anh Nguyen
Knoetzl Haugender Netal

Introduction

Will be added shortly, readers will be informed when the paper is available.

Malaysia-Singapore Dispute over Southern Johor Airspace: A Case Study

Ish Jain
Regius Legal LLP

Abstract

Air and Space Laws today play a significant role in International Law, making it all the more intriguing and important to explore the evolution of these laws over the years. This article aims to contextualise the incremental and turbulent changes that the laws governing Air and Space have undergone, offering a detailed case study on the Malaysia-Singapore dispute over southern Johor airspace that has seized global attention in recent times and has paved the way for further contemplation on international agreements and treaties. The article also focuses on the ripple effect that transpired in the ambit of world politics in the backdrop to this dispute and the role played by the Convention on International Civil Aviation in the context of the said dispute. The article concludes with certain suggestions that ICAO should adopt in order to act as an effective resolution of international disputes related to aviation.

Full article here

The Recognition of Taxes Under Article 15 of the Chicago Convention

Vito Di MEI
Institute of Air and Space Law, McGill University

Abstract

Although legal discussions relating to airport charges have been long overshadowed by the focuses on their symbiotic partner-airlines, they have raised many concerns with increasing importance.
Among others, a question stands out: if an airport tax is imposed on airlines for the pure entry into or departure from the airspace of a country without the provision of airport services, will this tax be recognised as 'fees, dues or other charges,' which are prohibited under the last sentence of Article 15 of the Chicago Convention? To answer this question, the first part of this article serves as an introduction. The second part adopts a doctrinal method to understand the conceptual relationship between a tax and a charge, and further explores the original purpose of Article 15. After that, the discussions of several relevant disputes help to answer the question from a practical perspective. In the fourth part, I explore the substantive reasons behind legal discussions, why a tax has always been taken seriously. The last part suggests that solutions should aim to reconcile the tension between the need for revenue from taxation and the user-friendly application of Article 15 if it is not feasible to achieve such strict application in practice.

This study stands for a voice for this underdeveloped but important topic. It also aims to shed light on Article 15 to resolve future disputes regarding the legitimacy of a tax imposed on airlines and passengers via airports.

Full article here
an empirical method by first presenting the empirical data, particularly leading cases from the Supreme People's Court to lower district courts. Then, it identifies patterns of application in China's courts and finally assesses critically the correct pathways for future application, especially against the backdrop of the post-Civil Code era.

State Aid to Airlines in Times of Pandemic in the European Union: Between Regression and Fair Competition?

Dr. Andrea Trimarchi
Institute of Air, Space and Cyber Law, University of Cologne

Abstract

Since the outbreak of COVID-19, most - if not all - EU airlines have faced immense financial difficulties due to the sharp fall in air travel demand. The EU responded to the pandemic and its financial implications by implementing a series of regulatory measures, which amend the common State aid EU legal regime. The paper intends to provide a dynamic snapshot of State aid to airlines in the European Union during such an unprecedented crisis.

This situation, in fact, has made it necessary for the Union to rethink the EU competition law regime and to provide a new temporary framework, which de facto allows governments to 'more freely' support their national air carriers. In this view, the paper identifies and discusses the characteristics and peculiarities of this extraordinary regime. With significant financial aid to national air carriers, however, there grows an evident asymmetry, which is both internal to the EU itself and external vis-à-vis third-country air carriers. In this respect, many complaints have been lodged with the European Commission by other EU airlines. The paper also investigates whether the current regime is suitable for settling such disputes and for ensuring that fair competition between airlines is maintained.

Isn’t it Time to Shift to Online Dispute Resolution (ODR) for Passenger Claims in Europe?

Delphine Defossez
Northumbria University

Abstract

The trend toward greater passengers' rights has resulted in new regulations being enacted in Canada and discussed in the US. Despite the enactment of solid frameworks, passengers worldwide are often facing difficulties to enforce their rights. In fact, any European passenger having faced delay or cancellation of flight knows that obtaining compensation under Regulation 261/2004 is not guaranteed. While all these problems are not new, the COVID-19 pandemic has highlighted the system's deficiencies, with numerous passengers complaining about their reimbursement (or the lack thereof).

These problems raise questions regarding more suitable manners for passengers to claim their compensation. Instead of filing a form on the
airlines’ website or contacting third parties such as CMCs, would online dispute resolution mechanisms (ODR) not be the solution?

**Full article here**

**Liability for Damage Caused by Space Objects**

Roman Zykov
http://www.arbitrations.ru/

**Abstract**

After the first rocket launches in the late 1950s, it became clear that space objects, both at launch and on return to the Earth, can pose a danger to people, the environment, and property. It is natural that with the expansion of the national space programs across the globe in the early 1960s increasing the number of rocket launches, cases of space objects falling onto Earth also became more frequent. The United Nations responded to the problem by adopting the Convention on International Liability for Damage Caused by Space Objects in 1963. The Convention was developed in a single paradigm in sync with other international treaties in the field of space activities and regulated the liability of states arising from activities related to outer space. Since its adoption, the Convention has been applied in several cases. However, only a handful of them has become public. This article discusses the contents of the Convention and the examples of its application to the disputes arising out of damage caused by space objects.

**Full article here**

**Determination of Fault-Liability for Damage Caused by Space Debris: Departing from Restrictive Liabilities for in-Orbit Collisions**

Ish Jain
Regius Legal LLP

**Abstract**

Under the 1972 Liability Convention (LIAB), fault-based liability for damage caused by space debris (debris) in in-orbit collisions depends on the damage caused to the space object(s) (based on inter-party liability under Art III or joint and severable liability under Art IV) by another space object, including persons and property on board therein, of one launching state to another. Accordingly, whether debris falls under the definition of space object and to which launching state the debris can be attributed is of prime importance. The 1974 Registration Convention (REG) mentions in its preamble a "mandatory system of registration [that ....] would assist in their (space objects’) identification." Registration is thus a means to identify a space object for liability purposes. Under Article VIII of the 1967 Outer Space Treaty (OST), the State of Registry retains jurisdiction and control over the space object. Firstly, under the REG, only a launching state can be a state of registry, and in the case of two launching states, those must choose one to be the state of registry.

The author argues that since the state of registry has jurisdiction and control over debris, only the state of registry would be bound by any domestic Space Debris Mitigation (SDM) measures implemented in the launching state, which is chosen to be the state of registry, thus restricting liability to the state of registry in in-orbit collisions. Secondly, the author argues that if the launching State violates its domestic SDM measures, even if non-governmental entities or government agencies fail to comply, and the launch and/or its operation is authorised nonetheless, liability can still be established. Thirdly, the author argues that fault under the LIAB should not be restricted to damage and its attribution to a launching state under the LIAB, but international law must be applied in its determination. Lastly, the author argues that customary international law may influence compliance with soft law. Soft law, in turn, may lead to indirect compliance with hard law international obligations. A note of caution, however: this is in no way suggestive that this accentuates compliance to international obligations.

The author intends to explore certain arm-twisting techniques to influence such compliance. Final compliance of hard law is always the prerogative of the State Party.

**Full article here**

Subscriptions - For subscription info (fees, single and multi user licences) visit our website.

Copyright & Disclaimer - © Copyright TDM 2021. Please visit our website at www.transnational-dispute-management.com for our terms & conditions notice.

About TDM (ISSN 1875-4120)
large number of law firms, academics and other professionals in the field of arbitration. A TDM subscription includes A) access to the journal; B) OGEMID membership; and C) the Legal & Regulatory database.

Unfamiliar with our OGEMID forum? Feel free to apply for a free trial membership via transnational-dispute-management.com/ogemid/

**TDM Published issues:**

**2021**
- TDM 5 (2021) - Old and New Disputes in Aerospace Law
- TDM 3 (2021) - Regular issue
- TDM 2 (2021) - The Impact of the COVID-19 Crisis on Challenges in International Transactions and International Dispute Resolution

**2020**
- TDM 7 (2020) - FDI Moot
- TDM 6 (2020) - State-Controlled Entities
- TDM 5 (2020) - The Interaction Between International Investment Law and Special Economic Zones (SEZs)
- TDM 4 (2020) - International Arbitration in Times of Economic Nationalism
- TDM 3 (2020) - The United States Mexico Canada Agreement (USMCA)
- TDM 2 (2020) - Regular issue
- TDM 1 (2020) - Post-soviet and Greater Eurasian Space

**2019**
- TDM 6 (2019) - FDI Moot 2019
- TDM 5 (2019) - Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)
- TDM 4 (2019) - African Extractive Sector (FDI)
- TDM 3 (2019) - Cybersecurity in International Arbitration
- TDM 2 (2019) - Judicial Measures and Investment Treaty Law

**2018**
- TDM 7 (2018) - Strategic Considerations in Energy Disputes
- TDM 6 (2018) - FDI Moot 2018
- TDM 5 (2018)
<table>
<thead>
<tr>
<th>Year</th>
<th>Issues</th>
</tr>
</thead>
</table>
| 2013 | TDM 6 (2013) - FDI Moot 2013  
TDM 5 (2013) - Art and Heritage Disputes in International and Comparative Law  
TDM 4 (2013) - Ten Years of Transnational Dispute Management  
TDM 3 (2013) - Corruption and Arbitration  
TDM 2 (2013) - EU, Investment Treaties, and Investment Treaty Arbitration - Current Developments and Challenges  
TDM 1 (2013) - Aligning Human Rights and Investment Protection |
| 2012 | TDM 7 (2012)  
TDM 6 (2012) - FDI Moot 2012  
TDM 5 (2012) - Legal Issues in Tobacco Control  
TDM 4 (2012) - CILS - 7th Biennial Symposium on International Arbitration and Dispute Resolution  
TDM 3 (2012)  
TDM 2 (2012) - FDI Moot 2011  
| 2011 | TDM 5 (2011) - Resolving International Business Disputes by ADR in Asia  
TDM 4 (2011) - Contingent Fees and Third Party Funding in Investment Arbitration Disputes  
TDM 3 (2011) - Intersections: Dissemblance or Convergence between International Trade and Investment Law  
TDM 2 (2011)  
TDM 1 (2011) |
| 2010 | TDM 4 (2010) - China  
TDM 3 (2010) - FDI Moot 2010  
TDM 2 (2010) - Guerrilla Tactics in International Arbitration & Litigation  
TDM 1 (2010) |
| 2009 | TDM 4 (2009) - Latin America  
TDM 3 (2009) - NAFTA - Fifteen Years Later. Experiences and Future  
TDM 2 (2009) - The Protection of Intellectual Property Rights through International Investments Agreements  
TDM 1 (2009) |
| 2008 | TDM 4 (2008) - Arbitrator Bias  
TDM 3 (2008) - Precedent in Investment Arbitration  
TDM 1 (2008) - UNCTAD Expert Meeting on Development Implications of International Investment Rule Making |
| 2007 | TDM 6 (2007) - Compensation and Damages in International Investment Arbitration  
TDM 5 (2007)  
TDM 2 (2007) - The Legacy and Lessons of Distressed and Failed Infrastructure Investments during the 1990s  
TDM 1 (2007) - Arbitration & Mediation |
TDM 4 (2006) - Alternative Dispute Resolution in Asia  
TDM 2 (2006)  
TDM 1 (2006) - Litigating Across Borders: Hot Topics and Recent Developments in Transnational Litigation |
| 2005 | TDM 5 (2005)  
TDM 4 (2005)  
TDM 3 (2005) - Relationship Between Local Courts and Investment Treaty Arbitration  
TDM 2 (2005) - Appeals and Challenges to Investment Treaty Awards  
TDM 1 (2005) |
TDM 3 (2004)  
TDM 2 (2004)  
TDM 1 (2004) |