

INTERNATIONAL NORMS ON EMERGENCY ASSISTANCE ON AIRCRAFT DISASTER

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INTRODUCTION

In any analysis of assistance and salvage in air law a sharp distinction is to be made between the period preceding the Second World War and the post-war era.¹ The concept of legal thinking and procedure before the war on assistance in aircraft disaster was based on private but gradually after the post war the subject is approached from public law, which means it has regarded as a governmental responsibility². There are two conventions which clearly reflects the approach in two convention on the subject matter for i.e. the convention for the unification of certain rules relating to assistance and salvage of aircraft, this conventions have been drawn up the by the a subcommittee of the comite international technique d'Experts juridiques Aeriens(commonly known as C.I.T.E.J.A)³. In this research the researcher will be dealing with the brief

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¹ Assistance and salvage An introduction to air law prof Dr.i.H.ph.diederiks-verschoor.p281

² Assistance and salvage An introduction to air law prof Dr.i.H.ph.diederiks-verschoor.p281

³ Salvage and Collisions of Aircraft—Draft Conventions <https://www.jstor.org/stable/pdf/753766.pdf?refreqid=excelsior%3Aa7a3e14763dd3116f169e6d6026cff72>

history on assistance and salvage, the Brussels convention, search and Rescue (Chicago convention Article 25 and Annex 12), ICAO Regional Air Navigation plan and rescue co-ordination, Analysis on The convention for the unification of certain Rules relating to the assistance and salvage of Air. Financial Aspects and concluding Remarks.

BRIEF HISTORY

An air accidents is of many circumstances either it can be natural, technical or a human mistake for an example mechanical breakdowns, negligence or terrorist attack. An aircraft accident is an unexpected and usually a catastrophic event⁴. Before the outbreak of the 2nd world war salvage and assistance used to be the within the concept of private law, before the war, the legal thinking and procedure used to be concept of the private law but after the 2nd world there was shift of concepts into public law which means it became the responsibility of the state therefore while analysis and distinction is to be made between proceeding of second world war and the post-war era, the difference in approach clearly reflected in the subject matters i.e. the convention for the unification of certain rules relating to Assistance and salvage of aircraft or by aircraft at sea concluded at Brussels and the Chicago convention of 1944⁵, even thou Brussels convention was not come into effective it would have not been the 1st convention because during 1919 in Paris convention the was one article a follows “ le sauvetage des appereils perdus en mer sera regle, sauf conventions contaires, par les principes du droit maritime⁶”. In the draft only assistance and salvage operation at sea were contemplated by the Brussel convention, it also prepared a similar

⁴ SECTION II. ICAO POLICY https://www.icao.int/Meetings/a38/Documents/DOC9998_en.pdf

⁵ An introduction to air law (diedriks- verschoor) 2006 eight revised edition chapter 10 assistance and salvage.

⁶ Art of the paris convention in English with regard to the salvage of aircraft wrecked at sea the principles of maritime law apply, in the absence of any agreement to the contrary' (Shawcross and Beaumont, Air law)

operations on land during the preliminary draft but it never went beyond the drafting stage⁷.

REASONS WHY BRUSSEL CONVENTION DID NOT COME INTO EFFECT

- (1) The outbreak of the second world war and
- (2) Scores of objections from the maritime circles⁸

A new legal basis came into force after the 2nd world war that is the Chicago convention 1944, while the technical regulations in considerable detail were added in Annex 12 to the convention, which elaborates Article 25 and bears the title of “search and rescue⁹”

THE BRUSSEL CONVENTION

There are certain reasons behind why Brussels convention did not ratified and could not come into operative yet there are important fundamental principles worth analysing which was laid down in the convention, the first important point is the obligation for both the aircraft commanders and ship’s captain duty to render assistance to person at sea in danger or being lost¹⁰. One must be very careful in commenting to this matter and should not be overlooked beyond that (a) conditions under which aircraft operate differ significantly from those affecting ships (b) obligation to render assistance is much more tougher to achieve in case of an aircraft commander than of ship captain, however the condition of both the commander burden has reduced the obligation to the a more

⁷ See [1938] JAL 603-606 ‘second preliminary draft of convention for the unification of certain rules relative to assistance of aircraft or by aircraft at land’.

⁸ An introduction to air law (diedriks- verschoor) 2006 eight revised edition chapter 10 assistance and salvage.

⁹ An introduction to air law (diedriks- verschoor) 2006 eight revised edition chapter 10 assistance and salvage.

¹⁰ An introduction to Air law chapter 10 assistance and salvage

acceptable proportions therefore there are four points which does not apply in the following cases when both the aircraft or ships is the course of trip or ready to depart, in case not a reasonable possible way to render useful aid, when commander has a knowledge that assistance is render by others, in case there is serious danger of the aircraft or ships or passengers or other persons in rendering assistance¹¹. The obligations and the penalties are left within the domestic legislation on which the aircraft or ships are registered. There was also a plan for rendering assistance on dangerous zone such as deserts and Arctic in the preliminary draft yet it was not successful due to reason to avoid the complications of a multiplicity of means of transport¹², therefore there was realisation and importance and the need of international rules on assistance and salvage following essentials consideration reason such as the very existence gives moral support to the passenger, more advantage to the airlines companies to asses more accurately their financial obligation and insure themselves against loses another reason is the modern development in aviation which made more desirous of introduction of certain rules and norms of assistance to aircraft disaster¹³.

CHICAGO CONVENTION

Assistance and salvage where private law was in existence the duties was with the local authorities there was no permanent service it was purely on the basis of incidental basis, the idea of setting up a permanent service was discuss on several occasion during the meeting of “CITEJA¹⁴” and it was often suggested such organisation is solely responsible of the state.

¹¹ An introduction to Air law chapter 10 assistance and salvage

¹² An introduction to Air law chapter 10 assistance and salvage

¹³ An introduction to Air law chapter 10 assistance and salvage

¹⁴ https://www.icao.int/secretariat/PostalHistory/the_first_years_of_the_legal_committee.htm

An organisation was set up “search and Rescue” by the Britain for the purpose of military rescue during the second world war, secondly an organisation called “Repair and Salvage Service” was responsible for locating and repairing aircraft, the United States and Canada set up a similar service after the war “Search and Rescue service” was retained and assistance and salvage become the responsibility¹⁵.

Article 25 of the Chicago states “aircraft in distress” read as follows;

“Each contracting state undertakes to provide such measures of assistance to aircraft in distress in its territory as it may find practicable, and to permit, subject to control by its own authorities, the owner of the aircraft or authorities of state in which the aircraft is registered to provide such measures of assistance as may be necessitated by the circumstances, Each contracting state, when undertaking search for missing aircraft will collaborate in coordination measures which may be recommended from time to time pursuant to this convention¹⁶”. The scope of article 25 is limited within its own territory therefore another new annex 12 of Chicago convention came into existence in order to make it clear and applicable almost the entire world on both land and sea on assistance of aircraft disaster. In chapter 3 of annex 12 contains SARPS for co operation between the states to help and lend assistance beyond the national borders or neighbouring States (territories or Sea) but it fails to specify precisely how far the obligation reaches.

ICAO Regional Air Navigation : ICAO Regional Air navigation Agreements came into existence in order to solve the problem arising in

¹⁵ An introduction to Air law chapter 10 assistance and salvage

¹⁶ Chicago convention 1944

connection precision are settled¹⁷ the recent development and responsible in search and rescue is published in ICAO Regional Air Navigation plans, Rescue co-ordination centres have established, each of which co-ordinates the operations in a specific area¹⁸, the functioning of the of the rescue coordination are categorised in three emergency phases ; phase of distress in case when the concerning news of an aircraft is being awaited, phase of alert, state of readiness and alerted of action, the phase of distress, to appeal for help to other in situation in rescuing in mountains and sea or ocean by the mountain rescue team and lifeboat services¹⁹. We can find certain obligation in Annex 12, the legal obligation to lend assistance applies only when the commander personally observes that an aircraft or vessel is in distress, but according to matte kamminga²⁰, the duty to render assistance does not exist in case if the commander does not seen the accident is total failure of Annex 12, Kamminga rightly pointed out to maintains that this is serious flaws in the system which greatly reduce its effectiveness, all the more so as modern aircraft fly at such a high altitude that personnel sighting is nearly always a matter of chance or luck²¹ to conclude the review of the Annex 12 the incorporation in the domestic legislation must emphasised that its provisions are effectives.

FINANCIAL ASPECTS

The problem arising out of the financial aspect is the roles of the private entities and the state government, In case if the assistance is

¹⁷ An introduction to Air Law chapter 10 assistance and salvage(search and rescue Chicago convention article 25 and Annex 12)

¹⁸ An introduction to Air Law chapter 10 assistance and salvage(search and rescue Chicago convention article 25 and Annex 12)

¹⁹ An introduction to Air Law chapter 10 assistance and salvage(search and rescue Chicago convention article 25 and Annex 12)

²⁰ M,s kamminga, the Aircraft commander in commercial Air transportation(1953) p.73
Nicolas m.Matte, the international legal status of the Aircraft commander(1975) p.86

²¹ An introduction to Air law chapter 10 assistance and salvage

render by the private entities the expenditure become so costly for operation and it is difficult when to called off, but in case state rendering assistance the expense are met by the state so it would be reasonable to leave the decision to the state of question, but in case the state gave the responsibility to the private entities the state should pay all the expenses that the private entities has render assistance in aircraft in distress²²

ANNEXURE 12 OF THE CHICAGO CONVENTION (SEARCH AND RESCUE)

In the year December 1946 during the second session on the search and rescue division has laid down the recommendation for standards recommended practises for search and rescue. These was developed by the secretariat and the then existent Air Navigation committee, duly submitted to the council but the proposal was not accepted due to the form in which they have presented and then On 20 April 1948 it was referred back to the Air Navigation committee for further consideration²³. Another draft Annex was then develop in the light of experience gained at Regional Air Navigation meetings and eventually was approved in principle by the Air Navigation commission and circulated to the states for further suggestion and comments, therefore further development and changes were made by the Air navigation commission as result of states “comments and the resulting proposal were adopted by the council on 25 may 1950 and designated as Annex 12 to the convention on international civil Aviation and thus the Annex became effective on 1 December 1950 and came into force on 1 March 1951²⁴. The SARP is a document to govern the application of the regional supplementary procedure search and rescue contained in Doc 7030, ICAO Annex 12 sets forth the provision applicable to the

²² Financial aspects An introduction to Air law.

²³ Annex 12 to the convention on civil aviation Search and Rescue p.(V)

²⁴ https://www.icao.int/secretariat/PostalHistory/annex_12_search_and_rescue.htm

establishment, maintenance and operation of search and Rescue service by contracting states in their territories and the high sea and to the coordination of such services between states²⁵ but the researcher will be dealing with certain provision of this Annex such as “cooperation of the state”.

COOPERATION BETWEEN STATES

“Contracting states²⁶” shall coordinate their search and rescue organisation with those of neighbouring states it also says to cooperate and facilitate coordination whenever necessary, it is also necessary to make plans and procedure in case there is an accident between the adjacent regions. Subject to such condition as may be prescribed by its own authorities, contracting state shall permit immediate entry into its territory of search and rescue units of other states for the purpose of searching for the site of aircraft accidents and rescuing survivors of such accidents, in case for entering to other territory by the contracting states for rescue purpose it shall transmit a request with full details of the mission and need for it to the rescue coordination centre of the state concerned or to such other authority as has been designated by the state²⁷. Duties of the authorities of contracting states shall, immediately acknowledge the receipt of such a request and also indicate the conditions, if any under which the mission may be undertaken²⁸, it also recommended to enter into agreement between the parties to strengthen the mission, to minimise the conditions in their respective territories, and to provide expediting entry of such units with the least possible formalities, it also recommends to make arrangement for joint operation

²⁵ Annex 12 to the convention on civil aviation Search and Rescue p.(V)

²⁶ Refers to the parties of ICAO

²⁷ Annex 12 to the convention on civil aviation Search and Rescue (cooperation between states).

²⁸ Annex 12 to the convention on civil aviation Search and Rescue(duties of the contracting states)

in order to promote search and rescue efficiency, to make arrangement for periodic liaison visit by personnel of their rescue coordination centres and sub centres to the centres of neighbouring states ²⁹.

COOPERATION WITH OTHER SERVICES

It is the duty of the contracting state to arrange all necessary needs like aircraft, vessels and local service and facilities which are not a part of the mission and also recommended to co operate to the full extend to the later stage of the mission, it should also ensure the closest practicable coordination between the relevant aeronautical and maritime authorities to provide for the most effective and efficient mission³⁰, it is also the responsible for the investigation accidents and with those responsible for the care of those who suffered from the accident.

DISSEMINATION OF INFORMATION

The contracting state shall publish and dissemination all information necessary for the entry of search and rescue of other states into its territory or make an alternative arrangement in the mission to include a service for the information of search and rescue, it is necessary for the contracting state as well as the public to know the plans of the operation mission³¹.

CIVIL AVIATION ACCIDENT EMERGENCY PLAN AT NATIONAL LEVEL

The establishment of civil aviation accident emergency plans at national level workshop was held by the European commission; under relatives pursuant to article 21 of EU regulation the plans are covered

²⁹ Annex 12 to the convention on civil aviation Search and Rescue p.3-1

³⁰ Annex 12 of ICAO co operation with other service.

³¹ Annex 12 of ICAO co operation with other service.

assistance to the victims of civil aviation accidents and incidents. Phillip CORNELIS, head of the aviation safety unit opened the workshop with the importance of the implementation of national emergency plans in case of civil aviation, he highlighted certain importance topic such as preparation and prevention of aircraft disaster, he also emphasis on Article 24 of EU which states the review of regulation³². Susana ESPANA (DGCA Spain), advisor to the Director General of civil aviation presented the recent development of the international framework, pre existing framework and the recent national developments and explain how it works on aviation assistance for victims and their families in Spain , the experience of the span air accident(flight jk5022) made a realisation to build a regulatory and procedural system for the victims and families³³, Francis FAVRE, Head of regulatory and international affairs department at Air France, His presentation introduced the Air France management of an event such as the accident of flight AF447 , he highlighted an overview of the crisis mechanism of his airline, a number of difficulties and hardship in the consolidation of the passenger list, and also described the support of the families and the loved ones and explained the relations with other state including the state³⁴, Martine DEL BONO head of the public affairs introduced the recent ICAO's publication(doc 9998-first edition 2013) entitled Aircraft Accidents victims and their families, that is in line with EU provisions covering the assistance to victims of air accident and their relatives, after Air France flight 447's accident, the BEA'S safety investigation took into account these new provisions, it pointed out firstly the necessity of acquiring in a timely fashion, to the contact information of the victims, right to be informed to the victims' families, another problem which often the

³² <https://ec.europa.eu/transport/sites/transport/files/modes/air/events/doc/2014-01-31-workshop/summary.pdf>

³³ <https://ec.europa.eu/transport/sites/transport/files/modes/air/events/doc/2014-01-31-workshop/summary.pdf>

³⁴ <https://ec.europa.eu/transport/sites/transport/files/modes/air/events/doc/2014-01-31-workshop/summary.pdf>

families gets confused is the principles of safety investigation and judicial inquiry and the different rights given to the victims' families at each particular steps³⁵.

AIR SAFETY CIRCULAR NO.2 OF 1998(CONTINGENCY PLANS TO DEAL WITH AIRCRAFT ACCIDENTS IN INDIA)

Responsibility of aircraft accident investigation to accident within India territory and its territorial water lies within the Air safety directorate of DGCA and for accidents beyond Indian Territory state of registry of the aircraft or the country of occurrence is responsible. The various procedures should spell out the duties and responsibility and actions to be deal by NAA, IAAI, Aircraft operator DGCA.³⁶

ICAO POLICY ON ASSISTANCE TO AIRCRAFT ACCIDENT VICTIMS AND THEIR FAMILIES.

ICAO policy on aircraft disaster deals with different aspect of chapter such as state readiness, family assistance plan, and timeliness of family assistance, Family assistance providers, there are two key role actors responsible to act during such distress the Government and the Non government. But the researcher will be dealing with state readiness and role of Government and nongovernmental organisation. ICAO on its 32nd session Assembly acknowledge to ensure assistance on mental, physical and spiritual well being of victims involved in civil aviation and their families, Assembly Resolution A32-7 discuss on three points called on contracting states to reaffirm their commitment to support aviation accident victims and their families, it also urged to be cooperation with ICAO and other states and develop material citing for the establishment

³⁵ <https://ec.europa.eu/transport/sites/transport/files/modes/air/events/doc/2014-01-31-workshop/summary.pdf>

³⁶ http://dgca.nic.in/circular/asc2_2013.pdf

of regulators and programmes³⁷. The provision in general section in family assistance requires the commitment of resources in several areas including³⁸ , information about the occurrence, emergency response to the accident, coordination to travel to and lodging at a family assistance center including assistance who are not travelling, assistance and coordination of a visit to the accident site where access is practicable, also immediate support of financial needs, information and status of the victims including recovery and identification and progress of the investigation and its investigation lastly support of psychological, social and emotional³⁹

ICAO POLICY ON STATE READINESS

National Legislation, regulation or policies may require for family assistance to ensure necessary resources and commitment and effective coordination to provide assistance are available at short notice⁴⁰, thus the council recommends that states; Ensure adequate and sufficient assistance, plans for family assistance; recipients of family assistance and types of family assistance needed, provide necessary financial support, personnel and equipment resources at the short notice and to establish legislation, regulation and policies must required effective implement coordination⁴¹. It also requires air operators to implement plans to ensure the plans are exercised regularly, supervised and audited as necessary and require implementing Airport emergency plans and to have proper arrangements with airports in which they operate, it also recommends to

³⁷ https://www.icao.int/Meetings/a38/Documents/DOC9998_en.pdf

³⁸ https://www.icao.int/Meetings/a38/Documents/DOC9998_en.pdf

³⁹ https://www.icao.int/Meetings/a38/Documents/DOC9998_en.pdf

⁴⁰ https://www.icao.int/Meetings/a38/Documents/DOC9998_en.pdf

⁴¹ State readiness https://www.icao.int/Meetings/a38/Documents/DOC9998_en.pdf

ensure that these plans are exercised regularly, supervised and audited as necessary⁴².

ROLE OF THE GOVERNMENT AND NON GOVERNMENTAL ORGANISATION

The Government

State of occurrence; The Standards and Recommended Practices (SARPs) regarding facilitation-related matters for family assistance is specified in “ICAO Annex 9, Chapter 8, Section I, Assistance to aircraft accident victims and their families”⁴³. Section I specifies the State of Occurrence as being responsible for these SARPs. Other States involved in the occurrence may also share these responsibilities⁴⁴. In case if the location cannot be identified or established of being in any territory it is the responsible of the state registry to provide family assistance and if it is international water state nearest will provide assistance. Aircraft accident investigation authority the sole objectives is defined in “ANNEX 13⁴⁵” is the prevention of accidents and incidents, not for the sharing of blame or liability and is separated from the provision of family assistance, however it is the duty of the accident investigation to provide all necessary or provide information timely and validated information⁴⁶. Civil Aviation Authority is usually responsible for the regulation, certification and oversight of aviation industry⁴⁷.

⁴² ICAO POLICY SECTION 2.3(d,e,f,g) https://www.icao.int/Meetings/a38/Documents/DOC9998_en.pdf

⁴³ https://www.icao.int/Meetings/mrtd-madrid-2014/Documents/7_Slavenas-Annex-9.pdf

⁴⁴ ICAO policy state of occurrence Government https://www.icao.int/Meetings/a38/Documents/DOC9998_en.pdf

⁴⁵ http://www.emsa.europa.eu/retro/Docs/marine_casualties/annex_13.pdf

⁴⁶ https://www.icao.int/Meetings/a38/Documents/DOC9998_en.pdf

⁴⁷ ICAO Policy on Assistance to Aircraft Accident Victims and their Families II-4

Non- government organisation

There are four major actors in the nongovernmental organisation they are Air operator, Airport operator, third parties and the family association each individual actors plays a vital role in providing assistance to the aircraft accident. It is the duty of the Airport operator to make an accurate list and maintain a list of the passenger for identification; it is also the duty to notify to the families about the occurrence of disaster, further the council recommends the states to ensure the air operators to reviewed the family assistance plans and update regularly and to provide effective assistance to the victims and the victims family⁴⁸. Airport operators are the 1st hand information to provide to the families where the victims' families often gather to receive information it is the duty of the airport operator to immediately provide care and support following an accident⁴⁹. Aid agencies, speciality commercial companies are the two third parties mentioned in the policy, Aid agencies plays a role in crisis counselling and support for the families of accident, where as Specialty commercial companies renders duties in handling calls from family members, providing on-scene family assistance coordination and managing identification and return of personal effects⁵⁰, Family associations can offer unique first-hand experience and insight regarding the provision of family assistance and can serve interlocutors on certain family issue⁵¹

⁴⁸ Non-government organizations https://www.icao.int/Meetings/a38/Documents/DOC9998_en.pdf

⁴⁹ Airport operator https://www.icao.int/Meetings/a38/Documents/DOC9998_en.pdf

⁵⁰ Third parties https://www.icao.int/Meetings/a38/Documents/DOC9998_en.pdf

⁵¹ Section II. ICAO Policy II-5 Family associations https://www.icao.int/Meetings/a38/Documents/DOC9998_en.pdf

INTERVENTION AND RESUE MEASURES UNDER (INTERNATIONAL CIVIL DEFENCE) (IN AIRCRAFT DISASTERS)

The control of all accidents in the first instance it is the responsibility of the commander (chief) and personnel of the affected means of transport, it is the duty of the passenger to be cooperative and must obey with the directive and behave as instructed and regulation ordered by the commander. Assistance in aircraft disaster operation are concerned, the means or system of transport involved and the area (country) where it occurs will determine who is the person in charge at the disaster site⁵². The two principles of intervention are in case of disaster with the range of an airport (5km) it is the responsibility of the airport authorities since the air traffic control is the responsibility of the airport in question and the control tower is in charge of warning the security and intervention service and if the incident occurs outside the area of control of airport authorities, the political authorities of the affected area will be in charge of the deployment of local intervention teams (police, fire brigade, civil protection, health service etc), control of rescue if necessary will be taken by the higher authority with the collaboration of the experts from the aviation and the judiciary and representatives of the transport company involved⁵³.

CONCLUSION AND SUGGESTION

Before the 2nd world where salvage and assistance was the legal concept of private law where it based on the incidental basis with the outbreak of 2nd world the concept was totally change the legal basis became the responsibility of the public law which means states responsibility, even thou Brussels convention could not be effective it

⁵² <http://www.icdo.org/en/disasters/man-made-disasters/transport-accidents/air/>(last visited 18/3/18)

⁵³ <http://www.icdo.org/en/disasters/man-made-disasters/transport-accidents/air/>

gives us the idea and importance of certain fundamental principles example obligation of the commander of the both, after the 2nd world a new era of legal basis turned up which is known as Chicago convention 1944 under article 25 it new concept was emerged with all technical branches and organisation was formed new annex policy was ratified for e.g. the air navigational plans , rescue co ordination and Annex 12, certain policy to help or render assistance to the victims family was also implemented such as ICAO Policy on assistance to aircraft accidents and families. The European nations has started to give importance by organisation such event regarding on civil Aviation accident emergency plan at national level, since from the private law the modification of certain loopholes has been developing till today, the private law which was effective became effective by making into public law where made a new legal basis the Chicago convention article 25 where it states only assistance to its territory has a little scope so annex 12 has formed to extend the scope of assistance beyond its jurisdiction, but again there was a problem in locating the exact precise area of accident so ICAO set up regional navigational plans as well as set up rescue coordination therefore immense changes which boost the moral support to the passenger of the aviation industry.

Some important suggestion the researcher needed pointed out are made a stringent law as law of the sea in the salvage and assistance, it is the duty of every responsible and morally to assist other state with good faith in case of assistance of aircraft, the use of other state territory must used in good faith and not for no other purpose. The state must allowed permission to let other state enter to its own territory during the Aircraft disaster.