

Session of Brussels – 1963

Conflicts of Laws in the Law of the Air

(Twenty-seventh Commission, Rapporteur : Mr Alexandre Makarov)

(The French text is authoritative. The English text is a translation.)

The Institute of International Law,

Recalls its earlier Resolutions relating to the problems of the Law of the Air, in particular the Resolution on the legal status of aircraft (Madrid, Session of 1911), the Resolution on international aerial navigation (Lausanne, Session of 1927) and the Draft Convention governing criminal jurisdiction in case of crimes committed on board private aircraft (Luxembourg, Session of 1937) ;

Restricts the object of the present Resolution to conflicts of laws in matters of private air law, without ignoring the importance of settling questions of jurisdiction ;

Postpones consideration of any problems that may be raised by the case of aircraft that might have an international character ;

Considers that, insofar as the ideal of adopting a uniform law of the air cannot be attained, it is opportune to adopt uniform laws of conflict in this matter ;

Taking as a starting point the principle that general rules of conflicts of laws should be applied in this special field insofar as the nature of aviation itself and the nature of aerial transport do not require the creation of special rules of conflict ;

Adopts the following Resolution :

Section 1

For the purpose of the following sections, the national law of the aircraft shall be that of the State in the registers of which the aircraft has been entered.

Nevertheless, save as regards the rights *in rem* covered by section 2, the national law of an aircraft chartered without crew by an operator who is the subject of a State other than the State of registration of the aircraft, shall, for the period of the Charter, be that of the State of which the Charterer is a subject.

Section 2

Rights *in rem* and private law claims in respect of an aircraft shall be governed by the law of the nationality of the aircraft.

Nevertheless creditors entitled to sums due for rescue of the aircraft and to special expenses essential for the maintenance of the aircraft may claim the preferences and the order of priority recognised to them by the law of the State where rescue or maintenance operations have been terminated.

A change of nationality of the aircraft shall not affect rights already acquired.

Section 3

The hiring and affreightment of aircraft shall be regulated by the law to which the parties have indicated their intention to submit them.

If the parties have not indicated their intention in this matter, the chartering and affreightment shall be subject to the national law of the aircraft.

Section 4

The contract of employment of the crew of an aircraft shall be governed by the law to which the parties have indicated their intention to submit it.

If the parties have not indicated their intention in this matter, the contract shall be governed by the national law of the aircraft.

Section 5

The contract of carriage of passengers and goods shall be governed by the law to which the parties have indicated their intention to submit it.

When the parties have not settled the law applicable, the contract shall be governed by the law of the principal place of business of the carrier.

Section 6

In case of an aerial collision which occurs in an area subject to State sovereignty, the law of the place where the collision has occurred shall apply.

In case of an aerial collision which has occurred in a place not subject to State sovereignty, the national law of the aircraft, if it is common to both parties, shall apply. In the absence of such a law, the law of the court seized shall apply.

Article 7

Obligations arising from any assistance or rescue carried out between aircrafts in areas subject to a single State sovereignty shall be governed by the law of the place where it has been rendered.

When assistance or salvage has been effected in an area not subject to State sovereignty, the national law of the assisted aircraft shall apply.

Section 8

Damage caused by aircraft to third parties on the ground shall be governed by the law of the place where it has been caused.

If damage has been caused in an area not subject to State sovereignty, the national law of the aircraft shall apply.

Section 9

If a legal act has taken place or a fact giving rise to legal liability has occurred on board of an aircraft in flight in an area not subject to State sovereignty, or whenever it is not possible to determine the territory over which the flight has taken place at the time of the act or fact giving rise to legal liability, the national law of the aircraft is substituted for the law of the place where such act or fact has occurred.

If the act covered by the preceding paragraph relates to goods situated on board an aircraft, the national law of the aircraft shall be substituted for the law of the situation of the goods.

*

(11 September 1963)