

**CENTRE FOR INTERNATIONAL LEGAL STUDIES
SCHOOL OF INTERNATIONAL STUDIES
JAWAHARLAL NEHRU UNIVERSITY**

Programme : Ph.D.
Course Number : DI 633
Course Title : International Air and Space Law
Course Type : Optional
Course Teacher : Dr. Fazil Jamal
Credits : 2
Contact Hours : 2 hours per week
Semester : Winter

COURSE OUTLINE

The rules of international law undergird the phenomenal growth and expansion of transnational air transportation in recent decades. Likewise, a plethora of multilateral conventions provide the framework for outer space exploration activities by States and non-State actors in our times. The Course seeks to familiarise the student with the principles and rules of international law that affect the uses of air space and outer space. The Course will introduce the student to contemporary space exploration activities against the overarching framework of the UN Space Law Treaties and Principles. It will examine the ways in which international law addresses evolving challenges in the fields of aviation and outer space: national sovereignty and jurisdiction in the air; freedoms of the air; nationality and registration of airlines; safety and security of civil aviation; carriage of passengers and goods by air; consumer protection and business liability; registration of space objects and State liability, dispute settlement, etc. A main focus of the Course is to review and appreciate India's domestic law and state practice in relation to evolving air and space law questions.

Learning Outcomes

A student undertaking the Course will be able to understand the role of international law and institutional frameworks in shaping international civil aviation and space exploration activities today. S/he will be able to trace the normative origins and institutional contours of international air law and evaluate its functional effectiveness against the backdrop of evolving challenges. S/he will also be able to appreciate the normative elements and institutional structures that undergird international space law, especially the UN Space

Treaties and assess their functions and processes. A student will also familiarise with the international law-making and national law-adjudication processes involved in the reception of international air and space law in a national context, especially with reference to the regulatory framework and State practice of India.

Evaluation Methods

Grading: 100 marks for Grade to be given after evaluation

- End-Semester Examination (60 marks)
- Term Paper (20 marks)
- Book Review/ Case Review (10 marks)
- Class Participation (10 marks)

Course Content

I. Freedom of Air and Sovereignty over Air Space

Definition of Air law- Nature, scope and source- Development of Air Law- Paris Convention 1910, Paris Convention 1919, Madrid Convention 1926, Havana Convention 1928, Warsaw Convention 1929; Chicago Convention, International Air Transit Agreement, and International Air Transport Agreement, 1944; membership and organs of ICAO; Legislative, administrative and judicial functions- Economic and technical regulations.

Bilateralism vs. Multilateralism- Concept of bilateralism- Views on multilateralism-Merits and demerits- Regionalism in civil aviation- Bilateral Air Service Agreements- Bermuda Agreement 1946 (I)- Bermuda Agreement 1977 (II) Deregulation of Air Transportation- Trade in Air Services -Commercial Practices in Air Transport-changing contours of national ownership and effective control of airlines.

II. Liability of the Carrier towards Passengers and Third Parties

Consumer protection in civil aviation- Rights and Privileges of air passengers- Liability for death, injury and delay- Global trends- Indian law; Liability in international civil aviation- Manufacturers, operators, operators' agents and maintenance contractors-Third party liability for surface damage- Warsaw Convention, 1929 -Hague Protocol 1955 Montreal Interim Agreement, 1966 – Guatemala City Protocol, 1971 -Montreal Protocols, 1, II, III, and IV, 1975 -Modernization of Warsaw System: Montreal Convention 1999- Liability of the Carrier towards Third Parties- Rome Convention 1933 -Rome Convention 1955.

III. Safety and Security in International Aviation

The concept- Aviation terrorism-International norms: conventions, protocols and regulations- The Tokyo Convention 1963- The Hague Convention 1970 – The Montreal Convention on the Suppression of Unlawful Acts relating to International Civil Aviation 1971- Protocol for the Suppression of Unlawful Acts of Violence at Airports serving International Civil Aviation, 1982 –Beijing Convention on the Suppression of Unlawful Acts relating to International Civil Aviation, 2010

IV. Dispute Settlement

Settlement of Aviation Related Disputes- General Principles- Role of ICAO and ICJ- Case law at ICAO Council and the ICJ- International Arbitration-Settlement under municipal law- EU policy on Aviation Emission Control-norms and disputes and the role of ICAO on regulation of aviation emission.

V. Issues in International Space Law

Definition, nature, scope and development of international space law- UN and Outer Space- Space technology: establishment of COPUOS- International co-operation for peaceful use- Development by General Assembly resolutions

UN Space Treaties: The Outer Space Treaty 1967- The Rescue Agreement 1968- The Liability Convention 1972- The Registration Convention 1975- The Moon Treaty 1979- Partial Test Ban Treaty 1963- Weather Modification Convention 1977- International and Intergovernmental Organizations- Non-governmental Organizations and Space Activities- Bilateral/Regional Agreements in Space Activity-Liability- the commercialization of space activities, Dispute Settlement

VI. International Air and Space Law and India

India and bilateral air services agreements- law and regulations in India- Indian Carriage by Air Act, 1972, and other legislations.

New Developments in India- Air Transport Domestic and International- New Aviation Policy of India- Technology development and problems in civil aviation.

India and Space Law -Contribution to development of international law- participation in treaty negotiations- Organisation of Space activities: DOS, ISRO- Space policy- Need for a national space law in the country; the Indian Space Policy- 2023.

Selected Reading List

I. Freedom of Air and Sovereignty over Air Space

Abeyratne, Ruwantissa (2014), *Regulation of Air Transport: The Slumbering Sentinels*, Heidelberg: Springer.

Cheng, Bin (1956), “The Right to Fly”, *Transactions of the Grotius Society, Problems of Public and Private International Law, Transactions for the Year 1956*, 42: 99-131.

Hobe, Stephan (2019), “Sovereignty as a Basic Concept of International Law and a Core Principle of Air Law”, in Pablo Mendes de Leon and Niall Buissing (eds.) *Behind and Beyond the Chicago Convention: The Evolution of Aerial Sovereignty*, The Netherlands: Kluwer Law, pp. 35-44.

Rowlands, I.H. (2007), “Atmosphere and Outer Space”, in D. Bodansky, J. Brunnee and E.Hey (eds.), *The Oxford Handbook of International Environmental Law*, Oxford: OUP, pp. 316-335.

Sand, Peter H. Jorge de Sousa Freitas & Geoffrey N. Pratt (1958), “An Historical Survey of International Air Law Before the Second World War”, *McGill Law Journal*, 7 (1):, 24-42.

II: Liability of the Carrier towards Passengers and Third Parties

Abeyratne, Ruwantissa (2014), *Convention on International Civil Aviation: A Commentary*, Switzerland: Springer.

Bartsch, Ronald I.C. (2020), *International Aviation Law: A Practical Guide*, 2nd edition, London: Routledge.

Batra, J. C. (1999), “Modernization of the Warsaw System - Montreal 1999”, *Journal of Air Law and Commerce*, 65 (3): 429 – 444.

Cheng, B. (2004), ‘A New Era in the Law of International Carriage by Air’, *International and Comparative Law Quarterly*, 53(4): 833–59.

Wakim, Brittany C. (2023), “Recent Developments in Aviation Law”, *Journal of Air Law & Commerce*, 88 (2): 361-431.

III. Safety and Security in International Aviation

Abeyratne, Ruwantissa (2011), “The Beijing Convention of 2010 on the Suppression of Unlawful Acts Relating to International Civil Aviation- An Interpretative Study”, *Journal of Transportation Security*, 4: 131-143.

_____ (2010), *Aviation Security Law*, Heidelberg: Springer.

Dempsey, P. (2004), “Compliance & Enforcement in International Law: Achieving Global Uniformity in Aviation Safety”, *North Carolina Journal of International Law and Commercial Regulation*, 30: 1-74

IV. Dispute Settlement

de Leon, Pablo Mendes (2022), *Introduction to Air Law*, 11th edition, The Hague: Kluwer.

Dempsey, P. (2004), “Flights of Fancy and Fights of Fury: Arbitration and Adjudication of Commercial and Political Disputes in International Aviation”, *Georgia Journal of International & Comparative Law*, 32: 231-305.

Havel, Brian F. & Gabriel S. Sanchez (2012), “Toward an International Aviation Emissions Agreement”, *Harvard Environmental Law Review*, 36: 351- 385.

Kim, Doo Hwan (2010), “Proposal for Establishing an International Court of Air and Space Law”, *ZLW*, 59: 362- 371.

Liu, Jin (2011), “The Role of ICAO in Regulating the Greenhouse Gas Emissions of Aircraft”, *Carbon & Climate Law Review*, 5 (4): 417-431.

Sanchez, Gabriel S. (2010), “The Impotence of the Chicago Convention’s Dispute Settlement Provisions”, *Issues in Aviation Law and Policy*, 10 (1): 27-38.

Shubber, Sami (1996), “The Contribution of International Court of Justice to Air Law”, in Vaughan Lowe and M. Fitzmaurice (eds.) *Fifty Years of the International Court of Justice: Essays in Honour of Sir Robert Jennings*, Cambridge: Cambridge University Press, pp. 316-326.

V. Issues in International Space Law

Cheng, Bin (1997), *Studies in International Space Law*, Oxford: OUP.

Cheng, Chia-Jui (1998), *The Use of Air and Outer Space Cooperation and Competition*, The Hague, Kluwer Law International.

Dempsey, P. *et al.* (2006), “Governance of Commercialized Air Navigation Services”, *Annals of Air & Space Law*, 31: 213-347.

Ernst, Deliana (2013), “Beam It Down, Scotty: The Regulatory Framework for Space-

Based Solar Power”, *Review of European Community and International Environmental Law*, 22 (3): 354-365.

Jakhu, Ram S., Kuan-Wei Chen & Bayar Goswami (2020), “Threats to Peaceful Purposes of Outer Space: Politics and Law”, *Astropolitics*, 18 (1): 22-50.

K. Grove and E. Kamenetskaya (1998), ‘Tensions in the Development of the Law of Outer Space,’ in C. Ku and P.F. Diehl (eds.), *International Law: Classic and Contemporary Readings*, Boulder, CO: Lynne Rienner Publishers.

Neto, Olavo de O. Bittencourt, *et al* (2020), *Building Blocks for the Development of an International Framework for the Governance of Space Resource Activities A Commentary*, The Hague: Eleven International Publishing.

Sachdeva, G.S. (2023), *Crimes in Outer Space: Perspectives from Law and Justice*, Singapore: Springer.

Steinhardt, Ralph G. (1995), “Outer Space” in Oscar Schachter & Christopher Joyner (eds.), *United Nations Legal Order*, Vol. II, Cambridge: CUP, pp. 753-787.

Su, J. (2017), “Legality of Unilateral Exploitation of Space Resources under International Law”, *International and Comparative Law Quarterly*, 66: 991-1008.

Tronchetti, Fabio (2009), *The Exploitation of Natural Resources of the Moon and Other Celestial Bodies: A Proposal for a Legal Regime*, Leiden: Martinus Nijhoff.

Xu, Fengna, Jinyuan Su (2022), “Towards a Legal Regime of Benefits Sharing for Space Mining: With Some Experience from the Area”, *Resources Policy*, 76 (C), available at: <https://doi.org/10.1016/j.resourpol.2022.102627>.

VI. International Air and Space Law and India

Deplano, Rossana (2021), “The Artemis Accords: Evolution or Revolution in International Space Law?,” *International and Comparative Law Quarterly*, 70 (3); 799-819.

Desai, Bharat H. and Jay B. Desai (2020), “Quest for Recovery and Use of Resources in the Outer Space: Some reflections on the US Executive Order 2020 and Beyond”, *Delhi Law Review*, 35: 1-17.

Kaul, R. and R.S. Jakhu (2010), “Regulation of Space Activities in India”, in R. Jakhu (eds) *National Regulation of Space Activities: Space Regulations Library Series*, Volume 5, Springer, Dordrecht, pp. 153 – 198.

Lele, Ajay (ed., 2017), *Fifty Years of the Outer Space Journey: Tracing the Journey*, New Delhi: IDSA & Pentagon Press.

Lyall, Francis & Paul B. Larsen (2018), *Space Law: A Treatise*, 2nd edition, London: Routledge.

Mani, V.S. et al. (eds., 1997), *Recent Trends in International Space and Policy*, New Delhi: Lancer Books

Rao, R., V. Gopalakrishnan & K. Abhijeet (eds; 2017), *Recent Developments in Space Law*, Singapore: Springer.

Sachdeva, G.S. (2013), *Outer Space: Law, Policy and Governance*, Delhi: KW Publisher.

Saraswati, Sujan Kumar (2001), "Civil Aviation Environment in India", *Economic and Political Weekly*, 36 (19): 1639-1645.

Sundahal, Mark J. & V. Gopalakrishnan (eds. 2011), *New Perspectives on Space Law*, Paris: International Institute of Space Law.

Tan, Alan Khee-Jin (2013), "India's Evolving Policy on International Civil Aviation", *Air and Space Law*, 38 (6): 439-462.

International Legal Instruments:

*Convention on International Civil Aviation, signed at Chicago, 7 December 1944

*International Air Services Transit Agreement, signed at Chicago, 7 December 1944

*International Air Services Transport Agreement, signed at Chicago, 7 December 1944

*Convention on Offences and Certain Other Acts Committed On Board Aircraft, signed at Tokyo, 14 September 1963

*UN General Assembly Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space, 1963

*Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague, 16 December 1970

*Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal, 23 September 1971

*Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, Done at Montreal on 23 September 1971, signed at Montreal, 24 February 1988

*Convention on the Marking of Plastic Explosives for the Purpose Of Detection, signed at Montreal, 1 March 1991

*Beijing Convention on the Suppression of Unlawful Acts relating to International Civil Aviation, September 10, 2010

*Beijing Protocol Supplementary to the Suppression of Unlawful Acts relating to International Civil Aviation, September 10, 2010

*Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies, 10 October 1967

*Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space, 3 December 1968

*Convention on International Liability for Damage Caused by Space Objects, 1 September 1972

*Convention on Registration of Objects Launched into Outer Space, 15 September 1976
Agreement Governing the Activities of States on the Moon and Other Celestial Bodies, 1979

*Protocol to the Cape Town Convention on International Interests in Mobile Equipment, on Matters specific to Aircraft Equipment, 2001

*Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Space Assets, 2012

*Artemis Accords: Principles for Cooperation in the Civil Exploration and Use of the Moon, Mars, Comets, and Asteroids for Peaceful Purposes (13 October 2020)

CASE LAW

[*The Aerial Incident*](#), 1955 (Israel v. Bulgaria), *ICJ Reports*, 1959, p.127.

The Appeal Relating to the Jurisdiction of the ICAO Council (India v. Pakistan), *ICJ Reports*, 1972, p.46. [<https://www.icj-cij.org/sites/default/files/case-related/54/054-19720818-JUD-01-00-EN.pdf>]

[*Military and Paramilitary Activities in and against Nicaragua*](#), Nicaragua v. USA (Merits), *ICJ Reports*, 1986, p.14.

[*The Aerial Incident*](#) 1988 (Iran v.USA), *ICJ Reports*, 1989, p.132.

State of Himachal Pradesh v. Ganesh Wood Products, AIR 1996 SC 149.

Air India v. Wiggins, 77 ILR 276; 1 WLR 815 (1980).

Sidhu v. British Airways, 1 All E.R.193 (1997).

[*Air Transport Association of America, et al v. The Secretary of State for Energy and Climate Change*](#), Case C-366/10 (Dec 21, 2011).

Trans Mediterranean Airways v. Universal Exports and Another, 10 SCC 316 (2011).

Ethiopian Airlines v. Ganesh Narain Saboo, 8 SCC 539 (2010).

Qatar Airways v. Shapoorji Pallonji &Co., 2013 AIR Bom R 164.

Kenya Airways v. Jinibai B. Keshwala, 1998 AIR Bom 287.

S. Abdul Salam v. Union of India (2011) 3 KLT 662.

National Aviation Co. of India Ltd v. S. Abdul Salam (2011) 4 KLT 72.

[Appeal relating to the Jurisdiction of the ICAO Council](#) under Article II, Section 2, of the 1944 International Air Services Transit Agreement (*Bahrain, Egypt and United Arab Emirates v. Qatar*), Judgment, *I.C.J. Reports* 2020, p. 172.

[Questions of Interpretation and Application of the 1971 Montreal Convention](#) arising from the Aerial Incident at Lockerbie (*Libyan Arab Jamahiriya v. United Kingdom*), Order of 14 April 1992, *I.C.J. Reports* 1992, p. 3.
