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Abstract

From the earliest kites to hypersonic flights, the history of aviation extends to more than a thousand years. The flying machine created by the Wright Brothers gradually changed the world's transportation industry. Commercial flights or airlines were subsequently introduced to replace sea transportation as the fastest way to convey people to various destinations around the world. The Malayan Airways came into the picture in 1947. Upon Malaysia's independence and separation of Singapore, the Malaysia Airlines System (MAS) was founded in 1972, serving not only Malaysia, but the world. The recent MH17 tragedy is a tragic episode in global aviation history when the world is still mourning over the disappearance of MH370. These tragedies may lead to one simple question – how safe are the skies? This paper discusses how international law through the Chicago Convention regulates safe overflight and assisted in developing the aviation industry. This paper further explains that the gunning down of MH 17 was a blatant violation of international law and MAS should not be blamed and lambasted for this tragedy. This article concludes that the skies are not entirely safe for the normal practice of civil aviation and that the world community should work together in ensuring that MH 17 tragedy would not happen again.

Keywords

skies, safe, mh17

Disciplines

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**MH17: HOW SAFE ARE THE SKIES?
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Abstract

From the earliest kites to hypersonic flights, the history of aviation extends to more than a thousand years. The flying machine created by the Wright Brothers gradually changed the world's transportation industry. Commercial flights or airlines were subsequently introduced to replace sea transportation as the fastest way to convey people to various destinations around the world. The Malayan Airways came into the picture in 1947. Upon Malaysia's independence and separation of Singapore, the Malaysia Airlines System (MAS) was founded in 1972, serving not only Malaysia, but the world. The recent MH17 tragedy is a tragic episode in global aviation history when the world is still mourning over the disappearance of MH370. These tragedies may lead to one simple question – how safe are the skies? This paper discusses how international law through the Chicago Convention regulates safe overflight and assisted in developing the aviation industry. This paper further explains that the gunning down of MH 17 was a blatant violation of international law and MAS should not be blamed and lambasted for this tragedy. This article concludes that the skies are not entirely safe for the normal practice of civil aviation and that the world community should work together in ensuring that MH 17 tragedy would not happen again

Keywords: Aviation, Malaysia Airlines System (MAS), MH 17 Tragedy, International Law

Introduction

From the earliest kites to hypersonic flights, the history of aviation extends to more than a thousand years (Crouch, 2004). Leonardo Da Vinci's 15th-century dream of flight was clearly seen in his several rational but unscientific designs, though he did not attempt to erect any of them (Niccoli, 2006). His dreams were later realised by the Wright Brothers, who flew the skies in 1903 with the world's first motored aircraft (Kelly, 1989).

The flying machine created by the Wright Brothers gradually changed the world's transportation industry (Heppenheimer, 2004). Commercial flights or airlines were subsequently introduced to replace sea transportation as the fastest way to convey people to various destinations around the world (Grant, 2007).

The world's first airline was Deutsche Luftschiffahrts-Aktiengesellschaft (DELAG), established in 1909 (Rusli, 2014). Airline business grew rapidly in mid-20th and the Malayan Airways came into picture in 1947 (Ibrahim, 2007). Upon Malaysia's independence and separation of Singapore, the Malaysia Airlines System (MAS) was founded in 1972, serving not only Malaysia, but the world.

The recent MH17 tragedy is a tragic episode in global aviation history when the world is still mourning over the disappearance of MH370. These tragedies may lead to one simple question – how safe are the skies?

Governing the Skies

Realising the growing importance of the aviation industry, the world community met in Chicago in 1944 and came up with the Chicago Convention on International Civil Aviation that established the International Civil Aviation Organisation (ICAO) (MacKenzie, 2010). Malaysia became a State party to this Convention on 7 April 1958 ("Convention on International Civil Aviation Signed at Chicago on 7 December 1944," 1944). Article 1 of the Chicago Convention acknowledges that every State has full and complete sovereignty over its airspace.

Article 3 (a) of the Protocol Relating to an Amendment to the Convention on International Civil Aviation of the Chicago Convention (Protocol) refrain any States from using weapon against civil aircrafts in flight. The Chicago Convention however, failed to achieve consensus over the extent of aviation liberalisation, or in other words, freedoms of the air (Rusli, 2014).

In maritime navigation, a vessel may navigate through the territorial sea of another State without prior notification, as clearly stated in the United Nations Convention on the Law of the Sea 1982 (LOSC) (Ridenour, 2006). This ensures the sea is open to all for the purpose of transportation. Like shipping, transit rights are important to the aviation industry too. However, unlike passage through the sea, aviation transit rights are generally obtained through bilateral agreements between States involved (Vallero, 2004).

Transit Rights

There are nine types of transit rights with two being deemed most important in the aviation industry (Erotokritou, 2012). These rights are the right to fly over a foreign country without landing and the right to refuel or carry out maintenance in a foreign country without embarking or disembarking passengers or cargo (Stadlmeier, 1998). The Chicago Convention drew up a multilateral agreement in which the first two freedoms are being legally conferred to State signatories ("International Air Services Transit Agreement, Signed at Chicago, on 7 December 1944 (Transit Agreement)," 1944), achieved through the creation of the International Air Services Transit Agreement (IATA) (Haanappel, 2003). As of mid-2007, the treaty was accepted by 129 countries including Malaysia, the Netherlands and Ukraine. The IATA has facilitated in building a wider network of airlines throughout the world by opening up the skies to safe overflight (Rusli, 2014).

Downing of MH17

The downing of MH17 on Thursday, 17 July 2014 has caused a tremendous shock to the world's aviation industry. The incident took place in the Ukrainian airspace and the aircraft crashed within the territory of Ukraine ("As it Happened: Malaysian Plane Crash in Ukraine," 2014). MAS suffered two horrific accidents in less than a time span on five months. The MH17 crash took place when the whole world is still in search of MH370 that disappeared into thin air last March.

Early reports have shown that MH17 was believed to be gunned down by either Ukrainian separatists or Russia at the Russia-Ukraine border, killing all aboard, mostly of Dutch nationality ("MH17: Malaysia to Announce a Day of Mourning," 2014). MH 17 was flying from Amsterdam to Kuala Lumpur, using the route that has been declared safe by the ICAO. Other airlines that frequent that route are, among others, Aeroflot of Russia, Lufthansa of Germany and Singapore Airlines ("MH17 crash: Facebook users pledge support for Malaysia Airlines," 2014). MAS has the right to fly over that particular route safely as provided in Article 3(a) of the Protocol.

In addition, as both Malaysia and Ukraine are State parties to the Chicago Convention and the IATA, Ukraine has the obligation to ensure that aircrafts could exercise safe transit rights over its airspace by refraining from using weapons against civilian flights. As such, the gunning down of MH17 was a blatant violation of the said Protocol and should not be condoned in any way under international law.

The Future of MAS

The downing of MH17 was indeed an unprecedented tragedy that has befallen Malaysia's national carrier. MAS is not jinxed and should not be lambasted for this calamity as MH17 was just unlucky for being at the wrong place at wrong time. If not MH17, the missile might have hit

other aircrafts using the same route. Following this tragedy, Russia and Ukraine are now pin-pointing at each other on who should be held responsible.

The world now is still mourning over the loss of both MH17 and MH370. In these difficult times, Malaysians should stay united to stand up for MAS in facing challenges ahead. For more than 40 years, MAS has served the nation well in uplifting Malaysia's name in the international arena particularly in the airlines industry.

From its humble beginnings, MAS is now one of the world's best five-star airliner, a symbol of the nation's pride. One cannot just disregard the importance of the national carrier to Malaysia. Although it is true that this tragedy was not MAS' fault, its image as a world-class airliner may now be somewhat tarnished. 2014 might be a terrible year for MAS, but every cloud has a silver lining.

Conclusion

MH 17 tragedy shows that the skies are not entirely secured for safe overflight even though international law recognises this right through the Chicago Convention. In light of this tragedy, the world community should work together to ensure the skies are hospitable for the well-being of the global aviation industry in ensuring that MH 17 tragedy shall not happen again. May the perpetrators of this crime be brought to justice.

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