International Air Law and Recent Developments

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What is Globalization?

Globalization is the term used to characterize the processes of growing interconnection and interdependence among the different nations of the world. It offers to the increased flow of trade, people, investment, technology, culture, ideas among countries and creates a more <u>integrated</u> and <u>interdependent</u> world

World Bank: Globalization is the growing integration of economies and societies around the world.

- Globalization of markets is one of the most fascinating developments of the 20th century. Its impact on economic transactions, processes, institutions, and players is dramatic and wide ranging. It challenges established norms and behavior and requires different mindsets.
- Globalization of markets involves the growing interdependency among the economies of the world; multinational nature of sourcing, manufacturing, trading, and investment activities; increasing frequency of cross-border transactions and financing; and heightened intensify of competition among a larger number of players

When Globalization Started?

- Globalization has been around since the 15th century when European exploration & colonization created global empires & markets, but most historians and economists agree that today is special by the extent of interdependence and the speed by which it has occurred.
- Globalization started in 15th – 18th C – age of exploration by European nations – invasions in pursuit of raw-materials/resources for industry development.
- Globalization from 18th – 20th C – Industrial Revolution and rapid growth of Manufacturing Industries, Migrations of Labor, Steamships, Telegraph, Railways, MNC Exporting Odyssey, Dutch East India Company, etc. .
- Globalization started in the late 20st C – Old economic & business order changed. New business landscape and major shifts in the global economy after Oil Shocks.
- Phase 1: 1974 -1980s Oil Shock -OPEC sets Oil price NOT oil MNCs. A blow to BIG 3 US Auto Industry and Competitiveness, Rise of Japan and Germany as Globally Competitive Nations .
- Phase 2: 1980s – 1990s China's World Manufactory & India IT Business Development.

Globalization and Its Impact on Civil Aviation

- Globalization is the term used to characterize the processes of growing interconnection and interdependence among the different nations of the world.
- Globalization of markets was one of the most fascinating developments of the 20th Century. It involves the growing interdependence among the economies of the world.
- Globalization has been catalyzed by developments in technology, communications and international trade, which have also changed the traditional understanding of trade and commerce.
- In this age of globalization and interdependence, principles of international business transactions affect all states, small and large, rich and poor, weak and powerful alike.
- Many of the structural changes that have taken place in the world economy since the early 1980s resulted liberalizing of capital markets and the capital remains no longer domestic; it moved freely across borders. Manufacturing was also no longer a domestic process. This lead to the loss of control on local markets, goods, financial services including the banking sector by the National governments.

Positive and Negative Impact of Globalization

- On the positive side, it generated by growing international economic, cultural, and political cooperation and solved many global problems which were not answered.
- On the negative side, globalization also has profound implications for states such as the autonomy and policy-making capability of states is being undermined by economic and cultural internationalization.
- Role of States have Changed from Law-maker to Law-takers
- Regulators to Facilitators
- Many governments see their role as not to regulate markets but to facilitate their expansion.
- Globalization and regional interactions are wiping out national borders and weakening national policies.

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Globalization of Aviation in Different Regions

- Since the passing of the De Regulation Act of 1978 in the United States of America, the international air transport is undergoing the most dramatic changes in its history.
- Globalization, deregulation, liberal bilateral air transport agreements, international alliances, privatization of airlines and airports, and economic constraints are some of the factors challenging established management and business practices.
- Globalization process, each region plays variations on a common theme. In North America, air travel is the normal way of moving people, mail and increasingly, freight.
- In the European Union, we have liberalization, consolidation, concentration and decentralization.
- Civil aviation in Eastern Europe and the Former Soviet Union is being restructured and needs strengthening –while adjusting to a free market economy.
- Impressive Aviation expansion is seen in India, China and ASEAN.
- Latin America shows promise.

Impact of Globalization on Civil Aviation Cont.

- With the increasing globalization of economies, liberalization and technological developments in air transport, new trends are emerging on the horizon.
- Privatization, cross-border acquisitions, market alliances, merger and restructuring of airlines in the wake of liberalization of air transport and deregulation are all leading towards market oriented international aviation environment.
- Airlines of many countries are in various stages of privatization· Airports Privatization is happening in many parts of the world

De-Regulation in USA

- The deregulation process in the USA stared first in air cargo sector in 1977, followed by the passenger deregulation by passing deregulation Act, in 1978
- The aim of the above act was that the market place should determine the airlines business decisions in the future. This fundamental change in policy meant that the U.S.Government's role in the new regulatory environment would be to protect the competitive process, not individual competitors.
- The scope of regulatory reform was limited essentially to commercial meters, such as pricing (which include fares, rates, and charges) market entry, capacity and frequencies, but did not include any relaxation of government controls over such matter as safety, air traffic control, airworthiness, personnel licensing and aircraft maintenance.

Liberalization in other countries

- Under the influence of deregulation in the United States, other industrialized countries, such as Australia, Canada, European Union (EU) countries and Japan adopted policies to liberalize the aviation industry and to bring about a more competitive environment.
- The structural changes in the Canadian airline industry bear a great similarity to developments in the US.
- In a period of de facto deregulation, starting in 1984, the airline industry in Canada moved rapidly toward a high degree of market concentration, before the new National Transportation Act came into effect in 1987.

Liberalization in EU

- A major landmark was the decision of the European Court of Justice in the Nouvelles Frontieres case in April 1986, that air transport agreements are subject to the competition rules of the Treaty of Rome, Signed in 1957 by six European Countries.
- This meant that airlines may be prosecuted for violation unless exemptions have been granted to them under policies agreed upon by the Council of Ministers.
- The implications of this judgment put considerable pressure upon the European Community (EC), presently European Union (EU, to develop and agree upon an air transport policy. In December 1987, the Council of Ministers adopted a package of legal instruments put to them by the Commission and thus took the first step toward a general liberalization of the European air transport industry[6]

EU Aviation Regulations

- There are three different regulations:
- Regulation NO. 2407—the licensing regulation, dealing with the requirements for the issue and revocation of operating licenses to air carriers established in the Community
- Regulation No. 2408—the access regulation, giving access to intra-Community routes to Community air carriers, and
- Regulation No. 2409—the fares regulations, whose purpose is to abolish government intervention in the determination of fares on intra-Community routes[7].(3 ,see Aviation Industry Developments 1997,p.115)
- As a result, all air services within EU countries may be regarded as having a special status under the EU third aviation package a domestic traffic and thus providing EU-based airlines with the opportunity to open new routes, whereas non-EU airline services within EU-countries may be considered cabotage traffic. This could bring about a new dimension in future negations concerning air service agreements.

Impact on Developing Countries

- The most serious impact of deregulation and liberalization of the aviation industry is being felt by airlines in developing countries.
- This lead to the formation of regional airlines from a number of small carriers in order to improve efficiency and productivity, to reduce cost and to maintain market share. Alternatively airlines also combined operations and joint projects, such as joint scheduling, sharing of equipment, crews and ground facilities, pooling of aircraft parts and support equipment, and cooperative arrangements for aircraft overhaul and maintenance.
- The rapidly changing environment of world air transport makes it essential that governments of developing countries and airline management should be very clear about their objectives and the need for close cooperation and sharing of scarce national resources.

Impact on Asia/Pacific Region

- The Asia/Pacific region offers abundant opportunities as the fastest growing aviation region in the world.
- The reasons for this optimism includes the strong economic expansion, significant ethnic ties with various countries, increase in leisure time, moves towards air transport liberalization and vigorous efforts to promote tourism to/from the region.
- The size and economic potential of the region has acted as a catalyst for development of new aircraft types, and manufacturers foresees a big market for future new aircraft.

WTO/GATS and Air Transport

- Uruguay Round and WTO
- Goals of Uruguay Round
- Uruguay Round: Problems and Prospects
- Uruguay Round Establishment of the WTO and put important treaties as Annexes to the WTO
- Annex1A-Trade in Goods
- Annex 1B- Trade in Services
- Annex 1C-TRIPS
- Annex 2 -DSU/DSB
- Annex 3-Trade Policy Review Mechanism
- Annex 4- Plurilateral Agreements

Overview of GATS

- Why GATS?
- The GATS is Part of WTO and it laid down the first ever set of multilateral treaty rules governing international trade in services.
- GATS operates at Three Levels:
- (1) Framework Agreement set out the general principles and obligations (29 Articles, VI Parts)
- (2)Various Annexes (VIII) contain rules for specific service sectors
- (3) Schedules list each signatory country's specific commitments and exemptions

The Forms (or "Modes") of Trade in Services

- Cross-border trade in services: a firm deals with a client in another country (e.g. electronically) without crossing the border;
- Consumption abroad: a client travels to a firm's country of operation to consume a service;
- Commercial presence: a firm establishes an operation in the market of another country; and
- Temporary movement of a natural person: a firm travels to the client's country of operation to provide the service.

GATS and Air Transport

- the GATS Air Transport Annex covers three so-called "soft" rights, namely
- aircraft repair and maintenance,
- selling and marketing of air transport, and
- computer reservation system (CRS) services.
- The WTO Council for Trade in Services, which oversees the operations of the GATS, is presently reviewing the developments in the air transport sector and the operation of this Annex with a view to considering the possible further application of the Agreement in the sector.

ICAO, WTO and Air Transport

- ICAO has maintained an active interest in the evolution of trade in services negotiations. It has discussed this matter at several Sessions of its Assembly.
- Its current policy is contained in Assembly Resolution A35-18. In addition, the ICAO Council adopted, on 22 November 1999, a Council Resolution on Trade in Services Negotiations addressed to both ICAO Contracting States and the WTO.
- The ICAO Secretariat attended and/or monitored closely a number of meetings of the Council for Trade in Services (CTS) of the WTO which addressed the review and expansion of the GATS Annex and provided substantive contributions to the WTO Secretariat on the review process.

Globalization and India

- India Globalized its economy in 1991 With Mounting problems- huge fiscal deficits, BoP crisis and foreign exchange crisis, Foreign investors and NRIs had lost confidence in Indian economy
- Major measures as a part of the Globalization strategy, Devaluation of Currency, Disinvestment, Dismantling of The Industrial Licensing Regime Abolition of the MRTP Act , Allowing Foreign Direct Investment, Wide-ranging financial sector reforms
- Reforms relating to the banking system-- Capital base of the banks were strengthened by recapitalization, public equity issues and subordinated debt, Prudential norms were introduced and progressively tightened for income recognition, classification of assets, provisioning of bad debts, marking to market of investments, New private sector banks were licensed and branch licensing restrictions were relaxed., Credit delivery was shifted away from cash credit to loan method

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- Exchange Control and Convertibility-- Exchange controls on current account transactions were progressively relaxed culminating in current account convertibility.,
- Foreign Institutional Investors were allowed to invest in Indian equities subject to restrictions on maximum holdings in individual companies.,
- Restrictions remain on investment in debt, but these too have been progressively relaxed., Indian companies were allowed to raise equity in international markets subject to various restrictions.,
- Indian companies were allowed to invest a small portion of their assets abroad, Indian companies were given access to long dated forward contracts and to cross currency options.(Derivatives)
- Reforms in the capital market□ SEBI- the apex regulator of the Indian capital markets□ Regulations were framed for insider trading□ Abolition of capital issues control□ Introduction of free pricing of equity issues□ On-line trading was introduced at all stock exchanges

LPG and Its Impact on Indian Aviation

Globalization, Liberalization and privatization (GLP) of aviation sector and Indian Responses

– Liberalization and open skies policy
– Repealing of Air Corporation Act 1953 and new Air Corporation Act 1994

Airport Privatization Legal Issues

– The Airports Authority of India Act, 1994 (55 of 1994)
– Privatization of AAI 2003
– Airport Infrastructure Policy 1997
– Joint Ventures, PPP and FDI in Airports
– Airports Economic Regulatory Authority of India Act, 2008
– The Carriage by Air Act 2009

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Airlines Privatization and Legal Issues

– FDI in Aviation Sector

– Mergers and Acquisition: Legal Issues

– Competition Issues in Aviation Issues

– Aviation Insuranc

Aviation Liability: Recent Developments

Draft Civil Aviation Policy 2016

Aviation Litigation in India and Role of Aviation Professionals

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- De regulations
- Elimination of Trade Barriers
- Harmonization of Laws

Aviation Industry:

- Contribution of technology - lower the cost of air travel.
- Fuel-efficient engines
- Low maintenance
- An improved materials have progressively allowed airlines to lower air fares and
- Allowing more and more people to use air transportation on a routine basis.

Cont…

- General liberalization and globalization of economies of world
- Change in priorities of governments
- General deterioration of condition of airports and airlines owned by government
- Financial problems faced by States
- Managerial problems and desire to improve
- Recognition of airports and airlines as business propositions
- Indian’s response to the above global developments
- India’s Open Sky Policy for Cargo sector
- India’s Open Sky Policy relating to Passengers
- India’s Liberalization Policy of 1990s and its Impact on Civil Aviation
- The Need for repealing of the 1953 Act.