

The Legal Approach to Investor Liability Conditions for Damage to Third Parties on the Ground within National Scope in the UAE Civil Aviation Law No. 20 of 1991 and the Saudi Civil Aviation Law No. 44 of 1426 AH: A Comparative Study

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Abstract

The damage caused by non-military aircraft to persons or property on the ground has long been a subject of international concern. Two key conventions were established to regulate liability arising from such damage: the 1952 Rome Convention, commonly known as the Rome Convention on “Damage Caused by Foreign Aircraft to Third Parties on the Surface,” and, later, the Montreal Convention of 2009, formally known as the “Convention on Compensation for Damage Caused by Aircraft to Third Parties.” The Montreal Convention was a result of the signatory states to the Rome Convention recognizing the need to review and update certain provisions. Both the United Arab Emirates and the Kingdom of Saudi Arabia are signatories to this convention. While international regulations play a significant role, domestic legislation is equally critical. It is therefore incumbent upon nations to enact clear legal provisions to regulate the liability of aviation investors for damage caused by aircraft to third parties on the ground, from a national legal perspective. This study addresses an issue of critical importance, namely the need for precise regulations that clarify the conditions of an aviation investor’s liability for damage to third parties on the ground within the national legal frameworks of the UAE and Saudi Arabia. Through comparative analysis, this research seeks to address the legislative gaps found in the UAE’s Civil Aviation Law No. 20 of 1991 on this matter.

Keywords: Aviation Investor, Third Party, Aircraft Damage, Ground Surface, Montreal Convention 2009, Civil Aviation Law.

1. Introduction

Human beings have long exploited airspace, ever since the invention of the airplane. From that time, airspace has become a domain of human activity. “Naturally, whenever human activity

turns toward the use of something, there must be laws in place to regulate and govern that activity, as well as the relationships and disputes arising from it” (Salam, 2014, p. 11).

Whether such laws govern international or national aviation activities—and whether these activities result in positive or negative consequences for those contracting with investors, or third parties—their aim is to create a protective, secure, and sustainable framework to maintain the advanced level of civil aviation and to continuously develop and improve its performance.

The legal liability we aim to discuss in this study is the civil liability of the investor, not in relation to the contracting parties, such as the crew, passengers, or cargo shippers, but rather in relation to third parties who have no contractual relationship with the investor. Specifically, we will examine the conditions under which the investor’s liability for damage caused to third parties on the ground is established under the UAE Federal Law No. 20 of 1991, in comparison with the Saudi Civil Aviation Law No. 44 of 1426 AH. Therefore, the scope of this research will be limited to the conditions of the aircraft investor’s liability for damage to third parties on the ground within the national framework.

Research Significance

This study is based on a comparison of the liability of aircraft investors for damage caused to third parties on the ground under UAE Federal Civil Aviation Law No. 20 of 1991 and the Saudi Civil Aviation Law No. 44 of 1426 AH. The significance of this research lies in this comparative analysis, as it highlights the similarities and differences between the two laws on the subject matter of the research. This comparison aids researchers in understanding the topic, clarifies points of convergence and divergence, and sheds light on the legal concepts related to the subject matter in both legal systems. The research relies on intellectual and analytical methods to systematically explore these legal issues.

Research Problem

The research problem is linked to highlighting the conditions of the aircraft operator's liability, within the national scope, towards third parties for damages caused by the aircraft to individuals on the ground. This is examined in the context of Federal Law No. 20 of 1991, and Saudi Law No. 44 of 1426 AH. The research also attempts to address the legislative gap found in Federal Law No. 20 of 1991 concerning this matter within the national framework. Consequently, the research raises several questions:

- What are the conditions for the liability of the operator for damages caused by the aircraft to third parties under UAE law?
- What are the conditions for the operator's liability for damages caused by the aircraft to third parties under Saudi law?
- What are the elements of these conditions, and how and when do they occur?

These are the questions the researcher seeks to answer through a comparative methodology between Federal Law No. 20 of 1991 and Saudi Civil Aviation Law No. 44 of 1426 AH, analyzing these aspects in a systematic and scientific manner.

Research Objectives

The research aims to resolve the problem addressed in the previous section and to answer the questions raised by the research problem. Furthermore, it seeks to facilitate the work of researchers in this field by identifying and understanding the differences between the UAE Federal Civil Aviation Law No. 20 of 1991, regarding the subject matter of the research, and the Saudi Civil Aviation Law No. 44 of 1426 AH. Additionally, it aims to help researchers deduce relationships and connections between the two laws in this field by applying the comparative methodology with an analytical approach.

2. Research Methodology

This research is based on the comparative methodology with an analytical approach. Through this scientific method, the researcher will gather points of convergence and divergence between the two legal systems under comparison and attempt to fill any legislative gaps in an analytical manner. This will be done through the application of the comparative methodology.

Research Structure

This research is organized systematically and coherently into two main chapters as follows:

- Chapter One: Conditions for establishing the operator's liability for damages caused to third parties on the ground under Federal Civil Aviation Law No. 20 of 1991.
- Chapter Two: Conditions for establishing the operator's liability for damages caused to third parties on the ground under Saudi Civil Aviation Law No. 44 of 1426 AH.
- The conclusion will consist of the research findings and recommendations.

CHAPTER ONE:

Conditions for Establishing the Operator's Liability for Damages Caused to Third Parties on the Ground under Federal Civil Aviation Law No. 20 of 1991

The liability of the aircraft operator for damages inflicted on third parties on the ground arises in cases such as when parts of the aircraft, its entire cargo, or a portion thereof fall to the ground. This includes incidents where a person falls from the aircraft, causing direct harm to individuals (natural or legal persons), the marine environment, or the land itself, such as the destruction of a house or the burning of a crop. "During flight, aircraft may cause significant harm to third parties on the ground. For instance, an aircraft might crash, causing damage to property or loss of life" (Dweidar, 2002, p. 22).

This chapter will discuss the conditions under which the operator's liability for damages to third parties on the ground is established under Federal Law No. 20 of 1991.

It is noted that Federal Civil Aviation Law No. 20 of 1991 suffers from a legislative gap on this issue at the national level. However, the same gap does not exist at the international level. The

United Arab Emirates is a signatory to the 2009 Montreal Convention, also known as the "Convention on Compensation for Damage Caused to Third Parties by Aircraft," which supersedes and replaces the 1952 Rome Convention regarding damages caused by foreign aircraft to third parties on the ground.

Article 19 of Federal Law No. 20 of 1991 states that "The provisions of the Chicago Convention and all protocols and agreements to which the UAE is a party in the field of civil aviation and its protection shall be considered complementary to the provisions of this law, provided that they do not conflict with its provisions."

It is clear from this article that the conventions to which the UAE is a party are considered to supplement any deficiencies in this law, provided they do not contradict its provisions.

From this, we can infer that we must rely on the provisions of the aforementioned convention, given that there are no specific national provisions on this subject. Since the UAE is a signatory to the convention, it is unavoidable to refer to its provisions in relation to this research topic. However, it should be noted that the convention addresses the operator's liability in an international context, not a domestic one, and the law does not cover this type of liability within the national framework. Therefore, we will present domestic legal opinions on this matter and recommend that the legislature address this legislative gap at the earliest opportunity, possibly by drawing on comparative legal systems.

Conditions for Establishing the Operator's Liability in this Context are as Follows:

I: There must be damage.

There must be damage suffered by a third party on the ground. The damage in this context refers to direct damage, which occurs, for example, if the aircraft, or an object or person from it, falls.

"Compensation is provided for damages resulting in death, physical injury, mental injury, as well as damage to property or even environmental damage" (Abudief, 2021, p. 334).

The aircraft may not only cause damage to persons or property on the ground but may also cause environmental harm. "These damages must be compensated as long as the law of the country where the damage occurred requires such compensation" (Jassim, 2018, p. 54).

II: The injured party must be a third party.

The third party referred to by the convention is any person other than the operator, the aircraft crew employed by the operator under an employment contract, the passenger or shipper contracted with the operator under a transportation contract, or even the consignee whose interest is related to the contract for the transportation of goods. This is expressed in Article 1/10 of the convention: "A third party is any person not in a legal relationship with the operator, or with whom the operator has no legal relationship." From the convention's perspective, "a person is any natural or legal person, including the state."

III: The damages must be suffered by third parties on the ground.

The direct damage suffered by third parties must not be related to the aircraft itself or even another aircraft in flight due to a collision or otherwise. In the event of a collision between two

aircraft in flight, the aerial collision must result in damage on the ground. Otherwise, the convention does not apply to damages suffered by third parties on another aircraft while in flight, as the convention only applies to damages caused on the ground and not to aircraft collisions *per se* (Dweidar, 2002, p. 95; Abudief, 2021, p. 335). This means that the damage to third parties must occur on the ground.

However, liability is established if the damage occurs to an aircraft parked on the airport grounds or to those onboard, whether people or property. "The concept of 'on the ground' also includes damage to ships and other floating objects in the seas and oceans, as ships are considered part of the ground" (Yamalki, 1998, p. 92).

Damage to a ship on the high seas, or to an aircraft over the high seas or the exclusive economic zone while in flight, is considered to have occurred in the territory of the state where the aircraft is registered. However, if the operator's principal place of business is in a state other than the state of registration, the damage is considered to have occurred in the territory of the state where the operator's principal place of business is located.

IV: The Aircraft Causing the Damage Must Be in Flight.

Article 1/3 of the convention states that "An aircraft is considered to be in flight from the moment all its external doors are closed after the boarding of passengers or the loading of goods, until the moment any of these doors are opened for the disembarkation of passengers or the unloading of goods."

It is worth noting that the flight period defined by the convention differs from the flight period stipulated in Article 1/18 of the Federal Civil Aviation Law, which defines the flight period as the total time from the moment the aircraft begins to move by its own power for the purpose of takeoff until the moment it comes to a complete stop after the end of the flight.

There is no conflict between the convention, to which the UAE is a party, and the Federal Civil Aviation Law. The flight period in national law is a general definition of flight periods, whereas the flight period in the convention specifically pertains to the subject of the convention—namely, the operator's liability for damages caused to third parties on the ground. The established legal principle in this regard is that "a general rule applies in its generality unless it is specifically limited."

V: The Source of the Damage Must Be a Private Aircraft.

This is evident by implication from paragraph four of Article (2) of the convention, which states that the provisions of this convention do not apply to damage caused by state aircraft. "State aircraft are considered to be those used for military purposes, customs, or police operations" (Abudief, 2021, p. 332). "Similarly, the 1952 Rome Convention excludes damage caused on the ground by aircraft used for customs or police operations" (Article 26 of the 1952 Rome Convention) (Radwan, 1982, p. 162).

VI: The Source of the Damage Must Be an Aircraft Operating within the State's Territory.

This condition is self-evident since the anticipated damage must originate from an aircraft operating within the state's territory and the airspace above it, whether it is an Emirati-registered

aircraft or one owned by residents of the state who do not hold its nationality, according to the conditions set by the competent authority. The operation of the aircraft must be for domestic transportation for the application of national law, unless there is a legislative gap. In such a case, the gap is filled, and the deficiency is addressed by applying the provisions of the international treaties to which the state is a party, in accordance with the principle of state sovereignty. National law is the mechanism through which the state exercises its full and absolute sovereignty over its airspace within its territory. The national law in this context is the Federal Civil Aviation Law No. 20 of 1991.

CHAPTER TWO:

Conditions for Establishing the Operator's Liability for Damage Caused to Third Parties on the Ground under the Saudi Civil Aviation Law No. 44 of 1426 AH

The Kingdom of Saudi Arabia spans a vast territory, with a total area of approximately 2.5 million km². The constitution is based on the Qur'an and the Sunnah, which permit the joining of treaties, as the Prophet Muhammad (PBUH) concluded several treaties, known in Islamic jurisprudence as "covenants" (Al-Ghunaymi, n.d., p. 36).

International efforts to regulate the liability of aircraft operators for damages caused to third parties on the ground began in 1930, leading to the Rome Convention of 1933 and later the Rome Convention of 1952, which came into force in 1985. Due to the insufficiency of the 1952 Rome Convention in addressing the developments in civil aviation, "as well as the emergence of new risks not covered by the provisions of the 1952 Rome Convention, the Montreal Convention of 2009 was concluded, which Saudi Arabia has acceded to in this regard" (Abdulhadi, 2019, p. 90).

In fact, we see no compelling legal justification for replacing the 1952 Rome Convention with the 2009 Montreal Convention; the provisions of the Rome Convention were, in our view, sufficient. Nevertheless, what transpired was that the 2009 Montreal Convention replaced the 1952 Rome Convention.

The Saudi Civil Aviation Law No. 44 of 1426 AH derived its provisions from the 1952 Rome Convention, despite Saudi Arabia not being a party to the Rome Convention. However, when the law was issued in 1426 AH (corresponding to 2005 AD), the Montreal Convention of 2009 had not yet been established. "There was an urgent need to issue regulatory instructions for aviation affairs in 1426 AH, resulting in the issuance of the Saudi Civil Aviation Law by Royal Decree No. 44 of 1426 AH, which consisted of 180 articles distributed across 14 chapters" (Darwish et al., 2020, p. 317). Among the subjects addressed by this law is the liability of the operator for damages caused to third parties on the ground within the national context.

In this regard, the Saudi Civil Aviation Law provided an internal regulation for such liability within the national context, unlike the Federal Civil Aviation Law No. 20 of 1991, which does not specifically regulate this matter within the domestic sphere.

Conditions for Establishing Liability under the Saudi Civil Aviation Law:

I: The Damage Must Be Direct

“The damage must result directly from an incident, as no compensation is provided for indirect damages” (Abu Aita, 2015, p. 54). Thus, indirect damages caused by aircraft, such as noise or disturbance due to their flight in the airspace, or damage to an aircraft in flight or to persons or property on board, are not covered under the liability framework in this regard (Swailem, 2018, p. 387).

Moreover, damage is not considered direct in the eyes of the Saudi legislator if liability for that damage is governed by a contract between the injured party and the operator or the person entitled to use the aircraft when the damage occurred, or if it is regulated by labor laws applicable to employment contracts between these individuals.

Furthermore, damages resulting from aircraft used in military services, customs, or police are excluded from the concept of damage, as are damages caused by nuclear incidents.

II: The Injured Party Must Be a Third Party to the Operator of the Aircraft Causing the Damage

“The injured party is considered a third party if they have no contractual relationship with the operator” (Swailem, 2018, p. 387).

III: The Damage Must Occur on the Surface of the Earth

The surface of the earth is not limited to land; any person or object that falls from an aircraft while it is in flight onto the earth’s surface, a ship, or a Saudi-registered aircraft in international waters is considered to have fallen on the surface of the earth within the territory of the Kingdom. “It should be noted that damages must affect the property or persons of third parties on the surface; if the damage occurs to passengers or property carried by the aircraft in flight, such as in the case of a mid-air collision, the law does not apply” (Abu Aita, 2015, p. 53).

IV: The Aircraft Must Be in Flight

According to the Saudi legislator, for the purposes of this matter, an aircraft is considered to be in flight from the moment the use of propulsive force begins for actual takeoff until the moment it lands. For lighter-than-air aircraft, this moment begins when the aircraft detaches from the ground and ends when it is secured again, as stipulated in Article 140 of the Saudi Civil Aviation Law.

V: The Aircraft Causing the Damage Must Be a Private Aircraft

The Saudi Civil Aviation Law excludes military aircraft, customs aircraft, or police aircraft from its scope, meaning that all aircraft providing public service are exempt from this law. Commercial aircraft, even if state-owned, are not intended for public benefit but rather for profit-making purposes, and therefore, the law applies to them.

VI: The Location of the Damage Must Be on the Surface of the Earth by an Aircraft Operating in the Kingdom's Territory

Since we are discussing domestic aviation and domestic transport in Saudi Arabia is generally restricted to Saudi aviation, the Saudi Civil Aviation Law applies. “One of the legal and economic consequences of granting nationality to an aircraft in the Kingdom of Saudi Arabia is the domestic monopoly over internal air navigation routes” (Atem, 2017, p. 43). Furthermore, if

Saudi Arabia relies on foreign aircraft for domestic transport as an exception, especially during peak seasons like the Hajj season, when the domestic fleet is insufficient, the operator's liability for damages to third parties on the ground within the Kingdom is governed by the provisions of the Saudi Civil Aviation Law No. 44 of 1426 AH.

3. Conclusion

The research reached several findings and recommendations, which can be summarized as follows:

I: Findings:

1. Aircraft during flight may cause significant damage to third parties on the surface of the earth, such as when an aircraft is involved in an accident and crashes to the ground, destroying property or lives.
2. The UAE Federal Civil Aviation Law No. 20 of 1991 suffers from a legislative gap regarding the liability of the aircraft operator for damage caused to third parties on the ground within the national scope. However, this gap does not exist in the international context, as the UAE is a party to the Montreal Convention 2009, referred to as the "Convention on Compensation for Damage Caused by Aircraft to Third Parties."
3. The conventions to which the UAE is a party complement the provisions lacking in this law, provided they do not conflict with its provisions.
4. The researcher found that the provisions of the Montreal Convention 2009, to which the UAE is a party, are applied to clarify the conditions upon which liability is based, bearing in mind that the convention addresses international matters.
5. To establish liability, there must be damage caused to third parties on the ground. The damage referred to here must be direct, such as when an aircraft or an object or person from the aircraft falls to the ground.
6. Compensation is provided for damages resulting from death, bodily injury, mental injury, as well as damage to property, or even environmental damage.
7. The researcher concluded that "third party," as referred to by the Montreal Convention 2009, is any person other than the operator, the aircraft crew under an employment contract with the operator, the passenger, or the shipper who is in contractual relations with the operator under a transport contract, or even the consignee whose interest is tied to the transport of goods.
8. The researcher also concluded that damages affecting third parties must occur on the ground, and the "ground" is not limited to dry land only.
9. In the case of a collision between aircraft, liability arises only if the collision leads to damage on the ground; otherwise, it is considered merely a collision between aircraft. In other words, the damage caused to third parties must occur on the ground.

10. The aircraft causing the damage must be in flight. An aircraft is considered to be in flight from the moment all external doors are closed after passengers have boarded or cargo has been loaded, until the moment any door is opened to disembark passengers or unload cargo.

11. The research showed that there is no conflict between the provisions of the Montreal Convention 2009, to which the UAE is a party, and the provisions of the UAE Federal Civil Aviation Law No. 20 of 1991. The flight period in national law covers flight periods generally, while the flight period in the convention specifically addresses the operator's liability for damage caused to third parties on the ground. The established legal principle in this regard is that "the general applies in its generality until specified."

12. The researcher concluded that the aircraft causing the damage must be a private aircraft. The term "private aircraft" includes state-owned aircraft used for commercial operations, but excludes sovereign aircraft such as military aircraft, police, or customs planes.

13. The damage under discussion must be caused by an aircraft operating within the state's territory and the airspace above it, whether the aircraft is registered in the UAE or owned by residents of the state who are not UAE nationals, subject to the conditions determined by the competent authority. The aircraft must be engaged in domestic transport for national law to apply, unless a legislative gap exists, in which case the gap is filled by applying the provisions of international treaties to which the state is a party—while considering the specifics of domestic matters—in accordance with the principle of state sovereignty. National law is the mechanism through which the state exercises full and absolute sovereignty over its airspace within its territory. The national law in question here is the UAE Federal Civil Aviation Law No. 20 of 1991. The law allows aircraft ownership by residents of the state who are not UAE nationals, as outlined in Article 28(4) of the Federal Civil Aviation Law.

14. The Kingdom of Saudi Arabia, like the UAE, is a party to the Montreal Convention 2009.

15. International efforts to regulate the liability of aircraft operators for damage caused by aircraft to third parties on the ground began in 1930, culminating in the Rome Convention of 1933. Later, the Rome Convention of 1952 was adopted, entering into force in 1985.

16. The researcher concluded that there is no convincing legal justification for replacing the Montreal Convention 2009 with the Rome Convention of 1952. The provisions of the Rome Convention, in the researcher's view, were sufficient, but the Montreal Convention 2009 eventually replaced the Rome Convention 1952.

17. The Kingdom of Saudi Arabia has national provisions that address the liability of aircraft operators for damage caused to third parties on the ground in its domestic Civil Aviation Law No. 44 of 1426 AH.

18. The researcher found that the Saudi Civil Aviation Law No. 44 of 1426 AH derived its provisions from the Rome Convention of 1952, although Saudi Arabia is not a party to the Rome Convention. At the time the law was issued (1426 AH / 2005 AD), the Montreal Convention 2009 had not yet been established. The need for regulatory instructions for aviation affairs in 1426 AH was pressing, leading to the issuance of the Saudi Civil Aviation Law by Royal Decree

No. 44 of 1426 AH, comprising 180 articles distributed across 14 chapters. Among the topics addressed in this law is the liability of aircraft operators for damage caused to third parties on the ground within the national scope.

19. The conditions for establishing liability under Saudi law require direct damage, that the injured party is a third party, that the damage occurs on the ground, and that the aircraft is in flight. Under Saudi law, an aircraft is considered in flight from the moment the propulsive force is applied for actual takeoff until the moment it lands. For lighter-than-air aircraft, this moment begins when the aircraft detaches from the ground and ends when it is secured again.

20. It is also required that the damage occur on the ground within the territory of the Kingdom. Domestic transport in Saudi Arabia is generally restricted to Saudi aviation, and thus the Saudi Civil Aviation Law applies.

II: Recommendations:

1. The researcher recommends that the UAE legislator address the legislative gap in Federal Law No. 20 of 1991. It is not sufficient to rely solely on international treaties to which the state is a party, as these treaties are merely supplementary to an existing deficiency and are not foundational. Furthermore, these treaties can only fill gaps insofar as they do not conflict with the provisions of national law. Article 19 of Federal Law No. 20 of 1991 states that “the provisions of the Chicago Convention, and all the protocols and agreements to which the state is a party in the field of civil aviation and its protection, are considered complementary to the provisions of this law insofar as they do not conflict with its provisions.”

Domestic matters also have specific nuances that differ from international issues, the latter primarily being designed to resolve conflicts of law.

2. The researcher recommends that lawyers and judges, when dealing with internal disputes of this nature, temporarily refer to the provisions of the Montreal Convention 2009, as long as they do not conflict with the domestic legal system, until this legislative gap is addressed.

3. The researcher recommends that the Saudi legislator amend its domestic law to align with the Montreal Convention 2009, which the Kingdom has joined, provided that this alignment does not conflict with domestic public policy. Furthermore, it should be confirmed that its internal provisions in this area, following the Kingdom’s accession to the Montreal Convention 2009, are now the ones applicable domestically. This is particularly important since the Kingdom joined the Montreal Convention 2009 after it was not a party to any similar agreement at the time of the issuance and enforcement of its national law, due to the non-existence and non-enforcement of such a convention during the development of the domestic law.

4. The researcher recommends that Saudi lawyers and judges remain aware of whether the disputes they are handling have an international aspect or are purely domestic. This awareness is crucial, given that the Kingdom has now become a party to the Montreal Convention 2009, whereas it had not been a party to any international agreements regarding the liability of aircraft operators for damage caused to third parties on the ground at the time the Civil Aviation Law No. 44 of 1436 AH was issued.

5. The researcher encourages scholars and Arab researchers to explore and study this topic in their research and writings, as it is an area with limited sources and discussion.

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