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Abdelmoneim Ismail Ahmed

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SURVEY OF EGYPTIAN AVIATION LAW AND POLICY—PART II

BY ABDELMONEIM ISMAIL AHMED

Practice Under Bilateral Agreements

AFTER the ratification of the Chicago Convention, Egypt followed the method of concluding bilateral agreements with foreign countries, for the establishment of scheduled air services between and beyond their respective territories. The Egyptian government set up a standard form to be used in such treaties. It has entered into negotiations with many foreign governments for that purpose, and succeeded in concluding such agreements on the basis of the principles provided in the standard form set up by it.

Current Egyptian practice is to grant the designated airlines of the contracting party with whom a bilateral agreement is concluded an operating permission to operate the specified air services to and/or through Egyptian territory for an unlimited period. As to the airlines of foreign countries, with whom Egypt has not concluded a bilateral agreement or has concluded a bilateral agreement but which is not yet in force, the practice is to grant them a temporary permission for six months, renewable if the case warrants such a renewal. As to non-scheduled air carriers, the conditions of the operation vary to suit individual cases.

In fact, Egypt has always exercised sovereignty over the air to the extent that she wished. These claims have never yet been challenged; nor, has there ever, until now, been any suggestion made that sovereignty was more limited with regard to the space above the land than it is with regard to the land itself. If this is not the case, i.e. that air space is not within the jurisdiction of the sovereignty over the land, surely there would have been some protest, or at least some doubt expressed as to the validity of these assertions of sovereignty. But in the whole history of civil aviation in Egypt, there has never been any question raised in any single case, nor has any doubt ever been suggested as to the jurisdiction of Egypt over the air until the present time.

As to foreign military aircraft, they were not permitted to operate to or through Egyptian territory, except by a prior permission. Necessity for this permission was waived if an agreement existed between Egypt and the country of origin of the aircraft.

Some debate on the status of the foreign armed forces in Egypt had occurred. Certain writers,⁹ expressed doubt as to the extent and

⁹ Legoff, M. Le statut aérien du canal de Suez d'après le traité anglo-égyptien du 25 août 1936. *Revue générale de droit internationale public*, 1939: 142—58, and David Morgan Hughes *Airspace Sovereignty over Certain International Waterways*, *Jrn. OF AIR LAW & COM.* Vol. 19 Spring, 1952, No. 2, p. 144-151.

nature of Egyptian sovereignty over the air space above the Suez Canal area. As this question is no longer of any legal practical importance, it will not be the subject of study of this survey. It would be suffice to say that the status of friendly forces in Egypt and in Great Britain has been the subject of study by many eminent writers.¹⁰ A careful analysis of the forementioned studies, putting in mind the principles of air space sovereignty mentioned earlier in this chapter and being mindful of the fact that the Suez Canal area is an integral part of the Egyptian territory, one could say that there was no need of the doubt expressed as to the full and exclusive sovereignty of Egypt over the Suez Canal. A treaty must be construed as a whole, so that no article of the treaty is to be taken substantive or standing alone and single from the rest.

ESTABLISHMENT OF AVIATION FACILITIES

In Egypt, the Law of 1920 specifies that the establishment of aerodromes is a monopoly of the government. This law, however, provided indirectly that any person may by prior authorization from the government establish an aerodrome. Inasmuch as there is no legal provision refusing this right to foreigners, it may be deduced that the latter either as individuals or corporations may open and maintain aerodromes in Egypt.¹¹ Nonetheless, the exercise of this right is controlled by the State. This policy has been widely considered as anomalous and erroneous. It is surprising that the legislators who are usually so strict on the question of the Egyptian nationality of proprietors of Egyptian aircraft should not have exacted a similar requirement with regards to the ownership of aerodromes situated in Egypt. There is a certain latent danger in the fact that a great number of aerodromes in Egypt be owned and exploited by foreigners. It is proposed that the law be amended on this point to refuse any authorization to any foreigner to establish or exploit any aerodrome in the Nile Valley.

It should be noted that in the last few years there has been a general tendency toward increased State intervention and control. That is the case in Egypt, the U.K., France and Italy. However, the experience of Canada and the U.S.A. has shown that aerodromes have developed rapidly, aided by private initiative. But, private initiative may lead to a certain dispersion of effort. Further, the problem has evolved. Private enterprise or particular group interests are no longer the sole factors. The establishment of an adequate infrastructure is of general public interest. Coordination of aids to navigation and communication is necessary for the safety of air transport. Finally, the cost of estab-

¹⁰ Jurisdiction over members of Allied Forces in Egypt, by J. Y. Brinton, *American Journal of International Law*, Vol. 38, 1944, p. 375. The Legal Aspect of the American Forces in Great Britain by A. L. Goodhart, *American Bar Association Journal*, Vol. 28, p. 762. Jurisdiction over Friendly Foreign Armed Forces. *American Journal of International Law* Vol. 36, p. 539. 1942 by A. King. Further Developments concerning Jurisdiction over Friendly Foreign Armed Forces. *American Journal of International Law*, Vol. 40, 1946, p. 257 by A. King. The Egyptian Mixed Courts and Foreign Armed Forces, *American Journal of International Law*, Vol. 40, 1946, p. 737 by J. Y. Brinton.

¹¹ Article 1 of the law No. 19 of 1920.

lishing an infrastructure has grown considerably and has reached, at least in the case of the larger commercial airports a figure which exceeds private resources. For this reason, the establishment of aerodromes and infrastructures offering the facilities required by modern aerial navigation is coming to be considered as a public service which should be undertaken by the State.

However, it is not appropriate to enunciate any general rule here. The solution to the problem is largely dictated by convenience. In my opinion, it seems that the Egyptian government may be charged with the establishment of infrastructures required by international traffic as well as those which are of national interest.

In Egypt, the government establishes all aerodromes situated on regular air routes. It also organizes and sees to the maintenance of beacons, communication signals and meteorological services. The establishment of public aerodromes is the financial concern of the State alone. The authority concerned with the establishment is the Civil Aviation Department. The planning is the concern of the Civil Aviation Supreme Board.

Condemnation of Land for Aerodromes

There is no single article, in the Egyptian positive law of aviation empowering the civil aviation authorities to acquire land either compulsorily or by agreement, for the purpose of establishing aerodromes, including roads, approaches, buildings, apparatus and equipment. In the absence of such rules, we should resort to the rules of common law—in this case to the law of acquisition of land for public interest. The expression “land” is to include land covered with water and any right in and over land. The State or its public agencies (Civil Aviation Department) in acquiring land for an airport, does not act differently than when it engages in other public projects such as establishing tunnels, docks, bridges or highways.

The acquisition of land Act governs the procedure for assessing compensation where land is acquired compulsorily. This Act establishes a panel of official arbitrators who have special knowledge of the evaluation of land. Compensation is payable to any person who suffers any direct injury or loss owing to condemnation of his property. It is recommended that the new law should not provide any ruling in this connection, as the general rules would serve our purpose.

The preceding rules are not to be applied to private aerodromes. The Civil Aviation Department, before permitting any private person to establish any aerodrome, must be sure that the land proposed for such establishment is enough to fulfill the technical requirements.

Protecting the Vicinity of the Aerodrome

The landing area for aircraft is more than just the ground space required for the runways, loading and unloading aprons and for storage and servicing facilities.

The air space surrounding all landing areas is of so much importance that the approaches to the ground space should be considered a part of the landing areas. In order to protect the approaches, tall buildings, trees, and communication and power lines must not become a hazard. The air space as well as the ground space must be protected, and some control over neighbouring property is, therefore, necessary.

According to the officers of the National Institute of Municipal Law,¹² there are a number of means of protecting approaches:

(a) Voluntary action by the owners of installations which constitute hazards. (b) Purchase of all land near the airport and razing of hazards located thereon. (c) Purchase of air space rights over all land near the airport. (d) Acquisition of air space rights over land near airports by use of the power of eminent domain in order to raze present and prevent future hazards. (e) Police power: condemnation of hazards to use of airports.

The proposal that these obstacles be overcome by increasing the size of the airport and thus increasing the distance from the point of landing or take-off in which there are no structures to jeopardize the safety of operations, is obviously impracticable. If such purchase is impossible, the remaining alternatives are regulation by zoning and acquisition by purchase, lease, or condemnation of the rights on air space above the surrounding property.

Zoning: Under the police power, the main protection of airports from abutting neighbouring land is in the regulation of these areas by zoning. There can be no such regulation solely in the interest of the port, rather, such regulation must be for the protection of the interests of the public. There are numerous illustrations, in the law books, of ordinances where prohibitions against the maintenance of public garages, laundries, moving picture theatres, and the like within specified distance of schools and hospitals have been upheld as proper measures to protect the public's interests.

Aircraft operating upon regular schedules in the transportation of goods and passengers, generally carrying heavy loads and flying in all kinds of weather, must be assured at all times of safe avenues of approach to the established terminals and intermediate landing fields. The adoption of ordinances to eliminate undue dangers to such traffic thereby becomes a measure directly in the aid of the public welfare.

Police power cannot be exercised over private airports. The Civil Aviation Authorities must be sure that applicants' for private airport licenses are able to purchase the adjacent land required for the protection of such an airport. It is interesting to mention here that prohibiting any person from doing with his property what previously he was free to do, is always the taking of a right in it. Compensation must be paid to such a person. The means chosen to protect the vicinity of

¹² Commercial Air Transportation by John H. Frederick, Revised Edition 1946, p. 116 (footnote 9), quoted from Airports and Airplanes and the Legal Problems They Create for Cities (Washington, D.C., 1939).

aerodromes, by the Egyptian legislators, is zoning Law No. 27 enacted in 1941, empowering the Minister of War and Marine to issue orders to establish around each aerodrome a zone not exceeding four hundred meters in width. Once this zone is established, nobody is authorized to build anything higher than 1/20 of its distance from the aerodrome.

ROLE OF ICAO IN THE ESTABLISHMENT OF AERODROMES

The Chicago Convention contains provisions¹³ of a kind not included in any earlier convention, designed to secure that airports and air navigation facilities of the standards laid down under the Convention, shall eventually be available for International Air Traffic in the territories of all contracting States. The obligations undertaken by the contracting States are, however, subject to limitations and safeguards which make it impossible for a State to be compelled to take action against its will.¹⁴ The obligation to provide airports and facilities is stated in article 28 of the Convention.¹⁵

MANAGEMENT AND EXPLOITATION OF AERODROMES

Each State has its own system. Here, by way of example, is the Egyptian system. Private aerodromes may be excluded: their management depends on their proprietors. State aerodromes may be managed by the State or by a concessionaire. The fact is that, till the present time, the Civil Aviation Department manages and exploits all public aerodromes.

Under exceptional circumstances, an aerodrome may be managed by a concessionaire. It is my belief that a concession is advantageous neither for the State nor for the concessionaire. It has become increasingly clear that an airport can seldom be expected to pay an adequate return on invested capital, so that it offers little attraction as a business project. Management or exploitation of an aerodrome is generally unprofitable because the different fees levied on aircraft, do not cover usually imposed operating management expenses nor the expenses of upkeep and improvement. One way out, would be to raise fees, but such a raise would be harmful to aviation. It would undermine the development of commercial aviation which would then be obliged to shift the burden to the passengers and shippers of cargo. Some one would say that the State should give some subsidies, but in this case the concessionaire is not likely to make any effort to improve the enterprise.

It is evident that an airport is a public utility deserving of support, even though a considerable net outlay may be entailed in keeping it up. It is submitted that it is highly desirable that the Egyptian government retain management of all public aerodromes and not allot them to concessionaires.

¹³Cf. Chapter XV of the Chicago Convention on Airports.

¹⁴*Ibid.*

¹⁵ For more details see Shawcross, C. N. and Beaumont, K. B., *Air Law*, 2nd edition, London 1951, p. 504, 505, and 506.

Whatever the form of management, whether by the State or by a concessionaire, two sets of rules should be considered: (a) The first concern fees which must be equal for foreign and domestic aircraft engaged in international flight. The Chicago Convention clarifies these rules in article 15. (b) The second set of rules concern the position of the manager of aerodromes. It is he who exercises police power. This power is clearly defined in the existing rules.¹⁶ He is empowered to inspect the documents of the aircraft and to oppose its departure if the case warrants.

From the standpoint of the safety of aerial navigation, the aerodrome manager has wide discretionary powers. The Egyptian ruling limits the freedom of take off to the case where the manager is certain that the pilot has familiarized himself with the meteorological data for the trip. It is submitted that the law should clearly specify that the manager's liability ceases once he has provided the pilot with adequate meteorological information.

Moreover, the ruling provides that the manager has the right to stop all take-offs which he deems dangerous either because of ground conditions or exceptional atmospheric conditions.¹⁷ He may do this but he is in no way obliged.

The National Airport Plan: Egypt would require at least a total of three hundred airports to serve adequately the transport and private flying which reasonably could be expected to develop within the near future. In developing any national airport program the national natural division of labour is for the central government to undertake the over-all planning since there must be a national pattern.

The provinces or the municipalities are, however, best fitted to handle the local details, and financing should be a joint enterprise, on the basis of the central government aid to public utilities: the highway system, for example. One formula for the distribution of central funds as they become available for provincial use involves taking four factors into account: (1) The area of each province. (2) The population of each province. (3) The number of registered aircraft in each province. (4) The existing number of airports in each province. Under such a plan, each province would match a specified percentage of its quota of central funds with its own money.

Seaplanes or Amphibian Bases: Not only the coasts of Egypt, but the lakes and the River Nile as well, provide many natural landing areas for seaplanes and amphibians. The opportunities for seaplane and amphibian operation in the interior of the country should be increased in the near future by the formation of new water bases. The existence of these water bases has ever been held to be one solution to the problem of airport shortage with which the nation of the Valley of the Nile is faced, particularly for the private flyer. The briefest

¹⁶ E.g. Article 8 of the Law No. 27 of 1941.

¹⁷ Article 12 of the Decree issued on the 23rd of May 1935.

study of maps or charts, is enough to show that there are hundreds of possible sites well prepared by nature in this country.

A widespread use of seaplanes and amphibians is as dependent upon the supply of adequate seaplane bases as the use of land-based aircraft is dependent upon airports. Commercial operations and private pilots could utilise lakes and rivers which often are more convenient to downtown city areas than present airports.

Airport Adequacy: The airport system of Egypt may be judged as to its adequacy on several bases. These are: (1) Airport location in relation to the cities served. (2) Size of airports and runway distribution thereon. (3) Airport equipment and buildings. (4) Extent of protection of landing areas exclusive of the airport itself. (5) Services available for the traveling public.

The record of performance of air transport in Egypt has been admirable, and its growth both in volume of operation and in public acceptance and popularity has been rapid, but it would give a better, safer and more reliable service if the general standards of quality of the airports used by the commercial airlines as regular scheduled stopping places or as occasional alternatives could be materially improved.¹⁸

Airport Income: All airports in Egypt are not paying their way or breaking even on the mere interest and sinking fund charges on the bonded indebtedness involved in their construction charged against operations. Airport income includes all revenue received from both aeronautical and non-aeronautical activities. It includes such items as commissions, rentals from restaurants, garages, swimming pools, hotels and landing fees etc. The State should consider the airport in the light of a country attraction, bringing business to it, yielding an indirect and intangible return, and prefer not to take the chance of making their field less attractive to users by charging for example, more than nominal fees for its use and service. An attempt should be made to make an airport pay for itself. Whether or not an aerodrome can be made to pay, depends upon considerations which are subject to variations.

RECOMMENDATIONS

In the light of the material presented in this chapter, and of the other information that has been secured during the preparatory work for this survey, we make the following recommendations:

(1) Development and maintenance of an adequate system of airports and seaplane bases should be recognized in principle as a matter of national concern.

¹⁸ This subject is under careful study of the C.A.D. and the C.A.B. in Egypt.

(2) Such a system should be regarded, under certain conditions, as a proper object of government expenditure.

(3) In passing upon applications for central government expenditure on airport development, establishment or improvement, the highest preference should be given to airports which are essential to the maintenance of safe and efficient operation of air transportation along the major trade routes of the nation; and to those rendering special service to the national defense.

(4) At such times as the national policy includes the making of grants to local units of government for public-works purposes, a proportion of the funds involved should be allocated to airport purposes. Such purposes should be given preference as rendering an important service to the localities concerned, and at the same time being of particular importance to the nation's commerce and defense.

(5) The Director of Civil Aviation Department may for the purposes of civil aviation establish and maintain aerodromes and provide and maintain in connection therewith roads, approaches, apparatus, equipment and buildings and other accommodations.

(6) Any local authority may, with the consent of the Director of Civil Aviation and subject to such conditions as he may impose, establish and maintain aerodromes and provide and maintain in connection therewith roads, approaches, apparatus, equipment and buildings and other accommodations.

(7) A place in Egypt other than a government aerodrome shall not be used as a place of landing and departure by any aircraft carrying passengers or cargo unless it has been licensed for the purpose, or save in accordance with the conditions, if any, of such license.

(8) A license for an aerodrome for private use; that is to say, for use by the licensee and by individuals specifically authorized by the licensee, shall not be granted to any person or corporation other than 1) an Egyptian subject, or 2) a company or corporation registered and having its principal place of business in Egypt.

(9) An aerodrome may be licensed for all type of aircraft or for certain specified types or classes of aircraft and the license may specify the conditions on which the aerodrome may be used.

(10) Every aerodrome which is open to public use by aircraft registered in Egypt upon payment of charges shall to the same extent and upon the same conditions be open to use by aircraft possessing the nationality of a contracting state.

(11) The Director of Civil Aviation shall for purposes of civil aviation and any purposes connected with the discharge of his functions have the power to acquire land or any right in or over land by agreement or compulsorily.

(12) The Director of Civil Aviation may by order provide for the creation in his favour of easement over land or of other rights in or in

relation to land, including rights to carry out and maintain works on any land and to install and maintain structures and apparatus on, under, over or across any land if he is satisfied that it is necessary to do so in order to secure the safe use for civil aviation purposes of any land which is vested in him.

(13) The Director of Civil Aviation may by order impose such prohibitions or restrictions on the use of any aerodrome as he thinks expedient for the purpose of securing that aircraft may arrive and depart with safety at any aerodrome under his control.

(14) The Director of Civil Aviation shall appoint for each aerodrome vested in him an officer who shall be responsible to the Director for all services provided on the aerodrome on behalf of the Director, including signalling services, flying control services and services connected with the execution of works.

