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**THE STATES INTERNATIONALLY RESPONSIBILITIES AND AIRSPACE
VIOLATION**

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ABSTRACT

The purpose of this study is reviewing the states international responsibility arising from airspace violation. This study has reviewed the raised issues in history and the events and the raised conventions as well. This research has studied on the state internationally responsibilities in the case of common relations and conflicts.

In any legal system, whether national or international, lack of a binding commitment may cause the legal responsibility. The rules of international responsibility determine the different situations that make a state responsible for violation of internationally commitment as well as the effects of this responsibility. Regarding the airspace situation is similar. The method of this research is library and has been done by studying the available and existing resources in this field.

According to the conclusions of this study, airspace violation in any situation is illegal and during the war between the countries, military and civilian targets and the other issues should be discriminated from each other. The actions should be made according to the existing treaties in this regard; otherwise doing any action is consider as a crime and the related state should pay damages.

Key words: international responsibility- invasion of privacy- airspace violation

INTRODUCTION

In the world, Man is as a creature that enjoys from power of reason and recognition; and since is the most prominent creature is the only one that makes the impossibilities, possible. Man by using his intelligence and power of reason always has attempted to

develop and help his fellowman. People based on their personal and social reasons have goals; and to reach them have used every opportunity and facility. Most human inventions have done by inspired from the nature. The Man by looking at the other creatures was thinking about innovations. Each creature has some potential that the Man does not have it; one of these abilities is the power of flying. When Man saw this power, attempted to find a way to fly; these attempts were done in different forms.(Nicolas Mat 1981:16).

For fulfilling this dream, Aryans and Hindus tried by entering the smoke in their cloths even for a moment keep themselves in the air. Greeks for achieving this wish, resort to the miracle.

In 1678, a French smithy made a device and fly by that in a short distance and people appreciated God for this strong invention. So, the first idea for flying was formed. But after that again French followed this amazing invention and in 1783 Yen Gelifieh French brothers, made a balloon content warm air and in the next year Landry from England made another balloon.

The first air regulations on 23 April in French for finding a solution for preventing from the events caused by flying the balloons were

enforced. Base on these rules, the flying of the balloons without license became ban.

To prevent from disasters caused by balloon crash, in 1819 some rules regarding mandatory equipping the balloon to parachute were enforced.(Nicolas,1981:21-22).

With the invention of airplane in 1908 by Right brothers, a new period began in transportation industry; in a way that by rapid developing of aviation in 20th century, now the airplane is considered as a most important means of transportation.

Ease of travel, shortening the distance, time-saving, less fatigue, no risk of ground travel, enjoying the aviation facilities in agricultural sector, natural resources, war and espial and etc. are as the advantages of this new industry. But occurring the first and second world war has expedite this industry; because during these two world war, especially during the second world war the most usage of this industry was in destroying; and occurring such events caused by such equipments provided the backgrounds for enforcing the laws and regulations and preventing from conflicts and the damages cussed by these issues.

Different countries use the airplane for aerial photography, in the field of athletic, recreational, educational and the other fields in a wide range. In addition, among these

usages, the air transportation constitutes the main and central focus of air laws and is very important in this filed. And this matter is caused by two reasons: firstly "air transportation is as a public service and not only in national level but also is used internationally, as well as for transportation of cargoes and passengers and freight; and secondly air transportation has an international aspect;

As far as has developed the relations and political, commercial, social and cultural relations of countries; and unbelievably has provided accessibly of the nations.

The main question of this study reviews the following matter:

The violation of countries airspace regarding the violator factor is direct responsibility or indirect?

Several questions arise in this paper such as:

Do/Does the related state/states to the violator person/persons has/have international responsibility?

Is there any strategy for compensating the damages of airspace violation in international laws?

Is there any border for determining the exact limitation of airspace?

The definition of state internationally responsibility and the airspace violation

First, we define the air laws. According to Safavi's viewpoint, the definition of air laws is as follows: "the air laws is a part of science of law that reviews the laws and regulations related to adjust the airplane traffic and using them and also the relation arising from these activities.

This definition beside the other definitions and rules expresses atype of legal mandatory in the field of air law and its enforcement by the states.

"In any legal system, whether national or international, lack of a mandatory commitment causes a legal responsibility. The rules of international responsibility determine the situations that make a state responsible for violation of internationally commitment as well as the effect of this responsibility.(Mightader, 145:1388)

When a state is responsible that violate a committed state against another one. The commitment may originate from a "treaty" or "customary law" or arising from the lack of implementation of a binding judicial decision. In addition, the responsibility may arise due to mistreatment with foreigners or non-implementation of a qualified international organization mandatory decision such as UN Security Council.

The origin of international commitment is not important in terms of state responsibility. In

general, the state responsibility includes two factors as follows:

- 1- Doing an illegal action;
- 2- The possibility of appointing to the government

So if the state has a credible defense, is able to be free of charge; otherwise based on its responsibility is forced to pay damages. Whether the action of a state causes an international responsibility or not is only determined by international laws. Therefore, if any action in international laws is illegal, the rule of civil law does not have effect on the legality of that action. Because according to an acceptable principle, the actions in the international laws are judged by international rules. Accordingly, in case that do or not doing an action by the state, leads to violation of an international commitment, the international commitment will arise. For example if any state illegally use its force against the neighbor country, will be responsible; Likewise, in case that does not prevent from making illegal action of autonomous armed group from its homeland against the neighbor country, will be responsible. (this matter was approved according to the article 3 of proposed planning of international law commission as well as the opinion of international courts – such as the case of Corfu Channel of

Albanian state, because of avoiding to warn about the existing mine in the Strait of North Corfu, that considered as a responsible)

In case of do or failure to do an action lead to making responsibility that there is an international commitment at the time of do or failure to do that action. Only violation a commitment lead to making responsibility whether the factor and element of change is existed or not, the international law commission in the proposal convention plan about the state responsibility, based on article 19, the international illegal action done by the states (the actions violating an international commitment) divided to two categories.

A class called as international crimes and the other one as international tort; and the reasons and documents have been mentioned for this classification. In general the international crimes includes the illegal actions that violating a significant and fundamental commitment that in terms of international society profits is very significant. Such as: serious violations of sanctions against rape- Serious violation of the right of self-determination (such as establishing colonial domination by force), violation of human rights in the large scale (such as: slavery, genocide, racial discrimination), serious violation of substantial regulations for

environment protection(such as widespread pollution of air or sea).

It is obvious that the mentioned items do not have limitative aspect, and are related to the concept of Peremptory, in other words the international crimes guarantee the peremptory.

Also it should be considered that the mentioned crimes are about "state" internationally responsibility and does not include the internationally crimes that are done by "persons". This current category in another place is compiled under the title of anti-peace and humanity crimes by international laws commission.

Clause4 from Aarticle19 of international laws commission proposal plan, about the second category of illegal actions says: any illegal international action that according to the clues 2 is not considered as an internationally crime, is as a tort. The commission at that time did not explain about the" internationally responsibility regime" it means the effects of laws related to internationally crimes, but in the report of special informer some of the effects of "internationally crime" warned to the commission in 1985 (article 14 of proposal).

Committing an internationally crime, creates rights and duties for all members of the international community such as the task of

identifying sciences of the resulted situation from committing the crime as well as avoiding from helping to a state that committed a crime. As a whole, about internationally crimes, all the states are entitled to against the violator country, citing to the related commitment role and take appropriate decision to deal with it.

The aim is that every sates be entitled to try for establishing these fundamental rules of internationally society. This separation between internationally crimes and tort was criticized by some states and juristic especially western states. To actualize the responsibility, the done or not- done illegal action should attribute to the state. In other words, it should be done by the state not by the persons and the pillars who have acted on their own. For example failure to observe the provisions of a treaty by state is considered as "state action", but if the action is done by the persons and the pillars who have acted on their own won't be raised as an international laws violating. If the action is done by the persons and attributable organs to the state, it is a subject that is determined by international laws; although the international laws is considered for determining status of the persons and pillars that their done on not done action are attributed to the state. Therefore, the state is responsible for the actions of its

organs such as army, police, judiciary, organizations and the state offices. The actions of mentioned organs are considered as the actions of state; even if act out of their area of responsibility. For example if the police in its capacity damage to the foreign, the state will be responsible even if the action of police has been out of its authority; so, because the mentioned organ has act on behalf of the state its action make the state responsible; and exceeding jurisdiction, is not as the resolver of state responsibility. (article 10 of states responsibility convention), but if the mentioned police out of their official duties damages a foreigner citizen in a street clash, as do not act as a state organ, the state won't be responsible. The rule of state responsibility for its pillars action includes all types of organs such as: administrative, judicial, and the laws will be determined and enforced for all of them.(Articles 6 and 7 of the convention plan).

The state is not responsible for the real persons; although their actions are done in their homeland. Therefore, if a common citizen attack to a foreigner, the state in terms of internationally is not responsible for his action. But in case of a real person do any act on behalf of state, the state may be responsible for their actions in terms of internationally; such as in the cases that the

real persons are used for doing the governmental tasks for example helping to the police for doing police researches or keeping the order and etc.

It is possible to attribute these types of actions to the state and damaging to the foreigners by mentioned persons are considered as state actions. The exception items from liability are as follows:

In the international laws as the same as the internal laws, violation of a private commitment in all aspects does not cause the responsibility. Because it is possible, that due to existing conditions the action of state is justified so it prevented from making the state responsible. Some of these items are as follows:

- 1-The consent of other party (except for violations of the rules items)
- 2-To reciprocate against the act of another state
- 3- Unpredictable or force majeure events that make impossible fulfilling of a commitment.
- 4- Emergency situations to save person's lives
- 5- Necessity
- 6- Self-defense cases (Moghtader, 2009:154-150).

A glance to the history of air laws

The Institute of International Law reviewed the Fushii's proposed scheme in 1911 in Madrid; and approved a summary of that in

14 articles. The first part of third article that related to the peacetime and about the freedom of airplane international transit ordained that:

"The traffic of aircraft over the world is free; but the state that the foreigner aircraft is flying over that is entitled to makes appropriate decisions for maintaining security of its homeland and saving its residents' life."

Despite the sporadic made efforts in European countries before the First World War air laws did not codified. In June 1910, Congress of Aviation Transportation International Law held in Veron and made some important decisions.

One of these made decisions was as follows: "Air space above the land and waters of any country is under the sovereignty of that country." Aviation International Laws Committee, which in 1911 held in Paris was composed of the number of independent; and lawyers did useful measures to develop the air laws.

One of the proposed rules of this committee is accepting the principle of freedom traffic of foreigner aircraft over the country, provided that, the country where the aircraft pass over it be able to impose its own domestic regulations to them for protecting its security.

In 1912 Association of International laws in Madrid made attempt to find a solution to

compromise between two free thoughts and to exercise sovereignty over the airspace of countries under their command. According to decision of the society, each state can impose rules to limit the passage of aircraft in its airspace. Meanwhile any states that observe the air regulations of that country should be allowed to without any discrimination use the space of that country for transit.

In 1925, according to French government suggestion, the first International Conference on Private law was held in Paris. The participants in that conference decided to constitute a committee entitled "Committee of Air Laws International Techniques Experts". The task of mentioned committee was to investigate the related issues to the Air privacy laws. This committee had some legal sub-committee such as the committee in charge of transportation, mortgage of the aircraft etc.

The mentioned committee provided the draft of Varshora treaty and submitted it to diplomatic conference for approving. This treaty subsequently approved by the diplomatic conference and became prepared for signing by the other countries.

Paris treaty is the first legal document that came into force. According to this approved treaty, by 3 countries full and exclusive sovereignty of countries over their own land

was recognized and its provisions were consistent with this Roman rule "Whoever owns the land is also own the space above it". In order to the treaty, involve the technical issues, some appendixes related to the criteria of flight capabilities and qualification certificate of flight attendants etc. were attached to it.

According to the article 34 of treaty, a commission entitled CINA was formed that was authority of adjusting the technical regulations, collecting and distributing the data related to aviation and suggesting about the issues that the member of the treaty might refer to it. This treaty proposed the first acceptable definition. Based on this definition" aircraft is as a device that is able to raises to the air and move in that". This definition included the machines such as air ship, without engine aircraft, free balloon, weapon carrying balloon, war as well as helicopter.

According to a definition presented by Maack aircraft is a device that is able to fly in the sky. In 1944 the Chicago treaty became as the replaced of mentioned treaty and abolished it. This treaty did not change the definition of aircraft.

Then Icao in 1967 proposed a new definition from aircraft; base on that the aircraft is referred to any means that moves by air

pressure without the help of air reaction at ground level.

The outstanding feature of this definition is adding the terms of "except air reaction at the ground level". After Paris treaty, the Eibro American treaty in 1926 in Madrid approved. This treaty was very similar to the Paris treaty. In 1927, USA began to propose a draft of aviation treaty entitled" Pan American Treaty" that was signed in 1928 in Havana. The difference of this treaty with Paris treaty was in two items: First: this treaty had no technical appendixes and second: a commission had predicted for settling the disputes and collecting the data and distributing them. This treaty failed to reach its purpose in unifying the air rules. At the time of world war, when internationally traffic expanded rapidly, Civil Aviation Temporary International Organization was established; that subsequently Ecao became replaced it; and until now has the main role in settling the aviation disputes.

Ecao was established in 1947 and finally became an important organization that several countries are its member. Ecao immediately developed to one of the specialized organization of United Nation. The ICAO runs its daily affairs. The ICAO has several tasks that have legal, economic and technical aspects. This council has 33 members that do

their tasks under supervising the General Assembly Organization. ICAO has a legal committee that its task is preparing and providing drafts of air laws treaties as well as proposing that to diplomatic conference for final approval.

The state responsibility: the international law experts, seeks to expand the scope of private sector activity that is attributable to the states; and in this regard they are sure that the states resist against accepting responsibility of breaching an international commitment.

For example a review done by International Law Commission regarding states responsibility, has refused from the doctrine of state responsibility based on traditional criteria of "appropriate efforts" and knows the states responsible for doing nearly all private sector activities which are done in their monitoring territories.

According to one of International Law Commission member, this review is widely depending on the government duty to regulate private sector activities; and probably its ability for obligating the private sector to insure property and giving the financial guaranties.

It is difficult to imagine how such an extension regarding appointing the treat and

actions of private sector to the states, could be consistent with their profits.

A system based on a broad perspective about attributing the acts to the state, need to more accurate supervision and inspection of state regarding doing economical activities of private sector and this matter make economic development more costly.

Violation of duty (Sicutere): the principle of Sicutere that has been derived from the criteria (principle) of "like harassment", cannot be as an experimental (inferential) respond for this basic question. That how mach of damages (in any location whether in sea or except that), is considered as "unacceptable damages" and this principle cannot respond to this question that what kind of action and law enforcement by a country lead to "unacceptable damages"?

The lack of international jurisprudence issues had an essential rule and now is so. The international law experts, by expressing some definitions from the required criterion for a state, have tried to prevent from the violation of duties in different fields.

In choosing between two doctrine of "responsibility based on fault" and "strict liability" as a precautionary and care criterion, the international law experts ignored the facts related to each of two doctrines. The international laws, traditionally has provided

the state responsibility in case of proof and negligence. For example, in a dispute entitled "meicham" in 1929, America and Mexico Public General Climes Commission believe that occurrence of responsibility is due to a neglect, mismanagement in terms of justice or abusing. Are the proceeding related to a lower degree of international law criterions or not?

What is important in the neglect discussion is uncertainty of the "neglect" that prevents from codifying it. Using the "neglect" criterion has this concept for audiences that: a global system (responsibility) is established based on a mental concept.

Such concept prevents from forming a common concept that is necessary for efficiency of an international responsibility system. A system based on neglect doctrine, regarding environment international laws, need to research in judgment and then determining a standard common criteria of a government behavior and proceedings.

If the states have similar basic views of neglect concept, it seems that a system based on neglect criterion can overcome the problem mentally being of this concept. As it is possible in the scope of a specific structure of the domestic judicial, the subject of neglect by judgment is interoperated in different forms, the cultural, political and economic dissimilarity that is seen between the different

countries, prevented from recognizing of common concept of neglect in the international scope.

For a responsibility system that acts necessarily by presenting a legal criterion "precautionary and care" mentality concept of neglect that is in a close relationship with interpretation of neglect subject, make the related judicial authorities hesitant. The absolute responsibility is created after occurrence of a major damaging event; that automatically, the cause of this accident will be responsible for compensating that.

Therefore, the stats should insure that in case of occurrence of any accident it should be compensated. Even if at the time that undertake doing the considered activity, it is not known as a harmful action. The doctrine of absolute responsibility, for its fans achieves an objective legitimacy aspect.

but preferring between "absolute responsibility" and "state interests "is an obstacle that prevent from existing of a general concept for such a responsibility.

The absolute responsibility for developing countries is unpleasant. The developing countries mostly doesn't have necessary information to predict the extent of international damage caused by inland activities, especially the activities that the mentioned countries in terms of economic

development rely on them and are done by companies and foreigner centers.

The absolute responsibility by increasing the industrial operations costs may reduce the ability of developing countries for international competition and consequently prevent from their economic development.

In addition, the absolute responsibility never can be free from the shape of "invisibility" and "being imaginary" that are along with the doctrine of "neglect" and in terms of basis for a global system regarding internationally responsibility make it weak. Imposing all aspects responsibility for Serzgour damages lead to making the system ineffective and incredibly complex.

The difference between very dangerous activities and the other harmful activities that make necessity using the absolute responsibility needs to a case-to-case balance between dangerous and interest of related activities.

So, we enfacd with two types of responsibility for the states: one of them is neglect and the other one is absolute responsibility that both of them are accountable to duty violation by the states that have done this violation. Therefore, any violation to the airspace of the countries has responsibility for the states that has done it.

The international responsibility for the airspace violating as one of hostile party

Regarding the hostile and war, the international laws has been enacted some regulations that obeying from them is necessary for states. It is as a wonderful point that there is a law and regulation in all aspects for armed conflicts.

In the condition that the war has happened, we witness the regulations that breaching them will be as an international rules violation. The reasons of obeying from armed conflicts laws by all countries are as follows:

- A) These rules, for states and the persons that present in their territory, are binding. Customary laws includes determined criterion that are mandatory for all the states. The contractual rights are necessary to be obeyed by member states of those treaties.

In both cases, these regulations are applied for the residing people in the mentioned states.

- B) the gross violation of national conflicts rights not only is a war crime but also in the internal courts with international courts is criminal traceable.

- C) Obeying the law

- 1- Confirms professional behavior of the armed forces members

- 2- Increases the good mood and discipline
- 3- Supporting military residents in their home and also in operations arena
- 4- Interactive behavior, for example in exchange for the wounded, the patients and war prisoners
- 5- Improving the possibility of return to peace without any hostility that may leads to instability of situations
- 6- It guaranties that the military proceedings focuses just on defeat the enemy's military forces

The gross violating of Geneva Convention and the first protocol of Geneva and the other serious violation of the armed conflict laws is considered as war crime that is punishable in all over the world.

The states should punish the persons who do the war crimes. Violating the armed conflicts generally includes the offences of common criminal such as: murders or crimes which are military rights violation for example non-performance of a military duty that in the civilian criminal courts or military courts are criminal traceable. Even if the states do not proceed, the international courts my set up for investigating to the violators crimes.

Since the subject of this study is about the air space, this paper is about war conflicts; and laws and regulations in this regard. In this regards the details have expressed clearly and militaries and civilians have separated from one another.

Enemy military aircraft

Enemy's military aircrafts except health aircraft and the aircraft enjoy from good manners, according to the mutual agreement are considered as military goals and they can be as a target of attack.

The laws of armed conflicts, especially the regulation the related to weapons, the article (1008) , the residence (article 1015), precautions proceeding in attack (article 1103), fitness and indiscriminate attacks (article 1108), about the done attacks against enemy's military aircrafts are exactly enforced.(article 65 and 66 of Sun Romeu instruction).

Civilian aircraft of the enemy

Civilian aircraft of the enemy can be as an attack target only in case that is considered as military target (article 62, Sun Remo instruction).

Doing the following activities cause that a civilian aircraft of the enemy, be considered as a military target (article 63, Remo instruction):

A) doing military proceeding by enemy, for example mining, removing the mines, installing or monitoring the acoustic sensors, proceeding to electronic war, tracking or attack to the other civilian aircrafts by providing the data related to targeting for enemy forces;

B) Proceeding as an assistance plane for the armed forces of the enemy, for example by transiting the soldiers, or military cargos, or fueling to military aircrafts;

C) Making activity as a part of collecting enemy's data or helping to this system, for example by doing the activities such as: identifying, early warning, surveillance or commanding the control and telecommunication missions;

D) Flying under the protection of warships or military aircrafts of the enemy

E) Refusing to accept the order of introducing itself, deviation from the rout or departure toward an airport belonging to the warring sides that its type is discussed in this paper; it should be available for visiting and inspecting reasonably or working with the fire control equipments that are considered as a part of aircraft advertising system or in case the tracked aircraft proceed to attack to the tracker aircraft clearly;

F) Armed to air-to-air or air-to-surface weapons

G) Any type of effective helping to the military operation.

So doing these mentioned action by a country aircraft in airspace of one another country is considered as a violation; and the violator country should be accountable and is responsible for it. In this regards some items have mentioned.

These items express the state internationally responsibility for airspace violation as a leveraging hostile war. In the following, these items have come:

The military commanders should consider any types of data about the determined route of civilian aircrafts in the military operation site in their military planning and they should warn the civilian aircrafts entering to the military dangerous activities site (article 74 and 77, the instruction of Sun Romeu).

At first, the responsibility of submitting the data for preventing from flying the civilian aircrafts to the site that because of military operations has become dangerous is as one of the responsibility of civil aviation authority as well as the pilot of mentioned aircraft that obey from the order of enemy. So, the military commander as a part of general condition that should be observed as a necessary cautions for supporting the civilians, should consider in their military

planning the civilian aircrafts flight schedules and warn them about the potential risks.

Warnings often through aviation declarations {Notice to airmen} (NOTAM) occurs; although these warnings usually are provide in higher levels, it is necessary to these information be presented by chief information officers. There must be coordination between military and civilian authorities within the military structure, as well as between the authorities that control aircrafts or the persons who conduct the military operations.

Also it may be necessary that military aircontrol authorities warn to the civilian aircrafts and in case that the military conditions is appropriate, the commanders of air intercept units may allocate some aircrafts for intercepting strayed civilian planes into hazardous areas (articles 72-77, instruction of Sun Romeu).

Seizing Civilian aircraft of the enemy and their goods

Civilian aircraft of the enemy (except hospital aircrafts and the aircrafts that by mutual agreement enjoy good behavior) and the existing goods in them, are permitted to be captured out of civilian regions (article 141, instruction of Sun Romeu)

Seizing the civilian aircraft of enemy can be possible by tracking that and the order of going to the airport of hostile where is safe

and accessible for that type of aircraft and it is permitted to be seized there as a war trophy for judicial investigation.

Security of crew and passengers and their Personal property and any document related to war trophy should be provided. As an alternative of seizure, it is possible to divert the aircraft from its rout to another destination. Any safe aircraft against seizing, in case of doing an action to the detriment the conflict party, or barricade the traffic of hostile, or do not obey the order of tracking or introducing and the others orders of hostiles, or do not observe the agreements of good behavior, will lose their supports.

The hostile states have some obligations that have to be observed otherwise, they commit the airspace violation. Doing the following proceedings by the hostiles is forbidden (article 2-4, neutrality convention, articles of 1, 2, 4 and 5 of Hague thirteen conversion 1907, Neutrality Convention of Maritime)

a) Transferring soldiers or military cargoes or flight of military aircrafts over the neutral land.

b) Setting up the military telecommunication devices in the country, neutral ports or territorial waters or military usage from the stations that had established before armed conflict.

c) Conscription in neutral territory

d) Committing hostile acts, including seizure and the applying the inspection right in the neutral state territorial waters

e) Establishing a war trophies in the land or territorial water of neutral countries

f) Using the ports or waters of neutral land as a naval operations base against their enemies. (article 31 of first protocol Geneva).

International responsibility of state in airspace violation as third person

The concept of neutrality of the state only is used for only for the state that has done sabotage acts or the other measures such this, according to the order of United Nation Organization Security Council based on the seventh chapter of United Nation Charter.

e) there is some limitation about the state that to what extent is permitted to help its ally state whether attempt to implement the contents of UN Security Council resolutions or not. For example, help the victims of violation, without losing its neutrality. The strict and repeated violation of a neutral state obligations make the hostile party entitled to consider that country as its enemy.

Noninterference principle

The homeland of a neutral state should not be attacked. (article 1 of fifth convention Hague 1907(Neutral Convention) the neutral state is a state the does not participate in armed conflict.

In exchange, the hostile parties should observe the privacy of the state that includes sea homeland, sky and the space over that country.

The obligations of neutral state

a) A neutral state is obligate that in case of necessary by using force, prevent from implementation of the activities mentioned in article 1903 by hostile parties in its homeland.

This matter includes installation of devices or arming or changing the ships that are used in hostility operations against the state in which a neutral state is at peace with that (article 8, the Hague thirteen convention 1907(Maritime Neutrality Convention).

b) This state should punish the violators in its homeland. (article 5, neutrality Convention).

c) This state should not put the warship, ammunition or other military supplies at the disposal of the warring party, but otherwise, there is no any interpretation in its trading with the warring states. (article 6, neutrality convention)

Any war trophy that is occupied in the neutral waters should along with officers and its crews be exited and the neutral country should hold the mentioned trophy war crew ship in the lockup. (article 3 of Convention neutrality sea).

If the persons (who are not the member of military force of neutral country) leave there

to provide their services to the hostile party, in case that the hostile party pass from the waters of that state or use the pilots of that state, the neutral situation of the country does not change. Also in case that the persons with the private company proceed to export or transit the weapons or military supplies or telecommunications stations belong to the private companies, or the persons be used, the neutral situation is not changed as well; provided that these criteria for all hostile party be applied for the hostile party identically.

Likewise, any regulation regarding the use of ports or waters of a neutral state should be applied regarding hostile parties identically. The Convention on Maritime Neutrality contains detailed rules about the use of neutral ports by hostile parties.

In particular, in case that the regulations are not enforced, the following items are applied:

- a) The hostile warship (except hospital ships) or the ship has given as trophy, is not allowed to stay more than 24 hours in port or the waters of neutral land; unless it is need to stay due to bad weather situation.
- b) In any time maximum 3 hostile war ship can use the ports or waterfront of neutral state unless in the regulation of related neutral state, it has been ordained.
- c) When more than one hostile party uses the ports, it should be at least 24 hour time

interval between the departure of the opposite party ships (whether commercial or warship).

- d) The warships are only allowed to enjoy the repairs related to ship maritime capabilities.
- e) It is not permitted to load war weapons.
- f) Referring to fuel should not be done more than once in 3 months.
- g) The war trophy ships are permitted to be transited to the port or waterfront of neutral party only due to bad weather situation or lack of fuel.

Otherwise, the war trophy will become free (article 15-25 of Convention on Maritime Neutrality). In case that the neutral state for preventing from the violation of its neutrality use the force, has committed a hostile act. (article 6-10, neutral convention. The articles 7-14 of the convention neutrality sea)

So, if the neutral state does not prevent from hostility activities in its land, the other hostile party can use the right of immediate prosecution for attacking to the enemy forces there.

Legal principles governing the air war

The legal regime of air is depends on the situation of land and the water under it, and includes air territory or open sky.

Air territory

The territory of a country not only includes land and its territorial waters but also includes a layer of air that is over its land and water

territory. This layer continues as far as atmosphere exists and then, beyond the atmosphere area or space begins.

Since 1914 the states have emphasized on the full sovereignty over their air territory and were not willing to accept the "right of innocent passage" for the aircrafts of other states, limit this sovereignty. This matter was approved by impartial countries because of the aircrafts ability for bombing and exploration in the First World War.

As in the Paris convention for adjusting the aviation (1919) complete and exclusive sovereignty of the states on air territory over the water and land of their homeland was approved.

(article1) "Chicago Convention regarding the internationally civilian aviation" came into force in April 1947; the article 1 that confirmed the mentioned principle is as follows:

"Any state has full and exclusive sovereignty right on the air over the land and water of its homeland". The Chicago Convention has classified the aircrafts to civil and state aircrafts. The purpose of state aircraft is military, customs and police aircrafts. So owning the aircrafts to state or using it in state airline is not enough reason to consider the aircraft belong to the state. Chicago

Convention is just governing on the civilian aircrafts.

According to article 5 of Chicago Convention, the civil aircrafts of member states- except regular flights- have limited right for transit and landing on one another homeland without need to any previous permission. Of course, the state of the homeland is entitled to regulate the route, cargo and the other affairs related to these types of flights. Regarding the regulated airlines two conventions in 1944 were approved by "International Civil Aviation Conference"; one of them is about flight dual freedom including the right of transit passage and the right of landing on for fueling and the other one is about quintet freedoms that besides above freedoms include 3 follow freedoms:

- 1- Dismounting the passenger and goods in a foreigner country from the origin of aircraft registration country
- 2- Riding the passenger and goods from a foreigner country to the destination of aircraft registration country
- 3- Transporting the passenger and goods between two foreigner countries.

Besides the mentioned agreements, "International Civil Aviation Conventions" (known as the Chicago Convention) not only imposed the internationally legal general

principles, but also established International Civil Aviation Organization (ICAO); that since 1947 has had main rule in creation of legal and technical standards for International Civil Aviation. Most of aviation rules have taken from the rules related to the ship. For example, the ownership the aircraft is according to the aircraft registration; and it is not possible to register one aircraft in two or more countries at the same time.

The problem of expedient flags that regarding the commercial ships has created many problems is rarely seen about the aircrafts maybe because most of the airlines are run by states. Also the rules governing on authority of states about done crimes in aircraft is similar to the ship rules. In terms of authority, the fling civil aircraft can be considered as a part of registered country; but at the same time it can be known present at the country that is flying over it. So not only the register country but also the country that aircraft is flying over it, are permitted to judge the violator. This matter is similar to simultaneous jurisdiction of the flag state and coastal state regarding the done crimes in foreigner commercial ships in internal waters and homeland waters.

The aircraft of a state is not entitled to enter to the airspace of one another state. In case of

doing this matter, the state has violated international law seriously.

In the case that a state aircraft has violated to one another country, has caused crisis. For example in 1960 Russians toppled the aircraft, known as the «U2» on the exploration mission over the Russia by missile.

In recent years, it has been seen for several times that some violations by countries such as Israel and America have done. Among the occurred events of air violations, we can point to the following items:

Violating Gaza Strip airspace by Israel. After the 51-day cease-fire, the helicopters of identifying Israel that is known as Alzananeh flew over the Gaza Strip continuously. These unmanned helicopters have features such as low volume and high ability of identifying; and their mission is identifying and imaging from fixed and mobile targets also these helicopters proceed to doing the operations against the persons and fixed and mobile targets. As several times have targeted hundreds people of resistance forces and Palestinian resistance machines.

The other case of airspace violation is the flight of Israeli unmanned aircraft over the land of Iran in 2014 that caused the serious reaction of Iranian authorities; and then the supervisor of Iran permanent representative in United Nation Organization through sending a

letter to the secretary general of this organization and the other internationally organs asked for a serious condemnation of Iran airspace violation by that Israeli aircraft. Another case such the mentioned event again was done by Israel. This regime despite signing the resolution of 1701 of Security Council and announcing cease-fire with Lebanon, till now several times has violated to airspace of this country. Every time the Lebanon the Foreign Ministry by predicating the violation, has complain to the united nation security council but unfortunately it didn't have because such events prove the weakness of UN Organization. And this organization in any cases is affected by America and despite pretend that have independence and power, but for making decision is affiliated to America. The resolution 1701 of United Nation Security Council that after invading in 2006 by Israel to Lebanon asked for cease-fire in the region, wanted Telaviv to recognize the Lebanon territorial integrity. But violating to Iran airspace has occurred several times by USA that some cases were mentioned. During the imposed war and after entering the United States military fleet to the Persian Gulf, this country by doing military operation against Islamic Republic on Iran and direct and indirect participation in Iraq war ignored the

obligations of impartial state; and violated its commitments.

America by direct military participation in the war against Iran proceeded to destruction of oil platforms. This country on October 1966 four USA ships equipped to guided missiles entitled "Yng", " Houl", "Kid" and " Leght Vich", shelling out the oil platforms of " Resalat" and " Reshadat" in 150 km from north east of Qatar.

Before the attack, it warned to the platforms crews that fire would be twenty minutes and would start again. After this deadline during 90 minutes, more than one thousand bullets poured over the platforms.

During this shelling, the installations of the platforms were destroyed and producing oil in the mentioned sea completely ceased. After this aerial aggression and the next day 17 American helicopters of "Am H 60" at the distance of 25 km of Farsi island opened fire towards Iranian extremist boat and overwhelmed it.

During this attack, six Iranian sailors arrested by US boats that two of them have lost their lives because of bad injury. America claimed that Iranian forces have fired toward their helicopter.

According to article 2 of that commission, a wrongful international act of a state will be fulfilled at the time that a treatment whether

done or not done an act according to international law be attributable to the state and be considered as an international violation by that stat. In this regard, in case an action is as the cause of responsible, that be a guarantee for binding internationally commitment violation for that state at the time of doing that action and the mentioned violation treatment should be attributable to that state as well as should be considered as an internationally commitment violation. Article 13 also expresses this mean.

CONCLUSION

The matter is very important the first place is sovereignty of countries. Violating to countries airspace without cooperating with sovereignty of that country, besides the violation of airspace is a kind of countries independence and sovereignty violation.

Some time the state to reach their goals and the airspace violation, arise some issues such as sea space etc; so that by this way find a solution to enter to the airspace of countries. The countries in protection of their airspace must be commitment to the international law. sThe civilian plane should be recognized from military or rescue plane and etc and any aircraft attack and violation to civilian aircrafts is as a clear violation of international laws.

In this regard, we can point to Iran airbus aircraft and killing the innocent passengers by America. From past to the present several air piracy and theft of aircraft have been seen.

With regard to such issues, it seems more necessary than before to consensus internationally on the air and sea law. On the other hand realizing this matter depends on governments' commitments and practice of international responsibilities. Any shortcoming and neglect may lead to violation of states and nations rights in the world. According to the writer viewpoint, we should make difference between the legalization and internationalization of this matter; and we should seek to consensus of states and nations across the world, not to be obliged to obey the rules and certain countries.

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