航空宇宙法學會誌 第26卷 第2號
2011년 12월 30일 발행, pp. 181~202

논문접수일 2011. 11. 30
논문심사일 2011. 12. 09
게재확정일 2011. 12. 22

Establishing a Unified System of China's Aviation Law

-Theoretical Analysis and Legislative Proposals

Zengyi Xuan*

Contents

* Director of the Institute of Air and Space Law, Professor China University of Political Science and Law, Beijing, China

Ⅰ. The Necessity of coordinating and improving China's aviation law

Since the adoption of reform and opening-up policy, China's market economy has developed by leaps and bounds, with people's living standards being improved greatly and consumption demand being increased significantly. During the past three decades, China's aviation industry has made substantial improvements. Meanwhile, China's aviation law system has begun to take shape. The formation of a relatively complete system of aviation law is marked by Civil Aviation Law of the People's Republic of China adopted in 1995.

However, it should be aware that the development of China's aviation industry is still a long way behind market demands, that the current aviation law system still cannot meet the challenges brought about by the marketization of aviation industry, that there is still a wide gap in aviation law system between China and many developed countries.[1)]

All these are direct restraints of the development of market economy. As a result, it is necessary for us to rethink and establish a viable aviation law system compatible with the actual national situation of China, in accordance with China's comprehensive development strategy and the trend in international community. By far, although civil aviation is relatively developed and legal system of civil aviation is comparatively complete, there is still a long way to go to keep up with the times. It can be seen from the low development level of general aviation, especially private aviation.

In most developed countries, general aviation aircraft accounts for 90 percent,

---

1) This article is an initial achievement of the project of "Establishing the International Law Basis of the Harmonious World" (08JA820042) sponsored by the Social Science Fund of the Ministry of Education of China. For instance, flight rules of some countries are not in conformity with international practice. While Convention on International Civil Aviation provides that Rules of the Air in Annex 2 to the Convention are a set of internationally agreed rules of the air, air traffic rules in each country shall be in compatible with it as much as possible.

and private aircraft makes up a considerable proportion. Take the US as an example; there are more than 220,000 private aircraft. [2]By comparison, China only has a number around 700, and the development and manufacturing of general aviation aircraft, particularly private business aircraft, is still at an elementary stage. To be in conformity with China's economic development level, a goal has been set to quadruple the total transportation turnover of civil aviation industry by 2020 based on the level of 2000.

Nevertheless, the current aviation regulation system has become a hindrance in achieving this goal. Even with a limited carrying capacity, flight delay has become a commonplace in China. It is positive to put it in this way that, without a fundamental reform of China's aviation administration structure and legal system, it would be impossible for civil aviation to keep pace with economic development.

An obvious defect in the present system of civil aviation is the unreasonable airspace management system. With airspace of 108 million square kilometers, China is rich in air resources. Yet, due to inefficient airspace configuration, waste of air resources is severe and the utilization ratio is pretty low. [3]For instance, excessively low fight altitude and high traffic density has led to flight delay.[4] Under the guidance of the policy that places lopsided emphasis on airspace security, the development of general aviation is severely restricted. Regulation on the Control of General-Purpose Aviation Flight carried out in 2003 looses restrictions on the application for flight of civil aircraft to a certain point, but compared with countries like the US, the application procedure is still too complex and time-consuming. What's more, private aviation activities such as random flying of unmanned balloon have brought hidden danger to the normal order of air traffic.

---

2) Lv Yang, Research on Opening Airspace at Low Altitudes and Drafting Rules of the Air for Private Aircraft by Air Traffic Control Committee of the CMC, Jiefang Daily, December, 2003.

3) Answers to the Journalists from CAAC Journal by Deputy Director of Air Traffic Control Committee of the CMC ,CAAC Journal, January, 2005.

4) "Estimated by the airlines, 60 percent to 70 percent of flight delay is caused by out-dated system of air traffic control. The ablility of air traffic control has been a restraint of the development of China's aviation industry", See Yu Weida, China's Air Traffic Control System Struggles to Meet the Demands of Thriving Civil Aviation Industry, Finance, August, 2007.

While these activities are prohibited by law, the relative provisions are difficult to be implemented owing to the discrepancy of various standards followed by airports and competent authorities from all parts of the country.

In a word, air traffic control aims to maintain the normal order of flight, increase flight traffic on the basis of guaranteeing flight safety, and maximize the utilization rate of air resources. How to make full use of airspace under the premise of assuring flight safety has become an urgent problem in the field of air transport.

On the whole, imbalances exist during the development of China's aviation law system. On one hand, legal system regulating aviation activities centers on Civil Aviation Law of the People's Republic of China. Although this law has chapter 7 to regulate aerial navigation, stipulation on airspace control is too vague, with only two substantial provisions. On the other hand, General Flight Rules of the People's Republic of China adopted by State Council and the CMC (Central Military Commission) in 2000 specifies rules of airspace control and flight control in detail. To observe carefully, there are differences between the legislative purposes of these two.

To be more specific, Article 1 of General Flight Rules provides, its purpose is to safeguard the national sovereign right over the territorial sky, regulate the aviation activities within the territory of People's Republic of China, and ensure the safe and orderly operation of civil aviation; while Civil Aviation Law is formulated not only to safeguard the national sovereign right over the territorial sky and the right of civil aviation, ensure the safe and orderly operation of civil aviation, but also to protect the legitimate rights and interests of the parties involved in civil aviation, and to promote the development of civil aviation. Despite the fact that General Flight Rules is in a lower rank as administration regulation, there is no explicit statement that it is enacted in accordance with Civil Aviation Law. Hence it is essential to coordinate the legislative purposes claimed by the two aforementioned legal norms.

Ⅱ. Current situation of China's aviation legislation and its analysis

Aviation law system in China, consisted of aviation laws, administrative regulations and rules, has provided guidance to almost every aspect of aviation activities. And it is a strong guarantee for the successful reform of aviation sector. The fact that, the people's congresses and governments at all levels, particularly the National People's Congress and the State Council, have turned the major decisions and policies in aviation field into laws and regulations promptly through legal procedures, fully reflects China has attached great importance to aviation sector.

1. An introduction of China's current aviation law system

Civil Aviation Law of the People's Republic of China adopted in 1995 is the fundamental law in the area of civil aviation. It is composed of 16 chapters with 159 articles, which mainly involves: sovereign right over the territorial sky, nationality of civil aircraft, rights over civil aircraft (including ownership and mortgage rights over civil aircraft, right of preemption over civil aircraft and lease of civil aircraft), control over airworthiness of civil aircraft, aviation personnel, civil airport, public air transportation (including general provisions, transport documents, liabilities of the carriers, special provisions for air transport by actual carriers), search and rescue and accident investigation, indemnity liabilities to the third party on the ground, special provisions for foreign civil aircraft, applications of foreign related laws and regulations, legal liabilities.

This law shall be strictly observed by CAA (Civil Aviation Administration), enterprises and individuals engaged in civil aviation activities.

Aviation administrative regulations has played an important role in adjusting various kinds of legal relations in the area of civil aviation, covering airports, aircraft, transport of passengers and cargoes, damages and security, etc.

The representative administrative regulations promulgated by the State Council are: Announcement of the State Council for Ensuring Safety in Civil Aviation (December 1, 1982), the Provisional Regulations of the Council for the Management of General Aviation (January 8, 1986), Regulations of the People's Republic of China for the Administration of the Airworthiness of Civil Aircraft(May 4, 1987), Interim Provisions Governing Non- Scheduled Flights in Civil Air transport (March 2, 1989), Interim Provisions Concerning Compensation for Bodily Injury of Passengers in Domestic Air Transport (1993 Amend- ment), Regulations on Civil Aviation Security of the People's Republic of China(July 6, 1996), Regulations of the People's Republic of China on the Nationality Registration of Civil Aircraft (October 21, 1997), Regulations of the People's Republic of China on Civil Aircraft Rights Registration(October 21, 1997), Regulations on the Control on General-Purpose Aviation Flight (January 10, 2003), State Emergency Plan of the Disposition of Civil Aircraft (January 22, 2006).

And the aviation administrative rules promulgated subsequently further reflect the highly complex nature of aviation law system. Internationally, China has signed and ratified over 20 international conventions and protocols, together with other air transport bilateral agreements. All these constitute China's legal system for civil aviation.

In this system, constitution is the fundamental law of the State. The domestic civil aviation law must not conflict with it. Civil Aviation Law of the People's Republic of China has the status of parent law in China's civil aviation. The system also includes Civil Code and other provisions of domestic laws related to civil aviation, administrative rules and regulations on civil aviation management and unification of national flight promulgated by the State Council and its competent authorities, as well as relevant aviation conventions and bilateral agreements which

China signed or participated in.

2. Problems to be solved by China's aviation legislation

Although China's aviation legislation has already taken shape, because aviation legislation starts late, the law circle doesn't pay much attention to it. That's why research of aviation law still lags behind and dozens of problems exist in China's aviation legislation. The problems can be summarized as follows:

Firstly, the legislative activities need to be standardized. With China's major laws such as Administration Punishment Law, Legislation Law and Administration Permission Law being promulgated sequentially and reform of civil aviation system deepened, social environment has changed greatly compared to when civil aviation legal system was originally set up. These changes bring forth new challenges to civil aviation legislation system, legislative procedures, legal system and legal norms. Civil aviation's legislative procedures should be in conformity with Legislation Law and Rules-making Procedural Regulation, which were issued in 2000 and 2001 respectively.

Civil Aviation Rules-making Procedural Rules of the People's Republic of China was issued in 1995, and it is worth studying whether there is any inconsistency among these three laws. Due to imperfectness of China's legislative techniques and limited capacity of legislatures, a number of laws have to be entrusted to department or industry with management expertise and much knowledge in business for drafting. A usual practice is that department under the government with corresponding regulating function is responsible for the draft of law. For example, Ministry of Public Security drafts Public Security Punishment Law, Ministry of Railways draft Railway Law, National Post Office drafts Post Service Law, and CAAC drafts Civil Aviation Law, and so on.

Secondly, it is necessary to reconcile relevant legislation in the area of aviation

security, air space defense security and market management. Civil aviation law involves many aspects, it is important for us to reflect on how to coordinate the functions and powers of different departments and establish a unified information platform, as the world moves rapidly into the information era.

Thirdly, the provisions on aviation personnel are inadequate. The statistics of civil aviation accidents indicates that, artificial factor is an influential element which affects contemporary aviation security the most. Accidents are mostly caused by human error. As to the legislation on aviation personnel, the requirements should not only involve obtaining licenses and having a suitable body check, but also cultivating sense of security and ability to draw lessons from the past, acquiring knowledge of safety management, security technology, so as to regulate and inspect the security education received by aviation personnel.

Fourthly, there are conflicting provisions on rights over aviation aircraft. According to Article 41 and Article 42 of the Guarantee Law of the People's Republic of China, if aircrafts are mortgaged, the mortgage contract shall be registered; and it goes into effect as of the date of registration.

However, Article 16 of Civil Aviation Law provides that, formally instituted mortgage rights over civil aircraft should be registered together by the pledgee and pledgor concerned with CAA. The unregistered mortgage may not counter the third party. Evidently, here is a discrepancy on the effect of registration between these two. When confronting such a conflict, the provisions of Civil Aviation Law concerning civil aircraft mortgage shall prevail over that of the Guarantee Law as special provisions. However, it should never be overlooked that the consistency between legal norms is crucial for a legal system to function well.

The fifth concerns about civil airport. With the rapid development of regional aviation and general aviation, the existing airports have failed to meet the demands of aviation industry. Therefore, the rational layout and construction of civil airports shall be specified by a unified air law to solve the problem.

The sixth is about aerial navigation. Airspace control and flight control are two

important elements of aviation law. Airspace control mainly aims at coordinating the relationship between civil and military aviation, in order to put the airspace to a full use.

Take the flight from Hong Kong to mainland China as an example; it should strictly follow a single cross-nation route, even if in the event of bad weather conditions. Intervals between flights should also be completely complied with. Flight delay in Beijing airport could exert influence on the Hong Kong aviation system, causing passengers stranded in Hong Kong.

When crossing the border line, the altitude of aircraft shall be more than 15,000 feet higher from the ground. In consequence, the flight has to bypass the South China Sea before landing or after taking off in Hong Kong, which in turn lengthens the route and increases the cost. Guotai Airline estimates that it costs extra 100,000 ton of fuel to cross the border line every year. Generally speaking, air space control is a complicated problem covering a wide range of subjects; it cannot be clearly illustrated in many cases. Restrictions imposed on general aviation have much to do with the guiding principle of airspace control legal system.

Seventhly, laws and regulations of airspace management are inadequate. With regard to air space regulation, the relevant provisions of Civil Aviation Law are quite few and ambiguous; while General Flight Rules contains more detailed provisions on airspace control and air traffic control.

From the viewpoint of legal hierarchy, General Flight Rules is in a lower rank than Civil Aviation Law; in other words, provisions of the latter shall take priority. Thus, it is of necessity to raise the status of General Flight Rules. In fact, this awkward situation reflects that China's airspace management system is in a predicament. To be more specific, airspace management in China is in the charge of Air Traffic Control Committee (ATCC) of CMC, which later confers this power to the CAAC (Civil Aviation Administration of China).

However, it can be seen from the high rate of flight delay, that the decentralization between ATCC of the CMC and the CAAC is unreasonable.

According to some experts, the efficiency of air control in China is a long way behind the US. Until now, there is no unified air traffic control system in China. 5)

Therefore, an explicit division of functions and powers among the authorities of airspace management is crucial to China's aviation legislation.

Eighthly, compared with developed countries especially the US, airspace control in China is too rigorous. Although it is beneficial to national defense security and public security of China, it also results in extremely low efficiency in air space utilization, which would hold back the development of China's air transport industry ultimately, especially the development of general aviation.

What's more, a group of relevant industries would be affected as well, such as aerial material industry and machinery manufacturing industry. Hence, it is a major subject to be researched in the subsequent aviation legislation, that is, how to keep balance between safeguarding national defense security and promoting the rapid development of China's aviation industry by ensuring high-efficiency utilization of airspace. The last one is about public air transportation. On 28th February 2005, with the Convention for the Unification of Certain Rules Relating to International Carriage by Air being ratified by the NPC Standing Committee, the Convention starts to take effect in China. It can be seen from it that liabilities of carriers in international air transport have been through a significant change.

Correspondingly, it should be specified in domestic law the changes taken place in domestic air transport. In addition, after the introduction of electronic tickets, relevant provisions on transport documents are under further scrutiny.

3. Evaluation of China's present aviation legislation

At the macro level, there are a large quantity of laws and regulations concerning

5) Qiu Hongbo, A Visit to the Control Room of Air Traffic Management Center, Federal Aviation Administration, at http://www.chinanews.com.cn.

civil air transportation, which are relatively complete. However, when it comes to airspace management and air traffic control, not a single law has been enacted; not to mention a comprehensive aviation law providing guiding principles for both civil air transportation and airspace control. And this would certainly do harm to the development of China's aviation industry. At the micro level, further reform is needed imperatively to improve the air traffic control system.

At present, ATCC of the CMC and the CAAC are jointly in charge of airspace management, the functions and powers of relevant authorities cannot be clearly defined and thus effectively exercised. Moreover, provisions of General Flight Rules are not in line with international practice and domestic laws of major aviation powers.

According to the proposals of International Civil Aviation Organization (ICAO), the world's ATM (Air Traffic Management) integration will be achieved in 2025, which are mainly reflected in the following areas: The first, integration of airspace structure.

The current situation where the division of airspace is country-based or district-based shall be altered, so as to reduce the times of transition of command, to improve the operational efficiency, and to ensure aviation safety.

The second, adoption of uniform operational standards. ICAO Aviation norms and technical standards are gaining worldwide acceptance gradually, which is advantageous to the maintenance of air traffic control order, the enhancement of air traffic control service quality, and the improvement of airspace utilization. This will further reduce the operational cost, increase the reliability of air transportation and ensure the smooth flow of passengers and cargos.

Thirdly, intellectualization of air traffic control equipments. ICAO has been actively advocating the extensive use of new technologies in air traffic control and the adoption of uniform technical standards for air traffic control facilities and equipments, which would provide technical support for the formation of a global ATM network and make the global air traffic management accurate, efficient

and "seamless". In order to promote the international- ization of China's aviation industry, it's necessary to build a unified system combining both civil aviation and air traffic control.

Ⅲ Preliminary idea of unifying China's aviation legislation

1. Selection of legislative mode

There are basically four legislative modes for China's aviation system to select from, which are armed forces in charge, civil aviation administration in charge, armed forces and civil aviation administration respectively in charge, and armed forces and civil aviation administration co-management. From my point of view, the fourth mode not only adapts to the development trend around the world, but also meets the practical needs of China.

(1) Armed forces in charge

In this mode, the military units are responsible for safeguarding the national sovereign right over the territorial sky and regulating aerial navigation and civil aviation activities.

Before the year 1980, it was the CMC that is in charge. The strong points of this mode are clear responsibility, strict management and effectiveness in safeguarding national security and sovereignty over the territory sky. However, the practice before the 1980s has also indicated that there were many defects of this traditional model, mainly including extreme strictness in management, extremely low airspace utilization rate and inability to adapt to the market economy. These shortcomings should not be overlooked. According to Article 1 of Civil

Aviation Law, rational utilization of airspace resources and aviation security are the two major objectives of it, while this mode is clearly not conducive to the coordinated development of both.

(2) Civil aviation administration in charge

Civil aviation administration in charge is a counterpart to the model mentioned in the preceding paragraph. It indicates that the department in charge of civil aviation is responsible for the management of all aviation activities. This mode is more adaptable to the demands of the market economy. And it helps increase the airspace utilization rate. Nevertheless, air transport involves such aspects of significant public interests as state sovereignty and territorial security, which are too sensitive to be in the charge of civil aviation authorities.

Unlimited navigation liberalization, just like excessive security control, is one-sided.

The use of air resources and the freedom of flying can not override national security.

For example, the U.S. general aviation enjoys considerable freedom at first; however, after the terrorist attacks on 11th September, 2001, the low-flying traffic control has been strengthened all over the country.[6]The same as armed forces in charge mode, this model fails to make balance between national security and economic efficiency.

(3) Armed forces and civil aviation administration respectively in charge

A division of powers between the military units and civil aviation administration provides a means to achieve the objective of ensuring aviation safety and guaranteeing efficiency at the same time. To be more specific, the military units

6) Flight Lower than 457 Meters Shall be Regulated, a Provision of Federal Aviation Administration Xinmin News, October, 2006.

take charge of airspace sovereignty and airspace management, etc; while civil aviation authorities are responsible for regulating objects such as aircraft, aviation personnel, airport facilities and the management of civil aviation activities.

China has been advocating joint military-civilian co-management policy since 1980, but the actual situation is not as expected. Aviation activities are, in fact, split and in the charge of military units and civil aviation authorities separately. When it comes to aviation legislation, this mode is reflected in the separating provisions of Civil Aviation Law and General Flight Rules on civil aviation activities. Although Article 72 of Civil Aviation Law empowers the State Council and the CMC to formulate concrete measures of airspace management, General Flight Rules thus enacted has little connection with Civil Aviation Law. It is more like a self-contained system.

Although armed forces and civil aviation administration respectively in charge mode is able to achieve the best balance between efficiency and security in theory, and in the absence of civil-military co-management system, it can even be a short-term expedient in the transitional period; its limitation is very obvious. Because aviation is a coherent whole, this mode will inevitably lead to the fragmentation of air traffic control system.

If provisions on airspace management in the charge of military units are unreasonable, then no matter how much efforts aircraft aviation authorities spare to improve provisions on

aviation personnel and airport facilities, the problem of low airspace utilization rate would continue to exist. Frequent flight delays nowadays are clear evidences.

On the contrary, no matter how reasonable the division of airspace is, without a proper regulation of aircraft and aviation personnel, it would be impossible to avoid the occurrence of air crash. Therefore, this model actually cannot provide a strong guarantee for the proper balance between safety and efficiency.

(4) Armed forces and civil aviation administration co-management

Literally, armed forces and civil aviation administration co-management is a mode in which the military units and civil aviation administration take a joint responsibility for the whole process of air transport. In this mode, airspace management, aerial navigation and civil aviation activities are co-related, all subject to the same basic aviation law.

Currently, the world's most developed countries have adopted this mode. We can also observe that airspace sovereignty, aerial navigation and civil aviation activities are more and more stipulated together in a single Convention. Take Convention on International Civil Aviation as an example, it covers both air navigation (Part I) and international air transport (Part III). The first part of it provides that every State has complete and exclusive sovereignty over the airspace above its territory, as well as civil aviation matters such as the international standards for aircraft. [7]Thus, although the formulation of specific measures can be left to lower-level laws, it has become a prevailing trend that higher-level laws make uniform provisions on the basic principles and framework for aviation all over the world.

From a historical point of view, the separation of Civil Aviation Law and General Flight Rules in China is not a coincidence. Before the 1980s, although there were several readjust- ments of civil aviation structure, it was the military units in charge mode that takes the dominant position in essence.[8]

After the 1980s, under the policy of separating government functions from enterprise management, civil aviation activities have been subject to the jurisdiction of the Civil Aviation Administration under the State Council. However, as some aspects of aviation activities may affect significant public interest like airspace

---

7) Part I of the Convention are consisted of: general principles and application of the Convention, flight over territory of contracting states, nationality of aircraft, measures to facilitate air navigation, conditions to be fulfilled with respect to aircraft and international standards and recommended practices.

8) Liu Weimin, Aviation Law Course, Law Press, 1996, p. 54.

sovereignty and national security, ATCC under the CMC is responsible for the formulation and implementation of flight rules.

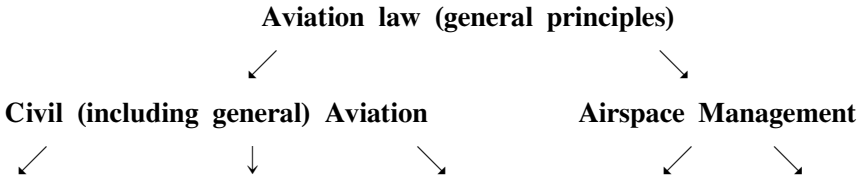
Meanwhile, aviation is an indivisible whole; air navigation must possess the following inter-related basic elements, which are airspace, aircraft, aviation personnel, airports, air traffic control and navigation services, etc. [9)]

Therefore, the mode where the military units and civil aviation authorities cooperate in airspace management through a joint regulatory agency is worth adopting, in fact, it is widely accepted in various developed countries.

Only by establishing a unified aviation law system with a co-management mode, can it meet the demands of securing aviation safety and increasing resources utilization rate at the same time. Thus, we need to readjust the current legal structure of aviation by elevating relevant flight rules concerning airspace management to the same legal status as Civil Aviation Law, and make them integrate into a unified legal system. As is shown in the following chart, a uniform air law will contain airspace management (covering rules of division of airspace, rules of flight management, and rules of entry and release management system, etc) and air transport (covering rules with regard to civil aviation and general aviation). In United States, Germany and other developed countries, besides an Aviation Organization Act, there are also a number of specific aviation laws. The practice of those developed countries is worth learning by China. That is to say, to establish a unified aviation law system, a comprehensive air law shall be designed first, consisting of general principles and administration structure of both air transport and airspace management; while separate laws and relevant regulations and rules formulated in accordance with the comprehensive air law may provide for concrete technical details. The following chart will help you to get a full picture.

---

9) Liu Weimin, Aviation Law Course, Law Press, 1996, p.4-5.



2. Choice of management patterns

The choice of management patterns is determined by the selection of legislative mode.

Civil-military co-management model requires a joint regulatory agency to implement relevant provisions of the unified aviation law. Since the opening-up and reform, China's aviation industry is thriving. However, it is also followed by the contradiction between flight demands and airspace utilization. In order to achieve the objective of ATM (Air Traffic Management) modernization and exercising unified national control over aviation, China has made a series of major strategic readjustments.

In 1986, the CMC set up Air Traffic Control Committee to take charge of air traffic control all over the country. In September 1993, the State Council and the CMC jointly issued a document on China's air traffic control system reform, in which a three-step strategic objective is set.

The first step is to conduct test on air routes among Beijing, Guangzhou and Shenzhen.

The second is to provide unified air traffic control services to aircraft in domestic flights. The last is to exercise a unified national control over air transport. Currently the first and second step of reform has been completed, initially forming the pattern of management of airspace.

The third step of reform is in progress. The unified aviation law in China will establish guiding principles for the reform of air traffic control system, eliminating confusion on airspace management, in theory and in practice.

In this respect, the experience of developed countries is particularly worth learning.

There is a huge difference in the world's air traffic control system. For instance, in the US, it is FAA (Federal Aviation Administration) in charge of airspace control, while Russia adopts the armed forces in charge mode.

China was greatly influenced by the Soviet Union; hence airspace management in China used to be exclusively exercised by the military units. And this management pattern had played a significant role in safeguarding national defense security in the past. However, with in-depth development of China's economy, voices of opening up low-altitude airspace and developing the general aviation industry has been running high day by day, it is necessary to initiate the reform of traditional management system of airspace. Here, the practice in Russia is in need of special attention. Although Russia also adopts a model of military management of airspace, compared to the Soviets Period, Russia's airspace management model has been dramatically changed. The military units have loosened their control over airspace. Therefore, to identify the relevant principles of airspace management in China, considerable attention should be given to the practice in Russia and comparative studies shall be conducted.

3. Difficulties of aviation legislation

As China's aviation law is still in the initial stage, the formulation of a uniform air law will undoubtedly be a great challenge. Thus in the drafting process, tons of difficulties will be encountered. To sum up, there are primarily two types of problems needed to be addressed in the subsequent legislative process. The first is about how to coordinate the powers between airspace management authorities

and air transport authorities. Due to historical reasons, ATCC of the CMC is responsible for airspace management, while ATMB (Air Traffic Management Bureau) of the CAAC takes charge of airspace management in respect of civil air transportation.

In the process of conducting air traffic control system reform and formulating the unified aviation law, readjustments shall be made on basis of this original mechanism.

However, coordination of the present powers exercised respectively by ATCC of the CMC and ATMB of the CAAC is likely to confront great difficulties in practice.

The second is concerning how to design the China's air traffic control network to attain the goals of both strengthening China's economic strength and safeguarding China's national security. The starting point of carrying out air traffic control system reform lies in the demands of China's economic development, and the reform is ultimately for the promotion of economic development.

At present, China can not efficiently use its airspace, resulting in a great waste of resources. Of course, there are many technical reasons, for example, obsolete air traffic control facilities could lead to inappropriate flight separation. However, defects in the present aviation law system are the root causes of the waste. Furthermore, weak airspace control will inevitably do harm to public security and national defense. For example, in the United States, airspace control is relatively loose; however, the occurrence of air crash is frequent.

Therefore, how to maximize the utilization rate of airspace without threatening China's national security and public interests is a problem to be handled with great care in the drafting process. Meanwhile, more attention shall be paid to relevant legislations in the United States and other developed countries.

Ⅳ. Conclusion

Aviation law refers to legal norms concerning airspace sovereignty, management of aerial navigation and civil aviation activities.[10] Up to now, China has no unified aviation law. In the preceding paragraphs, we have put forward the initial idea of perfecting China's present aviation law system. Only through the establishment of a unified system, can the objective of China's aviation legislation be attained, which can be concluded as optimizing the airspace structure, improving airspace utilization, putting the airspace to a reasonable, full and effective use, and achieving balance between economic efficiency and national security.

We believe that, it is the right time for China to establish a unified system of air law.

Based on the preliminary study above, it is suggested that armed forces and civil aviation administration co-management mode be adopted, and a joint regulatory agency be set up to provide uniform air traffic control services. From my point of view, a unified system of air law is bound to make its contribution to China's airspace security and economic develop-ment.

10) Liu Weimin, Aviation Law Course, Law Press, 1996, p.4-5.

References

Yu Weida, China's Air Traffic Control System Struggles to Meet the Demands of Thriving Civil Aviation Industry, Finance, August, 2007.

Qiu Hongbo, A Visit to the Control Room of Air Traffic Management Center, Federal Aviation Administration, at http://www.chinanews.com.cn.

Liu Weimin, Aviation Law Course, Law Press, 1996.

Abstract

Establishing a Unified System of China's Aviation Law —Theoretical Analysis and Legislative Proposals

Zengyi Xuan

In the recent years, China's aviation industry has gained visible progress.

Meanwhile, China's aviation law system has become more and more complete.

However, in this system, many problems still exist, especially lacking a unified aviation law, which limits the development of China aviation industry, general aviation in particular, and hinders the economic growth.

This article aims to raise the basic structure of China's unified aviation law system

and proposals on the basis of analysis on the existing problems in our current aviation law system.

Key Words : aviation law; theoretical analysis; legislative proposals