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Possibility of Establishing an International Court of Air and Space Law

국제항공우주재판소의 설립 가능성

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I . Introduction

The idea of establishing an International Court of Air and Space Law (hereinafter referred to ICASL) is only my academic and practical opinion. The establishment of the International Court of Air and Space Law can promote the speed and fairness of trial in air and space law cases.

The creation of an ICASL would lead to strengthening of the international cooperation deemed essential by the global community towards joint settlement in the transnational air and space cases, claims and would act as a catalyst for the efforts¹⁾ and solution on aircraft, satellite and space shuttle's accidents and cases and all manpower, information, trial and lawsuit to be centrally managed in an independent fashion to the benefit of global community.

In order to handle quickly and fairly for the international cases of air and space law, it is desirable for us to establish an ICASL that will be elected as 14 judges versed deeply in international air and space law by the majority resolution of the Council and General Assembly of the UN affiliated International Civil Aviation Organization (ICAO) and of the Legal Committee and General Assembly of the United Nations Committee on the Peaceful Use of Outer Space (UNCOPUOS).

1) Gabriel Lafferranderie, *“Outlook on Space Law over the Next 30 years”*, Kluwer Law International, 1997, at 424.

II. Necessity for the Creation of International Court of Air and Space Law

Reasons why the International Court of Air and Space Law should be established.

The characteristic features of the damages due to aircraft, satellite and spacecraft's accidents have ① character of great amounts of damage for compensation, ② character of total loss (all or nothing), ③ character of instant (Augenblick), ④ character of the subordination relation to the ground (air traffic and space control system) and ⑤ character of internationality.²⁾

In this reason aircraft, satellite and spacecraft's accidents attributes to the particular and different features between the road, railway and maritime's accidents. These aircraft, satellite and spacecraft's accidents have incurred many disputes between the victims and the air and space carriers in deciding on the limited or unlimited liability for compensation and the appraisal of damages caused by the aircraft's accidents, terror attack, satellite, space shuttle's accidents and space debris.

One possible way to unify the rules of the Montreal Convention (Convention for the Unification of Certain Rules for International Carriage by Air) of 1999 based on the contract liability, but the new Montreal Unlawful Interference Compensation Convention (aircraft terror)³⁾ and General Risk Convention of 2009⁴⁾ and the Space Liability Convention of 1972 based on the tort liability and those rules regarding the assessment of damages, which may be idealistic,

2) Doo Hwan Kim, "A Study on the Civil Liability of the Air Carriers and Legislative Problems", Doctoral Dissertation (1984), Graduate School, Kyonghee University at Seoul in Korea, at 1.

3) Convention on Compensation for Damage to Third Parties, Resulting from Acts of Unlawful Interference Involving Aircraft (Unlawful Interference Convention) of 2009.

4) Convention on Compensation for Damage Caused by Aircraft to Third Parties

would be to establish an International Court of Air and Space Law (tentative title) with jurisdiction to resolve claims arising out of international air and space disasters such as terror attacks of September 11, 2001⁵⁾ at New York and an orbit collision case between an US Iridium satellite and Russian Cosmos satellite of the 10th February, 2009.

In this court, the procedural and substantive law must be uniform and justice. The establishment of other international courts such as an International Court of Justice (ICJ) based on the UN Charter of 1945⁶⁾, an International Tribunal for the Law of the Sea based on the United Nations Convention on the Law of the Sea, Annex 6 of 1982⁷⁾, the International Criminal Court⁸⁾ based on

5) http://en.wikipedia.org/wiki/September_11_attacks

6) <http://www.icj-cij.org/icjwww/igeneralinformation/inotice.pdf>; The International Court of Justice was created by the Article 92~96 of the United Nations Charter in 1945 and is also a judicial principal organization of the United Nations. The court handles disputes between nations and it begun work in 1946. Its seat is at the Peace Palace at The Hague in The Netherlands.

7) http://www.itlos.org/start2_en.html; The International Tribunal for the Law of the Sea is an independent judicial body established by the Convention to adjudicate disputes arising out of the interpretation and application of the Convention. The Tribunal is composed of 21 independent members, elected from among persons enjoying the highest reputation for fairness and integrity and of recognized competence in the field of the law of the sea. The United Nations Convention on the Law of the Sea was opened for signature at Montego Bay, Jamaica, on 10 December 1982. It entered into force 12 years later, on 16 November 1994. A subsequent Agreement relating to the implementation of Part XI of the Convention was adopted on 28 July 1994 and entered into force on 28 July 1996. This Agreement and Part XI of the Convention are to be interpreted and applied together as a single instrument.

8) The Rome Statute of the International Criminal Court (often referred to as the International Criminal Court Statute or the Rome Statute) is the treaty that established the International Criminal Court (ICC). It was adopted at a diplomatic conference in Rome on 17 July 1998 and it entered into force on 1 July 2002. As of June 2009, 108 states are party to the statute. Chile will become the 109th state party on 1 September 2009, and a further 39 states have signed but not ratified the treaty. Among other things, the statute establishes the court's functions, jurisdiction and structure. The International Criminal Court (ICC) is an independent, permanent court that tries persons accused of the most serious crimes of international concern, namely genocide, crimes against humanity and war crimes; http://en.wikipedia.org/wiki/Rome_Statute_of_the_International_Criminal_Court

8) Comment, "The Role of Choice of Law in Determining Damage for International

the Rome Statute of the International Criminal Court, the Court of the European Communities⁹⁾ at Luxembourg and the European Human Rights Court¹⁰⁾ at Strasbourg demonstrates that such a court is possible.

The International Court of Justice acts as a world court with global jurisdiction¹¹⁾. The Court has a dual jurisdiction : it decides, in accordance with international law, disputes of a legal nature that are submitted to it by States (jurisdiction in contentious cases); and it gives advisory opinions on legal questions at the request of the organs of the United Nations or specialized agencies authorized to make such a request (advisory jurisdiction).¹²⁾

The International Court of Justice has been accused in the past of moving at a snails pace and certain cases seem to bear this out.

It took the court nearly 14 years (1993-2007) to get from the filing of Application to a Merits judgment in the Bosnian Genocide Convention Case,

Aviation Accidents,” 51 J. Air L. & Com. 953, 957 n. 301 (1986); *Id.* For a list of seventy cases filed with the court as of July, 1984, see 1983–1984 I.C.J.Y.B., 1984, at 3–6.

9) The European Court of Justice (ECJ) (officially the Court of Justice of the European Communities), is the highest court in the European Union in matters of European Union law. It is tasked with interpreting EU law and ensuring its equal application across all EU member states. The Court was established in 1952 and is based in Luxembourg. It is composed of one judge per member state — currently 27 - although it normally hears cases in panels of three, five or thirteen judges. The court is led by a President who has been Vassilios Skouris since 2003; http://en.wikipedia.org/wiki/European_Court_of_Justice

10) The European Court of Human Rights (ECtHR) (French: Cour européenne des droits de l’homme) in Strasbourg is an international judicial body established under the European Convention on Human Rights (ECHR) of 1950 to monitor respect of human rights by states. The European Convention on Human Rights, or formally named Convention for the Protection of Human Rights and Fundamental Freedoms, is a convention adopted by the Council of Europe. All 47 member states of the Council of Europe are parties to the Convention. Applications against Contracting Parties for human rights violations can be brought before the Court by other states, other parties or individuals.

11) V.S. Verschehetin, “The International Court of Justice as Potential Forum for the Resolution of Space Law Disputes,” *Luft-und Weltraumrecht im 21. Jahrhundert (Air and Space Law in the 21st Century)*, Liber Amicorum, Karl-Heinz Böckstiegel, Carl Heymanns Verlag KG, 2001, at 476.

12) <http://www.icj-cij.org/jurisdiction/index.php?p1=5>

11 years in the Oil Platforms case, and 10 years in Qatar v. Bahrain.¹³⁾ Perhaps more importantly, is there really a problem of slow justice at the ICJ? As some cases have taken very lengthy periods to reach a conclusion in the ICJ, so parties to ICJ cases always or even normally wish to have those cases decided quickly.

The creation of other international courts demonstrates that such a court is possible.¹⁴⁾

This International Court of Air and Space Law could hear any claim growing out of both international air and space crash accidents and transnational accidents in which plaintiffs and defendants are from different nations. This alternative would eliminate the lack of uniformity of decisions under the air and space conventions, protocols and agreements.¹⁵⁾

In addition, national courts would no longer have to apply their own choice of law analysis in choosing the applicable liability limits or un-limit for cases that do not fall under the air and space system. Thus, creation of an International Court of Air and Space would eliminate any disparity of damage awards among similarly situated passengers and shippers in non-members of air and space conventions, protocols, agreements and cases.

However, I would like to propose a creation an International Court of Air and Space in extending jurisdiction to the International Court of Justice at the Hague to in order to decide the air and space convention's cases.

13) <http://www.ejiltalk.org/recent-developments-at-the-international-court-of-justice/>

14) The International Court of Justice was created by the United Nations Charter in 1945. Comment, *The Role of Choice of Law in Determining Damages for International Aviation Accidents*, 51 J. AIR L. & COM. 953, 997 n.301 (1986). The court handles disputes between nations. *Id.* For a list of the seventy cases filed with the court as of July, 1984, see 1983-1984 I.C.J.Y.B. 3-6 (1984). *Id.*; See, <http://www.icj-cij.org>; <http://www.icc-cpi.int>; <http://www.itlos.org>; <http://www.un.org>

15) The Warsaw system need not be destroyed, however. Professor Matte of McGill University suggests creating an International Court of Appeals or extending jurisdiction to the International Court of Justice at the Hague to decide Warsaw Convention cases.

First of all, in order to create the International Court of Air and Space, it is necessary for us to legislate a Draft for the Convention on the Establishment of the International Court of Air and Space.

Furthermore, I would like to explain the main items of the abovementioned Draft for the Convention (Statute) of the International Court of Air and Space framed in comparison with the Statute (Article 1~70) of the International Court of Justice¹⁶⁾, the Statute (Article 1~41) of the International Tribunal for the Law of the Sea¹⁷⁾ and the Statute (Article 1~128) of the International Criminal Court¹⁸⁾ as the followings.

III. Organization — Composition, Election, Procedure, Duty, Competence, Chambers, Jurisdiction, Hearing and Judgment of the ICASL

1. Composition of ICASL

The International Court of Air and Space Law shall be the principal judicial organ of the International Civil Aviation Organization (ICAO) and United Nations Committee on the Peaceful Use of Outer Space (UNCOPUOS).

The International Court of Air and Space Law will be established by "*the Convention for the Creation of the International Court of Air and Space Law (tentative title)*" shall be constituted and shall function in accordance with the

16) <http://www.icj-cij.org/documents/index.php?p1=4&p2=2&p3=0>

17) http://www.itlos.org/documents_publications/documents/statute_en.pdf

18) <http://untreaty.un.org/cod/icc/statute/rome.htm>

provisions of the said Convention and Statute.¹⁹⁾ The Court shall have international legal personality. It shall also have such legal capacity as may be necessary for the exercise of its functions and the fulfillment of its purposes. The Court may exercise also its functions and powers, as provided in this Statute, on the territory of any State Party and, by special agreement, on the territory of any other State.

The Court shall be composed of a body of independent judges, elected regardless of their nationality from among persons of high moral character, who possess the qualifications required in their respective countries for appointment to the highest judicial offices, or are jurist consults of recognized competence in international air and space law.²⁰⁾

The Court shall consist of fourteen members (seven judges in the field of aviation law and seven judges in the field of space law), no two of whom may be nationals of the same state. No group may nominate more than four persons, not more than two of whom shall be of their own nationality.

The Presidency is responsible for the proper administration of the court. It comprises the President and Vice-Presidents.

2. Procedure of Election for Members of the Court

The members of the Court shall be elected by the General Assembly and Council of the ICAO and by the General Assembly and Legal Committee of the UNCOPUOS from a list of persons nominated by the national groups in the six continent (the North American, South American, African, Oceania and Asian Continent) and two international organization such as ICAO and UNCOPUOS. Before making these nominations, each national group is

19) Articles of Incorporation, Memorandum of Association

20) Article 2, Statute of the International Court of Justice.

recommended to consult its highest court of justice, its legal faculties and schools of law, and its national academies and national sections of international academies devoted to the study of air and space law.²¹⁾

The Secretary-General of ICAO and Director of the United Nations Office for Outer Space Affairs (UNOOSA) shall prepare a list in alphabetical order of all the persons thus nominated. The Secretary-General of ICAO and Director of UNOOSA shall submit this list to the General Assembly, Council and to the Legal Committee.

The General Assembly and the Council of ICAO and UNCOPUOS, Legal Committee and UNOOSA shall proceed independently of one another to elect the members of the Court. The members of the Court shall be elected by secret ballot.

Those candidates who obtain an absolute majority of votes in the General Assembly and in the Council of ICAO and in the General Assembly and in the Legal Committee of UNCOPUOS shall be considered as elected.

In the event of more than one national of the same state obtaining an absolute majority of the votes both of the General Assembly and of the Council of ICAO and of the General Assembly and of the Legal Committee of UNCOPUOS, the eldest of these only shall be considered as elected.

The Court shall elect its President and Vice-President for three years; they may be re-elected. The Court shall appoint its Registrar and may provide for the appointment of such other officers as may be necessary.

21) Article 6, Statute of the International Court of Justice.

3. Term, Duty, Diplomatic Privileges, Remuneration for Members of the Court and Seat

The members of the Court shall be elected for nine years and may be re-elected as one time. No member of the Court may exercise any political or administrative function, or engage in any other occupation of a professional nature and associate actively with or be financially interested in any of the operations of any enterprise concerned with the exploration for or exploitation of the resources of the air and outer space or other commercial use of the air or outer space.

No member of the Court may participate in the decision of any case in which he has previously taken part as agent, counsel or advocate for one of the parties, or as a member of a national or international court or tribunal, or in any other capacity.²²⁾ The members of the Court, when engaged on the business of the Court, shall enjoy diplomatic privileges and immunities. Every member of the Court shall, before taking up his duties, make a solemn declaration in open court that he will exercise his powers impartially and conscientiously.

As the headquarters of the International Court of Justice and the International Criminal Court are located at The Hague, the Netherlands and the headquarter of the International Tribunal for the Law of the Sea located at Hamburg in Germany, so three International Court's headquarters are all located in Europe. Though Europe's 710 million people make up 11% of the world's population, but Asia accounts for over 60% of the world population with almost 3.8 billion people.²³⁾

22) Article 8 (Conditions relating to participation of members in a particular case), the Statute of the International Tribunal for the Law of the Sea.

23) http://en.wikipedia.org/wiki/World_population

By comparing the world's population, I think that it is adequate to decide the headquarter of International Court of Air and Space Law in Asian region. However, in Asia, as the Republic of Korea located at the middle and buffer region between China and Japan as the geopolitical powers, so I would like to propose the decision for the headquarter of International Court of Air and Space Law at Seoul as a capital of South Korea.

The seat of the Court shall be established at Seoul, the Republic of Korea or another cities in Asia. This, however, shall not prevent the Court from sitting and exercising its functions elsewhere whenever the Court considers it desirable. The President and the Registrar shall reside at the seat of the Court.

Each elected member of the Court shall receive an annual allowance and, for each day on which he exercises his functions, a special allowance, provided that in any year the total sum payable to any member as special allowance shall not exceed the amount of the annual allowance.²⁴⁾ The President shall receive a special annual allowance. The Vice-President shall receive a special allowance for each day on which he acts as President. These salaries and allowances shall be decided by the General Assembly of ICAO and UNCOPUOS, taking into account the workload of the Court. They may not be decreased during the term of office.

4. Challenge, Formation for Chambers of the Court

If, for some special reason, a member of the Court considers that he should not take part in the decision of a particular case, he shall so inform the

²⁴⁾ Article 18 (Remuneration of members), the Statute of the International Tribunal for the Law of the Sea.

President. If the President considers that for some special reason one of the members of the Court should not sit in a particular case, he shall give him notice accordingly. If in any such case the member Court and the President disagree, the matter shall be settled by the decision of the Court.²⁵⁾

The Court may from time to time form one or more chambers, composed of three or more judges as the Court may determine, for dealing with particular categories of cases; for example, cases of aircraft hijacking, compensation for damage caused by aircraft accidents, accidents of launching satellite and spacecraft and cases relating to the collision among the aircraft, satellite, spacecraft and space debris, compensation for damage caused by space debris etc.

The Court may at any time form a chamber for dealing with a particular case. The number of judges to constitute such a chamber shall be determined by the Court with the approval of the parties. The Court shall frame rules for carrying out its functions. In particular, it shall lay down rules of procedure.

The decisions of the Chamber shall be enforceable in the territories of the States Parties in the same manner as judgments or orders of the highest court of the State Party in whose territory the enforcement is sought.

5. Competence, Jurisdiction of the Court and Nationality of Members

The Court shall be open to States Parties. Only states may be parties in cases before the Court. The Court, subject to and in conformity with its Rules, may request of public international organizations information relevant to cases before it, and shall receive such information presented by such organizations on their own initiative. The Court shall be open to the states parties to the

25) <http://www.icj-cij.org/documents/index.php?p1=4&p2=2&p3=0>

Statute.

The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the air and space treaties and conventions in force.

In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court.

The Court, whose function is to decide in accordance with air and space law and international law such disputes as are submitted to it, shall apply:

- (1) international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;
- (2) international custom, as evidence of a general practice accepted as law;
- (3) the general principles of law recognized by civilized nations;
- (4) This provision shall not prejudice the power of the Court to decide a case *ex aequo et bono* (Latin for "according to the right and good" or "from equity and conscience"), if the parties agree thereto.²⁶⁾

Members of the Court of the nationality of any of the parties to a dispute shall retain their right to participate as members of the Court. If the Court, when hearing a dispute, includes upon the bench a member of the nationality of one of the parties, any other party may choose a person to participate as a member of the Court. If the Court, when hearing a dispute, does not include upon the bench a member of the nationality of the parties, each of those parties may choose a person to participate as a member of the Court.

6. Procedure, Hearing, Expenses of the Court

Disputes are submitted to the Court, as the case may be, either by notification of a special agreement or by written application, addressed to the Registrar.

²⁶⁾ Article 36, Statute of the International Court of Justice.

In either case, the subject of the dispute and the parties shall be indicated. The Registrar shall forthwith notify the special agreement or the application to all concerned. The Registrar shall also notify all States Parties. The Court shall make orders for the conduct of the case, decide the form and time in which each party must conclude its arguments, and make all arrangements connected with the taking of evidence.²⁷⁾

The Court shall have the power to indicate, if it considers that circumstances so require, any provisional measures which ought to be taken to preserve the respective rights of either party.

- (1) The parties shall be represented by agents.
- (2) They may have the assistance of counsel or advocates before the Court.
- (3) The agents, counsel, and advocates of parties before the Court shall enjoy the privileges and immunities necessary to the independent exercise of their duties.

The procedure shall consist of two parts: written and oral. The hearing shall be under the control of the President or, if he is unable to preside, of the Vice-President; if neither is able to preside, the senior judge present shall preside. The hearing in Court shall be public, unless the Court shall decide otherwise, or unless the parties demand that the public be not admitted. Minutes shall be made at each hearing and signed by the Registrar and the President.

The Court shall make orders for the conduct of the case, shall decide the form and time in which each party must conclude its arguments, and make all arrangements connected with the taking of evidence. Whenever one of the parties does not appear before the Court, or fails to defend its case, the other party may call upon the Court to decide in favour of its claim. When, subject to the control of the Court, the agents, counsel, and advocates have completed their presentation of the case, the President shall declare the hearing closed.

27) Article 27 (Conduct of case), the Statute of the International Tribunal for the Law of the Sea.

All questions shall be decided by a majority of the judges present. In the event of an equality of votes, the President or the judge who acts in his place shall have a casting vote.

The expenses of the Court shall be borne by the States Parties and the Authority on such terms and in such a manner as shall be decided at meetings of the States Parties.

When an entity other than a State Party or the Authority is a party to a case submitted to it, the Court shall fix the amount which that party is to contribute towards the expenses of the Court. Unless otherwise decided by the Court, each party shall bear its own costs.

7. Judgement, Advisory Opinions, Finality and Binding Force of Decisions

The judgment shall state the reasons on which it is based. It shall contain the names of the judges who have taken part in the decision. The judgment shall state the reasons on which it is based. The judgment shall be signed by the President and by the Registrar. It shall be read in open court, due notice having been given to the agents.

The Court may give an advisory opinion on any legal question at the request of whatever body may be authorized by or in accordance with the Statute of the International Court of Air and Space Law to make such a request.²⁸⁾ The Registrar shall forthwith give notice of the request for an advisory opinion to all states entitled to appear before the Court.

The decision of the Court is final and shall be complied with by all the parties to the dispute. The decision shall have no binding force except between

28) Article 36, Statute of the International Court of Justice.

the parties in respect of that particular dispute. In the event of dispute as to the meaning or scope of the decision, the Court shall construe it upon the request of any party.

The official languages of the Court shall be French and English. If the parties agree that the case shall be conducted in English, the judgment shall be delivered in English.

IV. Conclusion

The creation of an International Court of Air and Space Law could provide the uniformity of decision currently lacking in claims arising out of commercial aircraft, satellites and space shuttle's accidents. Until an International Court of Air and Space Law is established to handle such claims and to provide some measure of uniformity, attorneys acting in their client's best interest should closely scrutinize the court's choice of law rules.²⁹⁾

In order to find a rational solution to disputes among the nations which have adopted differing liability systems in international air transport, circling orbit by satellite and spacecraft and space trip, we need fundamentally to reform their countries' domestic air and space law based on the new international conventions in the field of the air and space law.

My personal opinion is that if an International Court on Air and Space Law will be created in future, it will be settled quickly and reasonably the difficulty and complicated disputes, cases or lawsuit between the wrongdoer and victims and the injured person caused by aircraft, satellite, spacecraft's

29) Doo Hwan Kim, *Some Considerations on the Draft for the Convention on an Integrated System of International Aviation Liability*, JALC (Vol.53, No.3, 1986) at 794-795.

accidents or hijacker and terrorists etc. on account of deciding the standard of judgment by judges of that's court.

It is indeed a great necessary and desirable for us to make a new Draft for the Convention on a creation of the International Court of Air and Space Law to handle international air and space crash litigation. I shall propose to make a new brief Draft for the Convention on the Creation of an International Court of Air and Space Law in the near future.

As accidents of the aircraft, satellite and space shuttle has the different peculiarity from road, railway maritime accidents, so I think that it is necessary and desirable things us to establish an International Court on Air and Space Law as a special organization in order to solve quickly and efficiently the air and space cases occurred among the different legal system and different countries.

I think that the establishment of the International Court of Air and Space Law will be acted a catalyst role for the unification of air and space law in the global community.

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Abstract

The idea of establishing an International Court of Air and Space Law (hereinafter referred to ICASL) is only my academic and practical opinion as first proposal in the global community. The establishment of the International Court of Air and Space Law can promote the speed and promote fairness of the trial in air and space law cases.

The creation of an ICASL would lead to strengthening of the international cooperation deemed essential by the global community towards joint settlement in the transnational air and space cases, claims and would act as a catalyst for the efforts and solution on aircraft, satellite and space shuttle's accidents and cases and all manpower, information, trial and lawsuit to be centrally managed in an independent fashion to the benefit of global community.

The aircraft, satellite and spacecraft's accidents attributes to the particular and different features between the road, railway and maritime's accidents. These aircraft, satellite and spacecraft's accidents have incurred many disputes between the victims and the air and space carriers in deciding on the limited or unlimited liability for compensation and the appraisal of damages caused by the aircraft's accidents, terror attack, satellite, space shuttle's accidents and space debris.

This International Court of Air and Space Law could hear any claim growing out of both international air and space crash accidents and transnational accidents in which plaintiffs and defendants are from different nations. This alternative would eliminate the lack of uniformity of decisions under the air and space conventions, protocols and agreements.

In addition, national courts would no longer have to apply their own choice of law analysis in choosing the applicable liability limits or un-limit for cases that do not fall under the air and space system. Thus, creation of an

International Court of Air and Space Law would eliminate any disparity of damage awards among similarly situated passengers and shippers in non-members of air and space conventions, protocols, agreements and cases.

Furthermore, I would like to explain the main items of the abovementioned Draft for the Convention or Statute of the International Court of Air and Space Law framed in comparison with the Statute of the International Court of Justice, the Statute of the International Tribunal for the Law of the Sea and the Statute of the International Criminal Court.

First of all, in order to create the International Court of Air and Space Law, it is necessary for us to legislate a Draft for the Convention on the Establishment of the International Court of Air and Space Law. This Draft for the Convention must include the elected method of judges, term, duty and competence of judge, chambers, jurisdiction, hearing and judgment of the ICASL.

The members of the Court shall be elected by the General Assembly and Council of the ICAO and by the General Assembly and Legal Committee of the UNCOPUOS from a list of persons nominated by the national groups in the six continent (the North American, South American, African, Oceania and Asian Continent) and two international organization such as ICAO and UNCOPUOS. The members of the Court shall be elected for nine years and may be re-elected as one time. However, I would like to propose a creation an International Court of Air and Space Law in extending jurisdiction to the International Court of Justice at the Hague to in order to decide the air and space convention's cases.

My personal opinion is that if an International Court on Air and Space Law will be created in future, it will be settled quickly and reasonably the difficulty and complicated disputes, cases or lawsuit between the wrongdoer and victims and the injured person caused by aircraft, satellite, spacecraft's

accidents or hijacker and terrorists etc. on account of deciding the standard of judgment by judges of that's court.

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Key Words : air and space law, international court, convention, draft, creation, speed, judge, fairness, trial, justice, equity, establishment, organization, composition, election, procedure, duty, competence, chambers, jurisdiction, hearing, judgment

초 록

국제항공우주재판소의 설립 가능성

김 두 환 *

필자가 세계에서 최초로 국제항공우주재판소(ICASL)의 설립을 제안한 것은 어디까지나 필자 개인의 학문적이고 실용적인 의견에 불과하다. 항공기, 인공위성, 우주선의 추락 또는 충돌 등으로 인하여 인적 또는 물적 손해가 발생하는 항공우주사고의 특성은 ① 전손성(全損性 : all or nothing), ② 순간성(Augenblick), ③ 지상중속성(항공우주관제계 등), ④ 손해의 거액성, ⑤ 국제성 등이 있으므로 육상의 자동차, 기차사고 등과 해상의 선박사고 등과는 다른 특성을 지니고 있다.

따라서 국제항공우주법분야의 사건들을 신속하고 공정하게 처리하기 위하여서는 지역(대륙)별로 국제항공우주법분야에 조예가 깊은 전문가, 교수 및 법조인들 가운데 UN산하 국제민간항공기관(ICAO)의 이사회 및 총회와 UN우주평화적이용위원회(COPUOS)의 법률분과위원회 및 총회에서 다수결로 선출된 14명의 판사들로 구성된 국제항공우주재판소의 설립이 필요하다.

현재 국제재판소로는 네덜란드 헤이그에 있는 ① 국제사법재판소(ICJ), 독일 함부르크에 있는 ② 국제해양재판소(ITLS), 헤이그에 있는 ③ 국제형사재판소(ICC), 룩셈부르크에 있는 ④ 유럽공동체재판소(CEC)와 프랑스의 스트라스부르크에 있는 ⑤ 유럽인권재판소(EHRC) 등이 있으며 이들 재판소의 기능을 개별적으로 살펴어 볼 때에 주로 국제법, 국제해양법, 국

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제형사법, EU법, 유럽인권법 등에 관련된 사건들을 재판한 후 판결을 내리고 있다.

상기 5개 재판소의 설립근거는 각 재판소의 설립에 관계된 국제조약 내지 제정법(statute :정관)에 근거하고 있다. 상기 국제항공우주재판소의 설립근거가 되는 조약초안에는 ① 본 재판소의 설립목적, ② 판사의 선출방법, ③ 판사의 임기, ④ 판사의 의무와 권한, ⑤ 심의회, ⑥ 재판관할, ⑦ 청문회, ⑨ 판결의 방법(주문과 이유 등), ⑩ 제소기한 등을 삽입하여야만 된다. 국제항공우주재판소는 ICAO 및 UNCOPUOS의 주된 사법기관으로서 법인격을 향유하며 9년 임기의 판사들은 재선이 가능하다. 국제항공우주재판소의 소재지는 대한민국의 서울 또는 기타 도시로 한다.

국제항공우주재판소를 설립하기 위하여서는 설립근거가 되는 국제조약과 세부적인 절차법(정관: 定款 등)의 제정이 필요하다고 본다.

국제항공우주재판소의 설립은 항공우주법 사건에 대한 재판의 기준을 설정하고 재판의 공정성과 신속성을 도모하는데 크게 기여하게 되리라고 본다. 국제항공우주재판소의 창설은 판례법의 축적으로 인하여 국제항공우주법을 통일을 시키는데 촉매적인 역할을 하게 될 것이며 『세계통일법(unification of the law in the world)』을 형성시키는데 일익을 담당하게 될 것이다.

주제어 : 항공우주법, 국제재판소, 설립, 조약, 초안, 사법, 판사, 공정성, 형평성, 재판, 설립, 임기, 조직, 구성, 선출, 절차, 의무, 권한, 심의회, 판결, 재판관할, 심의회, 제소기한