PREFACE

The genius of man has invented machines to fly through the medium of air like birds. These are called the aeroplanes. He has developed them in size and speed, range and reliability. As a result international travel by air has become a possibility, a working necessity and a popular habit. It has also had tremendous impact on the economic and social fabric of the nations and has helped towards international understanding and co-operation.

International travel involves journey through the air space of several sovereign states with national laws which are most often conflicting. Therefore, to ensure smooth growth of international carriage, it was recognised pretty early in the development of aviation industry that there existed a need for uniformity in the conditions of international carriage and universality in their acceptance. The first answer was found in the Warsaw Convention of 1929 which contained regulatory measures concerning international carriage by air and tended to promote orderly growth of commercial aviation.

The Warsaw Convention has since been repeatedly amended and updated through the various protocols. But these protocols have been in the nature of palliative measures to assuage the growing malignancy of the Convention or to rectify its ineptness to the changing situations.
In spite of this, the fast pace of technological advances and operational improvement in aviation have outstripped the development of air law. Gradually this hiatus has been getting wider. Therefore, the Legal Committee of ICAO is fully and consciously seized of the problems confronting the Warsaw System and deliberating on its updation, revision and consolidation. A unified regime governing international carriage by air is in prospect.

On the other hand, it must be conceded that the juristic wisdom of the Warsaw Convention still remains beyond reproach and this institutional system has displayed ample evidence of vitality, diversity and resiliency. Therefore, an indepth study of this subject at this juncture is pertinent and timely, and equally important and relevant when the formulation of a revised regime is on the anvil.

Research is a systematic investigation to increase the existing fund of knowledge on a subject. And I have delved in this exercise with devotion and perseverance. Though I lay no claims to originality of the contents in the present study, yet the style of presentation and the system of treatment of the subject, with all the faults and foibles, is entirely my own.

My approach has been essentially evolutionary and diagnostic combined with broad analytical attempts to
investigate into the salient features and underlying concepts of the regime of international carriage by air. I have consciously avoided facile generalisation or lean simplifications during the analysis so as to retain the tenor of realism. And it is out of this analysis that I have envolved and culled out certain suggestions of practical value. The ideas preferred may not find a ready-made functional application, the suggestions made may not be immediately feasible, yet the main desideratum of this study has been to assess the operational efficacy of the institutional system of international carriage by air and identify problem areas so that the need for solution is recognised clearly and vividly. Because it is on such basis that integrated projections can be developed to elicit responses and options from the member states and then formalise a comprehensive convention on commercial air law.

In order to support and buttress the discussion in the thesis, every endeavour has been made to provide citations of decided cases and reference to known works of authorities on the subject. Nevertheless, a limitation of this study which needs to be honestly acknowledged is the scant availability of topical materials on this subject with the various libraries located at Delhi. Therefore the scope and content of the research has been handicapped by this scarcity. This has been so because for various reasons, I had no opportunity to visit
the renowned centres of learning on air law. All the same a sincere effort has been made to overcome this deficiency through discussions and informal consultations with government officials concerned with aviation and professors of law.

I have benefitted tremendously from the illuminating guidance and constructive suggestions by Professors RP Anand, Rahmatullah Khan and VS Mani. Yet I bear sole responsibility in all respects for what is contained in this study. I am rather deeply beholden to Dr. Rahmatullah Khan for periodically encouraging me and resuscitating my interest in the subject which tended to alake due to official compulsions and professional "busyness" as Wing Commander in the Indian Air Force.

With a smug sense of satisfaction and a fond hope that I have contributed something to the understanding of the subject or at least focussed attention on an area of current importance in the laws of the air, I humbly offer this thesis.

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( GS SACHDEVA )