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Abstract of the doctoral dissertation

“The Aviation Accident of April 10, 2010 in the Light of International Law”

The dissertation focuses on the aviation incident of April 10, 2010, the circumstances of which – the death of the President of the Republic of Poland, military commanders, and representatives of constitutional state authorities on the territory of the Russian Federation – had consequences not only in the historical and geopolitical dimensions but also in the field of technical investigation, raising numerous legal issues. Among them, the most debated was the determination of the international legal status of the aircraft carrying the delegation and, consequently, the choice of the appropriate legal basis for investigating the incident. The examination of technical causes was entrusted to the state where the incident occurred, according to the rules applicable to civil aviation, i.e., according to Annex 13 to the Convention on International Civil Aviation, Investigation of Accidents and Incidents of Aircraft.

The thesis pursued four research objectives. The first of these aims at conducting a comprehensive analysis of the legal status of the Tu-154M aircraft in the context of international law, taking into account existing legal frameworks and state practices. The second objective involved gaining insights into the principles governing the investigation of aviation incidents, applicable to accidents and incidents occurring in state aviation, particularly in the military context. The third objective was to examine the informal agreement concerning the investigation of the incident on April 10, 2010, through which the parties refrained from utilizing the inter-ministerial agreement of 1993 regulating military air transport between the Republic of Poland and the Russian Federation, opting instead for the application of Annex 13. The final objective set by the author was to address the question of the need for changes in the international and national legal systems, specifically the creation of detailed regulations pertaining to the safety and security of state and military aviation.

The presented research issues allowed for formulating the thesis: the investigation of the causes and circumstances of the aviation incident on April 10, 2010, involving a military

aircraft, was improperly subjected to rules applicable to civil aviation under a bilateral oral international agreement, bypassing the provisions of the existing 1993 Agreement.

The dissertation commences with considerations regarding the definition of aircraft and airplanes, as well as the evolution of the classification of aircraft in international aviation law, which are presented in the first chapter. This chapter provides a review of theoretical concepts aimed at differentiating between civil and state aircraft, outlining the categories and various legal regimes to which these aircraft are subject. The legislation pertaining to the differentiation of aircraft, including a comparative analysis with other countries, is discussed, with particular attention given to aircraft designated for the transportation of key state figures. This theoretical-legal analysis has allowed for the resolution of uncertainties regarding the legal status of the Tu-154M aircraft.

The analysis conducted in the first chapter, which delves into the classification of aircraft into state and civil categories, implies the application of distinct legal regimes in investigating aviation incidents, a topic explored in the second chapter. In this section, the term "aviation incident" is defined, and the genesis and brief historical overview of regulations concerning flight safety are presented. Commonalities and differences in the investigation of incidents in civil and state aviation are highlighted. Observations are made regarding national regulations concerning the investigation of aviation accidents and incidents. This chapter also seeks answers to questions regarding the specificity of investigating events resulting from unlawful interference.

The fundamental matter addressed in the third chapter was to ascertain the content, form, and scope of the agreement governing the investigation of the aviation incident on April 10, 2010. The factual progression of the investigation involving the Tu-154M was described, with particular emphasis on the applied regulations. An analysis of documentation from public administration authorities was conducted, allowing for the reconstruction of the agreement between the Republic of Poland and the Russian Federation for conducting the investigation of the aviation incident involving the Tu-154M aircraft. Subsequently, to facilitate an assessment of the concluded agreement, the scope of application and the practice of implementing the 1993 Agreement were analyzed, considering the unique character of the non-ratified international agreement within the Polish legal sources system. The possibility of applying the Chicago Convention, along with Annex 13, to the accident involving a state aircraft, was discussed, taking into account the legal nature and the potential separate application of annexes to the convention. In the pursuit of optimal solutions,

a comparative analysis was conducted, focusing on selected cases of aviation incidents comparable to the Tu-154M plane crash. All these considerations enabled an evaluation of the agreement concluded for the investigation of the aviation incident on April 10, 2010.

The author concluded that the Tu-154M aircraft was a military aircraft, as demonstrated by the fact that aircraft transporting key figures in the state, including heads of state, are identified as state aircraft under international law. State aviation, in principle, has not become subject to global international regulations; consequently, the international community has not yet developed an effective mechanism for conducting investigations into aviation incidents involving non-civil aircraft. Among the international acts regulating this issue for military aviation, it is necessary to point to associational military documents - standardization agreements issued within NATO - and the corresponding Polish defense standards. However, the application of associational documents clearly obliges only the members of the association. Therefore, it is common to regulate the investigation of aviation incidents in state aviation through bilateral agreements related to defense, military transport, and cooperation with other uniformed services utilizing air transport.

It is essential to reconcile the interests of both states - on one hand, the state of the incident has the right to conduct an investigation in accordance with its local jurisdiction, exercising sovereign authority over its territory. On the other hand, the state of registration, following the principles of international law, has the right to participate in the investigation, considering factors such as the right of ownership of the aircraft and the possibility that state documents or classified devices may be on board. The author thus demonstrated the validity of two additional theses, proving that the rules governing the safety of military aviation are the subject of bilateral international agreements rather than multilateral conventions.

Another important conclusion was the recognition that international aviation law does not sufficiently regulate the "interface" between aviation safety and security. Although Annex 13 has obligated authorities since 1974 to provide relevant information to the aviation security authorities of concerned States when there is suspicion that an accident or incident may result from an unlawful act of interference, this does not constitute comprehensive regulation of the intersection between aviation safety and security.

Regarding the form of the agreement delegating the investigation of the aviation incident in 2010, two possibilities were considered: the conclusion of an oral agreement or the assumption of commitments by a unilateral act of Russia, to which Poland implicitly

agreed. The author leaned towards an interpretation in favor of an informal oral agreement, which retains validity under international law. However, it is worth concluding that this particular, now rarely encountered form of agreement raises concerns within the international community related to the uncertainty of international legal transactions. The difficulty lies in proving the existence of the agreement itself and its conditions in the absence of a written document providing unequivocal evidence of the undertaken commitments.

The dissertation also demonstrated the existence of model agreements developed by AIG ICAO in 2007, which could potentially have been applied to the discussed case. Utilizing this model, with necessary adjustments to suit the needs of military aviation and the provisions of the 1993 Agreement, would have allowed for a swift and effective agreement on terms between investigative bodies and the concerned states.

The analysis established that on the day of the incident, the 1993 Agreement between the Ministries of National Defense of the Republic of Poland and the Russian Federation had binding force, serving as a source of international law and could provide the basis for investigating the incident through a joint commission.

Comparative analysis of selected aviation incidents comparable to the discussed case demonstrates a prevailing practice where the determination of the causes of a crash occurs jointly by the state of registration of the aircraft and the state where the crash took place, supporting the auxiliary thesis regarding the inclination of the state of registration to investigate incidents involving key state figures.

Observing the practice of delegating technical investigations, it can be noted that leading such investigations is entrusted to the state whose citizens comprised the majority of the victims or whose victims held significant state functions.

The considerations in this dissertation highlight the need for the creation of model memorandum or, at the very least, instructions or guidelines supporting the process of entering into relevant agreements in Polish state aviation in the event of incidents occurring beyond Poland's borders. There appears to be a necessary integration of aviation safety and security on a global scale, including the establishment of detailed procedures for investigating aviation incidents resulting from unlawful acts of interference and their reporting.

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Keywords: international aviation law, aviation safety, aviation security, state aircraft, investigation of aviation incidents, international agreement, informal international agreement