

Liability for Air Navigation Services

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AIR TRAFFIC CONTROL

Air traffic control [ATC] is typically divided into three areas:

1. *Area control* is designed to ensure adequate separation of aircraft once an aircraft has left the airspace controlled by an airport and is en route to another airport.
2. *Approach control* (or terminal radar control) gives approaching and departing aircraft radio instructions within the approach control area (the airspace extending like a staircase from the airport. Airport surveillance radar monitors location and altitude of aircraft under terminal radar control.
3. *Aerodrome control* consists of clearance given to an aircraft landing at or taking off from an airport in a control zone. This is performed from the air traffic control tower located at the airport.



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ANS is a sovereign public responsibility.

- Chicago Convention Article 1:
- Each State has complete and exclusive sovereignty over the airspace above its territory.
- Chicago Convention Article 28:
- States shall “Provide, in its territory, airports, radio services, meteorological services and other navigation facilities to facilitate international air navigation, in accordance with . . .” SARPs.





Air Navigation Service Providers

There are three forms of
classical” ANS providers:

- Individual State
- Joint State Institutions (e.g. EUROCONTROL MUAC and EAD)
- Non-Governmental Entity on behalf of a State/States

ANSP Organizational Structures

ANS Organizations

*Degree of
Commercialization
0%*

- State Authority (CAA)
- Autonomous State Entity
- State-owned Corporation (Crown corporation)
- Concession/Lease (all or part of the facilities)
- Partial Privatization (e.g. non-aeronautical)
- Not-for-profit (stakeholder owned) Corporation
- Fully Privatized Company (publicly traded shares)

100%

ASN can be provided by governmental, corporatized, or privatized institutions:

- Directly by the government (e.g., FAA)
- By an independent body (e.g., corporatized or privatized body, either non for profit such as Canada's NavCanada, or for profit, such as the UK's NATS)
- By another State's ANSP

Alternative Liability Approaches:

1. The State Primary Responsibility Doctrine:

The State is primarily responsible for any ANS failures, but may have a right of recourse against the ANSP (German DFS)

2. The State Ultimate Responsibility Doctrine:

The ANSP assumes primary responsibility for liability, but the State provides compensation for damages the ANSP is unable to pay.
(Swiss Skyguide)

3. The Service Provider Exclusive Liability Doctrine:

The ANSP is liable; the State is only liable for damages caused by its own, direct fault. (UK NATS)



Uberlingen 2002

- Two jets collided in German airspace where ANS were controlled by Swiss skyguide. 71 people died.
- The German court concluded that the sovereign task of securing German air space had never been constitutionally transferred to Switzerland; therefore Germany had responsibility for oversight.



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Germany

skyguide

Switzerland



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Cross-Border Liability Issues

- Who should be liable? Which law should apply?
 1. The State holding sovereignty over the airspace? (The “Territorial Doctrine”)
 2. The foreign ANSP?
 3. The State of the ANSP?
- The question raises serious conflicts of jurisdiction and conflicts of laws questions.