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The Smolensk Air Crash and International Law

The problems of choosing applicable international rules arouse in the case of a Polish aircraft, operated by a military unit for civilian transportation (with the President of the State and 95 other persons on board), crashed on the territory of Russia in April 2010. Without resolving questions of the legal status of the aircraft (civil or military), the parties agreed to apply the rules of the Chicago Convention (1944) on international civil aviation and the Annex 13 at the matter of investigation. This unprecedented decision will undoubtedly be a source of many legislation questions and discussions for a long time to come (about coordination between the safety and judicial investigations, protection of accident investigation records and their disclosure to the public etc.). Problems of the legal regime(s) of liability (and insurance) for damages caused have still to be resolved. The application of the Montreal Convention (1999) will depend on the interpretation of its provisions dealing with state and air transport undertaking activities, gratuitous carriage and contract of carriage.

Due to the fact that the regulation concerning common use of civil and military aircrafts is so unclear in International Air Law, it is time to revise and update Art. 3 of the Chicago Convention or create a new annex concerning this crucial issue.