

Aeronomics and Law

Fixing Anomalies

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1. Auflage 2012. Buch. xii, 196 S. Hardcover

ISBN 978 3 642 28944 6

Format (B x L): 15,5 x 23,5 cm

Gewicht: 479 g

[Wirtschaft > Fertigungsindustrie > Luftfahrtindustrie](#)

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Preface

At the base of the trouble with air transport is the Convention on International Civil Aviation (Chicago Convention) of 1944, or, to put it more accurately, the way it has been understood and applied. The intent of the forefathers of the Convention was to promote air transport and not to stultify it. They intended the Convention to solve unforeseen issues as they arose, such as the deleterious effects of aircraft engine emissions, through existing provisions or additions to the Convention. So far only a few such instances have been addressed and a few revisions incorporated. At the core of the problem lies a certain insouciance on the part of the aviation community and a reluctance to “ruffle the feathers” of an aged instrument that should mature with time and change if its invaluable utility is to continue. In Chap. 1 of this book, I discuss the anomalies in the regulatory structure of air transport with particular emphasis on the Chicago Convention and some issues that may have caused the problem.

Fundamentally, there is nothing wrong with the Chicago Convention. In fact, it is a visionary document that has shown direction and a way forward for air transport. The fault lies in the perception by Contracting States of the various provisions of the instrument and the tendentious manner in which those provisions have been interpreted for individual benefits and interests. This has led to air transport economics always being unique compared to economics of other modes of transport. The normative foundation of air transport has been built on the myopic delusion that air transport and the sovereignty of States are inextricably linked by an immutable construct of protectionism, and that airlines have to be substantially owned and effectively controlled by nationals of the States in which they are registered. The latter condition has neither been defined in any air law instrument nor entrenched in the Chicago Convention which was signed in 1944 and which lays down the overall principles pertaining to air navigation and air transport.

This anomaly has compelled commercial air carriers, in the absence of their ability to attract foreign capital and equity, to perform elusive practices to circumvent collapse. Mergers, alliances, code sharing and franchising are some of the tools used by air carriers to maximise capacity and optimise market access. The accessibility to foreign direct investment by airlines warrants serious discussion and

consideration if the airlines were to be treated like any other business and if passengers are to gain access to regular, efficient and economical air transport as prescribed by the Chicago Convention.

In Chap. 2, I discuss the three obstacles preventing FDI in air transport and examine the need for encouraging FDI in the industry. I also address the legal safeguards that would be available to foreign investors in the instance of such liberalization and conclude that the international community should take a serious look at this anomaly from a consumer-protection perspective.

Another grave lacuna in the current air transport scenario is the lack of attention paid to the carriage by air of cargo. Chapter 3 covers this aspect.

A further troubling issue in air transport is the lack of global principles on aircraft engine emissions. This has prompted States to go their different ways and lose sight of the compelling need to arrive at an acceptable global structure and direction towards investing in the mitigation of aircraft engine emissions in a meaningful manner. This aspect is discussed in Chap. 4, particularly how States muddle through the concept of a global fuel tax on aviation to mitigate aircraft engine emissions.

Chapter 5 discusses the importance of focusing on the rights of the passenger, his right to accurate information, timely travel and other entitlements. Chapter 6 is dedicated to a discussion on the disabled passenger.

Chapter 7 is about ICAO and its meaning and purpose in air transport. It has been an exceptional United Nations Agency and the service it has provided to the aviation community over the past 65 years has been outstanding. However, the Organization has been over-cautious in its mission and vision statements, as I elaborate in this chapter. Arguably the most troubling issue for air transport is that the Chicago Convention identifies the aims and objectives of ICAO as “to develop the principles and techniques of international air navigation and to foster the planning and development of international air transport”, making it clear that ICAO has no authority to develop principles of air transport as it can in the area of air navigation. Despite this theoretical obstacle, ICAO has performed in an outstanding manner in educating the aviation community on the economics of air transport. This has helped States to charter their own economic policies on air transport.

In the concluding chapter, I indulge in a discussion on what should be done to ensure the objectives of the Chicago Convention and the sustainability of the air transport product and what measures one might take to improve the various disadvantages faced by air transport.

Montreal
January 2012

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