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Air Transport Law and Economics: A Paradigm Shift from Sovereignty to Equality of Opportunity

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Abstract

The Seventh Worldwide Air Transport Conference (ATConf/7), to be convened by the International Civil Aviation Organization in November 2026, presents an opportunity to revisit the economic constitution of international civil aviation after a thirteen-year interval since ATConf/6. This article contends that the contemporary air transport industry has evolved far beyond the economic and political assumptions that informed the Chicago Convention of 1944, while its fundamental legal architecture concerning market access remains substantially rooted in State sovereignty and bilateralism. The resulting tension between Article 6, which preserves State control over scheduled international air services, and Article 44, which mandates ICAO to foster the planning and development of international air transport, reveals an unfinished economic constitution within the Convention. The article argues that the issue before ATConf/7 is therefore not simply whether liberalization should proceed, but whether sovereignty itself should acquire a more contemporary economic meaning. Sovereignty should remain the constitutional foundation of international civil aviation, but its exercise should increasingly be conditioned by transparency, proportionality, non-discrimination, competitive neutrality and equality of opportunity. The article proposes a transition from sovereignty conceived as unrestricted discretion to sovereignty understood as responsible stewardship, thereby reconciling national interests with the economic, technological and societal imperatives of a transformed global aviation system.

Keywords: air transport liberalization; ATConf/7; Chicago Convention; equality of opportunity; international aviation law; State sovereignty

Introduction: An Unfinished Constitutional Settlement

ICAO's 7th Air Transport Conference (ATConf/7) is scheduled to take place from November 16 to 20 2026. The last time such a conference took place at ICAO was in 2013 (ATConf/6), and, after a lengthy period of 13 years it is time the 193 member States had an opportunity to review the economic state of the global air transport industry.

There are moments in the development of international law when the circumstances surrounding a legal instrument change so profoundly that the instrument itself must be examined anew, not because its fundamental principles have necessarily become obsolete, but because the world to which those principles are applied has changed. International air transport law has reached such a moment. The Convention on International Civil Aviation,¹ signed at Chicago on 7 December 1944, remains one of the most consequential instruments of international law in modern history. It established the constitutional foundations upon which international civil aviation has developed for more than eight decades, and its principles concerning sovereignty, safety, nationality, air navigation and international cooperation remain remarkably resilient. Yet the economic architecture within which the Convention operates continues to bear the imprint of the political and economic circumstances of 1944, even though the aviation industry has since undergone a transformation that would have been difficult for the Chicago delegates to contemplate.

The aeroplane of 1944 was essentially national in its political and economic identity. Airlines were closely associated with States, international routes were matters of national prestige and strategic influence, foreign ownership raised fundamental questions of sovereignty and security, and the allocation of international traffic rights was regarded primarily as a matter to be negotiated between governments. The aviation system of the twenty-first century is altogether different. Airlines are frequently multinational enterprises operating through alliances and code-sharing arrangements; aircraft are acquired through international leasing and financing structures; airports have become sophisticated economic ecosystems; passengers purchase journeys through global digital platforms; cargo aviation has become inseparable from international supply chains; and capital moves across borders with a speed and volume

the principle that the State possesses the right to determine whether a scheduled international service may enter or operate within its territory. that would have been inconceivable in 1944. Yet the legal architecture governing access to international markets remains substantially anchored in the principle that the State possesses the right to determine whether a scheduled international service may enter or operate within its territory.

The paradox is contained within the Chicago Convention itself. Article 6 provides that scheduled international air services may not be operated over or into the territory of a contracting State except with the special permission or other authorization of that State and in accordance with the terms of such permission or authorization. Article 44, on the other hand, requires ICAO to foster the planning and development of international air transport and expressly directs the Organization toward the prevention of economic waste, the development of air transport, the provision of a fair opportunity for every contracting State to operate international airlines and the avoidance of discrimination between contracting States.

The Preamble adds a principle of even greater significance by contemplating the establishment of international air transport services on the basis of equality of opportunity and their operation in a sound and economical manner. The apparent contradiction between Article 6 and Article 44 is therefore not simply a technical legal anomaly. It represents a deeper tension between the sovereignty of the State and the international economic purposes of civil aviation. Article 6 gives the State the power to control access to its market, while Article 44 assigns ICAO the responsibility of fostering the development of the international air transport system. The Preamble, meanwhile, supplies a normative objective which neither provision can be permitted to ignore: international air transport should be developed on the basis of equality of opportunity.

It is my contention that this tension requires a paradigm shift. The next stage of international air transport law should not seek to abolish sovereignty in favour of unrestricted liberalization, nor should it preserve sovereignty in the form of unfettered economic discretion. The more sustainable legal proposition is that sovereignty should remain the constitutional foundation of international civil aviation while its exercise in the economic sphere becomes increasingly governed by principles of transparency, proportionality, non-discrimination, competitive neutrality and equality of opportunity. The transformation would therefore be from sovereignty as unrestricted discretion toward sovereignty as responsible stewardship.²

This proposition assumes particular importance in 2026. ICAO's Strategic Plan for 2026–2050 now identifies the economic development of air transport as one of its six

strategic goals and describes that objective in terms of economic prosperity and societal well-being. ICAO's contemporary policy framework also emphasizes connectivity, fair and open competition, infrastructure modernization, investment, innovation and sustainable economic development. The forthcoming Seventh Worldwide Air Transport Conference, ATConf/7, scheduled to take place in Montréal in November 2026, accordingly presents an opportunity to examine not merely how existing liberalization policies might be refined, but whether the international economic regulation of air transport requires a fundamentally different conceptual foundation.

The Chicago Convention and the Unfinished Economic Constitution

The Chicago Convention was an extraordinary exercise in compromise. The States represented at Chicago could agree upon the technical and institutional foundations necessary for international civil aviation, but they were unable to achieve a comprehensive multilateral settlement concerning the allocation of commercial traffic rights. The United States favoured a relatively liberal system in which competitive forces would play a substantial role, while other States were concerned about the survival of their national airlines and the economic and strategic consequences of unrestricted competition. The eventual compromise left the most sensitive commercial questions substantially within the sovereign domain of individual States.

Article 6 became the legal expression of that compromise. Scheduled international air services would require the authorization of the State concerned, and the conditions governing that authorization would therefore become a matter for State-to-State negotiation. The bilateral air services agreement consequently emerged as the principal legal mechanism through which international traffic rights were exchanged and regulated. Routes, capacity, frequencies, designation, ownership and control, tariffs and related commercial questions were addressed through a vast network of bilateral arrangements.

This bilateral structure was neither irrational nor inherently defective. It reflected the realities of the time. National airlines were instruments of economic policy and national prestige, and governments were unwilling to permit the commercial aviation market to develop independently of national strategic considerations. The bilateral system provided reciprocity, predictability and a means through which States could protect their interests while allowing international aviation to expand.

The difficulty is that an arrangement designed for a predominantly national airline industry now governs an industry whose economic structure is fundamentally transnational. The modern airline may be incorporated in one State, controlled through shareholders located in several States, operate aircraft registered in another jurisdiction,

lease aircraft from a lessor in yet another jurisdiction, belong to an alliance whose members span several continents and sell its services through digital platforms operating globally. The concept of a purely national airline has therefore become increasingly difficult to reconcile with the economic realities of international aviation.

This does not mean that nationality has ceased to have legal relevance. It remains deeply embedded in the Chicago Convention and in the political structure of international aviation. Nor does it mean that States have lost legitimate interests in security, public service, employment, strategic connectivity or national resilience. What has changed is the economic context within which those interests must be protected. The question is consequently no longer whether sovereignty should exist. It is whether the economic exercise of sovereignty should remain largely insulated from international principles of accountability.

Article 6 and the Meaning of Sovereignty

Article 6 is often understood as the clearest manifestation of State sovereignty in the economic sphere. That understanding is correct, but incomplete. Sovereignty establishes the authority of a State to regulate access to its territory; it does not necessarily determine that every exercise of that authority must be regarded as legally or economically immune from scrutiny.

There is an important distinction between sovereignty and discretion. Sovereignty is a foundational principle of international law, whereas discretion concerns the manner in which authority is exercised. The possession of sovereign authority does not necessarily imply that its exercise can never be constrained by principles of reasonableness, proportionality, good faith or non-discrimination.

This distinction could become central to the future development of Article 6. The traditional interpretation begins with the proposition that a State may require authorization for scheduled international services. A more contemporary approach would preserve that proposition while asking whether the conditions under which authorization is granted or denied are consistent with the broader purposes and principles of the Convention.³

The difference may appear subtle, but it is jurisprudentially significant. The traditional question is whether the State has the power to refuse access. The emerging question is whether the State can justify the exercise of that power within an international legal framework that recognizes equality of opportunity, fair opportunity and non-discrimination. The result would not be the abolition of sovereignty. It would be the constitutionalizing of its exercise.

Article 44 and the Institutional Paradox of ICAO

The institutional difficulty is more pronounced when Article 44 is considered. ICAO is mandated to foster the planning and development of international air transport, yet the language of "fostering" is fundamentally different from the language of binding economic regulation. In technical matters, ICAO has developed a sophisticated system of Standards and Recommended Practices contained in Annexes to the Convention and supported by monitoring, auditing, implementation assistance and continuous review. In economic matters, the Organization has historically relied more heavily upon policy guidance, manuals, conferences, model agreements, studies, databases and recommendations.

There are understandable reasons for this distinction. Technical safety requirements lend themselves more readily to international standardization because an aircraft cannot safely operate across borders if States apply radically different principles of navigation, communication, licensing or operational safety. Economic regulation is more intimately connected with domestic political choices concerning competition, investment, employment, public ownership, national airlines, subsidies and public-service obligations. States have therefore been understandably cautious about transferring economic decision-making to an international institution.

But the distinction becomes less persuasive when one recognizes the extent to which economic regulation now determines the functioning of the aviation system. Market access affects connectivity. Connectivity affects tourism and trade. Airport charges affect airline economics. Ownership rules affect investment. Subsidies affect competition. Competition affects fares and consumer choice. Infrastructure financing affects the capacity of States to participate in international aviation. Economic resilience affects the continuity of essential air services during crises. Economics is therefore not peripheral to international aviation. It is one of its foundations.

ICAO's current strategic policy appears to recognize this transformation. Its Strategic Plan for 2026–2050⁴ describes economic development as a core strategic objective and connects it with prosperity, societal well-being, connectivity and an economically viable aviation system. The Organization also identifies its role as encompassing the advancement of air law and the development of policies, plans and standards capable of addressing current and emerging challenges. The question should therefore no longer be whether ICAO possesses an economic mandate. The more difficult question is whether its economic mandate has been developed with the same normative sophistication that has characterized its technical mandate.

The Preamble and the Forgotten Principle of Equality of Opportunity

The most promising answer may lie in the Preamble to the Convention, because the Preamble provides the philosophical context within which the operative provisions should be understood. The contracting governments declared their desire to establish international air transport services on the basis of equality of opportunity and to operate them soundly and economically. These words should not be treated merely as ceremonial language.

"Equality of opportunity" is an especially important expression because it is conceptually different from "free competition". Free competition describes the condition of markets, whereas equality of opportunity describes a condition of law. The latter does not require identical outcomes. It does not require every airline to possess the same market share, nor does it prevent governments from pursuing legitimate public objectives. It requires instead that legitimate participants should not be arbitrarily excluded from opportunities to compete.⁵

This distinction provides a possible bridge between sovereignty and liberalization. A State may retain its sovereign authority to regulate access to its market, but it should increasingly exercise that authority in a manner that preserves fair opportunity and avoids arbitrary discrimination. Public-service obligations may remain legitimate, subsidies may remain possible, and strategic restrictions may remain necessary in certain circumstances, but the regulatory basis for such measures should be transparent and proportionate. Equality of opportunity could consequently become the principal normative principle of a new international air transport economic order.

Article 15 and the Existing Economic Principles of Chicago

Article 15 reinforces this proposition. The provision requires airports open to public use to be available under uniform conditions to aircraft of other contracting States and addresses the charges imposed upon foreign aircraft by reference to the principle of comparable treatment. It also requires transparency concerning charges and provides a mechanism through which the ICAO Council may review certain representations concerning airport charges.

Article 15 therefore contains within the Convention principles of non-discrimination, transparency, uniformity, comparability and institutional oversight. These principles are not foreign imports from modern competition law. They were present in the Convention from its inception.

This is significant because it demonstrates that the Chicago Convention does not regard economic regulation as incompatible with international aviation law. Rather, it

addresses economics selectively. The challenge for the future is to determine whether the principles already embedded in Article 15 can be developed into a more comprehensive jurisprudence of economic regulation.

If non-discrimination is appropriate in relation to airport charges, it is legitimate to ask whether the same principle should inform the allocation of market access. If transparency is necessary concerning charges, it is equally legitimate to ask whether transparency should apply to the reasons for denying market access or maintaining ownership restrictions. If ICAO possesses a review function in relation to certain economic measures, it is worth considering whether similar analytical mechanisms could be developed for other areas of economic regulation. The proposition is not that Article 15 creates powers that it does not contain. It is that Article 15 provides evidence of an economic philosophy within the Convention which can support further development.⁶

Liberalization as an Instrument Rather Than an Ideology

The debate over liberalization has sometimes become unnecessarily polarized. Liberalization is frequently presented as though the choice were between an unregulated market and a State-controlled market. International aviation demonstrates why such a dichotomy is inadequate. Markets require rules, and aviation requires more rules than many other industries because airports, air navigation systems, international routes and safety oversight are deeply intertwined with State authority.

The relevant question is therefore not whether aviation should be regulated. It must be regulated. The relevant question is whether regulation should facilitate the economic and social purposes of aviation or obstruct them unnecessarily.

ICAO's Long-Term Vision for International Air Transport Liberalization recognizes this distinction by connecting liberalization with the benefits of stakeholders and the economy at large while emphasizing fair and equal opportunity. ICAO's economic policy work similarly identifies consumer benefits, connectivity, competitive business opportunities and sustainable development as objectives of its regulatory approach. Liberalization should consequently be regarded as an instrument for achieving legitimate public objectives rather than as an objective in itself.

There can be too little competition, but there can also be destructive competition. There can be excessive concentration, but there can also be excessive fragmentation. Public subsidies may distort competition, but the absence of public intervention may destroy strategically important connectivity. Foreign investment may strengthen an airline, but certain ownership restrictions may remain justified by genuine security considerations. The proper concept is therefore not unrestricted liberalization but

responsible liberalization, in which market opening is accompanied by rules designed to preserve competition, connectivity, consumer welfare and resilience.

Aeronomics and the Economic Consequences of Law

This is where the concept of aeronomics acquires particular significance. Air transport law cannot be economically indifferent. Every legal rule produces an economic consequence, whether intended or unintended. A restriction on market access may protect a national carrier while increasing fares or reducing connectivity. An ownership restriction may protect national control while limiting access to capital. A subsidy may preserve an essential route while distorting competition. An airport charge may finance necessary infrastructure while influencing the commercial viability of airlines. The lawyer who considers only the formal legality of the rule therefore sees only half of the regulatory picture. The other half concerns economic consequence.

This is particularly important in aviation because the industry possesses structural characteristics that distinguish it from ordinary markets. Airlines operate in network economies, airports may possess significant market power, slots at congested airports are scarce, aircraft fleets involve enormous capital commitments, demand is volatile and external shocks can rapidly transform commercial conditions. The law must therefore ask not simply whether a measure is legally permissible but what economic behaviour it creates.

This is one of the principal lessons that can be drawn from an aeronomics perspective. The economic consequences of legal rules should inform their interpretation and development, particularly where the ultimate objectives of the Convention include sound and economical air transport and the prevention of economic waste.

Competition, Investment and the Nationality Principle

The same reasoning applies to competition and investment. International aviation requires enormous quantities of capital. Airlines must acquire aircraft, airports require major infrastructure investment, air navigation systems must be modernized and digital infrastructure must be developed. Yet nationality restrictions remain a prominent feature of international air transport law.

Historically, such restrictions had a rational foundation. Governments wished to ensure that their airlines remained under national control and could be relied upon in circumstances involving national security or strategic interests. But historical legitimacy does not necessarily imply contemporary economic necessity.

The future legal question should therefore be whether each ownership restriction continues to serve a legitimate public purpose and whether that purpose could be achieved through a less restrictive regulatory mechanism. This is a question of proportionality.

The same approach should apply to competition. A State-owned airline should not be presumed to be illegitimate merely because it receives government support. Nor should government support be presumed to be legitimate merely because the airline is nationally owned. The relevant question should concern the purpose, transparency, proportionality and competitive effect of the intervention. Competitive neutrality would therefore be a central component of the proposed paradigm.

Competitive neutrality does not mean that governments must abandon public intervention. It means that public intervention should be designed so that legitimate public objectives are achieved without unnecessarily foreclosing fair opportunities for competing carriers.

From the Slumbering Sentinel to the Active Steward

The metaphor of the "slumbering sentinel" remains useful because it captures an institutional paradox. ICAO has not been inactive in economic affairs. It has produced manuals, guidance, studies, policy documents and economic data, and it has convened successive Air Transport Conferences. ATConf/6, for example, considered the regulatory framework for international air transport, competition, consumer protection, taxation, air carrier ownership and control and other economic questions. The difficulty is that activity is not necessarily transformation.

The international air transport economy has changed faster than the normative architecture governing it. The result is that ICAO possesses considerable economic knowledge but comparatively limited economic regulatory authority. The Organization should therefore become an active steward of the economic conditions within which international aviation operates.

This does not require ICAO to become a supranational economic regulator. It requires it to develop principles by which States can regulate their own markets consistently with the purposes of international civil aviation.

The distinction is fundamental. ICAO would not regulate the airline. It would help regulate the regulatory environment in which the airline operates.

From the Manual to the Annex

The proposal to move from an ICAO Manual on the Regulation of International Air Transport toward an Annex devoted to economic regulation should consequently be

understood as a gradual process rather than an immediate legal revolution. The Manual is valuable because it consolidates information, policy and regulatory practice. Its authority is primarily persuasive and facilitative. An Annex possesses a different character because it translates broad Convention principles into an internationally recognized framework of Standards and Recommended Practices.

An economic Annex should not prescribe a particular economic ideology. It should not require privatization, prohibit national airlines, eliminate public-service obligations or establish a universal competition law. Such an instrument would exceed the legitimate expectations of States and would be politically unsustainable. The more realistic approach would be to establish principles governing the exercise of economic regulatory authority.

Those principles could include equality of opportunity, non-discrimination, transparency, proportionality, competitive neutrality, regulatory accountability, consumer welfare, connectivity, resilience and access to investment. They could provide a framework for assessing market-access restrictions, subsidies, ownership requirements, public-service obligations and airport charges.

The essential proposition would be that the Annex should regulate **the manner in which States regulate**, rather than prescribe the economic system which States must adopt. Such a distinction would enable the international community to move toward greater economic harmonization without destroying legitimate national economic policy.

Rethinking Article 6

The question then arises whether Article 6 itself should be amended. A radical amendment would remove the requirement for special permission and establish a universal right to operate scheduled international services. Such an approach would represent an extraordinary movement away from the sovereignty principle embedded in Chicago and is unlikely to command sufficient political support.

A more pragmatic approach would preserve Article 6 but progressively modify its normative environment. States would continue to possess the right to require authorization, but the exercise of that authority would be increasingly informed by international principles of transparency, non-discrimination, proportionality and equality of opportunity. The State would retain the right to say "no", but international law would increasingly ask why. This is not a trivial change. It represents the movement from discretionary sovereignty toward accountable sovereignty.

The refusal of market access could remain legitimate where justified by safety, security, national defense, public order, essential public services or other recognized

public interests. But the justification should be transparent, rational and proportionate to the objective pursued. Such an approach would preserve the constitutional integrity of the Convention while allowing its economic principles to evolve.

ATConf/7 and the Opportunity for a New Economic Philosophy

ATConf/7 is unusually well placed to initiate this process. Its official objectives include advancing economic regulatory frameworks in response to changing markets and technologies through data, enhancing resilience, mobilizing innovative infrastructure financing, shaping economic policy foundations for innovation and emerging technologies, strengthening institutional capacity and enabling sustainable and inclusive growth. These objectives should not be treated as independent agenda items. They are manifestations of a single transformation in the international aviation economy.

Data permits evidence-based regulation. Resilience requires a broader conception of economic efficiency. Innovative financing requires a reconsideration of traditional State and private-sector roles. Emerging technologies require regulatory frameworks capable of accommodating new business models. Institutional capacity determines whether developing States can benefit from liberalization. Sustainable and inclusive growth requires the economic system to produce benefits beyond the airline industry itself.

ATConf/7 should therefore consider the adoption of a new set of International Principles for the Economic Regulation of Air Transport.⁷ These principles could initially take the form of an Assembly-approved policy framework, developed through the Council and the Air Transport Committee, before eventually becoming the basis for a more formal normative instrument.

The conference should also support the development of a comprehensive set of economic indicators measuring connectivity, market concentration, competition, investment, consumer outcomes, airport charges, subsidies, public-service obligations, resilience and regulatory openness. Liberalization should no longer be assessed simply by counting open-skies agreements. It should be assessed by examining the economic and social outcomes produced by regulatory systems.

The bilateral air services agreement should likewise not be abandoned, but it should increasingly operate within a multilateral framework of common principles. States could retain different levels of market openness while progressively converging upon minimum standards of regulatory fairness.

ATConf/7 could also begin a structured examination of foreign ownership and control requirements. The question should not be whether nationality restrictions are

traditional, but whether they remain necessary to achieve legitimate public purposes and whether less restrictive mechanisms are available.

The conference should similarly address competitive neutrality. States should retain the ability to support essential connectivity and strategic airlines, but such support should be transparent and proportionate and should not become a mechanism for arbitrary exclusion of foreign competition.

Developing States and the Substance of Equality

Equality of opportunity cannot mean merely that all States are given identical legal rights. A developing State with limited infrastructure, inadequate capital and weak institutional capacity does not enjoy meaningful equality of opportunity merely because its legal rights are identical to those of a highly developed aviation economy.

Formal equality without capacity can produce substantive inequality. The new paradigm must therefore combine liberalization with capacity-building. Developing States must be provided with the infrastructure, technical expertise, regulatory institutions and financing necessary to take advantage of market opportunities. The principle that no country should be left behind acquires particular significance in this context.

The proposition is simple. A State should not merely be told to open its market. It should be assisted in developing the capacity necessary to participate effectively in the market.⁸ Liberalization without capacity can create dependency. Capacity without market access can create stagnation. The appropriate policy is therefore the interaction of the two.

Resilience and the Economics of the Unexpected

The economic model of aviation has traditionally emphasized efficiency. Airlines seek high aircraft utilization and strong load factors, airports seek optimal capacity utilization and operators seek to minimize costs. These objectives are economically rational, but they are insufficient in a world characterized by pandemics, geopolitical conflict, supply-chain disruption, energy volatility and climate-related events.

Resilience sometimes requires redundancy. A route that is marginally profitable may nevertheless be strategically important. An airport that appears commercially inefficient may provide indispensable regional connectivity. A diversified airline market may be more resilient than one dominated by a small number of large operators. Spare capacity may be economically inefficient in normal circumstances but invaluable during a crisis.

Resilience should therefore become an economic value recognized by international air transport law. The question should no longer be simply whether a system is efficient. It should also be whether it can survive the unexpected. This is particularly relevant to ATConf/7 because resilience is expressly included among its objectives. The conference has an opportunity to incorporate resilience into the economic vocabulary of international aviation rather than treating it merely as a crisis-management issue.

Artificial Intelligence and the Transformation of Economic Regulation

The emergence of artificial intelligence provides another reason for rethinking the existing architecture. AI is increasingly influencing demand forecasting, revenue management, route planning, airport operations, customer service and investment decisions. Data has become an economic asset, and digital platforms increasingly mediate the relationship between airlines and consumers. The regulatory categories of the twentieth century are consequently becoming less reliable.

The future regulator may not be dealing only with airlines, airports and travel agents. It will increasingly deal with platforms, data ecosystems, algorithmic pricing systems, artificial intelligence providers and technology companies whose economic influence may extend beyond the traditional boundaries of aviation law.⁹

The appropriate regulatory framework must therefore become more function-oriented and technology-neutral. The question should increasingly be not merely who owns the aircraft but who exercises economic power within the aviation ecosystem.

This is another reason why a principles-based economic Annex would be preferable to a highly prescriptive instrument. Principles such as non-discrimination, transparency, proportionality and competitive neutrality can survive technological change. Detailed rules based upon particular business models may not.

A Permanent Economic Stewardship Function

One further institutional reform deserves consideration. Air Transport Conferences are periodic, whereas the aviation economy is continuous. A conference may identify an emerging problem, but by the time the next conference occurs the economic environment may have changed substantially.

ICAO should therefore consider establishing a permanent economic monitoring and analytical mechanism capable of reporting annually on the condition of international air transport economics. Such a mechanism could examine connectivity, market concentration, competition, investment, ownership, subsidies, airport charges, consumer welfare, essential services, infrastructure financing and resilience.¹⁰

The Organization's current Business Plan (2026-2028)¹¹ already incorporates performance indicators and targets, and this provides an institutional foundation upon which a more comprehensive economic observatory could be constructed.

The future of international air transport regulation should increasingly be evidence-based. Data should not merely describe the aviation economy. It should inform its governance.

Sovereignty as Stewardship

The deepest objection to the proposed paradigm is likely to be sovereignty. States did not create ICAO to surrender their economic sovereignty, and Article 6 is evidence of their determination to retain control over scheduled international services. That objection must be taken seriously.

But international cooperation does not necessarily diminish sovereignty. States frequently strengthen their capacity to pursue national objectives by agreeing upon common rules. A State that enjoys predictable access to foreign markets, transparent rules concerning investment and protection against arbitrary discrimination may possess greater economic security than a State that relies exclusively upon unilateral discretion.

The choice is therefore not necessarily between sovereignty and international regulation. It is between sovereignty exercised through cooperation and sovereignty exercised through isolation. For an industry whose very existence depends upon international connectivity, cooperation is the more rational form of sovereignty. ICAO should consequently not become the sovereign of aviation economics. It should become its steward.

A steward does not own the system. A steward protects its integrity and ensures that it remains capable of serving the purposes for which it was created.

Conclusion: From Chicago to Montreal

The Chicago Convention has survived because it was sufficiently principled to endure and sufficiently flexible to accommodate change. The challenge now is to apply its principles to an economic world radically different from that of 1944.

The answer is not to discard Article 6. Nor is it to diminish sovereignty. Nor is it to transform ICAO into a supranational competition authority. The answer lies in recognizing that the Convention already contains the foundations of a more sophisticated economic order.

The Preamble gives us equality of opportunity. Article 6 gives us sovereignty. Article 15 gives us non-discrimination and transparency in relation to airport charges.

Article 44 gives ICAO an aim and objective to foster air transport development, prevent economic waste, ensure fair opportunity and avoid discrimination.

Read separately, these provisions appear to belong to different parts of the Convention. Read together, they reveal the outline of an unfinished economic constitution. The task of the next generation is to complete it.

That completion should begin with the recognition that liberalization is not synonymous with deregulation and that sovereignty is not synonymous with unlimited economic discretion. It should proceed through the development of international principles governing the exercise of economic regulatory authority. It should employ objective indicators to measure the consequences of regulation. It should progressively harmonize the economic principles underlying bilateral and multilateral air services agreements. It should address competition, investment, ownership, subsidies, public-service obligations, infrastructure financing, connectivity, consumer welfare and resilience as components of one integrated economic system.

Eventually, and when States are prepared to accept the necessary degree of normative convergence, those principles could mature into an ICAO Annex dealing with economic regulation. Such an Annex would not dictate whether an airline must be publicly or privately owned. It would not require every State to adopt identical competition laws. It would not abolish public-service obligations. It would not eliminate legitimate national security considerations.

It would do something more modest and, ultimately, more important. It would establish the principles according to which States exercise their economic sovereignty. That is the paradigm shift.

The movement would not be from sovereignty to liberalization but from *unqualified sovereignty to principled sovereignty*. It would not be from regulation to deregulation but from fragmented regulation to coherent economic governance. It would not be from bilateralism to the abandonment of bilateralism but from bilateralism as the principal architecture of economic regulation toward bilateralism operating within a progressively developing multilateral framework. Most importantly, it would give legal substance to the words "equality of opportunity".

Those words have been present in the Chicago Convention since 1944. Their significance has perhaps been obscured by the practical dominance of bilateralism and the historical importance attached to national airlines and State control. Yet they may contain the most promising foundation for the future.

Equality of opportunity does not mean equality of outcome. It means that the legal order should create a fair field upon which legitimate economic participants can operate, while preserving the right of States to pursue legitimate public purposes.

This conception allows sovereignty and competition to coexist. It allows national interests and international connectivity to coexist. It allows public intervention and market discipline to coexist. It allows developed and developing States to participate in the same international system while recognizing their different capacities. And it allows ICAO to exercise a more meaningful economic role without transforming itself into a supranational government.

ATConf/7 should therefore not be remembered merely as another conference in the long chronology of international air transport liberalization. It has the opportunity to mark the beginning of a different intellectual journey. Its theme of global connectivity, economic development and resilience is sufficiently broad to accommodate a reconsideration of the foundations of air transport economics. The conference could begin the process of moving ICAO from a system principally concerned with manuals, guidance and facilitation toward a system increasingly characterized by principles, measurement, accountability and progressive normative development.

The sentinel, in other words, need not abandon its post. It must awaken the world that has developed around it. The aircraft has already changed. The airline has changed. The airport has changed. The passenger has changed. The global economy has changed. Technology has changed. Capital has changed. The risks confronting aviation have changed. The law must now change with them.

The most faithful way to preserve Chicago may therefore be not to preserve its economic assumptions, but to preserve its principles by giving them contemporary meaning. The future of international air transport law should be built upon the proposition that sovereignty is the foundation of the system, equality of opportunity is its economic principle, competition is its instrument, connectivity is its social purpose, resilience is its contemporary necessity, and ICAO is its international steward.

That would not be a rejection of Chicago. It would be Chicago's next chapter. And Montréal, in November 2026, provides an appropriate place to begin writing it.

Endnotes

¹ Convention on International Civil Aviation, *opened for signature* Dec. 7, 1944, 61 Stat. 1180, 15 U.N.T.S. 295 (entered into force Apr. 4, 1947) [hereinafter Chicago Convention]. See also ICAO, CHICAGO CONVENTION, ICAO Doc. 7300 (9th ed. 2006, as amended). For commentaries on this treaty see RUWANTISSA ABEYRATNE, THE CONVENTION ON INTERNATIONAL CIVIL AVIATION: A COMMENTARY (2014); RUWANTISSA ABEYRATNE, READING THE CHICAGO CONVENTION, FROM ORIGINALISM AND TEXTUALISM TO CONTEMPORARY RELEVANCE (2024). *Id.* art. 44 (“Objectives. The aims and objectives of the Organization are to develop the principles and techniques of international air navigation and to foster the planning and development of international air transport so as to: (a) Insure the safe and orderly growth of international civil aviation throughout the world; (b) Encourage the arts of aircraft design and

operation for peaceful purposes; (c) Encourage the development of airways, airports, and air navigation facilities for international civil aviation; (d) Meet the needs of the peoples of the world for safe, regular, efficient and economical air transport; (e) Prevent economic waste caused by unreasonable competition; (f) Insure that the rights of contracting States are fully respected and that every contracting State has a fair opportunity to operate international airlines; (g) Avoid discrimination between contracting States; (h) Promote safety of flight in international air navigation; (i) Promote generally the development of all aspects of international civil aeronautics)".

² The tension between State sovereignty and the economic purposes of the Chicago Convention has long been identified as a fundamental anomaly in international air transport law. Abeyratne observes that the Convention simultaneously embraces "equality of opportunity" while preserving State sovereignty and the requirement that international scheduled services operate only with the agreement or authorization of the State, creating what he describes as a "teleological anomaly." He further cautions that sovereignty has been misunderstood by States as conferring "absolute immunity against their domestic decisions and actions," thereby encouraging protectionism. The more sustainable conception is therefore not the abandonment of sovereignty, but its reconciliation with competition, liberalization and equality of opportunity. See Ruwantissa Abeyratne, *Competition and Investment in Air Transport: Legal and Economic Issues* (Springer, 2016), especially chs. 1 and 9; Ruwantissa Abeyratne, "Competition in Air Transport and Equality of Opportunity," *Estey Journal of International Law and Trade Policy*, vol. 19, no. 2 (2018), pp. 85–106.

³ The distinction between sovereignty and its exercise is significant in interpreting Article 6. In my earlier publications, I have observed that State sovereignty over airspace has been "misunderstood by many States to confer to them absolute immunity against their domestic decisions and actions," a misconception which has contributed to protectionism in international air transport. In his commentary on Article 6, he recognizes the State's discretionary authority over scheduled international services, while emphasizing that such authority exists within the broader legal and functional framework of the Chicago Convention. Thus, sovereignty establishes the authority to regulate access; it should not be equated with an unfettered discretion to exercise that authority without regard to the Convention's purposes, including the orderly development of international civil aviation and equality of opportunity. See Ruwantissa Abeyratne, *Convention on International Civil Aviation: A Commentary* (Springer, 2014), pp. 101–110; Ruwantissa Abeyratne, *Competition and Investment in Air Transport: Legal and Economic Issues* (Springer, 2016), pp. 6–9.

⁴ The ICAO Business Plan 2026–2028 may be regarded as the operational instrument through which the long-term ICAO Strategic Plan 2026–2050 is translated into action. It establishes the priorities, projects and activities for the triennium, supported by a Triennial Operating Plan and a Performance Monitoring Framework through which progress is measured by key performance indicators and reported annually to the Council. In this sense, the Business Plan seeks to convert strategic aspiration into measurable institutional performance, with corrective action where results fall short of expectations. Its architecture rests upon three principal pillars: implementation of the Strategic Goals, High-Priority Enablers and Supporting Enablers, all directed towards ICAO's overarching vision of a safe, secure, sustainable and globally connected international civil aviation system. See <https://www.icao.int/news/icao-unveils-2026-2050-strategic-plan-safe-skies-sustainable-future>.

⁵ Equality of opportunity" in the Chicago Convention should not be understood as an entitlement of every carrier to identical rights to operate international air services, nor as a guarantee of equality of market outcomes. Rather, as I have argued, the expression, taken in its proper economic and teleological context, denotes the opportunity of carriers "to compete with each other" on a fair and equitable basis. He further observes that the equilibrium contemplated in air transport does not require "both parties ... to have an absolutely equal share of results." The principle is therefore one of equality of competitive opportunity, not equality of outcome. See

Ruwantissa Abeyratne, “Competition in Air Transport and Equality of Opportunity,” *Estey Journal of International Law and Trade Policy*, vol. 19, no. 2 (2018), pp. 85–106; Ruwantissa Abeyratne, “Application of the Theory of Contracts to Open Skies Agreements in Air Transport,” *Estey Journal of International Law and Trade Policy*, vol. 18, no. 2 (2017), pp. 126–141.

⁶The Chicago Convention contains, from its inception, important principles of economic regulation. In his commentary on the provision, he emphasizes its requirement that airports and air navigation facilities be available under “uniform conditions” to aircraft of other Contracting States and its prohibition against discriminatory charges. He has also examined airport charging as a regulatory question involving “cost pricing” and the duties and liabilities of airport operators. Article 15 may therefore be understood not merely as an operational provision, but as an early expression of the Convention’s concern with non-discrimination, comparability and economic fairness. See Ruwantissa Abeyratne, “Article 15 Airport and Similar Charges,” in *Convention on International Civil Aviation: A Commentary* (Springer, 2014), pp. 227–240, DOI 10.1007/978-3-319-00068-8_16; Ruwantissa Abeyratne, “Revenue and Investment Management of Privatized Airports and Air Navigation Services—A Regulatory Perspective,” *Journal of Air Transport Management* (2001).

⁷ See generally RUWANTISSA ABEYRATNE, *THE PROGRESS OF AIR LAW: THE RESOLUTIONS OF THE INTERNATIONAL CIVIL AVIATION ORGANIZATION* (2024).

⁸In the 1990s, ICAO developed the concepts of “preferential measures” and a “safety net” as means of reconciling liberalization of international air transport with the need to protect the effective participation of less competitive carriers, particularly those of developing States. Preferential measures were conceived as transitional arrangements giving such carriers a “head start” in establishing a sustainable market presence, while the safety net contemplated temporary protective action where liberalization resulted in a rapid and significant loss of market participation. The concepts were considered prominently at ICAO’s Fourth Worldwide Air Transport Conference (ATConf/4) in 1994 and subsequently incorporated into ICAO’s policy work on progressive liberalization. See ICAO, ATConf/4-WP/80, “Preferential Measures for Developing Countries” (23 November 1994); ICAO, ATConf/4-WP/7, “Liberalization of Market Access with a ‘Safety Net’ and Full or Progressive Introduction” (14 April 1994); ICAO, *Policy and Guidance Material on the Economic Regulation of International Air Transport*, Doc 9587.

⁹ The advent of artificial intelligence calls for a fundamental review of the traditional economic assumptions underlying air transport, since algorithms and data-driven decision-making are increasingly capable of altering the allocation of resources, operational efficiency, competition and the economics of the aviation value chain. As Abeyratne observes, “all of the topics discussed in this book ... are profoundly affected by algorithms; so are air traffic services and aeronautical communications.” See Ruwantissa Abeyratne, *Aviation in the Digital Age: Legal and Regulatory Aspects* (Springer, 2020), pp. 13–42, 43–54; DOI: 10.1007/978-3-030-48218-3.

¹⁰ Such a mechanism would be consistent with a broader conception of ICAO’s economic role, extending beyond the collection and dissemination of information towards continuous analysis of the condition and direction of international air transport. As I have already observed in my earlier publication, the question is whether ICAO should become “a beacon to air transport regulators” and, rather than merely serve as a forum for practitioners to exchange information, “analyze trends and guide the air transport industry.” See Ruwantissa Abeyratne, *Regulation of Air Transport: The Slumbering Sentinels* (Springer, 2014), pp. 1–25.

¹¹ <https://www.icao.int/about-icao/Council/icao-business-plan-2026-2028>.