



XII

Welcome to **WALA XII**
Punta Cana, Dominican Republic
April 27-29, 2022

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April 28th, 2022



The purpose of this conference, and this presentation (1)

- Panoramic overview provided by this conference about topical challenges affecting international air transport with an obvious emphasis of airport related developments
- They include a broad spectrum, including:
 - The implications of the COVID-19 pandemic for the management of airports, including questions pertaining to the allocation of airport slots;
 - The state of affairs of aviation in this beautiful country, the Dominican Republic;
 - Technological advancement in relation to safety and legal protection as evidenced in the sessions about the introduction of 5G, air mobility and the use of unmanned aircraft around airports;

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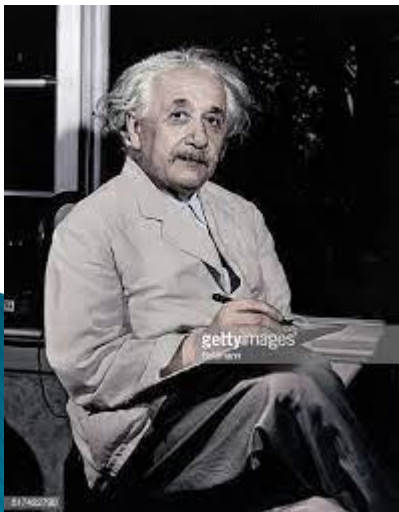


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The purpose of this conference, and this presentation (2)

- Economic considerations with respect to the management of airports, including charges, concessions and related issues.
- To begin with, a panoramic overview of the history of international civil aviation, not for the sake of the relevance of the history but for presenting a light on the future by articulating the evolution of international civil aviation.
- Albert Einstein: "Learn from yesterday, live for today, hope for tomorrow. The important thing is not to stop questioning."



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The evolution of aviation in the 20th century (1)

- Recent and current challenges dominated by ‘war’:
- The Chicago Convention (1944) has been built on the ashes of the second world war
- Principal objectives:
 - promotion of safety and security worldwide, based on global rulemaking;
 - protection of national airspace, by closing it for security and economic reasons, fear of competition, which closure could only be lifted by international/bilateral agreements between States;
 - economic regulation of air services left to States, apart from:

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The evolution of aviation in the 20th century (2)

- the establishment of economic principles for the regulation of airports:
 - charges must be cost-related, transparent and non-discriminatory
 - Implementation and application of these principals in practice is another matter – as to which see session #4
- These conditions somehow manifest the position of airports in those days: *public bodies* whose operation was subjected to strict principles and governed by public authorities
- In the 1990s: airports became *undertakings*, coupled with another principal development:
- Opening airspace, and creating air transport markets

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Closure of airspace in the 21st century (1)

- Closure of airspace for a variety, non-economic reasons:
 - In the 20th century, after WW II, airspace was only exceptionally closed for non-economic, that is, strategic and political reasons, for instance: India and Pakistan in the 1970s;
 - 9/11 – a couple of days, in order to restore safety of US and Canadian airspace, except for military, police, and medical flights –
 - On 14 April 2010, Volcanic eruptions in Iceland caused cancellation of Transatlantic flights for a couple of weeks due to ashes damaging aircraft engines;
 - Leaving aside the Vietnam war (1955 – 1975), Syria and Afghanistan in the 21st century because they did not yield specific effects on aviation



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Closure of airspace in the 21st century (2)

- 2017 – 2021: Middle East crisis, five Arab States blocking Qatar Airways from entering and passing through their national airspaces;
- 2020 – 2022: closure of airspace in many States around the world because of the COVID-19 pandemic;
- 2022: closure of airspace of ‘Western’ States for Russian airlines as a reaction to Russia’s invasion of the Ukraine, and *vice versa*: Russian airspace closed for European, US and other airlines.



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Closure of airspace in the 21st century (3)

- Consequences of such closures:
 - Cancellation of flights and closure of airports;
 - Huge losses of income around the world, especially for the stakeholders in aviation, especially airlines and airports
 - Massive State support especially to airlines and less so for airports;
 - Signification disruptions of air traffic;
 - Loss of slots for Russian airlines at airports because of the ‘use it or loose it’ rule, provoking serious questions about ‘new entry ‘status of Russian airlines when this is over, and retaliation by the Russian authorities in relation to overflights of Siberia.

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War is in the air (1)

- Airspace as a strategic weapon in warfare;
- What is war? No legal definition
- See, Art. 89 of the Chicago Convention (1944):

War and emergency conditions

“In case of war, the provisions of this Convention shall not affect the freedom of action of any of the contracting States affected, whether as belligerents or as neutrals.”

- No clauses on ‘war’ in Air Services Agreements (see sanctions Russia);
- No definition of “war”, neither in other international treaties, nor judgements of the International Court of Justice (ICJ)
- Presidents Trump and Macron (2019): ‘We are at war with the Corona virus.’

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War is in the air (2)

- See insurance, AVN 48 B: *War, Hi-Jacking and Other Perils Exclusion Clause*

“This Policy does not cover claims caused by (a) War, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, martial law, military or usurped power or attempts at usurpation of power. (b) Any hostile detonation of any weapon of war employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter.”

“hostilities carried on by entities that constitute at least *de facto* governments, between entities that have at least significant attributes of sovereignty.’ – See the status of the Donetsk Republic ...

- Conclusion: ‘war’ is a state of facts, not of law.

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Green shades in the air (1)

- Climate is not our enemy, we are not 'at war' with our environment, but must cope with it, if not try to establish a sound partnership with it.
- → No closure of airspace but reduction of the use of airspace, hence, a partial closure, for specific purposes and usages;
- On the global level: the Carbon Offsetting and Reduction Scheme for International Aviation (CORSA) of ICAO – designed to
 - reduce aircraft noise;
 - improve local air quality, and :
 - reduce the impact of greenhouse gas emissions on the global climate



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Green shades in the air (2)

- EU ETS: Market based Measure policy tool that
 - must achieve environmental goals at a lower cost and in a more flexible manner than traditional regulatory measures, an off-setting mechanism, with or without generation of revenue, and:
 - a ‘Cap and trade’ system.
- Question about the relationship between the two regimes on flights within the EU/EEA and flights from and to the EU/EEA
- On top of all that: the ‘Fit for 55 Agenda’ of the EU Commission, comprising:
 - Taxation of aircraft fuel – but see exemptions based on international air law;
 - taxation of passenger tickets;

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Green shades in the air (3)

- Mandatory use of Sustainable Aviation Fuel (SAF);
- The introduction of a Carbon Border Adjustment Mechanism (CBAM) in order to maintain the level playing field between EU/EEA and non-EU/EEA airports and airlines – complex application the aviation sector.
- European airports are (very) concerned about loss of traffic because of tax avoidance and ‘carbon leakage’, that is, passengers will travel through Istanbul and Rabat, Morocco rather than straight to Lisbon or Madrid or other European destination), and use non-European airports in order to avoid the European environmental measures.

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Green shades in the air (4)

- So far, airlines are the liable persons, but there are also discussions going on to hold airports liable, not only for noise produced by aircraft but also emissions of aircraft because airports are sitting in a State whereas airlines are mobile assets moving from one airspace to another, implying the application of international law, hence, common understanding by States in the world – which is not easy to achieve.



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Concluding remarks (1)

- The use of airspace as a strategic weapon is not a good idea. It does not “preserve friendship and understanding among the nations and peoples of the world” whereas “it is desirable to avoid friction” and “cooperation between nations and peoples upon which the peace of the world depends” should be enhanced; as dictated by the Preamble of the Chicago Convention (1944)
- While the end of the 20th century was marked by opening markets, the first two decades of the 21st century have shown instances of closure of airspace, either drastically, or partially, for security, environmental and health reasons;

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Concluding remarks (2)

- The role of airports is evolving from that of an 'arm' of the government into that of a dynamic undertaking;
- Airports must fully realize the implications not only of its 'classical' task of accommodating traffic, but also on how to attract traffic, and keep on attracting traffic, and avoid loss of traffic because of myriad external causes;
- While airports and airlines have sometimes different agendas, for instance, in relation to the level of charges, they also go, or have to go, hand in hand in respect of matters of safety, security, facilitation of air traffic, dealing with environmental concerns, and stay on the ball by providing an attractive venue for the facilitation of passengers, their baggage and cargo.

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Muchas gracias por su amable y respetuosa atención!

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