



## **LEGAL COMMITTEE – 33RD SESSION**

(Montréal, 21 April – 2 May 2008)

### **Agenda Item 4: Consideration of other items on the General Work Programme of the Legal Committee**

#### **THE IMPLICATION OF THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA FOR THE APPLICATION OF THE CHICAGO CONVENTION AND ITS ANNEXES AND OTHER INTERNATIONAL AIR LAWS INSTRUMENTS**

##### **PROPOSAL TO AMEND ARTICLE 2 OF THE CHICAGO CONVENTION**

(Presented by Indonesia)

### **1. INTRODUCTION**

1.1 Article 1 of the Chicago Convention states that "[t]he contracting States recognize that every State has complete and exclusive sovereignty over the airspace above its territory." The territory of a State as defined in Article 2 of the Chicago Convention "shall be deemed to be the land areas and territorial waters adjacent thereto under the sovereignty, suzerainty, protection or mandate of such State." In this regard, Article 2 is of critical importance since it defines the area of which contracting States shall have complete and exclusive sovereignty.

1.2 Article 2 reflects the definition of territory under international law in the 1940's. It is in line with the term territory and sovereignty under Articles 1 and 2 of the Convention on the Territorial Sea and Contiguous Zones 1958 (the 1958 Convention). Article 1 of the 1958 Convention stated that "the sovereignty of a state extends, beyond its land territory and its internal waters, to a belt adjacent to its coast, described as the territorial sea". Article 2 of the 1958 Convention continues stating that "this sovereignty extends to the airspace over the territorial sea and to its seabed and subsoil."

1.3 The law of the sea has significantly developed since the adoption of the United Nations Convention on the Law of the Sea (UNCLOS) 1982 in Montego Bay on 10 December 1982 and its entry into force on 16 November 1994.<sup>1</sup> In accordance with UNCLOS 1982, there are different segments of waters that are under the sovereignty of a coastal state namely internal waters, archipelagic waters and territorial waters. Thus, international law today provides states with sovereignty over land areas, internal waters, archipelagic waters and territorial waters.

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<sup>1</sup> Indonesia has ratified UNCLOS 1982 on 31 December 1994

## 2. TERRITORY AND SOVEREIGNTY: CHICAGO CONVENTION AND UNCLOS 1982

2.1 As stated above, UNCLOS 1982 stipulates different segments of waters under the sovereignty of a coastal state. Article 2, paragraph 1 of UNCLOS 1982 states that "[t]he sovereignty of a coastal State extends, beyond its land territory and internal waters and, in the case of an archipelagic State, its archipelagic waters, to an adjacent belt of sea, described as the territorial sea," Article 3 states that the breadth of territorial sea is up to a limit not exceeding 12 nautical miles measured from baselines determined in accordance with UNCLOS 1982. Article 8 paragraph 1 defines that "[e]xcept as provided in Part IV, waters on the landward side of the baseline of the territorial sea form part of the internal waters of the State." Article 49 paragraphs 1 and 2 state that the sovereignty of an archipelagic State extends to the water enclosed by the archipelagic baselines drawn in accordance with article 47, described as archipelagic waters, regardless of their depth or distance from the coast. This sovereignty extends to the airspace over the archipelagic waters, as well as to their seabed and subsoil, and the resources contained therein.

2.2 Clearly there is a need to amend the Chicago Convention so as to reflect the current development of laws on territory, including the complete and exclusive sovereignty of states in the air now including the air above the land areas, internal waters, archipelagic waters, territorial waters which its breadth is 12 nautical miles from the baselines. Thus, to be in line with UNCLOS 1982, it is of critical importance to amend Article 2 of the Chicago Convention.

## 3. THE STUDY OF THE ICAO SECRETARIAT IN 1984

3.1 In 1984 the Secretariat of ICAO has undertaken a study about United Nations Convention on the Law of the Sea — Implications, if any, for the application of the Chicago Convention, Its Annexes and other international air law instruments. With regards the implication of UNCLOS 1982 to Article 2 of the Chicago Convention, the Study (paragraph 10.7) found:

“Without any need for a textual amendment of the Chicago Convention, its Article 2 will have to be read as meaning that the territory of a State shall be the land areas, territorial sea adjacent thereto and its archipelagic waters.”

3.2 However, the above mentioned study is not a legally binding document. Therefore, it is legally inadequate to be considered in line with the current international law.

## 4. DISCUSSION ON AIR SERVICE AGREEMENT NEGOTIATIONS

4.1 Deliberations in a number of bilateral or multilateral air services agreements have faced challenges on the definition of territory of contracting states. Some want to refer only to definition of territory under the Chicago Convention. This creates problem since it is not in line with present international law, creates protracted negotiation and sometimes unsatisfactory results and difficulties in later application. This would not happen should the Chicago Convention define the territory that reflects the current international law.

5. **CONCLUSION**

5.1 Article 2 of the Chicago Convention requires amendment so that it keeps in line with the development of international law, especially UNCLOS 1982. The definition of the territory of contracting States of the Chicago Convention should include segments of territory of coastal states, archipelagic states, and land-locked states.

5.2 In this regard, Indonesia proposes to amend Article 2 of the Chicago Convention and calls the Legal Committee and the contracting States of the Chicago Convention to consider the issue and to further discuss the possible amendment of Article 2 of the Chicago Convention.

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