国际民用航空组织

工 作 文 件

法律委员会 — 第 40 届会议

（2026年10月26日至30日，蒙特利尔）

议程项目 2：审议法律委员会总体工作方案

秘书处关于《芝加哥公约》第十五条的研究小组 (SSG-A15) 报告

(由《芝加哥公约》第十五条研究小组主席[1]提交)

1. 背景

1.1 大会在其第 42 届会议（2025 年 9 月 23 日至 10 月 3 日）期间，在法律委员会总体工作方案中增列了题为"关于航空运输监管专家组（ATRP）对《芝加哥公约》第十五条的适用所作分析的法律审查"的一个新项目。根据该项目，要求法律委员会对 ATRP 的三份文件草案，即：i）关于《芝加哥公约》第十五条的指导材料草案；ii）为澄清第十五条项下义务给缔约国的国家级信件草案；和 iii）国际民航组织理事会对相关缔约国因他国征收机场及其他设施使用费所提申诉的审查程序草案，进行法律审查。大会进一步表示，该项法律审查应于 2026 年完成。

1.2 为推进此项工作，秘书处《芝加哥公约》第十五条研究小组（SSG-A15）于2026年 1 月成立。该小组由各国提名的法律专家、一个国际组织的代表和国际民航组织相关专家组的代表组成，于 2026 年 3 月至 7 月间举行了一系列视频会议。SSG-A15 按商定的方法，依据提交的书面材料并审阅相关历史和制度性文件，对 ATRP 文件草案进行了审查，以确保其与《国际民用航空公约》（1944 年，芝加哥，《芝加哥公约》）第十五条的一致性。其审议结果形成秘书处《芝加哥公约》第十五条研究小组报告，现载于本工作文件附件中。

2. 法律委员会的行动

2.1 请法律委员会审议《芝加哥公约》第十五条研究小组报告及其附录中提供的信息，以利其开展工作。

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[1] Lena-Maria Gaese博士, 德国。

附件

秘书处关于《芝加哥公约》第十五条的研究小组（SSG-A15）
提交法律委员会第四十届会议的报告

1. 背景

1.1 国际民航组织大会在其第42届会议（2025年9月23日至10月3日）期间，在法律委员会总体工作方案中增列了题为“关于航空运输监管专家组（ATRP）对《芝加哥公约》第十五条的适用所作分析的法律审查”的一个新项目。该新项目要求法律委员会对ATRP的三份文件草案，即：i）关于《芝加哥公约》第十五条的指导材料草案；ii）为澄清第十五条项下义务给缔约国的国家级信件草案；和iii）国际民航组织理事会根据《芝加哥公约》第十五条对相关缔约国因他国征收机场及其他设施使用费所提申诉的审查程序草案，进行法律审查。下面将这三份文件统称为ATRP文件草案。大会认为，法律委员会完成对ATRP文件草案的法律审查的目标日期，应为2026年。

2. 《芝加哥公约》第十五条研究小组的设立、组成和方法

2.1 鉴于大会将2026年定为完成审查的目标日期，为高效推进该新项目的工作，2026年1月设立了秘书处关于《芝加哥公约》第十五条的研究小组（SSG-A15），负责对航空运输监管专家组（ATRP）对《国际民用航空公约》（1944年，芝加哥，《芝加哥公约》）第十五条的适用所作分析进行法律审查，并向定于2026年10月举行的法律委员会第四十届会议提交报告，供其审议。

2.2 为响应秘书长2025年11月发出的国家级信件，由16个成员国（阿根廷、巴西、加拿大、智利、中国、德国、肯尼亚、纳米比亚、尼日利亚、挪威、卢旺达、沙特阿拉伯、新加坡、南非、坦桑尼亚和美国）以及一个国际组织（国际航空运输协会（IATA））提名的法律专家共同组成SSG-A15并参加了该研究小组的一次或多次会议。航空运输监管专家组、机场经济专家组及空中航行服务经济专家组（AEP-ANSEP）的代表，也参加了SSG-A15的工作。

2.3 SSG-A15 于 2026 年 3 月至 7 月间举行了多场线上会议（第一次会议：2026 年 3 月 18 日；第二次会议：2026 年 4 月 30 日；第三次会议：2026 年 5 月 13 日及 20 日；第四次会议：2026 年 6 月 15 日及 29 日，及7 月 14 日）。在第二次会议上，Lena-Maria Gaese博士（德国）和Maria Makalla Memba女士（坦桑尼亚联合共和国）以会议鼓掌通过方式，分别当选为SSG-A15主席和副主席。

2.4 SSG-A15第一次会议就法律审查的范围和方法初步交换意见后同意，各成员应就法律审查项下ATRP文件草案提出书面意见。成员提交的所有此类书面意见经汇总后报SSG-A15 第二次会议及其后的会议审议。SSG-A15还审议了其他相关信息和文件，如：秘书处编写的工作文件；理事会1958年处理一缔约国援引《芝加哥公约》第十五条对另一缔约国征收航行服务费和设施使用费提出申诉一事所遵循程序的记录[2]; 各国向国际民航组织通知并在航空税费（Aero-

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[2] 见国际民航组织，理事会第三十四届会议，第三次会议纪录，1958年5月14日, Doc 7902-3号文件（非公开发行）第38页，第34段; C-WP/2686号文件，叙利亚对航行服务和设施的收费。

Tariffs）平台公布的收费信息种类；以及适用于国际民航组织各机构的规则、指令和准则。[3] SSG-A15开会期间，除其他外，还审议了对ATRP文件草案若干可能的修改意见，其主旨在于保持ATRP文件草案与《芝加哥公约》第十五条规定之间的一致性和连贯性。SSG-A15经审议后提出的对ATRP文件草案的修改意见，现载于本报告的**附录A、B和C**。

3. ATRP 文件草案法律审查的实质内容

3.1 本节概要介绍 SSG-A15 四次会议过程中审议的实质内容。

3.2 SSG-A15 经分析 ATRP 文件草案，确定下列各点为法律审查的核心内容：

- 用语的前后不一致；
- 在费用相关性原则[4] 和公布收费构成的详细信息方面[5]，存在将《芝加哥公约》第十五条项下义务与非约束性指导材料的要求混为一谈的风险；
- 禁止交叉补贴作为第十五条的一个要素[6]；
- 禁止仅为准许过境权、出入权而收费，特别是：
  a) 仅为飞越权之先决条件的过境权收费；[7]
  b) "规费、捐税或其他费用"是否仅包括直接支付，还是也包括其他利益；[8]
  c) 将飞越申请的管理委托给第三方或私营实体 [9]；
- 《芝加哥公约》第十五条与第六十八条的关系；
- 法律委员会、法律事务和对外关系局（LEB）和航空运输委员会（ATC）（《芝加哥公约》第五十四条第四款）在国际民航组织理事会根据《芝加哥公约》第十五条审查收费问题的程序草案中的作用；
- 明确区分《芝加哥公约》第十五条规定的理事会审查程序及其可能的后果（见《芝加哥公约》第五十四条第十款、第十一款和第十四款）与《芝加哥公约》第八十四条规定的理事会争端解决职能；[10]
- 理事会根据《芝加哥公约》第十五条对"征收机场及其他设施使用费"的审查范围的明确性；[11]
- 鉴于可能无法获得此前公布的信息，国际民航组织理事会根据《芝加哥公约》第十五条审查收费过程中的举证责任；和
- 避免利益冲突、保障平等参与、保持透明以及规定合理期限等一般程序原则。

3.3 SSG-A15在解释《芝加哥公约》相关条款时，考虑了《维也纳条约法公约》（1969年，维也纳，"VCLT"）第 三十一条和第三十二条中所述的原则。虽然《芝加哥公约》早于《维

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[3] 具体为：航空运输委员会（ATC）、机场经济专家组（AEP）、空中航行服务经济专家组（ANSEP）、航空运输监管专家组（ATRP）以及国际民航组织秘书处法律事务和对外关系局（LEB）。
[4] 如第 A-10页，第1和3段；第 A-12和 A-13页；第 A-15页，情景1；第A-16页，情景3和5；以及第 A-17页，情景6。
[5] 如第 A-15 页，情景 1。
[6] 如第 A-9 页，第 2 段；第 A-12 和 13 页；以及第 A-15 页，情景 1。
[7] 如第 A-16 页，情景 5。
[8] 如第 A-16 页，情景 4 和 5。
[9] 如第 A-16 页，情景 5。
[10] 如第 A-11 页，第 2 段。
[11] 如第 A-11页，第2段。

也纳条约法公约》缔结，但《维也纳条约法公约》第三十一条和第三十二条中所述各项原则仍然适用，因为国际法院认定这些原则是经该公约编纂成文的习惯法原则。

4. 关于《芝加哥公约》第十五条的指导材料草案

4.1 用语的一致性

4.1.1 SSG-A15 发现，关于《芝加哥公约》第十五条的指导材料草案（下称"指导材料草案"）通篇所用措词不仅内部不一致，而且不符合《芝加哥公约》第十五条的用法，在某些情况下甚至可产生歧义。SSG-A15审查指导材料草案时有鉴于材料的解释性质，认为其用语必须避免与《芝加哥公约》发生偏差，而应不偏不倚地与第十五条的措词保持一致。

4.2 区分第十五条项下义务与现有指导材料中的建议

4.2.1 虽然《芝加哥公约》产生的义务对缔约国具有法律约束力，[12] 但指导材料并不具有此种效力。指导材料为缔约国和业界提供的是关于最佳做法的建议，并支持监管协调。鉴于其法律性质上的差异，必须将《芝加哥公约》项下具约束力的义务与指导材料中的建议区分开来。就收费问题而言，相关指导材料载于《国际民航组织关于机场和空中航行服务收费的政策》（Doc 9082号文件，第十版，2024年），《空中航行服务经济手册》（Doc 9161号文件，第六版，2023年）和《机场经济手册》（Doc 9562号文件，第四版，2020年）。

4.2.2 虽然指导材料草案本身不具有约束力，但其中主张的国际最佳做法却植根于《公约》的概念框架，包括第十五条。因此，SSG-A15的一些成员建议，可酌情利用指导材料草案，为对第十五条具法律约束力的义务做出权威性解释提供参考。不遵守指导材料中的建议并不一定构成对《芝加哥公约》的违反，但建议中明确复述《公约》项下具法律约束力之义务者除外。

4.2.3 SSG-A15在对ATRP文件草案进行法律审查期间指出，存在将第十五条项下义务与指导材料中的建议混为一谈的风险，特别是在涉及以下问题时，即：第十五条是否要求 (i) 各国对机场和其他设施收取的使用费应与成本挂钩；和 (ii) 缔约国公布并向国际民航组织通知（成本明细等）相关信息，以证明其对机场和其他设施征收使用费的合理性。SSG-A15评估了这些要求究竟是衍生自《芝加哥公约》因而具有约束力，还是仅为指导材料中的建议。

4.2.4 成本相关性

4.2.4.1 SSG-A15在其多次会议上对成本相关性原则进行了广泛讨论。成员们对该原则在多大程度上构成《芝加哥公约》第十五条项下义务持不同观点。SSG-A15 最终得出结论认为，收费的成本相关性要求是源自第十五条。这一结论基于以下几点考虑。

4.2.4.2 第十五条第二款虽未明示提及"成本相关性"这一术语，但其措辞表明，收费必须与向航空器提供的服务相关，其中规定："缔约国对另一缔约国的航空器<u>使用</u>此类机场及空中航行设施而征收或准予征收的任何费用[...]"（着重号后加）。如果因使用机场或空中航行设施而收取费用，那么，只要该费用是基于为提供这些设施并能使用而产生的成本，包括合理加收的管理费，这一相关性便得以成立。"收费"一词的通常含义支持这一理解。根据大会 A42-26 号决议的定义，

[12] 缔约国受本《公约》约束，但依据第九十五条退出公约者除外。

收费是指专门为收回提供民用航空设施和服务所产生的成本而设立并收取的款项；而收税则是为国家或地方政府的财政收入征收的款项，其所得通常并不全部用于民航领域，也不按特定成本进行征收。善意解释第十五条的约文，并结合"收费"和"因使用"等术语的通常含义，可以得出结论：成本相关性原则来源于第十五条。

4.2.4.3　《维也纳条约法公约》第三十一条第二款要求，在解释条约条款时，亦须考虑其上下文。这方面应予注意的是，《芝加哥公约》第七十一条规定，如果理事会提供机场和空中航行设施，则理事会"*可以规定使用此项设施的公平和合理的费用*"（着重号后加）。此外，与《芝加哥公约》第七十一条类似，《国际航班过境协定》（芝加哥，1944 年，"IASTA"）第一条第四款第二项与《芝加哥公约》第十五条相呼应，也规定使用机场及其他设施的收费必须公平、合理。尽管《芝加哥公约》和《国际航班过境协定》的缔约国并不完全相同，但《芝加哥公约》第七十一条和《国际航班过境协定》第一条第四款第二项共同烘托出《芝加哥公约》第十五条的大环境。《国际航班过境协定》与《芝加哥公约》于同日签订，因此它是该条约的一项关联协定，是与《芝加哥公约》并蒂而生的产物。

4.2.4.4　《芝加哥公约》第四十四条第四款规定：国际民航组织的目标和宗旨之一是"*满足世界人民对[…]经济的航空运输的需要*"（着重号后加）。考虑到"经济的"一词通常意指可盈利或价格合理，显然，其目标是避免给航空公司及其客户造成不必要的财务负担，以利航空运输的健康发展，并提供负担得起的航空出行。为实现这一目标，收费必须与实际发生的成本相关。因此，上述情况支持得出收费须与成本挂钩的要求源自第十五条的解释。

4.2.5　**公布收费标准**

4.2.5.1　至于《公约》第十五条是否赋予缔约国向国际民航组织提供其收费构成详情的义务，SSG-A15 内部对此尚无共识。

4.2.5.2　支持第十五条有此要求的解释主张：鉴于第十五条所预设的理事会审查程序，缔约国向国际民航组织通知其收费构成的详细信息是强制性的。缔约国要向理事会提出申诉就必须提供此类信息，若无此类信息，其他缔约国便无法确定某国征收的费用是否符合第十五条的规定。此外，有观点认为，公布和通知收费情况的义务与理事会的审查程序相关，这从第十五条以下措辞中可以看出："*所有此类费用应予公布，并通知国际民用航空组织，但如一有关缔约国提出异议* […]"（着重号后加）。最后，如果提供的信息足以证明一项收费的合理性，缔约国将得以知情、有据地做出应否就该项收费寻求救济的决定。

4.2.5.3　反对对第十五条作此解释的主要论点认为没有任何根据支持对第十五条约文做出这种解释。该条约文仅要求公布收费标准并将其通知国际民航组织，而不是公布支持此类收费合理性的详细信息。此外，尽管第十五条措辞中使用了"但…"这一限定语，但公布收费标准并将其通知国际民航组织的义务，与理事会的审查程序是互相独立的。在理事会审查过程中，可要求其收费受到诘问的缔约国提供详细资料，以证明在审收费的合理性。实际上，在磋商过程中，往往会向空域用户和其他利益相关方提供收费构成详情。关于这一点，人们注意到，尽管磋商原则是 Doc 9082 号文件指导意见的核心要素，但它并不属于《芝加哥公约》第十五条规定的义务范畴。鉴于迄今仅有过一例审查案件，因此，不能以无根据的主张和程序简约化为由，将第十五条解释为要求缔约国必须向国际民航组织通知相关收费的细节。

4.2.5.4 SSG-A15审查了缔约国向国际民航组织通知并在航空税费平台公布的信息样本，以评估缔约国之间是否存在《维也纳条约法公约》第三十一条第三款(乙)项所指的“嗣后实践”，即后来向国际民航组织通知了收费构成的细节。SSG-A15 发现，航空税费平台上仅有最后收费金额，未公布收费构成的详细情况，因此并无证据证明存在嗣后实践。

4.2.5.5 SSG-A15 承认，在第十五条要求必须公布并通知国际民航组织何种具体收费信息方面看法不一，但最终协议认为，凡缔约国针对其他缔约国航空器使用其机场及空中航行设施而征收或允许征收的任何费用，均须进行公布并通知国际民航组织。若此类收费未予公布或未通知国际民航组织，即构成对第十五条的违反。另一方面，若任何此类收费业已公布并通知国际民航组织，并不自动意味着该收费完全符合第十五条，因为它仍可能与该条的其他规定相抵触，如禁止歧视等，不遵守者亦构成对第十五条之违反。

4.3 **交叉补贴**

4.3.1 按照对指导材料草案的理解，将向他国航空公司非法收费的所得用于补贴收费国自家航空公司或其他实体，似可构成对第十五条的违反。ATRP代表澄清说这并非本意，用非法收费所得补贴收费国航空公司这一设想情景，只是提出的一个示例而已。

4.3.2 SSG-A15经仔细审阅第十五条的措词后，并未发现任何证据表明明确禁止使用收费所得资助收费国本国实体的运作与活动。因此，SSG-A15建议对指导材料草案作出相应修改，具体修改内容见**附录**A。

4.4 **禁止仅为准许过境权、出入权而收取费用**

4.4.1 关于第十五条的最后一句，SSG-A15认为有必要确定相关标准，以判定一项收费是否仅为准许从一国领土的过境权、出入权而征收。SSG-A15一致认为，第十五条最后一句并不禁止在航空器使用机场和其他航行设施、特别是空中航行服务时，就使用这些设施征收费用。SSG-A15审议了是否可以结合缔约国发予其他缔约国运营人的许可或其他运营授权，来征收规费、捐税或其他费用。

4.4.2 **仅为准许过境权、入境或离境权而收取规费、捐税或其他费用：准许和授权费**

4.4.2.1 SSG-A15一致认为，如果缔约国征收的任何规费、捐税或其他费用是仅为准许航空器过境或进出收费国领土而征收的，且未向该航空器提供任何服务，则此类收费违反《芝加哥公约》第十五条。因此，禁止征收任何此类规费、捐税或其他费用就意味着，一国不得仅为向他国航空器发予进出和飞越其领土的许可或其他授权，而收取费用。这一认识基于以下理由：

4.4.2.2 第十五条最后一句的措词是明确的：“任何缔约国对另一缔约国的任何航空器或航空器上所载人员或财物不得仅为给予通过或进入或离去其领土的权利而征收任何规费、捐税或其他费用”。考其通常含义，第十五条禁止（国际条约中的“不得”一词是指强制性义务）缔约国“仅为”准许其他缔约国的航空器通过、进入或离开其领土的权利而征收任何规费、捐税或其他收费；如果运营人拒绝付费，此类收费便是阻碍航权的行使。

4.4.2.3 第十五条的最后一句还须结合《芝加哥公约》第五条和第六条加以解读。这几条规定了任一缔约国的航空器进入其他缔约国领空的条件，包括可能需要特别许可或其他授权的情形及运行的类型。因此，《芝加哥公约》预见到在特定情况下，进入某国领空可能需要该国给予特

别许可或其他授权；同时，《公约》也规定，不得仅为给予从一缔约国领土的过境权、出入权而征收任何规费、捐税或其他费用。一些成员认为，禁止仅为通过、进出缔约国领土的权利而征收规费、捐税或其他费用，并未将与办理授权有关的某些费用排除在外。不过，SSG-A15 普遍认为，为了保持《芝加哥公约》规范的一致性，对航权及行使航权所需的特别许可或其他授权的授予，不得征收任何规费、捐税或其他费用。如前所述，这一解释符合《芝加哥公约》满足世界人民对经济的航空运输的需要之目标。

4.4.3 **将飞越请求的管理委托给第三方或私营实体**

4.4.3.1 SSG-A15得出结论认为，第十五条禁止仅为准入空域而征收规费、捐税或其他费用，不论该准许行为是缔约国委托第三方和、或私营实体执行还是由缔约国自己执行。这一结论依据的道理是：缔约国受《芝加哥公约》的约束，因此，缔约国不能通过将通常应由自己进行的活动转移给另一国和、或私营实体，来规避其根据国际条约承担的义务。国际条约的缔约国必须确保在其领土内并责其国民遵守该条约，此乃一项国际法原则。确保不仅为通过、进入或离开一缔约国领土的权利而征收任何规费、捐税或其他费用的终极责任，在于相关的国家。

4.4.3.2 这既源于条约必须遵守的习惯法原则（《维也纳条约法公约》第二十六条已将其编纂成文："凡有效之条约对其各当事国有拘束力，必须由各该国善意履行"）；也源自国际条约与国内法之间的等级关系：《维也纳条约法公约》第二十七条规定："一当事国不得援引其国内法规定为理由而不履行条约[…]"。

4.4.4 **将给予直接付款以外的其他利益作为准入空域的条件**

4.4.4.1 第十五条不仅禁止缔约国征收须直接支付的规费、捐税或其他费用，还禁止缔约国将准入空域作为条件，要求其他缔约国的航空公司或运营人仅为授予从该国领土的过境权、出入权而提供非现金利益或作出间接给付。提供非现金利益，例如提供货物或服务等。作出间接给付，例如要求与许可国或该国实体签订合同或协议，而此类合同或协议要求申请国航空公司或运营人作出给付或承担费用等。

4.4.4.2 这一理解的依据在于：要求提供非现金利益或间接支付，会使请求进入领空的缔约国或其航空公司、运营人与准许进入的缔约国相比处于经济上的不利地位。因此，其效果与直接给付规费、捐税或其他费用等同。鉴于《芝加哥公约》旨在满足世界人民对经济的航空运输的需要，这一目标支持对第十五条项下统一条件义务的解释，因此，不能区别看待这两种情况。

4.4.4.3 对其他缔约国的航空器通过、进入或离开一国领土的权利附加提供非现金利益或间接给付的条件，可被视为规避《公约》第十五条最后一句的规定。此类规避行为不符合要求缔约国诚信履行和执行条约的条约必须遵守原则。

4.5 **与《芝加哥公约》第六十八条的关系**

4.5.1 《芝加哥公约》第六十八条与第十五条存在直接联系。第十五条明确规定，缔约国按对本国航空器的统一条件向其他缔约国的航空器开放机场提供公用的义务，应受第六十八条的规定约束。根据第六十八条，每一缔约国均可指定任何国际航班在其领土内应遵循的航线以及航班可使用的机场。这就意味着，凡缔约国均可自由指定国际航班使用的特定航线和机场，但一旦

指定，该缔约国必须按统一条件允许所有其他缔约国的航空器使用这些航线和机场。应在指导材料草案中说明与《芝加哥公约》第六十八条的这一联系。

5. 为澄清第十五条项下义务给缔约国的国家级信件草案

5.1 SSG-A15审查了国家级信件草案，并提出若干修改建议，以使其内容与指导材料草案内容一致。SSG-A15 这样做的理解是，指导材料草案最后定稿并获理事会批准后将与国家级信件一起公布并分发各缔约国。因此，SSG-A15 对国家级信件草案所作的法律审查及提出的修改意见，旨在确保这两份文件在法律上均与《芝加哥公约》第十五条相符合。

6. 国际民航组织理事会审查收费问题程序草案

6.1 SSG-A15认为，是否应按第十五条的设想，为理事会审查机场及其他设施的收费问题设立一个专门程序，这是一项政策决定，而非法律问题。理事会应自行酌定在现阶段设立此一专门程序是否有用。另外，从法律角度看，理事会对设计此一程序享有相当大的裁量权，仅须遵守《芝加哥公约》、特别是其第十五条规定的各项法律要求，符合参与该程序的国际民航组织各机构的章程或组织职能和权限，并确保遵守正当程序的一般原则。

6.2 SSG-A15 在对程序草案进行法律审查后得出结论认为：如**附录 C 中**所述进行若干细微的编辑性修改后，该程序草案有利于理事会按照第十五条履行其收费审查职能。如果理事会决定保留该程序草案，SSG-A15 建议进一步精简其措词，使其与《芝加哥公约》的表述一致，并适当体现国际民航组织其他机构在建制中的作用。

6.3 与第八十四条项下争端解决程序的区别

6.3.1 SSG-A15注意到，在某些情况下，程序草案中的措词并未明确区分第十五条项下的收费审查与《芝加哥公约》第八十四条项下的争端解决程序。第八十四条规定了通过理事会裁决解决两个或两个以上缔约国之间对《芝加哥公约》及其附件的解释或适用的分歧的程序，并允许向特设仲裁庭或国际法院提出上诉。相比之下，第十五条所设定的审查程序，并非最终由理事会作出有拘束力且可上诉的裁决之对抗性程序。根据第十五条对收取机场及其他设施使用费进行审查，其结果仅为理事会提出供有关国家考虑的无拘束力建议。不过，虽然此类建议无法律约束力，但如有缔约国选择不执行这些建议，则理事会可根据《芝加哥公约》第五十四条第十款，向各缔约国通报该国未执行建议之情事。

6.4 法律委员会、法律事务和对外关系局及航空运输委员会的作用

6.4.1 按照程序草案中的构想，国际民航组织各相关机构，如航空运输委员会、航空运输监管专家组、机场经济专家组和空中航行服务经济专家组及法律局，均应参与理事会审查收费事项的工作流程。根据《法律委员会章程》（大会第A7-5号决议），法律委员会的责任和职能之一，是就理事会交办的与《芝加哥公约》的解释和修正有关的事项，向理事会提供咨询意见。因此，就《芝加哥公约》的解释或修正相关事项向理事会提供建议，这并非法律局的职责所在。若理事会按照第十五条审查收费问题的过程中需要此种建议，应将此事交与法律委员会而非法律局办理。程序草案应与《法律委员会章程》保持一致。

6.4.2 程序草案预设航空运输委员会将参与收费审查工作。这一任务需体现在赋予运委会的授权中。

6.5 **审查程序的范围**

6.5.1 这里产生一个问题，即：第十五条设想的审查程序是仅涵盖第十五条第二款所指的缔约国因使用机场和空中航行设施而征收的费用，还是说审查的范围更广，还包括须按统一条件准许使用机场和航行设施的义务，以及第十五条最后一句中、禁止仅为准许通过、进入或离开缔约国领土的权利而征收规费、捐税或其他费用的规定。

6.5.2 经广泛讨论后得出的结论是：结合第十五条的宗旨、目的及上下文对其进行的通常解释支持以下观点，即：唯有缔约国因使用机场和空中航行设施而收取的费用，才属于第十五条规定的理事会审查范围。

6.6 **举证责任**

6.6.1 在草拟审查程序时，必须考虑缔约国可获得什么样的信息。由于第十五条并未明确规定缔约国负有公布并向国际民航组织通知其成本基础和分摊方法等收费细节的义务，因此，审查程序不应过分要求提出申诉的国家提供详尽资料与解释，以论证它为何认为另一缔约国征收的费用不符合第十五条。虽然SSG-A15理解申诉国可能无法全面获得收费的成本核算和费率制订的相关信息，但仍一致认为，该国必须诚信行事，在申请理事会审查相关收费时提出某些合理的依据。SSG-A15还进一步认为，审查程序应赋予理事会应有的权力，在收到申诉后要求收费国提供详细信息，以证实所涉收费的合理性。

6.7 **一般程序原则**

6.7.1 审查程序通常具有若干通用的一般原则。这些原则确保了程序的合法性和公信力，因而有助于各方接受审查结果并自愿加以遵守。程序草案可借鉴以下一般原则：

6.7.1.1 **透明**：理事会的建议应包含导致理事会作出相关结论的考虑因素和理由。必须说明理事会提出某项建议的原因。

6.7.1.2 **公允**：参与审查程序的理事会成员应保持公允，并须避免利益冲突。为此，可增加一条规定，明确表示凡与相关申诉存在利害关系的缔约国，一律不得参加理事会对该申诉的审议。

6.7.1.3 **循证**：理事会应收集、评估并审查所有相关信息，并以此为据进行审查并提出建议。

6.7.1.4 **公平**：程序当事各方必须获得公平、合理的机会，以陈述意见并申诉其主张。

6.7.1.5 **守时**：审查须在合理期限内进行；各方须有合理的时间陈述其意见。

7. 结论和建议

7.1 总之，SSG-A15 认为，从原则上讲，航空运输监管专家组经审查并修改的文件草案构成法律上可接受的实施准则，有助于缔约国更好地遵守《芝加哥公约》第十五条。

7.2 鉴于上文中提出的评论意见以及本报告附录 A、B 和 C 中反映的修改意见，谨此建议法律委员会核准航空运输监管专家组的文件草案。

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APPENDIX A

DRAFT GUIDANCE MATERIAL ON ARTICLE 15 OF THE CHICAGO CONVENTION

TABLE OF CONTENTS

GLOSSARY

When the following terms are used in this guidance material, they have the following meanings:

Aircraft. Any machine that can derive support in the atmosphere from the reactions of the air other than the reactions of the air against the earth's surface.

Contracting State. A State~~s~~ which ~~have~~ has ratified or adhered to the ~~Chicago~~ *Convention on International Civil Aviation* (Chicago, 1944 – "the Chicago Convention") in accordance with the provisions of its Chapter XXI.

Pre-funding. Financing of an airport or air navigation facility project through charges levied on users prior to completion of the facility concerned.

LIST OF ACRONYMS

AEP	Airport Economics Panel
ANSEP	Air Navigation Services Economics Panel
ATRP	Air Transport Regulation Panel
ICAO	International Civil Aviation Organization
WG	Working Group

ICAO PUBLICATIONS
(referred to in this guidance material)

The ICAO documents listed below are referred to in this guidance material and provide additional guidance for the implementation of Article 15 of the Chicago Convention.

Convention

Convention on International Civil Aviation (Chicago, 1944 – “the Chicago Convention~~), Signed in Chicago, on 7 December 1944.~~”) (Doc 7300/9).

Manuals

ICAO’s Policies on Charges for Airports and Air Navigation Services (Doc 9082~~)~~, Tenth Edition, 2024)
Manual on Air Navigation Services Economics (Doc 9161, Sixth Edition, 2023)
Airport Economics Manual (Doc 9562, Fourth Edition, 2020)

Chapter 1

INTRODUCTION

1. OBJECTIVE OF THE GUIDANCE MATERIAL

1.1 This guidance material aims to ~~help~~assist ICAO Member States to give full effect to Article 15 of the Chicago Convention in accordance with their legal obligations as ~~ICAO~~ Contracting States.

1.2 The guidance material responds to Assembly Resolution ~~A41-27~~A42-26, wherein the Assembly urged "Member States to ensure that Article 15 of the Convention is fully respected" (Appendix C, Section 1, 1). Its purpose is to enable ~~Member~~Contracting States to adhere to the Assembly's resolution through their compliance with Article 15 of the Chicago Convention.

2. ABOUT THE GUIDANCE MATERIAL

2.1 This guidance material provides ~~clear interpretations of~~ guidance on compliance with Article 15 of the Chicago Convention, addressing ambiguities and promoting consistent application among ~~Member~~Contracting States.

2.2 It outlines specific obligations and responsibilities of Contracting States to ensure proper implementation of Article 15 of the Chicago Convention, fostering fair and non-discriminatory charging practices.

~~Sim~~

2.3 This guidance material includes illustrative scenarios to further elucidate the practical application of Article 15 of the Chicago Convention.

Chapter 2

THE NEED TO DEVELOP GUIDANCE MATERIAL ON ARTICLE 15 OF THE CHICAGO CONVENTION

A41-WP/199 ~~submitted~~ *Requesting guidance regarding Article 15 and airspace access* presented by the United States to the 41st Session of the ICAO Assembly (~~A41~~Montréal, 27 September – 7 October 2022) discussed "the need for specific guidance and legal analysis regarding the provisions of Article 15 of the ~~Convention on International Civil Aviation (~~Chicago Convention~~)~~, in order to ensure States' compliance."

The paper noted that certain Contracting States use their airspace to extract concessions from other Contracting States and/or require commercial or other private arrangements between air carriers as a condition for airspace access. The paper contended "that the confidential nature of such transactions makes it difficult for aviation authorities to understand the potential market impact of these arrangements between airlines, and under certain circumstances, such practices seem to be inconsistent with the intent of Article 15."

A41-WP/199 ~~asked~~requested ICAO "to undertake an analysis of the relationship between States' obligations pursuant to Article 15 of the Chicago Convention and States' grants of airspace access, which would provide a basis to promote States' adherence to Article 15." As a result, in Assembly Resolution A41-27, the Assembly urged "Member States to ensure that Article 15 of the Convention is fully respected" (Appendix C, Section 1, 1).

In addition, the Economic Commission ~~instructed~~agreed that more specific guidance and legal analysis are required for Contracting States to better understand and apply Article 15 of the Chicago Convention ~~(Article 15),~~, and, ~~in A41-WP/673~~to that end, instructed that the Air Navigation Services Economic Panel (ANSEP) and the Air Transport Regulation Panel (ATRP~~) analyze~~), in consultation with the Legal Committee analyse whether a State's differential conditioning of grants of airspace access to other States is consistent with the requirement that foreign and domestic aircraft be subject to the same fees, on the same terms and conditions, for the same services (~~what~~referred to in this document ~~will refer to,~~ as a "~~national treatment" standard~~uniform conditions" obligation) as well as the principle of non-discrimination required by the Chicago Convention.

The Seventeenth Meeting of the Air Transport Regulation Panel (Montréal, 16 to 18 April 2024) (ATRP/17) drew three conclusions relating to Article 15, and tasked a Working Group (WG 1) dedicated to addressing the following ~~them up (WG 1)~~:

- ~~Noted~~ the need for more clarification and guidance on the provisions of Article 15 of the Chicago Convention to promote compliance by ~~Member~~Contracting States;
- ~~Asked the WG to liaise~~ liaising with the AEP-ANSEP to provide more clarification and guidance for the compliance of ~~Member~~Contracting States ~~to~~ with Article 15 of the Chicago Convention; and,
- ~~Asked the WG to coordinate~~ coordinating with the Legal Committee to review and finalize the draft State letter before it is sent to States.

At its subsequent meeting, WG 1 took on these tasks. As recorded in its final meeting report, the WG strongly supported the ~~Panel's~~ ATRP's conclusion that more detailed guidance material singularly focused on Article 15 is necessary. Members of WG 1 identified specific areas that the guidance material should cover, including, among other topics:

- clarifying what "solely of the right ~~to~~of transit...," means;
- clarifying the difference between legitimate~~ cost-based~~ charges for air navigation services and charges for traffic rights (i.e., airspace access);
- addressing the lack of clarity and transparency surrounding "authorization fees," "administrative charges," and/or other similarly amorphous charges and conditions that some States impose for airspace access and their consistency or lack thereof with Article 15;
- clarifying where ICAO maintains information regarding charges imposed ~~charges~~ by Contracting States for the use of airports and other facilities i.e., in *Tariffs for Airports and Air Navigation Services* (Doc 7100) or the AeroTariffs platform; and
- specifying the process to ~~bring concerns~~make a representation relating to another State's charges ~~before~~to the ICAO Council, as contemplated by Article 15.

Chapter 3

CLARIFICATIONS ON THE INTERPRETATION OF ARTICLE 15 OF THE CHICAGO CONVENTION

Contracting States are bound by Article 15 (and all other Articles) of the Chicago Convention. As Parties to the Convention, Contracting States have committed themselves to abide by all of the Convention's provisions without exception. The full text of Article 15 of the Chicago Convention reads as follows:

Article 15

Airport and similar charges

Every airport in a contracting State which is open to public use by its national aircraft shall likewise, subject to the provisions of Article 68, be open under uniform conditions to the aircraft of all the other contracting States. The like uniform conditions shall apply to the use, by aircraft of every contracting State, of all air navigation facilities, including radio and meteorological services, which may be provided for public use for the safety and expedition of air navigation.

Any charges that may be imposed or permitted to be imposed by a contracting State for the use of such airports and air navigation facilities by the aircraft of any other contracting State shall not be higher,

a) As to aircraft not engaged in scheduled international air services, than those that would be paid by its national aircraft of the same class engaged in similar operations, and

b) As to aircraft engaged in scheduled international air services, than those that would be paid by its national aircraft engaged in similar international air services.

All such charges shall be published and communicated to the International Civil Aviation Organization, provided that, upon representation by an interested contracting State, the charges imposed for the use of airports and other facilities shall be subject to review by the Council, which shall report and make recommendations thereon for the consideration of the State or States concerned. No fees, dues or other charges shall be imposed by any contracting State in respect solely of the right of transit over or entry into or exit from its territory of any aircraft of a contracting State or persons or property thereon.

In summary, Article 15 establishes that a Contracting State must: i) ensure uniform conditions for access to its airports open to public use (subject to the provisions of Article 68[1]) and use of its air navigation ~~services~~facilities provided for public use; ii) not charge foreign aircraft more than it charges its own aircraft of the same class engaged in similar operations for access to airports and use of air navigation ~~services and~~ facilities; iii) publish ~~those~~and communicate to ICAO charges~~, iii)~~ imposed for the use of airports and air navigation facilities; iv) not impose fees, dues or other charges solely for the right of transit over or entry into or exit from its territory, and ~~iv~~v) upon representation by an interested Contracting State, the charges imposed for the use of airports and other facilities shall be subject to review by the ICAO Council, which shall report and make recommendations thereon for the consideration of the State or States concerned.

The uniform conditions provision requires that all conditions for access to airports open to public use and use of public-use air navigation facilities be consistent for all users from all Contracting States. This ensures

[1] Article 68 provides that each contracting State may designate the route to be followed within its territory by any international air service and the airports which any such service may use. This means that each Contracting State is free to designate specific routes and airports to be used by international air services but once designated, the Contracting State must give access to such routes and airports under uniform conditions to aircraft of all Contracting States.

that Contracting States do not discriminate or distort competition by providing better conditions for certain air carriers~~ at the expense of others~~.

The requirements for equivalent treatment of foreign and domestic aircraft with respect to charges for airport access and use of air navigation ~~services~~facilities relate to the principles of non-discrimination and fair competition. Article 15 states that Contracting States may not apply higher airport and air navigation-related charges to aircraft from other Contracting States than those it applies to its national ~~carriers~~aircraft, when they are engaged in ~~the same activities~~similar operations or air services or receiving the same services. In other words, charges related to airport and air navigation ~~services~~facilities cannot ~~be~~discriminate based on the ~~carrier's~~ nationality~~.~~ of the aircraft. Like the uniform ~~condition standard~~conditions principle, the ~~standard~~principles of non-discrimination and fair competition enable foreign air carriers to compete on equal footing with national carriers by preventing economic discrimination or unfair competitive practices.

It is the final ~~provision~~sentence of Article 15, which prohibits the imposition of fees, dues or other charges solely for the right of transit over or entry into or exit from a Contracting ~~Party's~~State's territory, that some Contracting States have interpreted and implemented differently. Contracting States have the sovereign right to grant or not to grant ~~freedom of the~~ air traffic rights to other ~~contracting~~Contracting States for ~~scheduled~~ international air services. Contracting States or their service providers have the right to recover the costs incurred in the provision of ~~airport facilities~~airports and air navigation ~~services~~facilities, through ~~user~~fair and reasonable charges~~, subject to ICAO's cost principles~~. Article 15 explicitly prohibits each Contracting ~~States~~State from imposing any fees, ~~duties~~dues, or other charges solely for the right of ~~an aircraft to~~ transit over, ~~enter~~entry into, or exit from its territory~~.~~ of any aircraft of other Contracting States or persons or property thereon. This means that ~~access to airspace itself cannot be charged for. That provision precludes~~ a Contracting State ~~from conditioning a grant of the first freedom of the air in any way that would infringe upon the uniform condition, national treatment, or cost basis standards established in Article 15.~~cannot charge aircraft of other Contracting States for mere access to its airspace. In other words, while a ~~contracting~~Contracting State may choose to grant or not to grant ~~first freedom~~air traffic rights ~~for scheduled operations~~ to another ~~contracting~~Contracting State for international air services, it may not condition the grant or the exercise of those rights on additional ~~non-cost-based~~ charges or other requirements (~~i.~~e.g., private commercial arrangements between airlines~~) that would be inconsistent with the uniform condition or national treatment standards.~~). This prohibition extends to charges ~~disguised~~labelled as "administrative fees," "authorization fees," or any other similarly vague charges that are, in essence, fees, dues or other charges imposed solely for airspace access rather than in payment for ~~specific~~ services~~.~~ provided to aircraft.

~~-~~"Solely of the right..." as used in Article 15 means that no fees, dues or other charges can be ~~levied~~imposed by a Contracting State simply for granting ~~access to airspace. Charges~~ authorization for a flight to operate into, out of or over its territory. Fees, dues or other charges can only be imposed for specific services provided to aircraft~~—~~ that go beyond allowing access to airspace. This prohibition includes fees, dues or other charges imposed for mere overflight, where an aircraft transits a Contracting State's airspace without landing. Any attempt to impose fees, dues or other charges for such ~~overflight,~~ access to airspace which are not ~~tied to~~for specific services provided~~,~~ is a violation of Article 15. ~~User~~Fees, dues or other charges can be levied only if they are ~~tied to~~for specific services provided.

Article 15 requires Contracting States to publish and communicate to ICAO charges imposed for ~~airport~~the use of airports ~~or air navigation services to ICAO.~~and other facilities. ICAO then publishes those charges on its AeroTariffs platform.

~~This~~The AeroTariffs platform may be accessed online. It has replaced the *Tariffs for Airports and Air Navigation Services* (Doc 7100). The provisions of Article 15 relating to the publication and communication to ICAO of charges are intended to capture all monetary conditions that may be imposed by a Contracting State ~~associated with transit of~~on aircraft operating international air services in its airspace in order to provide maximum transparency and certainty among Contracting States and operators. ~~The obligation regarding publication and communication must be read in conjunction with the obligation not to impose fees, duties or other charges solely for the right of transit (i.e., fees, duties, or other charges required for exercise of Freedom of the Air rights).~~

Finally, Article 15 stipulates that ~~Contracting States can bring forth disagreement against~~the charges imposed by other Contracting States for ~~issues relating to user charges, allowing ICAO~~the use of airports and other facilities shall, upon representation by an interested Contracting State, be subject to review ~~such charges~~by the Council, which shall report and make recommendations ~~to~~thereon for the consideration of the State or States ~~involved.~~concerned.[2]

[2] The Council review procedure provided in the last paragraph Article 15 of the Chicago Convention solely concerns "charges imposed for the use of airports and other facilities". Any other concerns relating to the interpretation and application of Article 15 of the Chicago Convention may be presented to the Council by a Contracting State under Articles 54 j), k) n) and/or 84 of the Chicago Convention. On 29 March 1958, the Council (XXXIII-17 (Closed)) considered a request by Jordan that the Council review charges imposed by Syria for the use of aeronautical services and facilities and report and make the necessary recommendations to Syria, in accordance with Article 15 of the Chicago Convention. The Council was asked to determine whether the question of compulsory landings should be considered in association with the proceedings under Article 15 of the Convention. In this regard, the then Director of the Legal Bureau expressed the view that the issue of compulsory landing had to be dealt "in accordance with the procedure laid down in the Rules for the Settlement of Differences (Doc 7782) and the proceedings would be different from those applicable to a review of charges by the Council under Article 15 of the Convention" (see ICAO, *Council Thirty-Fourth Session, Minutes of the Third Meeting, 14 May 1958*, Doc 7902-3 (Closed) at page 38, paragraph 34; C-WP/2686, *Syrian Charges for Aeronautical Services and Facilities*).

Chapter 4

FURTHER CLARIFICATIONS ON SPECIFIC ASPECTS OF ARTICLE 15

This chapter provides key clarifications on the application of Article 15 of the Chicago Convention regarding user charges. User charges, as referred to herein, encompass ~~both Air Navigation Charges~~charges for the use of airports and ~~Airport Charges.~~air navigation facilities. Contracting States are reminded that Article 15 prohibits ~~unjust~~ discrimination based on aircraft nationality in the imposition of charges for the use of airports and air navigation facilities.

As indicated in the *Manual on Air Navigation Services Economics* (Doc 9161) and *ICAO's Policies on Charges for Airports and Air Navigation Services* (Doc 9082), the principles of uniform conditions and ~~national treatment~~non-discrimination appear to be well understood by Contracting States. Other aspects of Article 15—specifically the scope of legitimate ~~user~~fees, dues and other charges, publication and communication to ICAO of ~~user~~ charges, and the ~~ICAO process for reviewing~~provisions relating to the review by the ICAO Council of a Contracting State's charges upon representation by an interested Contracting State—~~are~~ seem not to be well understood. The following sections will focus on these three aspects and provide more detailed information as to their interpretation and implementation.

1. USER CHARGES

~~There is additional guidance in Doc 9181, Doc 9161, and Doc 9562.~~

User charges must be fair and reasonable and should be based on the legitimate costs of providing the facilities ~~and~~or services to which they relate. Legitimate costs typically include operating expenses, maintenance, depreciation of assets, and a reasonable return on investment. Costs should be directly related to the use of facilities and the provision of services related to aircraft and should not include costs unrelated to aviation activities or costs that are inflated or inefficient. ~~States should provide transparent accounting and cost allocation methodologies to justify user charges. Users have the right to request detailed cost breakdowns and challenge charges that are not cost-related.~~

Under Article 15, charges imposed or permitted to be imposed by a Contracting State for the use of airports and other air navigation facilities must comply with the non-discrimination principle – they shall not be higher for aircraft of any other Contracting State. Discriminatory practices include, but are not limited to:

- Imposing higher charges on foreign ~~users~~aircraft than national ~~users~~aircraft for use of the same ~~services~~airports and air navigation facilities.
- Offering preferential rates or discounts to certain ~~users~~aircraft based on nationality or other non-operational factors.
- ~~Cross-subsidizing or financing other activities or airports with user charges.~~
- Applying different charging methodologies to ~~different users~~national and foreign aircraft without objective justification.
- ~~Lack of transparency in charging policies and procedures.~~

Any differential treatment in ~~user~~ charges must be based on objective, cost-related factors and not on nationality, commercial advantage, or other discriminatory grounds.

States should ensure transparency in the development and application of ~~user~~ charges. This includes:

- Publishing all user charges ~~and relevant charging policies~~.
- Communicating user charges to ICAO and thereby making them accessible through the AeroTariffs platform.
- ~~Consulting with airlines and other users before implementing changes to user charges.~~
- ~~Providing detailed justifications for any changes in user charges.~~

~~Effective consultation with users is essential for ensuring that user charges are fair, reasonable, and cost-related.~~

If a user identifies that ~~user charges~~the charges imposed by a Contracting State for the use of airports and air navigation facilities are discriminatory or ~~not cost-related~~otherwise inconsistent with Article 15, it ~~can~~may request its State, as an interested Contracting State, to make a representation to the ICAO Council~~.~~ ~~The~~ pursuant to Article 15. Upon a representation by an interested Contracting State, the ICAO Council ~~can~~shall review the charges ~~imposed for the use of airports and other facilities~~in question and make recommendations thereon for the consideration of the State or States concerned. Users should provide detailed evidence and justifications to their State to support ~~their~~any such representation to the ICAO Council. This will be necessary to assist and enable the State making the representation to provide sufficient information and justifications to the charging State as well as the Council.

~~Doc 9082 is also clear that charges need not be identical for all flights.~~ A ~~charging authority~~Contracting State can impose different levels of ~~charge~~charges under circumstances where there are underlying cost differences in the services received by the users. For example, a communication charge related to air navigation services may have a different charge for a voice link service than for data link services, as long as there are clear cost differences in the provision of the services and the ~~option~~opportunity to choose between the two options is generally made available to all users on non-discriminatory terms.

A Contracting State~~s~~ ~~shall~~must not impose differentiated routings solely for the purpose of levying ~~user~~ charges or discriminating against certain users. If there is a cost-based differential sufficiently demonstrated, the various routings must nevertheless be available to aircraft of any Contracting State consistent with the uniform ~~condition~~conditions principle of Article 15.

Overflight authorization fees, service fees, or permission fees that cannot be clearly linked to cost recovery for services provided to aircraft ~~transiting~~operating over, entering into or exiting from a State's ~~airspace~~territory would be contrary to the requirement in Article 15 that no charges be imposed solely for the right of aircraft of another Contracting State to enter, transit, or exit the territory of a ~~contracting~~Contracting State. However~~, they are~~ characterized or ~~named~~labelled, a fee that is not related to the cost of providing services to ~~civil aviation, or~~aircraft and which is levied solely to grant access to airspace, is inconsistent with Article 15. Therefore, any ~~costs~~fees, dues or charges relating to a permit to access ~~an~~a Contracting State's airspace, including the processing cost of permission application, should not be ~~recovered from the airspace user~~imposed or permitted to be imposed by a Contracting State.

Additional guidance on user charges can be found in *ICAO's Policies on Charges for Airports and Air Navigation Services* (Doc 9082), the *Manual on Air Navigation Services Economics* (Doc 9161), and the *Airport Economics Manual* (Doc 9562). Doc 9082 has four key charging principles~~.~~ that c~~C~~harges should be non-discriminatory, cost related, transparent, and implemented following consultation with users. Specific services that may be categorized as air navigation services are defined in Appendix 2 of Doc 9082. Doc 9082 is also clear that charges need not be identical for all flights.

2. PUBLICATION OF USER CHARGES

~~A key component of ICAO's charging principles is transparency. This component is mirrored in~~ Article 15~~, which~~ requires that Contracting States ~~provide~~publish and communicate to ICAO ~~information regarding~~ all user charges imposed for the use of airports and other facilities~~air navigation services~~ that exist within each Contracting State's ~~airspace~~territory.

This requirement means that any and all charges related to the use of airports and other ~~air navigation charges~~facilities within a Contracting State's territory must be ~~assessed~~published and accordingly communicated to ICAO~~.~~ by that Contracting State.

3. PROCESS TO BRING ~~ARTICLE 15 ISSUES TO ICAO~~USER CHARGES IMPOSED BY A CONTRACTING STATE TO THE ICAO COUNCIL FOR REVIEW UNDER ARTICLE 15

~~As Members of ICAO, Contracting States cannot release themselves from the provisions of Article 15 (or any other Article) of the Chicago Convention. As signatories of the Convention, Contracting States have committed to abiding by all of the Convention's Articles without exception.~~ Article 15 ~~thus~~ provides for the ICAO Council, upon representation by an interested Contracting State, to ~~"~~review the charges imposed by another Contracting ~~States~~State for the use of airports and other facilities, and report and make recommendations thereon ~~to~~for the consideration of the State or States concerned~~".~~. It should be noted that ~~the~~ Article 15 specifically refers to representation by an interested Contracting State only, not by any other party, as further clarified in ~~Doc 9161.~~paragraph 1.5 of the *Manual on Air Navigation Services Economics* (Doc 9161).

If ~~a Member State (~~an interested ~~State) represents an issue or concern with another State's charges~~Contracting State considers, either ~~through~~based on the data available via ~~Aero Tariffs~~the AeroTariffs Platform or through its own experience or the experiences of its operators, ~~it should~~that the charges imposed by another Contracting State for the use of airports and air navigation facilities are inconsistent with Article 15, it may submit a written representation on the issue ~~in writing~~ to the ICAO Council. Taking this step would be without prejudice to that interested Contracting State's ability to address the matter through bilateral channels with the charging ~~other~~ State or through other provisions such as Articles 54 n) and 84 of the Chicago Convention.

In ~~raising~~making the written representation on the issue to the Council, the interested Contracting State should provide information regarding which specific charges are ~~of concern~~the subject of the representation and ~~demonstrate, with support,~~ indicate why it believes such charges ~~deserve scrutiny~~warrant a review with respect to their potential inconsistency with Article 15.

~~Once the ICAO Council receives written notification from the interested Member State(s), it should instruct the Air Transport Committee (ATC) to review the charges. In turn, the ATC should request further support from the experts in the Airport Economics Panel (AEP) and Air Navigation Services Economics Panel (ANSEP) and the Air Transport Regulation Panel (ATRP) to undertake the review. The ATRP and AEP-ANSEP would convene a standing sub-group (potentially made up of both panels' working groups on Article 15) to lead the work among their respective panels, and to address potential conflicts of interests between the panels. Should the involved States wish, they should each be able to request the participation of a technical expert in the sub-group.~~

~~The sub-group would work to produce a report for the ATC based on facts gathered and other supporting information from all parties involved. The report, which would be reviewed and amended as appropriate by the Legal Bureau especially with regard to the interpretation of the Convention.~~

~~The sub-group should request, and Contracting States should provide information on the charges in question, including full details justifying the calculation of the charges and the specific services that are tied to each charge. As part of the process, the views of all States concerned should be fully heard.~~

~~Once the sub-group has completed their joint report and it has been reviewed and amended as appropriate by the Legal Bureau, it should submit it back to the ATC, which will then report its conclusions to the Council for a final recommendation. The ICAO Council should set deadlines for each of the steps involved in the process, in order to resolve the issue in a timely manner.~~Upon receipt of the written representation and in accordance with Article 15, it is proposed that the ICAO Council follows the procedure established in [Doc xxx] in order to report and make recommendations for the consideration of the State or States concerned.

Chapter 5

ILLUSTRATIVE SCENARIOS

The illustrative scenarios below showcase examples where Contracting States would be ~~contravening~~ breaching their obligations under Article 15 of the Chicago Convention, were they to undertake the described actions. The list below is not intended to be an exhaustive list of all possible breaches of Article 15. If for any reason, Contracting States are engaged in any of the ~~below~~ actions below, they should immediately act to ensure conformity~~, in order to align~~ with ~~all~~the provisions of Article 15~~. Reversal of such actions could include cessation of discriminatory actions, or the imposition of undue charges on all air carriers~~.

1. SCENARIO 1: DISCRIMINATORY AND NON-COST BASED AIRPORT ~~and/or~~AND/OR AIR NAVIGATION CHARGES

Contracting State A imposes higher airport or air navigation charges on aircraft of foreign carriers than for aircraft of its own national carriers. As an example, ~~the country~~Contracting State A charges aircraft of foreign carriers a fee, but waives or discounts, or otherwise provides incentives for the same ~~charge~~fee for aircraft of its national carriers. This action by Contracting State A ~~contravenes~~ breaches the ~~national treatment standard~~uniform conditions principle of Article 15. ~~The~~ Contracting State A must immediately bring parity between aircraft of foreign carriers and those of its national carriers. The State can either waive charges for all ~~carriers~~aircraft, foreign and national, or impose the same charges on aircraft of its national carriers. This is without prejudice to ~~a~~the State's right to modify charges based on cost differences in the provision of services so long as, in principle, each service is available to all ~~carriers~~aircraft whether national or foreign~~.~~ at the same charge. For example, as referred to in paragraphs 2.2(e) and 3.3(e) of *ICAO's Policies on Charges for Airports and Air Navigation Services* (Doc 9082), airports can legitimately offer cost-based rebates or discounts to ~~a particular aircraft operator (e.g., to~~ encourage the use of a specific technology~~) as provided in paragraphs 2.2(e) and 3.3(e) of Doc 9082.~~. Such waivers or discounts ~~are~~should be based on objective criteria and ~~are~~must be uniformly accessible ~~by~~to foreign and national ~~carriers~~aircraft operators alike.

Contracting State B imposes ~~user~~ charges that exceed the costs of the airport and/or air navigation ~~services~~facilities it provides~~. In addition, the charges imposed~~ within its territory. The amounts charged do not in any way relate to the costs incurred by Contracting State B ~~subsidize or finance the operations of its national carriers, at times through direct payment to its national carriers. Contracting State B also uses these charges to pre-fund future~~ in connection with the provision of the facilities and ~~operations, without following ICAO's specific guidance on pre-funding as stated in~~ may also have no relation to the use of those facilities by aircraft of other Contracting States. The charges cannot be considered to be cost-related, reasonable and fair, and would therefore breach Contracting State B's obligations under Article 15.~~.8 of Doc 9082 (10th edition). As these actions do not comply with Article 15,~~ Contracting State B must act immediately to bring its ~~user~~ charges in line with ~~ICAO's cost-based principles.~~

~~States must provide transparent accounting and cost allocation methodologies to justify user charges. Users have the right to request detailed cost breakdowns and challenge charges~~the requirement of cost relatedness stemming from Article 15. *ICAO's Policies on Charges for Airports and Air Navigation Services* (Doc 9082) provides useful guidance for Contracting States on how to ensure that charges are cost-related, ~~not based on legitimate costs~~fair and reasonable. It also contains specific guidance regarding pre-funding of an airport or air navigation facility through charges levied on users prior to completion of the facility concerned.

2. SCENARIO 2: DISCRIMINATORY ACCESS TO AIR NAVIGATION SERVICES

Contracting State A provides priority access to its air navigation services to its national ~~airlines~~aircraft ~~-~~or ~~airlines~~aircraft of certain Contracting States whether in exchange for a fee or not, while delaying or denying similar services to other foreign ~~airlines, whether in exchange for a fee or not.~~aircraft. Contracting State A is ~~violating the provisions of~~ breaching its obligation under Article 15~~.~~ to ensure that the use by aircraft of other Contracting States of air navigation facilities provided for public use for the safety and expedition of air navigation shall be subject to uniform conditions applicable to the national aircraft of Contracting State A. To correct this action, Contracting State A must provide all ~~airlines~~aircraft ~~-~~(whether foreign or ~~domestic~~national) with similar access to similar services.

3. SCENARIO 3: DISCRIMINATORY ACCESS TO DIFFERENTIATED SERVICES

Contracting State A allows access to certain services to its national ~~carriers~~aircraft operators or to ~~carriers~~aircraft operators from only certain Contracting States. These services could include but are not limited to voice link versus data link ~~ANS~~air navigation facilities and services; preferential routings through its airspace; or~~,~~ other operational restrictions or conditions on ~~the ability to transit its~~transiting through Contracting State A's airspace. Although ~~the~~ Contracting State ~~can~~A may offer differentiated services with differentiated costs, all such services being cost-based must be available and offered under uniform conditions to all ~~carriers~~aircraft operators of every Contracting State operating in Contracting State A's territory ~~that have been granted first-freedom access, whether national or foreign, under uniform conditions, in addition to being cost-based. More information~~. Additional guidance material on charges can be found in ~~Chapter 5.172 and 5.173 of~~ the *Manual on Air Navigation Services Economics* (Doc 9161~~.~~).

4. SCENARIO 4: CONDITIONAL GRANT OR EXERCISE OF OVERFLIGHT TRAFFIC RIGHTS

Contracting State A requires foreign ~~airlines~~aircraft operators to enter ~~a~~into commercial ~~arrangement~~arrangements with its national ~~carrier~~aircraft operator(s) as a pre-condition for the grant or exercise of the right to transit its airspace. The imposition of any such commercial ~~arrangement~~arrangements, whether or not they require ~~payment~~the foreign aircraft operator to make cash payments or to provide other non-cash benefits to the national aircraft operators of Contracting State A, is contrary to Article 15.

Historically, certain Contracting States have required foreign aircraft operators to make payments beyond those that can be justified ~~as user charges~~under Article 15 and/or to enter into commercial arrangements with their national ~~carriers as a pre-condition to granting~~aircraft operators as a precondition for exercising the right to enter into, transit over, or exit their territories. Examples of such commercial arrangements include, but are not limited to, agreements entailing direct payments to national ~~carriers and non-cost-based overflight charges. Such commercial arrangements conflict with the national treatment standard of Article 15 by~~aircraft operators. By imposing ~~different charges~~financial obligations on foreign ~~carriers~~aircraft operators from which national ~~carriers~~aircraft operators are exempt~~. Such a practice could, in some instances, be at odds~~, such commercial arrangements conflict with the non- discrimination and uniform ~~condition standard of~~conditions obligation of Article 15. Such commercial arrangements also violate the Article 15~~, to the extent a State imposes such requirements differently on carriers based on their nationality. Additionally, such practices would qualify as a pre-requisite for airspace access, which conflicts with the~~ prohibition ~~on charges~~against the imposition of fees, dues and other charges in respect solely of the right of foreign aircraft to transit ~~a Contracting~~ over, enter into or exit from a Contracting State's ~~airspace~~territory.

5. SCENARIO 5: "SERVICE" CHARGES AND OTHER UNDEFINED CHARGES

Contracting State A imposes an "administrative fee". However, Contracting State A does not provide information describing the ~~composition of~~reason why and for which service or facility this "administrative fee~~.~~" has been imposed. Contracting State B ~~charges~~ imposes "service fees" for the provision of air navigation services, but these service fees exceed the costs of the service provided. In both cases, ~~charging~~ the imposition of ~~these~~such fees would not comply with the requirements of Article 15 ~~and both States would need~~as Article 15 requires that charges must be for the use of airports and air navigation facilities. ~~to provide comprehensive information detailing the services rendered and their cost basis. The transparency~~ This requirement ~~for such "service charges"~~ applies to all ~~user~~ charges, including those ~~at times dubiously named~~not clearly specified and variously labelled as "regional development fees", "security surcharges", "overflight authorization fees", "overflight charges", "transit fees", "administrative fees", "permit fees", "permission fees", etc. States should more specifically enumerate what specific services are provided in exchange for payment of these charges.

Some Contracting States delegate ~~their~~the adjudication of their overflight requests to third parties. In such cases, the third party might charge a "service fee" to recover administrative costs ~~borne~~incurred during the adjudication of overflight requests. Regardless of their administrative set up, Contracting States, or their delegated third parties (when applicable), ~~cannot~~can neither charge solely for granting access to their airspace nor for the grant of overflight permission~~, nor hide~~ to foreign aircraft. Even if such charges ~~by listing them~~are labelled as "administrative fees" to give the impression that such fees are charged to ~~recoup~~recover costs of managing flight plans~~. Similarly,~~, they remain charges imposed solely for granting authorization for a flight to operate into, out of or over a Contracting ~~States also cannot require the payment of such "administrative fees" as a precondition for processing overflight requests~~State's territory, and are therefore not compliant with Article 15.

6. SCENARIO 6: FAILURE TO ~~SUBMIT~~COMMUNICATE USER CHARGES TO ICAO

Contracting State A levies charges on users of its ~~aviation system.~~airports and air navigation facilities. Contracting State A does not ~~provide information~~communicate the charges to ICAO ~~on each charge, along with their cost basis, and~~ including related facilities or service(s) ~~rendered~~for which the charges are imposed. Contracting State A is not fully respecting Article 15 of the Chicago Convention, which requires each Contracting State~~s~~ to ~~provide such information~~publish and communicate to ICAO the charges it imposes or permits to be imposed for the use of its airports and air navigation facilities. Contracting State A must readily ~~submit such~~communicate information related to ~~user~~its charges to ICAO for inclusion in the AeroTariffs platform, so that such charges~~, along with their cost basis,~~ can be accessible to all ~~users~~other Contracting States.

APPENDIX B

DRAFT STATE LETTER TO CONTRACTING STATES CLARIFYING OBLIGATIONS UNDER ARTICLE 15

Tel.:
DATE
Ref.:

Subject: Clarifications on Contracting States'~~s~~ Obligations Under Article 15

Action required: Contracting States should observe ICAO's policies on charges and base their revision of charges on the principles set forth in the policies

Sir/Madam,

~~On 6 January 2023,~~ I ~~shared~~have the honour to refer to State letter EC 2/89 – 23/2, dated 6 January 2023, in which I referred *to ICAO's Policies on Charges for Airports and Air Navigation Services* (Doc 9082) and highlighted the importance for Contracting States to observe ICAO's policies and base any revision of their charges on the principles set forth in the policies.

~~Through this present letter,~~ I wish to inform you that the ~~Secretariat seeks to provide further~~ Council has approved [Doc xxx] which contains additional guidance ~~and~~ materials, including clarifications ~~concerning Contracting States'~~ and illustrative scenarios pertaining to the obligations of Contracting States under Article 15 of the *Convention on International Civil Aviation* (Chicago, 1944 – "the Chicago Convention~~).~~").

Contracting States have the sovereign right, subject to Article 5 of the Chicago Convention, to decide whether to grant ~~or not to grant first freedom of the~~ air traffic rights to other ~~contracting~~Contracting States for ~~scheduled~~ international air services. Article 15 ~~obligates contracting States not to impose~~prohibits each Contracting State from imposing fees, dues or other charges in respect solely of the right of transit over or entry into or exit from its territory of any aircraft of a ~~contracting~~Contracting State or persons or property thereon. Article 15 also obligates each C~~c~~ontracting ~~States~~State to ensure that uniform conditions apply to the use, by aircraft of every ~~contracting~~Contracting State, of all airports and air navigation facilities open to public use within its territory.

Given the obligations stemming from Article 15 of the Chicago Convention, as outlined above, a ~~contracting~~Contracting State is precluded from conditioning ~~a grant of the first freedom of the air~~access to its airspace by aircraft of other Contracting States by imposing fees, dues or other charges in any way that would ~~infringe upon~~breach the ~~uniform condition, national treatment, or cost basis standards prescribed~~obligations stemming from ~~in~~ Article 15. In other words, while a ~~contracting~~Contracting State ~~may choose~~has discretion regarding whether to grant ~~or not to grant first freedom~~air traffic rights for international air services to another ~~contracting State~~Contracting State, it may not condition the grant or exercise of those rights on additional ~~non-cost-based~~ charges or other requirements (~~i.~~e.g., private commercial arrangements between airlines) that would be inconsistent with ~~the uniform condition or national treatment standards. All charges shall~~Article 15. Similarly, each Contracting State must ensure that its airports and air navigation facilities open to public use by its national aircraft are open under uniform conditions to the aircraft or all other Contracting States.

Article 15 further requires that all charges imposed by Contracting States for the use of airports and air navigation facilities be published and communicated to ICAO.

In this regard, ~~it is clear that the provisions of Article 15 relating to~~ the publication and communication to ICAO should include all ~~of charges are intended to capture ALL such~~ monetary conditions that may be imposed by a ~~contracting~~Contracting State for the ~~right~~use of ~~transit~~its airports and air navigation facilities in order to provide for maximum transparency and certainty among ~~contracting~~Contracting States and operators~~. One must read the obligation regarding publication and communication in conjunction with the obligation not to impose fees, duties or other charges solely for the right of transit (i.e., fees, duties, or other chargers required for exercise of first-freedom rights should be published). I wish to encourage all States to consider the clarifications included in this letter and to ensure they meet their obligations under Article 15 of the Chicago Convention~~.

Should ~~a~~ an interested Contracting State encounter user charges imposed by another Contracting State that are inconsistent with the provisions ~~terms~~ of Article 15~~,~~ that State ~~should~~may bring such charges to the attention of the ICAO ~~whereby the~~ Council by way of a written representation. The Council will review those charges~~ and then,~~ and report and make recommendations thereon for the consideration of the State or States concerned. ~~If a State has undertaken any international obligations inconsistent with the terms of Article 15, they shall take immediate steps to procure its release from the obligation as called for under Article 82 of the Convention.~~

I wish to encourage all Contracting States to consider and implement the guidance material contained in Doc [xxx] which is designed and intended to assist States to better comply with their obligations under Article 15 of the Chicago Convention.

Please accept, Sir/Madam, the assurances of my highest consideration.

Juan Carlos Salazar
Secretary General

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APPENDIX C

~~DRAFT~~ ICAO COUNCIL PROCESS ~~ON ISSUES OF~~FOR THE REVIEW OF CHARGES PURSUANT TO ARTICLE 15 OF THE CONVENTION ON INTERNATIONAL CIVIL AVIATION

If ~~a Member State (~~an interested ~~State) represents an issue or concern with another State's charges~~Contracting State considers, either ~~through~~based on the data available via ~~Aero Tariffs~~the AeroTariffs Platform or through its own experience or the experiences of its operators, ~~it should~~that the charges imposed by another Contracting State for the use of its airports or air navigation facilities are inconsistent with Article 15 of the Chicago Convention, it may submit a written representation on the issue ~~in writing~~ to the ICAO Council. Taking this step would be without prejudice to that interested Contracting State's ability to address the matter through bilateral channels with the charging ~~other~~ State or through other provisions such as Articles 54 n) and 84 of the Chicago Convention.

In ~~raising~~making the written representation to the Council ~~the issue~~, the interested Contracting State should provide information regarding which specific charges are of the subject of the representation ~~concern~~ and ~~demonstrate, with support,~~ indicate why it believes such charges ~~deserve scrutiny~~warrant a review with respect to their potential inconsistency with Article 15.

Once the ICAO Council receives such written ~~notification~~representation from ~~the~~an interested ~~Member~~Contracting State(s), it should instruct the Air Transport Committee (ATC) to review the charges. In turn, the ATC should request further support from the experts in the Airport Economics Panel (AEP) and Air Navigation Services Economics Panel (ANSEP) and the Air Transport Regulation Panel (ATRP) to undertake the review. The ATRP and AEP-ANSEP would convene a standing sub-group (potentially made up of both ~~panels' working groups~~Panels' respective Working Groups on Article 15) to lead the work among their respective ~~panels~~Panels, and to address potential conflicts of interests between the ~~panels~~Panels. Should the involved States wish, they should each be able to request the participation of a technical expert in the sub-group.

The sub-group would work to produce a report for the ATC based on facts gathered and other supporting information from all ~~parties involved.~~States concerned. The report~~, which~~ would be reviewed and amended as appropriate by the Legal Affairs and External Relations Bureau especially with regard to the interpretation of the Chicago Convention.

The sub-group should request, and Contracting States should provide information on the charges in question, including full details justifying the calculation of the charges and the specific services that are tied to each charge. As part of the process, the views of all States concerned should be fully heard.

Once the sub-group has completed ~~their joint~~its report and it has been reviewed and amended as appropriate by the Legal Affairs and External Relations Bureau, ~~it~~the sub-group should submit it back to the ATC, which will then report its review and conclusions to the Council ~~for a final~~to consider for its report and recommendation to the State or States concerned. The ICAO Council should set deadlines for each of the steps involved in the process, in order to resolve the issue in a timely manner.

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