International Civil Aviation Organization

WORKING PAPER

LEGAL COMMITTEE – 40TH SESSION

(Montréal, 26 to 30 October 2026)

Agenda Item 2 : Consideration of the General Work Programme of the Legal Committee

REPORT OF THE SECRETARIAT STUDY GROUP ON ARTICLE 15 OF THE CHICAGO CONVENTION (SSG-A15)

(Presented by the Chairperson[1] of the SSG-A15)

1. BACKGROUND

1.1 During its 42nd Session (23 September to 3 October 2025), the Assembly included a new item to the Legal Committee's General Work Programme titled "Legal review of the analysis completed by the Air Transport Regulation Panel (ATRP) of the application of Article 15 of the Chicago Convention". Under this item, the Legal Committee was requested to undertake a legal review of three ATRP draft documents: i) Draft Guidance Material on Article 15 of the Chicago Convention; ii) Draft State Letter to Contracting States Clarifying Obligations under Article 15; and iii) Draft Process for the ICAO Council to review representations by interested Contracting States concerning charges imposed by other States for the use of airports and other facilities. The Assembly further indicated that the legal review should be completed in 2026.

1.2 To facilitate this work, the Secretariat Study Group on Article 15 of the Chicago Convention (SSG-A15) was established in January 2026. Comprising legal experts nominated by States, representatives of one International Organization and relevant ICAO Panels, the SSG-A15 held a series of virtual meetings between March and July 2026. Following an agreed methodology that relied on written submissions and the review of relevant historical and institutional materials, the SSG-A15 examined the ATRP draft documents with a view to ensuring their consistency with Article 15 of the *Convention on International Civil Aviation* (Chicago, 1944 – the "Chicago Convention"). The outcome of its deliberations, as the SSG-A15 Report, is in the Annex to this Working Paper.

2. ACTION BY THE COMMITTEE

2.1 The Legal Committee is invited to consider the information provided in the Report of the SSG-A15 and in the Appendices thereto to facilitate the conduct of its work.

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[1] Dr. Lena-Maria Gaese, Germany.

ANNEX

REPORT OF THE SECRETARIAT STUDY GROUP ON ARTICLE 15 OF THE CHICAGO CONVENTION (SSG-A15) PRESENTED TO THE 40TH SESSION OF THE LEGAL COMMITTEE

1. BACKGROUND

1.1 During its 42nd Session (23 September – 3 October 2025), the ICAO Assembly included a new item in the General Work Programme of the Legal Committee titled "Legal review of the analysis completed by the Air Transport Regulation Panel (ATRP) of the application of Article 15 of the Chicago Convention". Under this new item, the Legal Committee was requested to conduct a legal review of three draft documents developed by the ATRP, namely: i) Draft Guidance Material on Article 15 of the Chicago Convention; ii) Draft State Letter to Contracting States Clarifying Obligations under Article 15 and iii) Draft Process for the ICAO Council to review, pursuant to Article 15 of the Chicago Convention, representations by interested Contracting States concerning charges imposed by other Contracting States for the use of airports and other facilities. The three documents are hereinafter collectively referred to as the ATRP draft documents. The Assembly considered that the target date for the Legal Committee's completion of the legal review of the ATRP draft documents should be 2026.

2. ESTABLISHMENT, COMPOSITION AND METHODOLOGY OF THE SSG-A15

2.1 To advance work on this new item in an expedient fashion taking into consideration the target completion date of 2026 set by the Assembly, a Secretariat Study Group on Article 15 of the Chicago Convention (SSG-A15) was established in January 2026 to undertake the legal review of the analysis completed by the ATRP of the application of Article 15 of the *Convention on International Civil Aviation* (Chicago, 1944 – the "Chicago Convention"), and to present a report for consideration by the Legal Committee at its 40th Session scheduled for October 2026.

2.2 In response to a State Letter issued by the Secretary General in November 2025, legal experts nominated by 16 Member States (Argentina, Brazil, Canada, Chile, China, Germany, Kenya, Namibia, Nigeria, Norway, Rwanda, Saudi Arabia, Singapore, South Africa, Tanzania, and the United States) as well as one International Organization (the International Air Transport Association IATA) constituted and participated in one or more meetings of the SSG-A15. Representatives from the ATRP and the Airport Economics Panel and the Air Navigation Services Economics Panel (AEP-ANSEP) also participated in the work of the SSG-A15.

2.3 The SSG-A15 met virtually over meetings between March and July 2026 (First Meeting – 18 March 2026; Second Meeting – 30 April 2026; Third Meeting – 13 and 20 May 2026; and Fourth Meeting – 15 and 29 June, and 14 July 2026). During the Second Meeting, Dr. Lena-Maria Gaese (Germany) and Ms. Maria Makalla Memba (United Republic of Tanzania) were elected by acclamation as Chairperson and Vice-Chairperson of the SSG-A15 respectively.

2.4 Following an initial exchange of views on the scope and methodology of the legal review during the First Meeting, the SSG-A15 agreed that members would make written submissions on the ATRP draft documents under legal review. All such written submissions presented by members were collated for consideration by the SSG-A15 during its Second and subsequent meetings. The SSG-A15 also had for consideration other relevant information and documentation such as Working Papers prepared by the Secretariat; Council records pertaining to the process followed in 1958 in connection with a request from a Contracting State under Article 15 of the Chicago Convention concerning charges imposed by a Contracting State for aeronautical services and facilities[2]; the types of information on charges communicated by States to ICAO and published on the Aero-Tariffs platform; and the rules, directives and guidelines applicable to various ICAO bodies[3]. During its meetings, the SSG-A15 considered, *inter alia*, various possible draft revisions to the ATRP draft documents aimed primarily at maintaining consistency and coherence between the ATRP draft documents and the provisions of Article 15 of the Chicago Convention. The draft revisions to the ATRP draft documents proposed by the SSG-A15 following its deliberations are presented in **Appendices A, B and C** to this Report.

3. SUBSTANTIVE AREAS OF LEGAL REVIEW WITH RESPECT TO THE ATRP DRAFT DOCUMENTS

3.1 This section presents a summary of the substantive deliberations held by the SSG-A15 over the course of its four meetings.

3.2 The SSG-A15 analyzed the ATRP draft documents and identified the following points as forming the central focus of the legal review:

- Use of inconsistent wording;
- Regarding the principle of cost-relatedness[4] and publication of detailed information on the composition of charges[5], the risk of conflating obligations stemming from Article 15 of the Chicago Convention with requirements of non-binding guidance material;
- Prohibition of cross-subsidization as an element of Article 15[6];
- Prohibition of charges imposed in respect solely of the right of transit over or entry into or exit from a Contracting State's territory, in particular:
    a) when is a charge in respect solely of the right of transit, serving as a prerequisite for overflight traffic rights[7]
    b) does "fees, dues or other charges" only cover direct payments or are other benefits covered[8]
    c) delegation of managing overflight requests to third parties/private entities[9];
- Relation between Article 15 and Article 68 of the Chicago Convention;
- Role of the Legal Committee, the Legal Affairs and External Relations Bureau (LEB) and the Air Transport Committee (ATC) (Article 54 d) of the Chicago Convention) in the Draft Process for the ICAO Council to review charges pursuant to Article 15 of the Chicago Convention;

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[2] 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*.
[3] Namely: the Air Transport Committee (ATC), Airport Economics Panel (AEP); Air Navigation Services Economics Panel (ANSEP); Air Transport Regulation Panel (ATRP) and the Legal Affairs and External Relations Bureau of the ICAO Secretariat (LEB).
[4] e.g., pages A-10, paras. 1 and 3; A-12 and A-13; A-15, Scenario 1; A-16, Scenarios 3 and 5; and A-17, Scenario 6.
[5] e.g., page A-15, Scenario 1
[6] e.g., pages A-9, para. 2; A-12 and 13; and A-15, Scenario 1
[7] e.g., page A-16, Scenario 5
[8] e.g., page A-16, Scenarios 4 and 5
[9] e.g., page A-16, Scenario 5

- Clear differentiation between the Council review process under Article 15 and its possible consequences (Article 54 j), k) and n) of the Chicago Convention refer) and the dispute settlement functions of the Council under Article 84 of the Chicago Convention[10];
- Clarity of the scope of the Council's review of "charges imposed for the use of airports and other facilities" under Article 15 of the Chicago Convention[11];
- Burden of proof in the process for the ICAO Council to review charges pursuant to Article 15 of the Chicago Convention considering potential unavailability of prior published information; and
- General procedural principles such as avoiding conflict of interests, enabling equal participation, transparency, and reasonable timelines.

3.3 In interpreting the provisions of the Chicago Convention, the SSG-A15 considered the principles set out in Articles 31 and 32 of the *Vienna Convention on the Law of Treaties* (Vienna, 1969 – the "VCLT"). Although the Chicago Convention was concluded before the VCLT, the principles of Articles 31 and 32 of the VCLT nevertheless apply, as the International Court of Justice has found that those principles are customary law principles that have been codified in the VCLT.

4. DRAFT GUIDANCE MATERIAL ON ARTICLE 15 OF THE CHICAGO CONVENTION

4.1 Consistency of wording

4.1.1 The SSG-A15 found that wording used throughout the Draft Guidance Material on Article 15 of the Chicago Convention (hereinafter referred to as Draft Guidance Material) is neither internally consistent nor in line with the wording of Article 15 of the Chicago Convention and is in some instances ambiguous. The SSG-A15's review of the Draft Guidance Material took into account the need to avoid deviation from the wording of the Chicago Convention given the interpretive nature of the Draft Guidance Material, which must be aligned with and not deviate from Article 15.

4.2 Differentiation between obligations under Article 15 and recommendations from existing guidance material

4.2.1 While the obligations stemming from the Chicago Convention are legally binding for Contracting States,[12] guidance material is not legally binding. Guidance material provides recommendations for best practices and supports regulatory alignment for Contracting States and industry. Because of the differences in legal nature, it is important to distinguish binding obligations under the Chicago Convention from recommendations contained in guidance material. In the context of the charges, the relevant guidance material is found in *ICAO's Policies on Charges for Airports and Air Navigation Services* (Doc 9082, Tenth Edition, 2024), the *Manual on Air Navigation Services Economics* (Doc 9161, Sixth Edition, 2023) and *Airport Economics Manual* (Doc 9562, Fourth Edition, 2020).

4.2.2 While the Draft Guidance Material itself would not be binding, the international best practices it asserts are rooted in the Convention's conceptual framework, including Article 15. Some Members of the SSG-A15 therefore suggested that the Draft Guidance Material could be used, as appropriate, to inform an authoritative interpretation of the legally binding obligations of Article 15. Non-compliance with recommendations in guidance material does not necessarily constitute a violation of

[10] e.g., page A-11, para. 2
[11] e.g., page A-11, para. 2
[12] Contracting States are bound by the Convention unless they denounce the Convention in accordance with Article 95.

the Chicago Convention, unless the recommendation unambiguously restates a binding legal obligation under the Convention.

4.2.3 During the legal review of the ATRP draft documents, the SSG-A15 noted the risk of conflating obligations arising under Article 15 with recommendations in the guidance material particularly in relation to the question of whether Article 15 requires (i) charges imposed by States for the use of their airports and other facilities to be cost-related and (ii) Contracting States to publish and communicate to ICAO information (such as the cost breakdown) to justify the charges imposed for the use of airports and other facilities. The SSG-A15 assessed whether these requirements derive from the Chicago Convention and are thus binding or whether they are simply recommendations from the guidance material.

4.2.4 **Cost-relatedness**

4.2.4.1 The principle of cost-relatedness was discussed extensively in several meetings of the SSG-A15. Members expressed differing views on the extent to which the principle constituted an obligation under Article 15 of the Chicago Convention. Ultimately, the SSG-A15 concluded that the requirement of cost-relatedness of charges stems from Article 15. This conclusion was based on the considerations set out below.

4.2.4.2 Although the second paragraph of Article 15 does not explicitly mention the term "cost-relatedness", the wording suggests that the charge must relate to a service provided to the aircraft, as it reads "*[a]ny charges that may be imposed or permitted to be imposed by a Contracting State* <u>*for the use of*</u> *such airports and air navigation facilities by the aircraft of any other Contracting State* [...]" (emphasis added). If a charge is imposed for the use of airports or air navigation facilities, this relationship is maintained if the charge is based on the costs incurred to provide those facilities and enable their use, including a reasonable markup for overheads. The common meaning of the term "charge" supports this understanding. As defined in Assembly Resolution A42-26, a charge is a levy that is designed and applied specifically to recover the costs of providing facilities and services for civil aviation, whereas a tax is a levy that is designed to raise national or local government revenues which are generally not applied to civil aviation in their entirety or on a cost-specific basis. Interpreting the text of Article 15 in good faith and considering the ordinary meaning of the terms "charge" and "for the use of" leads to the conclusion that the principle of cost-relatedness stems from Article 15.

4.2.4.3 Article 31 (2) of the VCLT requires that the context also be considered when interpreting treaty provisions. In this connection, it is instructive to note that Article 71 of the Chicago Convention provides that if the Council provides airport and air navigation facilities, it "*may specify* <u>*just and reasonable*</u> *charges for the use of the facilities provided*" (emphasis added). Further, in similar fashion to Article 71 of the Chicago Convention, Article 1, Section 4 (2) of the *International Air Services Transit Agreement* (Chicago, 1944 – the "IASTA") which mirrors Article 15 of the Chicago Convention also provides that the charges for the use of airports and other facilities must be just and reasonable. Although the Contracting States to the Chicago Convention and the IASTA are not identical, Article 71 of the Chicago Convention and Article 1, Section 4 (2) of the IASTA form part of the context of Article 15 of the Chicago Convention. The IASTA was signed on the same day as the Chicago Convention and is therefore an agreement relating to the treaty which was made in connection with the conclusion of the Chicago Convention.

4.2.4.4 Article 44 d) of the Chicago Convention establishes that one of the aims and objectives of ICAO is to "*meet the needs of the peoples of the world for […]* <u>*economical*</u> *air transport*" (emphasis added). Considering the ordinary meaning of the term "economical" as profitable or affordable, the clear objective is to avoid unnecessary financial burdens for the airlines and their customers to facilitate the healthy growth of air transport and provide affordable air mobility. For that objective to be fulfilled, charges must be related to the costs incurred. Thus, as part of the context, the above would support the interpretation that the requirement for charges to be cost-related derives from Article 15.

4.2.5 **Publication of charges**

4.2.5.1 There was no consensus within the SSG-A15 on whether there is an obligation incumbent upon Contracting States under Article 15 of the Convention to provide detailed information to ICAO about the composition of their charges.

4.2.5.2 The argument in support of interpreting Article 15 to include such a requirement was that the communication by Contracting States to ICAO of such detailed information on how their charges are composed is mandatory in view of the Council review process foreseen in Article 15. Such information would be required in order for a Contracting State to make a representation to Council; without that information other Contracting States would not be in a position to ascertain whether or not a charge imposed by a State is compliant with Article 15. Further, it was argued that the obligation to publish and communicate charges is linked to the Council review process as indicated by the exact wording used in Article 15: "*[a]ll such charges shall be published and communicated to the International Civil Aviation Organization, provided that, upon representation by an interested Contracting State […]*" (emphasis added). Finally, if information justifying a charge is made available, this would enable Contracting States to make informed and substantiated decisions on whether to seek recourse in connection with the charge concerned.

4.2.5.3 The primary argument against such an interpretation of Article 15 was that there are no grounds for upholding such an interpretation of the wording of Article 15. The text only requires the publication and communication to ICAO of charges and not of detailed information justifying the charges. Moreover, the obligation to publish and communicate the charges to ICAO is independent from the Council review process despite the qualification "provided that" used in the wording of Article 15. During the Council review process, the Contracting State whose charges are challenged could be requested to provide detailed information to justify the charges under review. In practice, details of the composition of the charges are often made available to airspace users and other stakeholders during the consultation process. In this regard, it was noted that although the principle of consultation is a core element of the guidance in Doc 9082, it did not form part of the obligations arising under Article 15 of the Chicago Convention. Considering that there has been only one review case, unfounded representations and procedural economy cannot be used as justification for interpreting Article 15 to include a requirement for Contracting States to communicate detailed information about charges to ICAO.

4.2.5.4 The SSG-A15 reviewed samples of the information communicated by Contracting States to ICAO as published on the Aero-Tariffs platform to assess whether there is a subsequent practice within the meaning of Article 31 (3) b) of the VCLT among Contracting States to communicate to ICAO detailed information about the composition of charges. The SSG-A15 found that the Aero-Tariffs platform only contains the final charges and that no detailed information about the composition of the charges is published. Thus, there was also no evidence of a subsequent practice.

4.2.5.5 Having acknowledged the divergence of views on the question of exactly what information about charges must be published and communicated to ICAO under Article 15, the SSG-A15 agreed that any charges that may be imposed or permitted to be imposed by a Contracting State for the use of airports and air navigation facilities by the aircraft of other Contracting States shall be published and communicated to ICAO. If any such charge is not published and communicated to ICAO, this would constitute a non-compliance with Article 15. On the other hand, if any such charge is published and communicated to

ICAO, that does not automatically mean the charge is in full compliance with Article 15, as it could still be inconsistent with its other provisions including, for example, the prohibition against discrimination and thus in breach of Article 15.

4.3 **Cross-subsidization**

4.3.1 The Draft Guidance Material could be understood as stipulating that there would be a breach of Article 15 if the proceeds of charges illegally levied against the airlines of other States are used to subsidize the airlines or other entities of the charging State. The ATRP Representative clarified that this was not the intended meaning and that the illustrative scenario involving the use of proceeds of charges illegally levied to subsidize the airlines of the charging State was only meant as an example.

4.3.2 Following a careful review of the wording of Article 15, the SSG-A15 did not find any evidence of an express prohibition against using the proceeds of charges to fund the operations and activities of national entities of the charging State. Accordingly, the SSG-A15 has recommended the appropriate revisions to the Draft Guidance Material as reflected in **Appendix A**.

4.4 **Prohibition against charges imposed in respect solely of the right of transit, entry or exit**

4.4.1 Regarding the last sentence of Article 15, the SSG-A15 identified the need to define criteria for determining whether a charge is imposed in respect solely of the right of transit over, or entry into or exit from the territory of a State. The SSG-A15 agreed that the last sentence of Article 15 does not prohibit the imposition of any charges for the use of airports and other air navigation facilities, in particular air navigation services, when an aircraft makes use of those facilities. The SSG-A15 considered whether fees, dues or other charges may be imposed in connection with permits or other operational authorizations granted by a Contracting State to operators of other Contracting States.

4.4.2 **Fees, dues or other charges imposed in respect solely of the right of transit, entry or exit – charges for permissions and authorizations**

4.4.2.1 The SSG-A15 agreed that any fees, dues or other charges imposed by a Contracting State would contravene Article 15 of the Chicago Convention if they are imposed only in respect of being allowed to transit over, enter into or exit from the territory of the charging State, and with no service provided to the aircraft. The prohibition against the imposition of any such fees, dues or other charges therefore means that they cannot be imposed for the grant by a State of permissions or other authorizations for aircraft of other States merely to access and fly over its territory. This understanding is based on the rationale set out below:

4.4.2.2 The wording of the last sentence of Article 15 is clear. "*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*". Considering its ordinary meaning, Article 15 prohibits ("shall" in international treaties describes a mandatory obligation) a Contracting State from imposing any fees, dues or other charges for granting to the aircraft of other Contracting States "only" the right to transit over, entry into or exit from its territory and that would prevent the exercise of traffic rights should an operator refuse to make payment.

4.4.2.3 The last sentence of Article 15 must also be read in conjunction with Articles 5 and 6 of the Chicago Convention. Those articles set out the provisions under which aircraft of any Contracting State may access the airspace of other Contracting States, including the circumstances and types of operations for which special permits or other authorizations may be required. The Chicago Convention thus foresees that under certain circumstances, access to a State's airspace may require special permission or other authorization from that State and, at the same time, stipulates that no fees, dues or other charges shall be imposed in respect solely of the right of transit over, entry into or exit from the territory of a Contracting State. Some Members expressed the view that the prohibition against the imposition of fees, dues or other charges in respect solely of the right of transit over, entry into or exit from a Contracting State's territory did not preclude certain fees associated with the processing of authorizations. However, the SSG-A15 generally agreed that for the Chicago Convention to preserve its normative coherence, the granting of traffic rights and the special permissions or other authorizations needed to exercise those rights must not be subject to any fees, dues or other charges. As previously noted, such interpretation would be consistent with the Chicago Convention's objective of meeting the needs of the peoples of the world for economical air transport.

4.4.3 **Delegation of the management of overflight requests to third parties/private entities**

4.4.3.1 The SSG-A15 concluded that Article 15 prohibits the imposition of fees, dues or other charges solely for the granting of access to airspace regardless of whether the granting of such access is outsourced by a Contracting State to third parties and/or private entities or performed by the Contracting State itself. This conclusion is based on the rationale that Contracting States are bound by the Chicago Convention and that a Contracting State cannot evade its obligations under an international treaty by transferring activities usually performed by the Contracting State to another State and/or a private entity. Rather it is a principle of international law that a Contracting State to an international treaty must ensure that the treaty is complied with in its territory and by its nationals. The ultimate responsibility for ensuring that no fees, dues or other charges are imposed in respect solely of the right of transit over, entry into or exit from a Contracting State's territory rests with the State concerned.

4.4.3.2 This derives on the one hand from the customary law principle of "*pacta sunt servanda*" that is also codified in Article 26 of the VCLT ("*[e]very treaty in force is binding upon the parties to it and must be performed by them in good faith*") and on the other hand from the hierarchy between international treaties and national law. Thus Article 27 of the VCLT stipulates that "*a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty [….]*"

4.4.4 **Conditioning access to airspace upon the grant of benefits other than direct payments**

4.4.4.1 Article 15 not only forbids a Contracting State from imposing dues, fees or charges that require direct payments but also prohibits Contracting States from conditioning access to their airspace upon the provision of non-cash benefits or indirect payments by the airlines or operators of other Contracting States solely for the right to transit over, enter into or exit from a State's territory. Examples of non-cash benefits would be the provision of goods or services. An example of an indirect payment would be the requirement to conclude contracts or agreements with the granting State or an entity of that State that would require the airline or operator seeking access to make payment or incur expense.

4.4.4.2 The basis of this understanding is that the requirement of non-cash benefits or indirect payments creates an economic disadvantage for the Contracting State or its airlines or operators seeking airspace access as compared to those of the granting State. The effect is thus equivalent to fees, dues or other charges entailing direct payments. Considering the objective of the Chicago Convention to meet the needs of the peoples of the world for economical air transport as supporting how the uniform conditions obligations under Article 15 is interpreted, the two situations cannot be viewed differently.

4.4.4.3 Conditioning the right of aircraft of other Contracting States to transit over, enter into or exit from a State's territory upon the provision of non-cash benefits or indirect payments could also be seen as a circumvention of the last sentence of Article 15. Such circumvention would be inconsistent with the principle of *pacta sunt servanda*, that requires Contracting States to perform and execute a treaty in good faith.

4.5 Relation to Article 68 of the Chicago Convention

4.5.1 Article 68 of the Chicago Convention and Article 15 are directly connected. Article 15 explicitly states that the obligation of a Contracting State to keep its airports open to public use by its national aircraft under uniform conditions to aircraft of other Contracting States is subject to the provisions of Article 68. According to Article 68, 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 other Contracting States. The connection to Article 68 of the Chicago Convention should be included in the Draft Guidance Material.

5. DRAFT STATE LETTER TO CONTRACTING STATES CLARIFYING OBLIGATIONS UNDER ARTICLE 15

5.1 The SSG-A15 reviewed and proposed several revisions to the Draft State Letter to align its contents with those of the Draft Guidance Material. In doing so, it was the understanding of the SSG-A15 that the Draft State Letter would be issued and circulated to Contracting States along with the Draft Guidance Material once the latter has been finalized and approved by the Council. The SSG-A15's legal review of and proposed revisions to the Draft State Letter were therefore aimed at ensuring that both documents were legally consistent with Article 15 of the Chicago Convention.

6. DRAFT PROCESS FOR THE REVIEW OF CHARGES BY THE ICAO COUNCIL

6.1 The SSG-A15 decided that the question of whether a dedicated process should be established for the review by the Council of charges imposed for the use of airports and other facilities as envisaged under Article 15 is a policy decision and not a legal question. It is for the Council to decide whether it deems it useful to have such a dedicated process established at this juncture. Further, the Council has, from a legal perspective, considerable discretion in designing the process, subject only to the legal requirements set out in the Chicago Convention, in particular Article 15, the constitutional and/or institutional role and powers of the various ICAO bodies to be involved in the process as well as the general principles that ensure that the due process is observed.

6.2 Having conducted a legal review of the Draft Process, the SSG-A15 concluded that, subject to some minor editorial revisions indicated in **Appendix C**, the Draft Process could facilitate the Council's conduct of its review of charges function as prescribed in Article 15. Should the Council decide to retain the Draft Process, the SSG-A15 recommends that its wording be further streamlined and aligned with that of the Chicago Convention, and that the institutional roles of other ICAO bodies be appropriately reflected.

6.3 Differentiation from the dispute settlement process under Article 84

6.3.1 The SSG-A15 noticed that in some instances the wording used in the Draft Process does not precisely differentiate the review of charges under Article 15 from the settlement of disputes process under Article 84 of the Chicago Convention. Article 84 sets out the procedure for the settlement of a disagreement between two or more Contracting States relating to the interpretation or application of the Chicago Convention and its Annexes by decision of the Council with the possibility of an appeal to an ad hoc arbitral tribunal or the International Court of Justice. In contrast, the review process envisaged under Article 15 is not an adversarial procedure that ends with a binding decision of the Council against which appeal is possible. The outcome of a review under Article 15 of charges imposed for the use of airports and other facilities are non-binding Council recommendations for the consideration of the State or States concerned. While such recommendations may not be legally binding, if a Contracting State chooses not to carry them out, the Council could report such failure to carry out the recommendation to Contracting States pursuant to Article 54 j) of the Chicago Convention.

6.4 Role of the Legal Committee, the Legal Affairs and External Relations Bureau and the Air Transport Committee

6.4.1 The Draft Process contemplates the involvement of ICAO bodies such as the ATC, the ATRP, the AEP-ANSEP and LEB in the Council process for the review of charges. According to the Constitution of the Legal Committee (Assembly Resolution A7-5), one of the functions and duties of the Legal Committee is to advise the Council on matters relating to the interpretation and amendment of the Chicago Convention, referred to it by the Council. Accordingly, it is not the role of LEB to advise the Council on matters pertaining to the interpretation or amendment of the Chicago Convention. Should the Council require such advice in the context of its review of charges pursuant to Article 15, this would have to be referred to the Legal Committee and not to LEB. The Draft Process should be aligned with the Constitution of the Legal Committee.

6.4.2 The Draft Process foresees the involvement of the ATC in the review of charges. This task would need to be reflected in the mandate given to the ATC.

6.5 Scope of the review process

6.5.1 The question arose as to whether the review process envisaged in Article 15 only covers charges imposed by a Contracting State for the use of airports and air navigation facilities as indicated in the second paragraph of Article 15 or whether the review is broader and would also cover the obligation to grant access to airports and air navigation facilities under uniform conditions and the prohibition against the imposition of fees, dues or other charges in respect solely of the right of transit over, entry into or exit from a Contracting State’s territory as set out in the last sentence of Article 15.

6.5.2 Following extensive deliberations, it was concluded that an ordinary interpretation of Article 15 considering its object, purpose and context supports the view that only charges imposed by Contracting States for the use of airports and air navigation facilities are subject to review by the Council under Article 15.

6.6 Burden of proof

6.6.1 The Draft Process needs to consider what kind of information is available to the Contracting States. As Article 15 does not explicitly stipulate that Contracting States have an obligation to publish and communicate to ICAO detailed information about their charges, such as information on the cost-base and cost-allocation methodologies, the review process should not disproportionately require the State making a representation to provide detailed information and explanations as to why it considers that a charge imposed by another Contracting State is not compliant with Article 15. While the SSG-A15 understood that the State making a representation may not have full access to the information on costing and fee-setting which informs the charges in question, it nonetheless agreed that that State must act in good faith and must indicate some reasonable grounds when making its representation for the Council to review those charges. The SSG-A15 further agreed that the review process should inherently empower the Council, upon receipt of a representation, to require the charging State to provide detailed information justifying the charges concerned.

6.7 **General procedural principles**

6.7.1 There are some general principles that review processes usually have in common. These principles ensure the legitimacy and credibility of the process and thus support the acceptance of and voluntary compliance with the outcome. The Draft Process could benefit from those general principles:

6.7.1.1 **Transparency**: The recommendation of the Council should include the considerations and reasons that lead to the Council's conclusions. It must be clear why the Council has made a certain recommendation.

6.7.1.2 **Impartiality**: Council Members involved in the review process should be impartial and conflicts of interest must be avoided. To this end, it may be helpful to include a provision stating that no member of the Council shall participate in the Council's consideration of a representation in respect of which it is an interested Contracting State.

6.7.1.3 **Evidence-based**: The Council should collect, assess and consider all relevant information and base its review and recommendation thereon.

6.7.1.4 **Fairness**: Parties to the process must be provided with fair and reasonable opportunities to be heard and to present their case.

6.7.1.5 **Timeliness**: The review needs to take place within a reasonable period, and the parties need to have a reasonable amount of time to present their views.

7. CONCLUSION AND RECOMMENDATIONS

7.1 In conclusion, the SSG-A15 considers that, in principle, the ATRP Draft Documents reviewed and revised accordingly constitute legally acceptable implementation guidelines that can assist Contracting States in improving their compliance with Article 15 of the Chicago Convention.

7.2 The ATRP Draft Documents are, subject to the comments identified above and the proposed revisions reflected in Appendices A, B and C to this Report, therefore recommended for endorsement by the Legal Committee.

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APPENDIX A

DRAFT GUIDANCE MATERIAL ON ARTICLE 15 OF THE CHICAGO CONVENTION

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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[13]) 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

[13] 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.[14]

[14] 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.

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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.

— END —