

AIR LAW, REGULATION AND COMPLIANCE MANAGEMENT



COURSE DESIGNED FOR
ISTANBUL TECHNICAL UNIVERSITY AND TURKISH AVIATION ACADEMY
BY MCGILL UNIVERSITY INSTITUTE OF AIR AND SPACE LAW

AIR NAVIGATION SERVICE PROVIDERS

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Institute of Air & Space Law

Faculty of Law

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PLAN

1. Importance of Air Navigation
2. Objectives of Air Traffic Services (ATS)
3. International Regulation of ATS
4. Commercialisation of ATS
5. Delegation of ATS

SPECIFIC LEARNING OBJECTIVES

1. To recognize the positive and negative factors in modern trends of the development of Air Traffic Services provision.
2. To identify how it could influence on the activity of your airlines.

1. Importance of Air Navigation

The Importance of Air Navigation

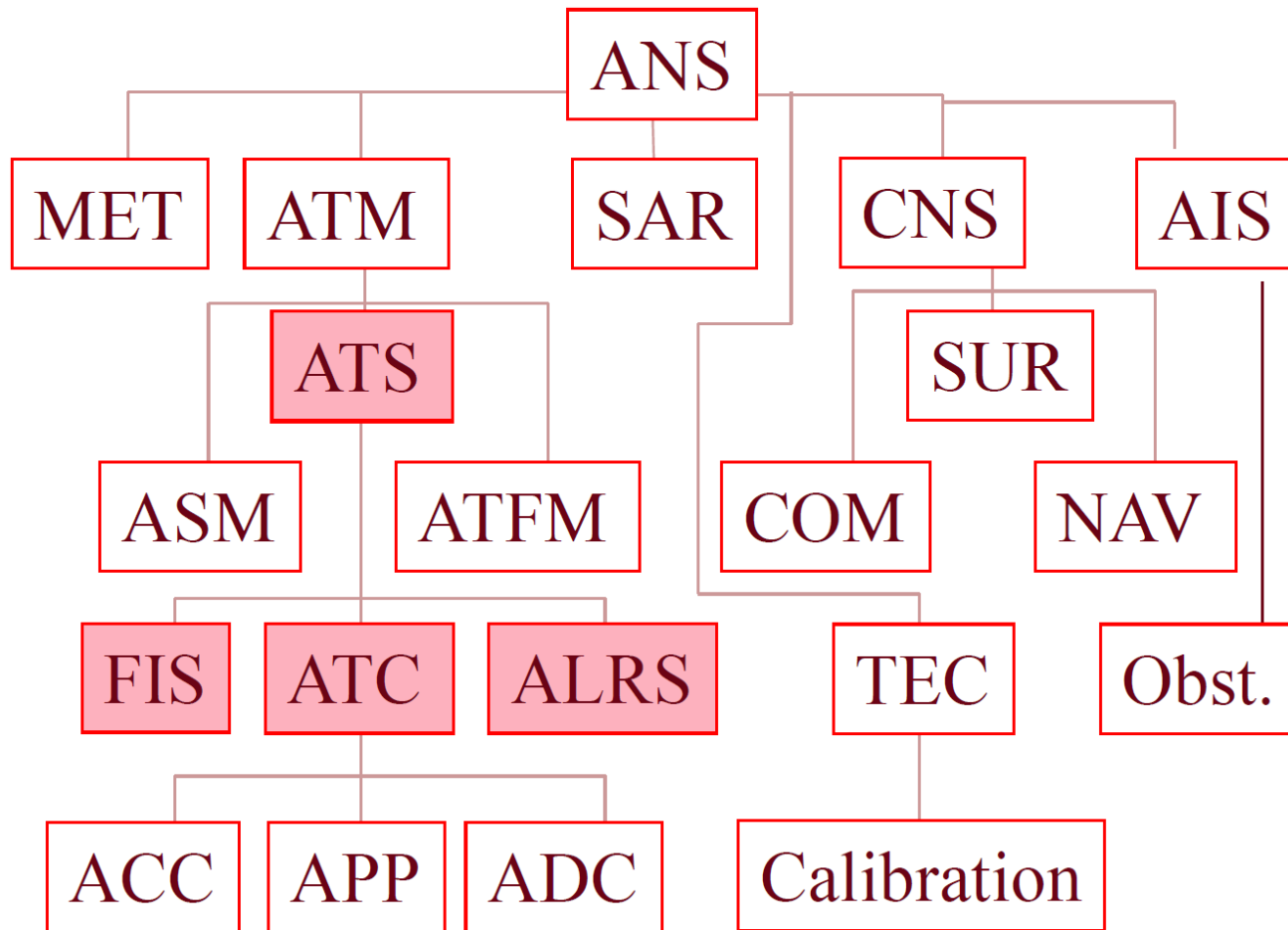
“Air navigation services are manifestly important to the safety and efficiency of air transportation. . . . They also impact airline economics both in terms of the charges they impose upon users of the system, and the delay and circuitry they can impose on aircraft operations.”

Paul Dempsey, Public International Air Law (2008)

The Importance of Air Navigation (cont)

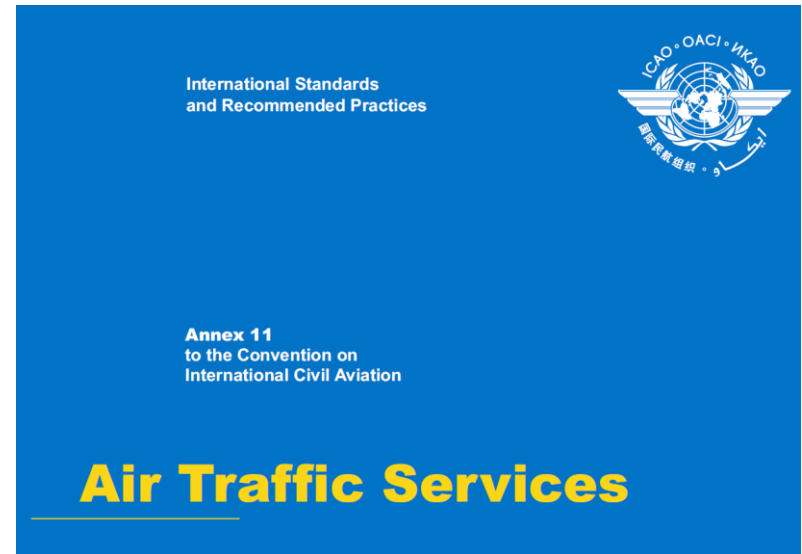
“Among the traditional functions of government, air traffic control is provided for the purpose of preventing collisions between aircraft in the air and between aircraft and obstructions on the ground, as well as expediting and maintaining an orderly flow of air traffic. In addition to ATC, the effective management of air traffic requires associated services such as meteorology, search and rescue, and telecommunications, as well as the provision of aeronautical information such as charts.”

Ira Lewis, "Analysis of Alternative Institutional Arrangements for Reform of US Air Traffic Control" (2004)



2. Objectives of Air Traffic Services

Annex 11 (ATS): purpose



"Annex 11 pertains to the establishment of airspace, units and services necessary to promote a safe, orderly and expeditious flow of air traffic. [...] Its purpose, together with Annex 2, is to ensure that flying on international air routes is carried out under uniform conditions designed to improve the safety and efficiency of air operation."

Source: ICAO Annex 11 (foreword)

Divisions of ATS (ICAO Annex 11)

The air traffic services shall comprise three services identified as follows:

1. **The air traffic control service (ATC)**, this service being divided in three parts as follows:

Area control service (ACC)

Approach control service (APP): The provision of air traffic control service for those parts of controlled flights associated with arrival or departure

Aerodrome control service (ADC): The provision of air traffic control service for aerodrome traffic

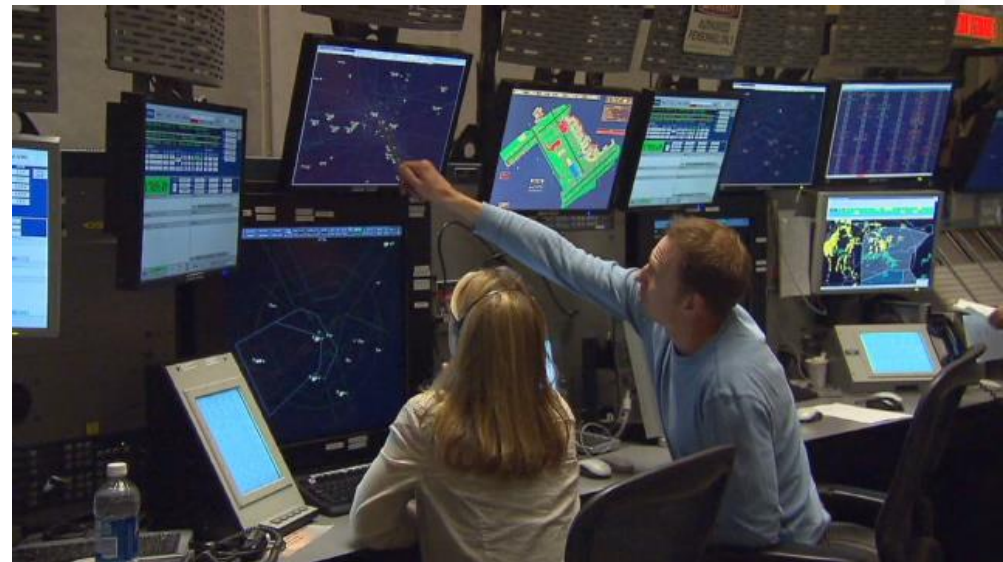
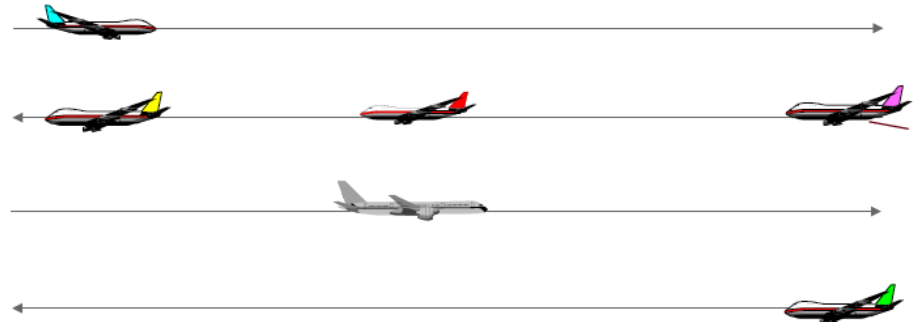
2. **The flight information service (FIR)**

3. **The alerting service (ALRS)**

APP, ADC



ACC



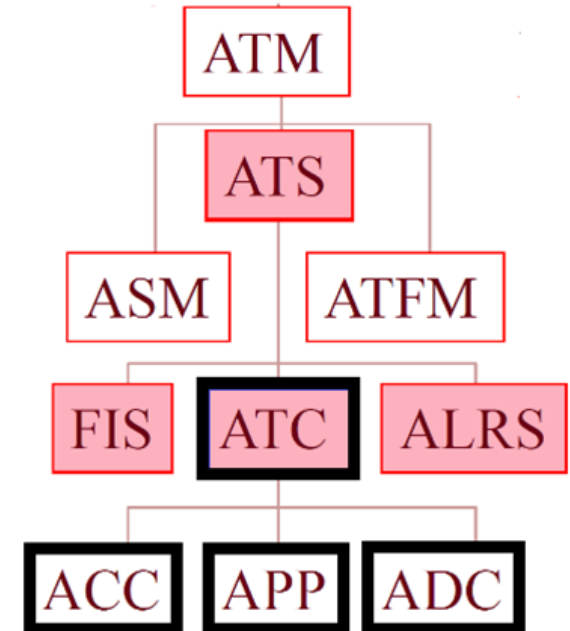
Objectives of Air Traffic Control

SAFETY:

- Prevent collisions between aircraft
- Prevent collisions between aircraft on the manoeuvring area and obstructions on that area

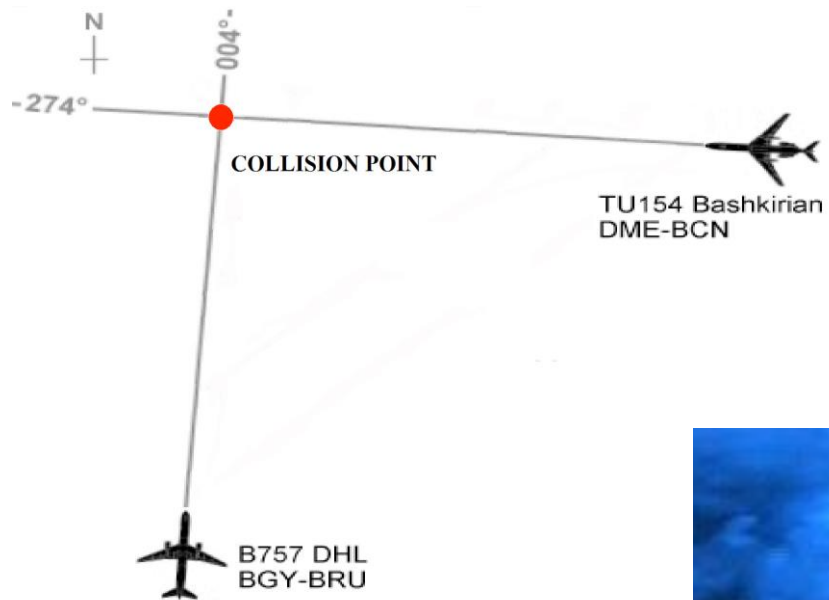
CAPACITY:

- Expedite and maintain an orderly flow of air traffic

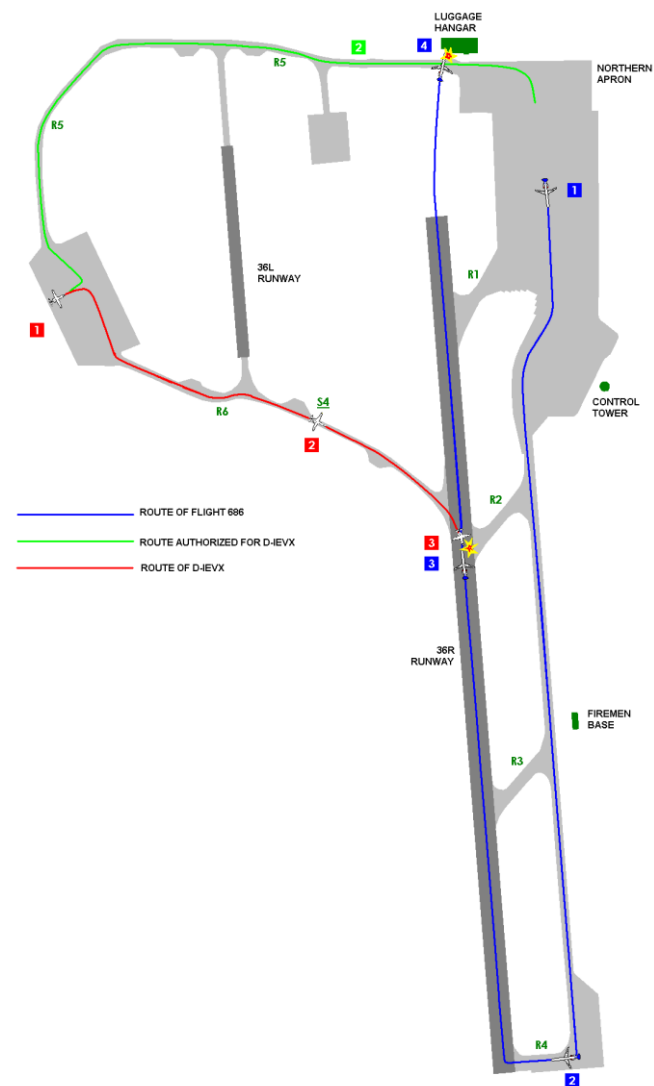


Source: Annex 11, § 2.2

Überlingen, 1 July 2002



Linate, 8 October 2001

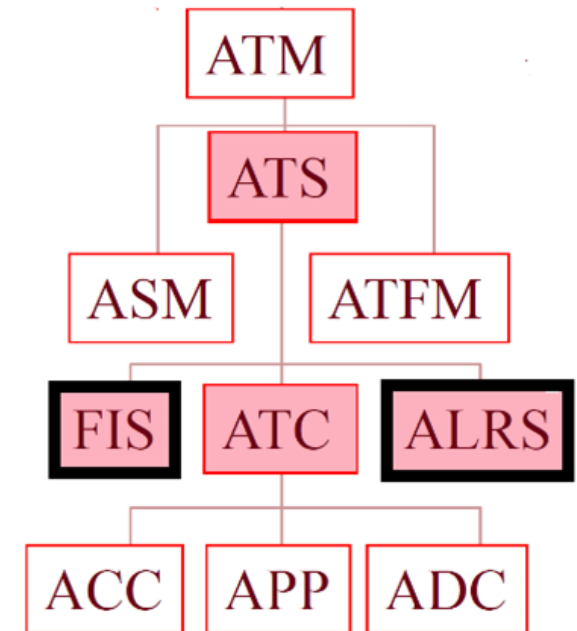


Objectives of Flight Information Service (FIS)

- Provide advice and information useful for the safe and efficient conduct of flights

Objectives of Alerting Service (ALRS)

- Notify appropriate organisations regarding aircraft in need of search and rescue aid, and assist such organisations as required



Flight Information Regions

“Those portions of the airspace where it is determined that flight information service and alerting service will be provided shall be designated as flight information regions.”



Source: Annex 11, § 2.5.2.1

3. International Regulation of ATS

Chicago Convention

Annex 11 to the Chicago Convention

ICAO Document 4444 (PANS/ATM)

ICAO Document 7030 (Regional Supplementary Procedures)

Regional Air Navigation Plans

Regional provisions (Regional regulatory authorities)

National Prescriptions

Local Procedures

Chicago Convention – Specific Articles

Article 1 - *Sovereignty*

Article 9 - *Prohibited areas*

Article 11 - *Applicability of air regulations*

Article 15 - *Airport and similar charges*

Article 28 - *Air navigation facilities and standard systems*

Article 37 - *Adoption of international standards and procedures*

Article 68 - *Designation of routes and airports*

Article 28 - *Air Navigation Facilities and Standard Systems*

"Each contracting state undertakes, so far as it may find practicable, to:

a) Provide, in its territory, airports, radio services, meteorological services and other air navigation facilities to facilitate international air navigation, in accordance with the standards and practices recommended or established from time to time, pursuant to this Convention;

b) Adopt and put into operation the appropriate standard systems of communications procedure, codes, markings, signals, lighting and other operational practices and rules which may be recommended or established from time to time, pursuant to this Convention;

c) Collaborate in international measures to secure the publication of aeronautical maps and charts in accordance with standards which may be recommended or established from time to time, pursuant to this Convention.

Article 37

Adoption of international standards and procedures

Each contracting State undertakes to collaborate in securing the highest practicable degree of uniformity in regulations, standards, procedures, and organization in relation to aircraft, personnel, airways and auxiliary services in all matters in which such uniformity will facilitate and improve air navigation.

Article 37 (cont)

To this end the ICAO shall adopt and amend from time to time, as may be necessary, international standards and recommended practices and procedures dealing with:

- [...]
- communications systems and air navigation aids, including ground marking,
- rules of the air and air traffic control practices,
- licensing of operating and mechanical personnel,
- collection and exchange of meteorological information,
- aeronautical maps and charts,
- and such other matters concerned with the safety, regularity, and efficiency of air navigation as may from time to time appear appropriate.

Air Navigation Service Providers

Forms

There are three forms of ANS providers:

- Individual State
- Joint States (e.g. EUROCONTROL)
- Non-Governmental Entity on behalf of a State/States

4. Commercialisation of ATS

Air Navigation Service Providers

Degree of Commercialization

- State Authority (CAA)
- Autonomous State Entity
- State-owned Corporation
- Concession/Lease (all or part of the facilities)
- Partial Privatization (e.g. non-aeronautical)
- Not-for-profit (stakeholder owned) Corporation
- Fully Privatized Company

0%



100%

Source: P.Dempsey, Air Navigation (2015)

Advantages of Non-Governmental Entities

- financially self-sufficient
- better able to raise capital in the market, and thereby meet growing capacity needs
- more efficient, and more capable of reducing costs for users, and subsidy requirements from governments
- can have governance structures allowing users greater input on decision making
- more equitable user-charge approach to cost allocation

Source: P.Dempsey, Air Navigation (2015)

Commercialisation
Corporatisation
Privatization

Cir 284
AT/120



Privatization in the Provision of Airports and Air Navigation Services

Commercialisation

"An approach to management of facilities and services in which business principles are applied or emphasis is placed on development of commercial activities"

ICAO Circular 284 AT/120

Corporatisation

"Creation of a legal entity outside government to manage certain facilities and services, either through a specific statute or under an existing statute such as company law. Once corporatised, the entity becomes autonomous."

ICAO Circular 284 AT/120

Privatization

"Transfer of full or majority ownership of facilities and services from the public sector to the private sector."

ICAO Circular 284 AT/120

Why privatize?

"Government financing ... is becoming increasingly difficult in many States. Governments are under pressure to finance other high priority services, especially social services."

ICAO Circular 284 AT/120



ICAO's Concerns

- Privatisation & Ownership

"It may also be preferable to restrict the participation of airlines in the ownership and management of airports and Air Navigation Services to avoid conflicts of interest that may arise when the users become the owners."

ICAO Circular 284 AT/120



ICAO's Concerns

- Privatization and the protection of the public interest

"Every business activity has certain risks, and airports and Air Navigation Services are no exception. The major risks to States in private participation or privatisation in the provision of ... services are that:

the private provider may ignore safety and security requirements;..."

ICAO Circular 284 AT/120

IATA's Concerns



- ANS commercialization may have a negative side, in particular when the principal objective is to maximize profits.
- No matter what organizational form an airport or ANS entity assumes through the process of commercialization, it remains by its nature a monopoly on which the users are completely dependent. There are a growing number of cases of abuse of this monopolistic situation by newly created commercial organizations, often with the complicity of the governments concerned.
- IATA's experience is that, in many cases, commercialization has resulted in significant increases in the airport and ANS cost base that are used to determine charges. In addition, the promised increases in efficiency and productivity have not always materialized.

States' concerns in respect of ANS

Three central concerns:



The organisation in charge of service provision must offer sufficient confidence that all concerns are adequately addressed

Source: F.Schubert, Introduction to ANS (2015)

5. Delegation of ATS

Delegation of ATS

"Delegation of ATS: the process by which "one state delegates to another state the responsibility for establishing and providing air traffic services."

ICAO Annex 11, § 2.1.1

Delegation of ATS (cont)

Article 28 of the Chicago Convention

the responsibility for providing air navigation facilities is a "State responsibility"

Nothing in the Chicago Convention prevents a State from designating another entity, be it a national, foreign, public or private organisation Service Provision

"When it has been determined that air traffic services would be provided, the State concerned should designate the authority responsible for providing such services... The authority responsible for establishing and providing the service may be a State or a suitable agency".

ICAO Annex 11, § 2.1.3.

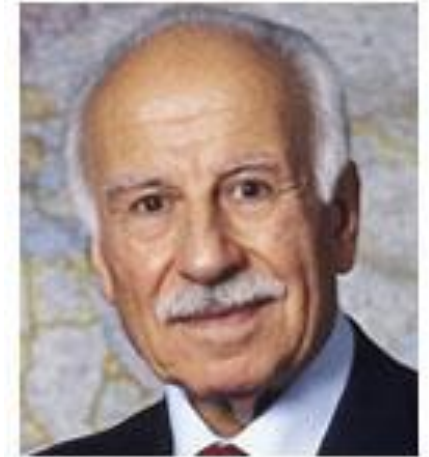
Source: F. Schubert, Introduction to ANS (2015)

Need for Cross Border Arrangements

"The delineation of airspace, wherein air traffic services are to be provided, should be related to the nature of the route structure and the need for efficient service rather than to national boundaries."

ICAO Annex 11, § 2.10.1.

From National to Global ANS



"The future system requires global regulation, global planning, global implementation and global systems integration."

"Airspace structures can no longer only be based on national and domestic considerations. Major efficiency gains will be attained through global integration rather than rigid boundary structures. In order to achieve this goal, there is a need to focus on international rather than on purely national requirements."

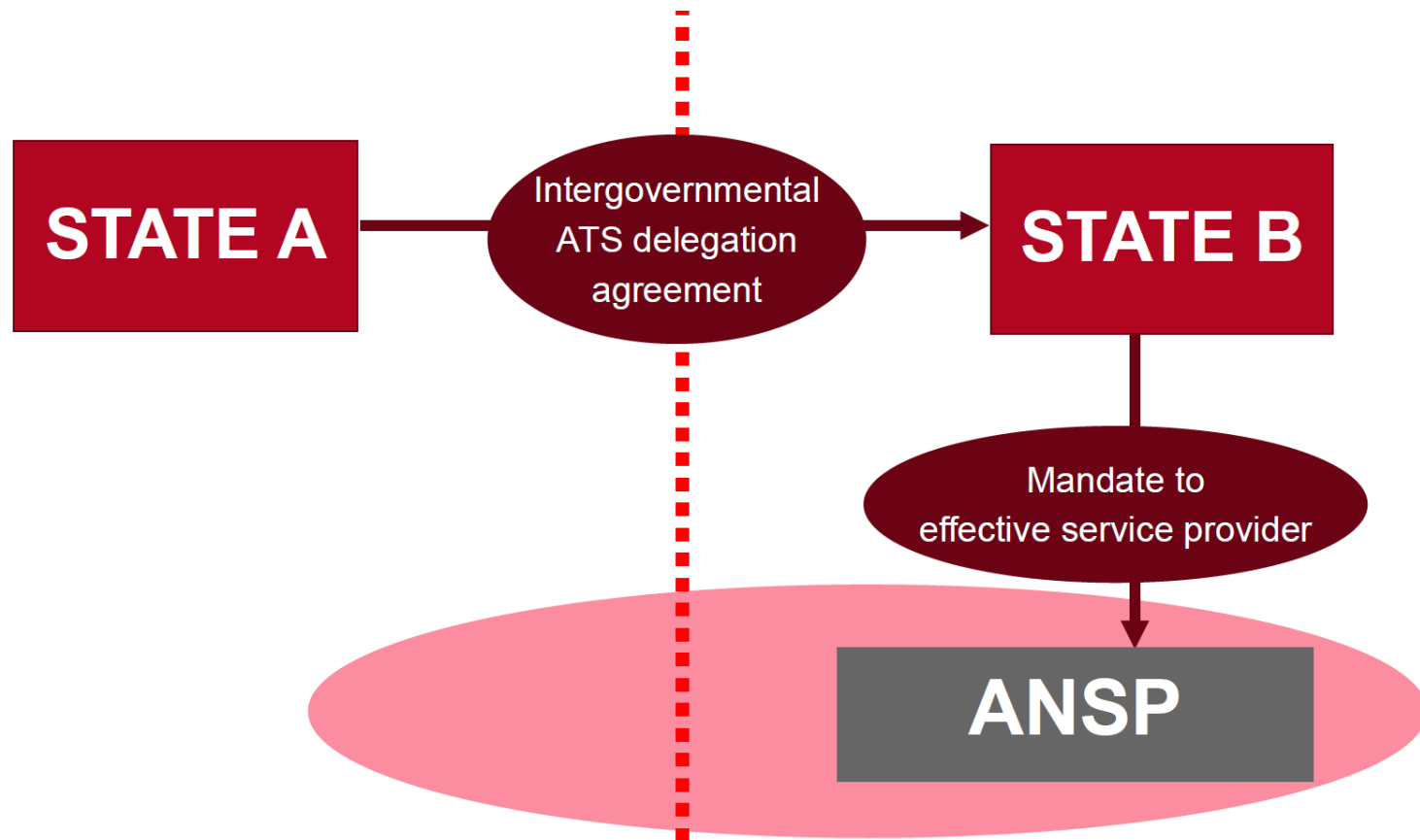
Assad KOTAITE, "Global Challenges and Expectations", ATC Maastricht Conference, 23-24 February 2000

Models for Cross-border Service Provision

1. Air Traffic Services Delegation
2. Service concession
3. Sub-contracting of services
4. Multinational centres

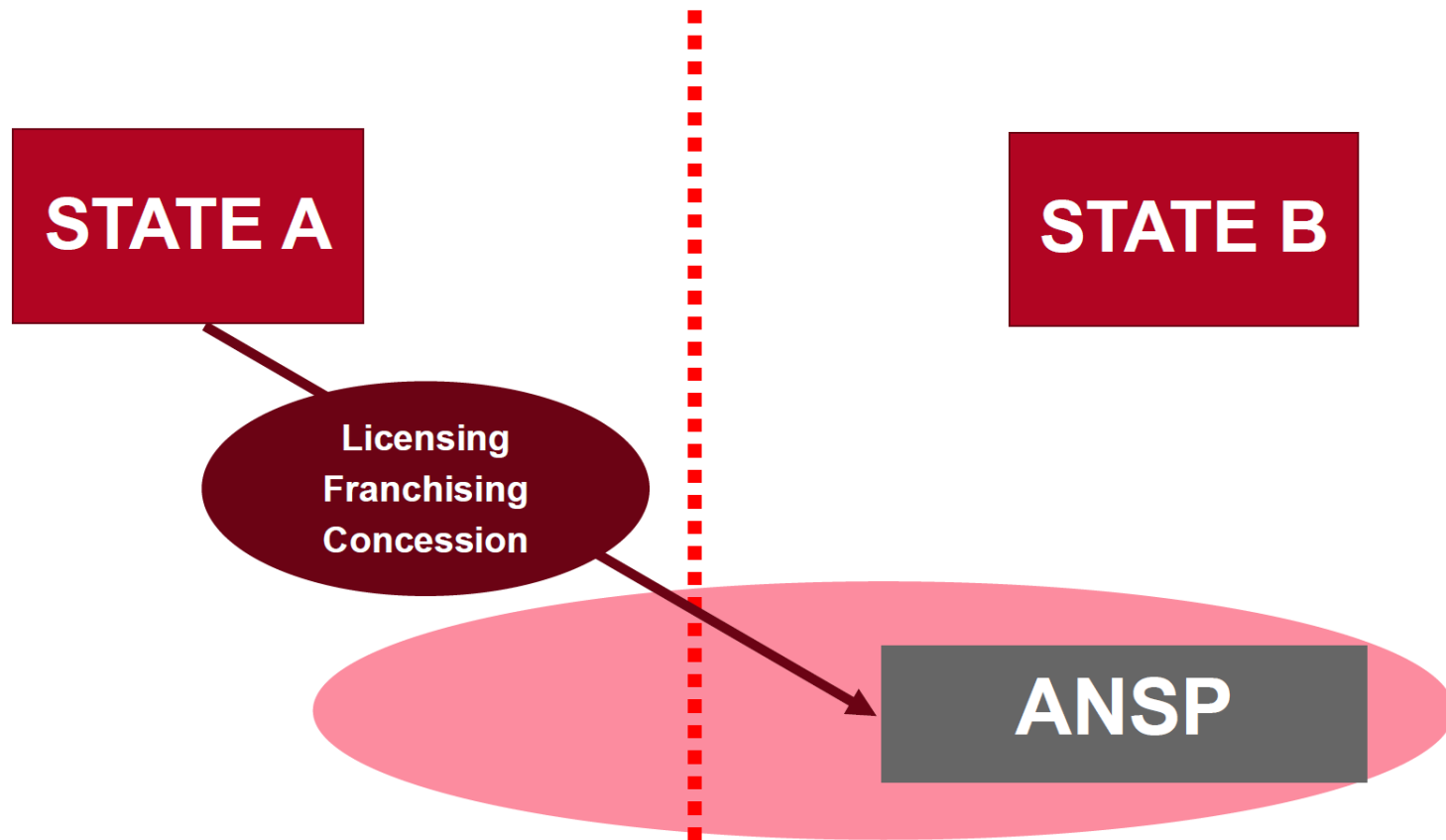
Source: F. Schubert, Introduction to ANS (2015)

Air Traffic Services Delegation



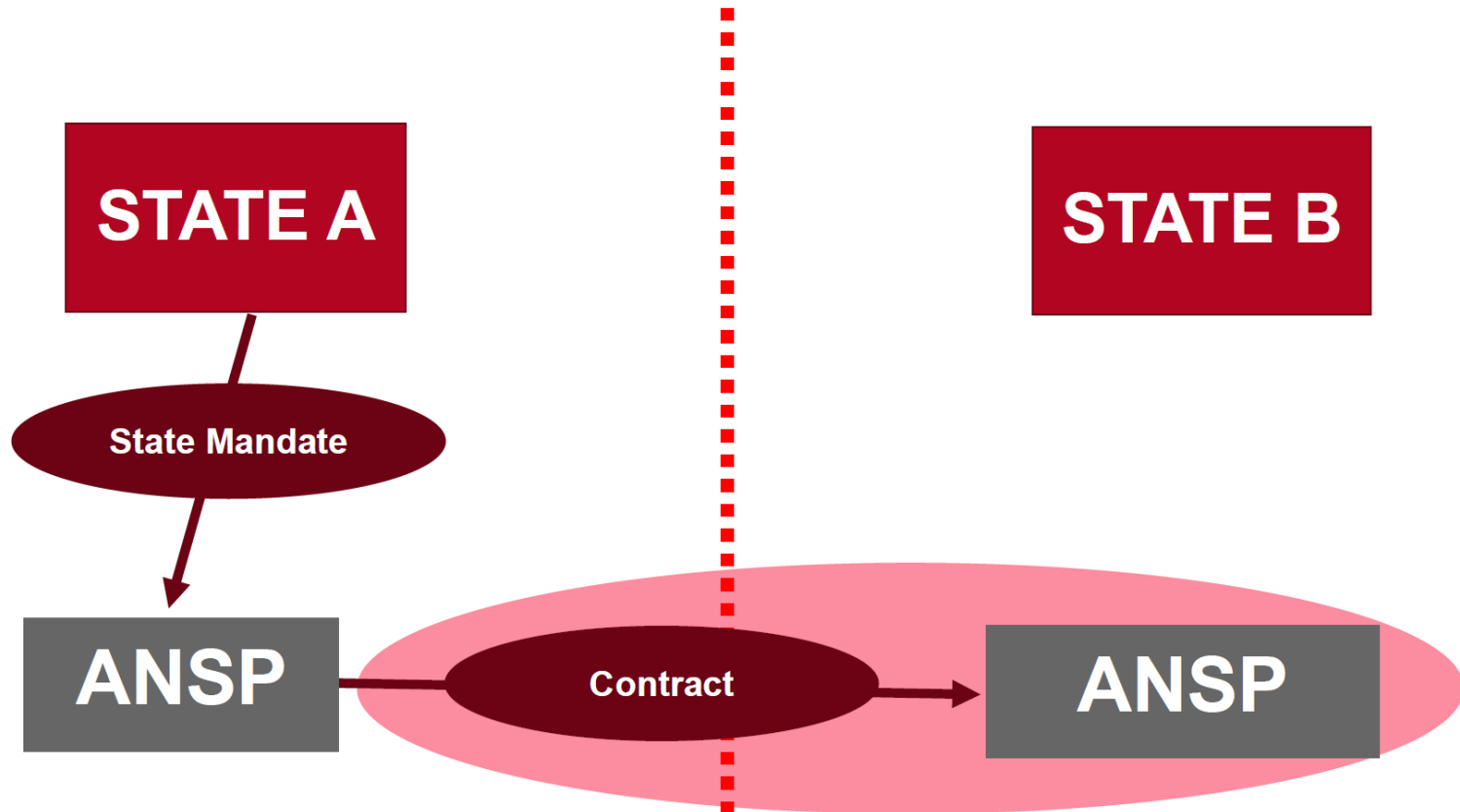
Source: F. Schubert, Introduction to ANS (2015)

Service Concession



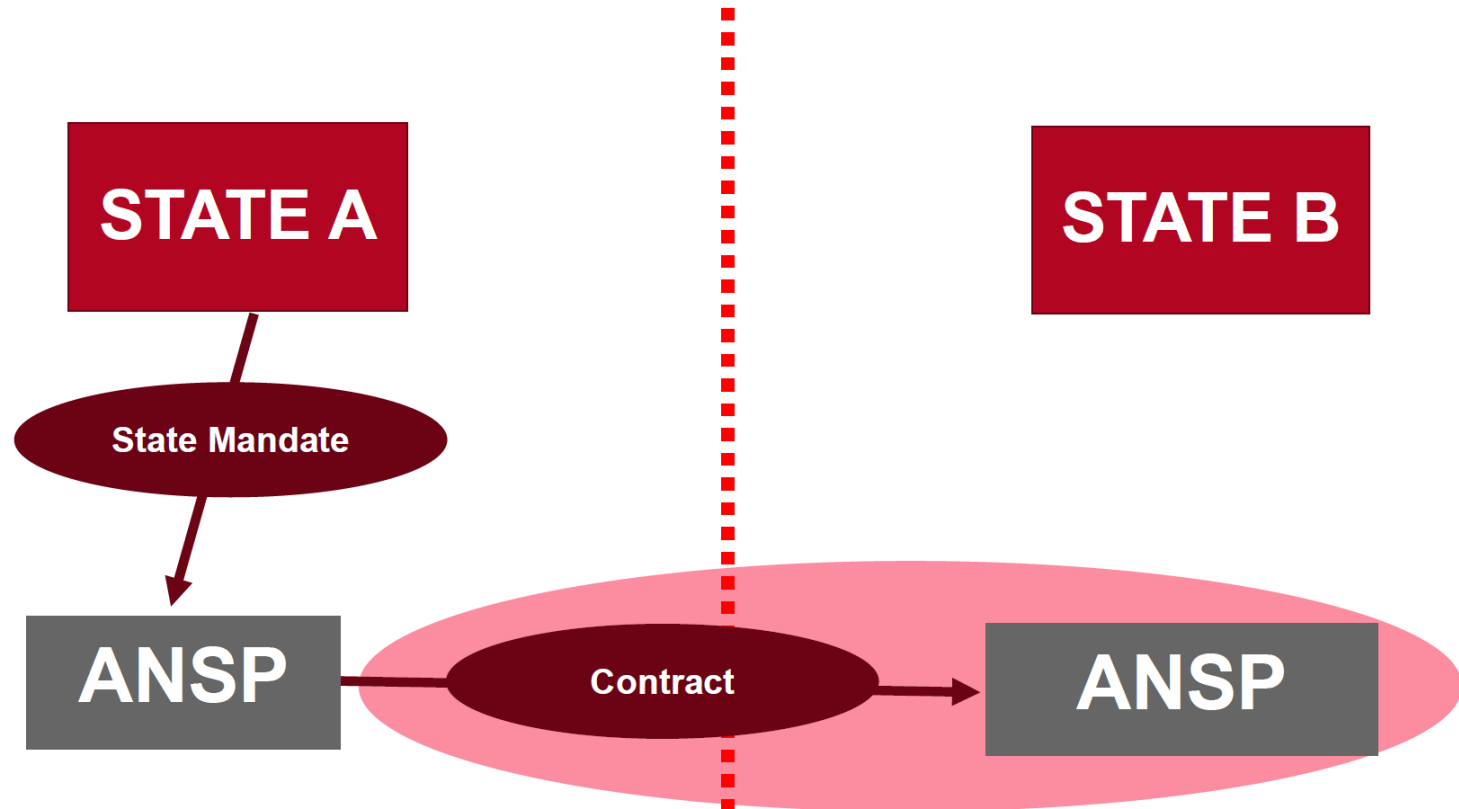
Source: F. Schubert, Introduction to ANS (2015)

Sub-contracting of Services



Source: F. Schubert, Introduction to ANS (2015)

Multinational Centres



Source: F. Schubert, Introduction to ANS (2015)

IMPORTANT!

Delegation, Outsourcing, Privatization,
Commercialisation, etc do NOT exonerate the State
from its obligations under the Chicago Convention!

LEARNING REFLECTION

What are your key takeaways?

What questions do you have?

Thank you!



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