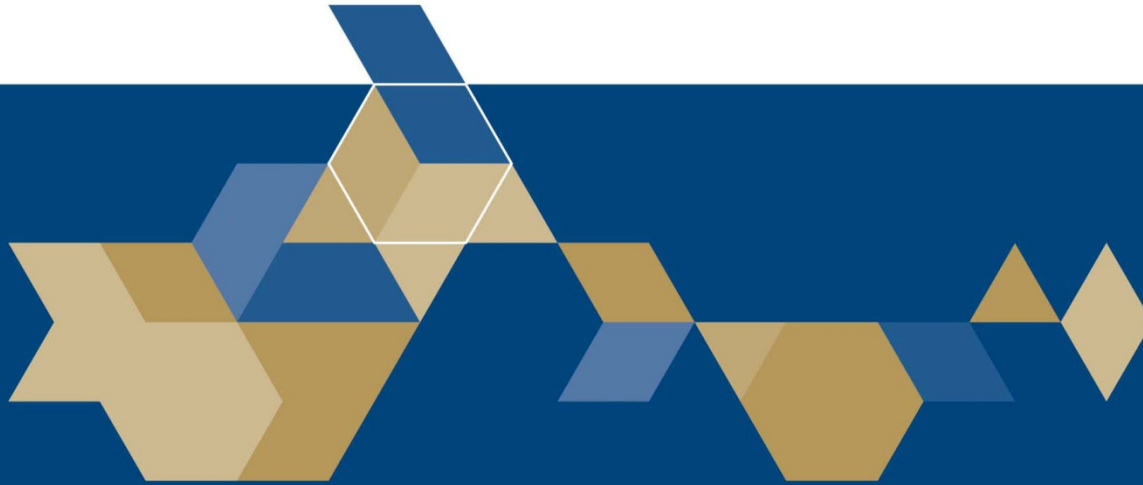


**TURKISH  
AVIATION  
ACADEMY**



**İTÜ**



## **International Regulatory Environment**

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**Air Transportation Systems and Infrastructure**

**Module 5**

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# Outline

- ❑ **Objective:** Provide some common background on the international regulatory environment of air transport
  
- ❑ **Topics:**
  - Background and Freedoms of the Air
  - Bilateral and Multilateral Agreements
  - “Traditional” vs. “Open Skies” Agreements
  - Some important International agencies and organizations

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## Background on International Regulatory Environment

- ❑ “Chicago Convention” (“Convention on International Civil Aviation”, 1944, 54 nations; ratified 1947) provided the initial *conceptual* framework for the evolution of the international regulatory environment for commercial air transportation
- ❑ “Open market” position : liberal, multilateral arrangements, including open competition, unrestricted operating rights, and market-driven frequencies and tariffs
- ❑ “Protectionist position”: “bilateral air service agreements” (ASA) should be the basic regulatory framework; fixing of market access and entry, of capacity and of tariffs/fares
- ❑ Concerns of “protectionists”: US dominance; national security; airspace sovereignty; nascent industry ← *use of landing rights as bargaining tool*
- ❑ Outcome: protectionist position prevailed

# Contributions of the Chicago Convention

- ❑ “Recognition” of air transport as a global industry and activity
- ❑ Need for commonality in airport and air traffic control facilities, equipment and procedures
- ❑ Framework for the provision of ATC services on a global scale
- ❑ International Civil Aviation Organization (ICAO): Technical standards and recommended practices for airports and air traffic control; global seat of documentation on ASA, national practices, etc.
- ❑ Identification of alternative “models” for international regulatory environment for commercial air transport
- ❑ Definition of first five “Freedoms of the Air”

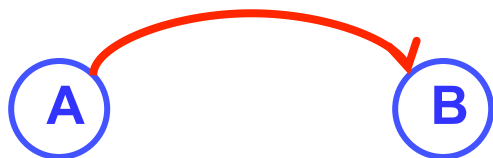
# "Freedoms of the Air"

(With reference to airline X, certificated in State A)

- ❑ First: The right to fly over another State without landing.
- ❑ Second: The right to land in another State for technical reasons (e.g., re-fueling) without picking up or setting down revenue traffic. → *"International Air Service Transit Agreement"*

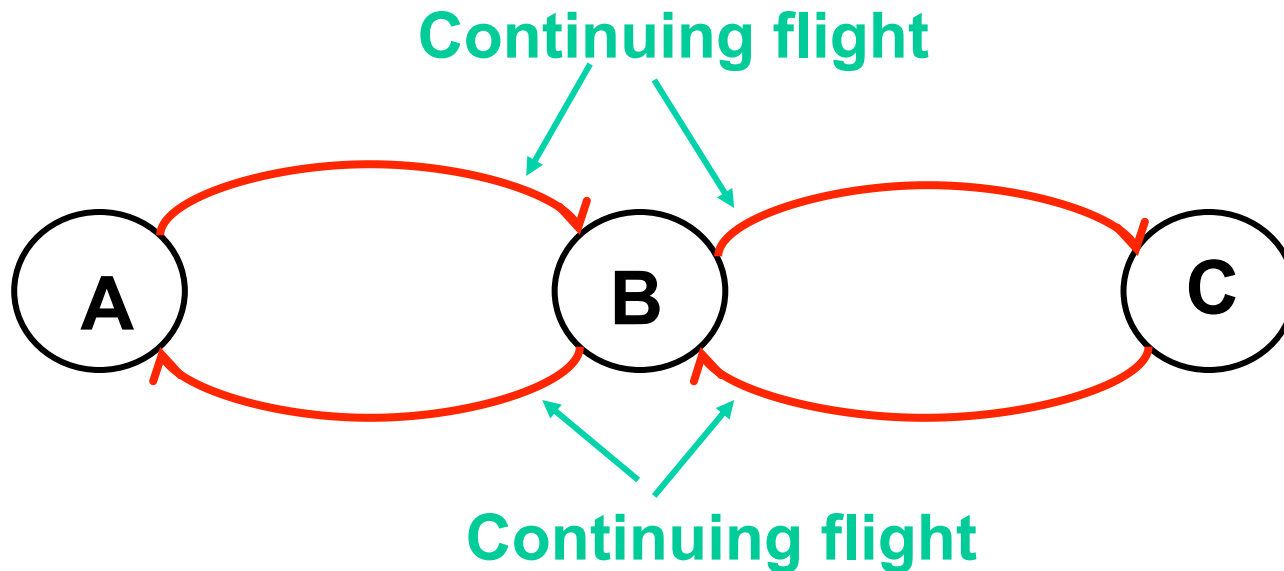
(In a bilateral agreement between States A and B)

- ❑ Third: The right to carry traffic from own State (A) to the State (B) of the treaty partner.
- ❑ Fourth: The right to carry traffic from treaty partner (B) to own State (A).



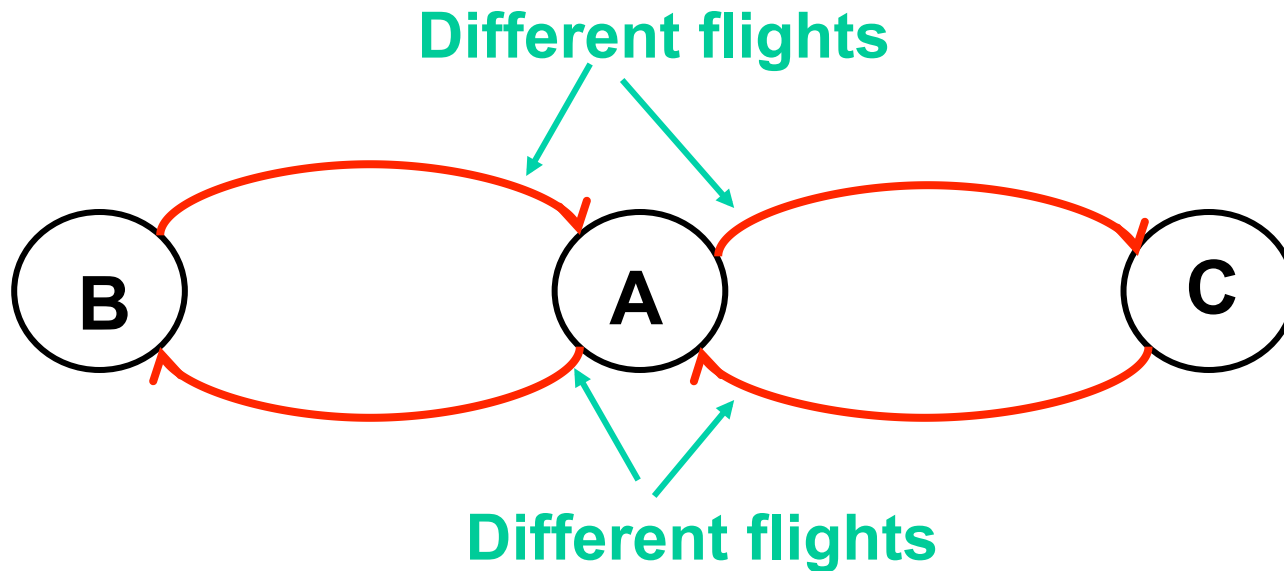
## **“Freedoms” of the Air (2)**

- ❑ Fifth: The right of an airline of State A to carry revenue traffic between the treaty partner (B) and another State, C, on services starting or ending in own State A. (Note that State C must also agree!)



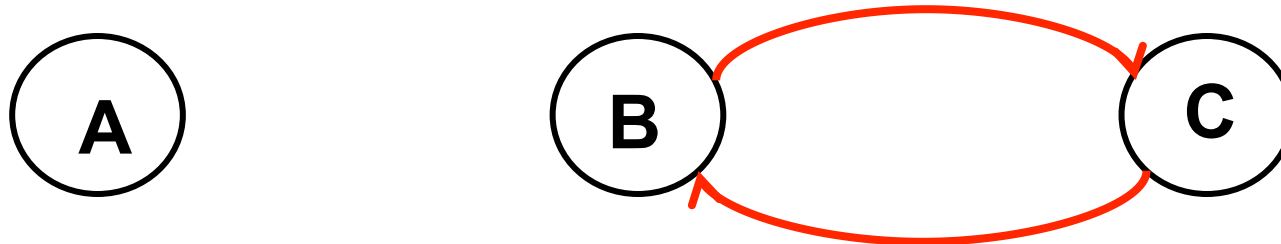
## **“Freedoms” of the Air (3)**

- ❑ Sixth: The use by an airline of State A of two sets of Third and Fourth Freedom rights to carry traffic between two other countries, by using an airport in A as a transit point.



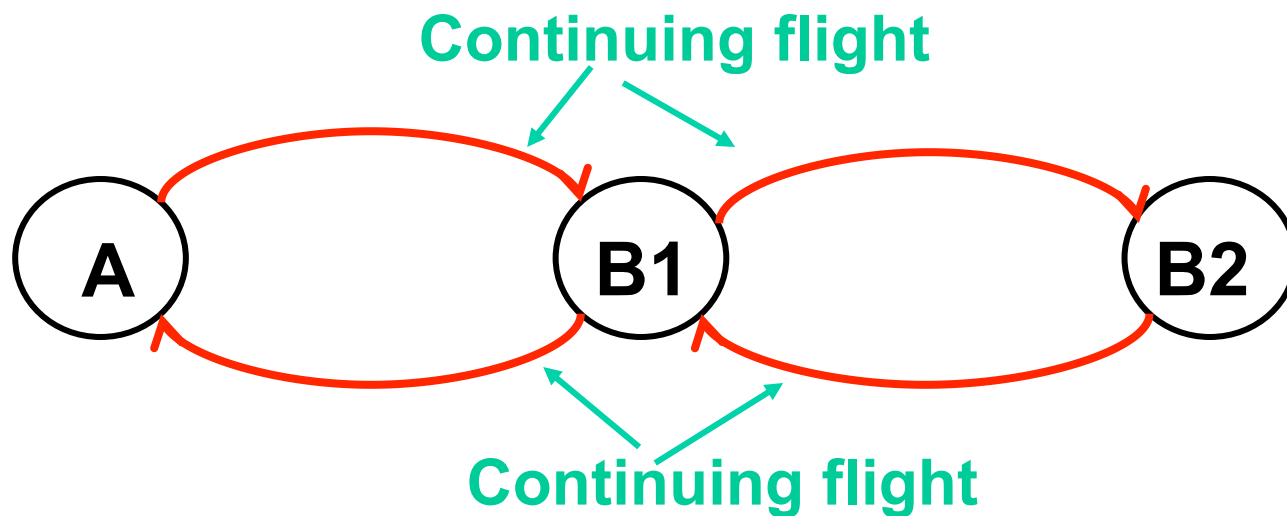
## **“Freedoms” of the Air (4)**

- Seventh: The right of an airline of State A to carry revenue traffic between airports in two States B and C on services which lie entirely outside State A.



## “Freedoms” of the Air (5)

- ❑ Eighth (“consecutive” or “fill-up” cabotage): The right of an airline of State A to carry revenue traffic between two points in State B *on a service originating or terminating in State A*.



- ❑ Ninth (“pure” or “full” cabotage): Same as eighth, but no requirement to originate or terminate in A.

## Bilateral Agreements

- ❑ Past 70 years have been characterized by gradual liberalization of bilateral (and multilateral) ASAs
- ❑ Evolution:
  - 1946 +: “traditional” (either “restrictive” or “liberal”/Bermuda)
  - 1978 +: “open market” (e.g., US-Netherlands, US-Singapore, UK-Netherlands)
  - 1992 +: “open skies” (e.g., US-Netherlands, US-Singapore, New Zealand-Chile, EU-US)
- ❑ Caution: Numerous existing agreements worldwide (but few involving nations with the most advanced air transport systems) are still of the “traditional” type.

## Elements of Bilateral Agreements

- ❑ Market Access: Potential city-pairs to be served; any granted Freedoms beyond Third, Fourth and Sixth.
- ❑ Designation: Number *and ownership requirements* (but *not* identity) of airlines that have the right to service each city-pair.
- ❑ Capacity: Frequency and number of seats that can be offered on each service.
- ❑ Tariffs: Determination of passenger fares and cargo rates on services offered.

## “Traditional” ASA

- ❑ Market access: Only a specified set of city-pairs can be operated by each airline; typically small number of city-pairs; practically no Fifth Freedom rights; charter traffic rights not included
- ❑ Designation: Typically single airline designation; a few double; identity of airline *not fixed* in agreement.
- ❑ Capacity: Strict frequency and capacity control; often 50-50; revenue pooling and sharing often required. (In “liberal” versions, no capacity control; but may review to protect airlines at “disadvantage”.)
- ❑ Tariffs/fares: Prices based on “cost + profit” formula; *double approval* by both governments needed; use of IATA tariff-setting procedures encouraged.

## **“Open Skies” ASA**

- ❑ Market access: Unlimited access at both ends, including charter rights; unlimited Fifth Freedom; no Seventh (with a few exceptions), Eighth or Ninth freedom.
- ❑ Designation: Any airline satisfying eligibility requirements of its designating state (*“ownership and effective control”*).
- ❑ Capacity: No frequency or capacity controls; code sharing permitted; change of aircraft on Fifth Freedom flights permitted.
- ❑ Tariffs/fares: Free pricing.

***Open Skies ASAs are becoming increasingly multilateral***

## EU Third Package (1/1/93)

- ❑ Community Carrier: Any carrier registered in an EU Member State.
- ❑ Ownership of Carriers: Any group of nationals of an EU Member State may apply for the establishment of an airline in any EU Member State. Approval will be given as long as the technical and ownership requirements specified by the EU are satisfied.
- ❑ Access to Markets: Full seventh (and fifth) freedom rights *within EU* for community carriers. Cabotage permitted on continuation of intra-EU international flights for only up to 50% of the aircraft's capacity. Full cabotage (ninth freedom) rights for community carriers after April 1, 1997.

## A Landmark Judicial Case

- ❑ November 5, 2002: European Court of Justice finds nationality clauses in bilateral Open Skies agreements between EU Member States and the US violate EU legislation re. equal rights for all Community air carriers; authorizes EU Commission to negotiate an agreement with US on behalf of all EU Member States
- ❑ 11 of (then) 15 EU nations had Open Skies agreements with US; declared invalid but continued temporarily
- ❑ Negotiations began October 2003; concluded in March 2007 with path-breaking *provisional* EU-U.S. agreement that took effect in March 2008; still ongoing
- ❑ Complex negotiations; highly politicized environment in Washington

## The EU-US Open Skies Agreement (2007)

- ❑ Any US airline and any EU airline (“community air carrier”) can serve any city-pair between the US and the EU
- ❑ Fifth Freedom rights granted to both sides
- ❑ Community air carriers receive Seventh Freedom rights for service between cities in the US and certain non-EU European States
- ❑ All-cargo flights by Community air carriers receive Seventh Freedom rights for flights between US and third countries; similarly for all-cargo flights between EU and third countries by US carriers
- ❑ Facilitation of alliances through provision of broad anti-trust immunity to alliance partners (but must be granted case-by-case)
- ❑ Numerous more technical provisions (“Fly America” program, regulatory convergence, Joint Committee, etc.)
- ❑ Still to negotiate: US ownership restrictions, cabotage rights in US

## **International Civil Aviation Organization (ICAO)**

- ❑ Established in 1947 as a result of Chicago Convention (“specialized agency of UN”); Montreal headquarters; regional offices
- ❑ 190 Member States; Assembly meets every 3 years
- ❑ 36-member Council; 3-year term; some permanent members
- ❑ Secretariat with large staff
- ❑ Primarily technical regulation: International standards and recommended practices (18 Annexes)
- ❑ Occasional conferences on economics, regulation and policies
- ❑ Bilateral ASA must be registered with ICAO (more than 6000 exist!)

# International Air Transport Association (IATA)

- ❑ Trade association of most of the international airlines in the world (~240 member airlines, 125 countries, carry 84% of all ASK and 90+% of international ASK in 2012); Geneva and Montreal headquarters; founded in 1945.
- ❑ “Two-tier” operation since 1978:
  1. Trade association (legal and technical services): “conditions of carriage”; “interline” trips; passenger and cargo services; dangerous goods regulations; airport and ATC facilities; airport “schedule coordination”; monitoring of airport and ATC user charges
  2. “Tariff coordination” in some markets (~80 airline participants, no US airlines, violates US and EU statutes)

## Other International Agencies and NGOs

- ❑ EU Commission
- ❑ EU Directorate General – Transportation and Energy (DG – TREN)
- ❑ Airports Council International (ACI): increasingly active trade association of airport operators with several strong regional offices
- ❑ International Federation of Airline Pilots Associations (IFALPA)
- ❑ International Council of Aircraft Owners and Pilot Associations (ICAOPA)
- ❑ Various regional airline associations and passenger rights associations

# Federal Aviation Administration (FAA)

- ❑ Established in 1958; part of US Dept. of Transportation
- ❑ ~46,000 employees, ~15,000 air traffic controllers, many regional offices, European office
- ❑ ~\$16 billion budget in FY2012 (~\$10 billion for operations [50% from Aviation Trust Fund, \$3.5 billion airport improvements, \$1.2 billion NextGen])
- ❑ Six lines of activity
  - Regulation and Certification
  - Research and Acquisitions
  - Airports                      -- Administration
  - Commercial Space Transportation
  - Air Traffic Services

# EUROCONTROL

- ❑ Founded in 1960; composed of 40 Member States from the European Region, including all EU Member States.
- ❑ ~ 2000 employees
- ❑ Main activities:
  - **Maastricht Upper Area Control Centre**
  - **Central Route Charges Office**
  - **Network Manager** (Air Traffic Flow Management) for all 40 Member States
  - **Centralised Services Initiative**
  - **Research and development**, e.g., central role in SESAR
  - **Support** the European Commission, EASA and National Supervisory Authorities in regulatory activities.

## Principal Points

- ❑ Internationally, the airline industry operates in regulatory environments that range from highly restricted and protectionist to almost fully deregulated.
- ❑ The nine “freedoms of the air” determine whether or not an airline can serve a particular market
- ❑ The four central attributes of ASAs:
  - Market access
  - Airline designation
  - Frequency and capacity offered
  - Setting of tariffs / fares
- ❑ Diverse International regulatory, institutional, cultural and technical environments for air transport



**Back-up slides**