

# Airspace Sovereignty: A CANSO Perspective

### **The Need for a Mature Understanding of Sovereignty**

‘State Sovereignty’ is a fundamental principle of international law. However, the term is very often used in a political sense, with differing interpretations depending on context and intention. The notion of ‘sovereignty’ is dynamic, evolving with the development of the global institutional environment.

In aviation, sovereignty refers to the ownership of airspace. In other words, to the exclusive competence of a State to exercise its legislative, administrative and judicial powers within its national airspace.

However, air navigation services require a global, seamless, delivery-focused model, based on performance, rather than national borders. For this to materialise, all stakeholders need a fully developed understanding of the meaning of national sovereignty consistent with present and future political, economic and social realities. Such an understanding of the concept of sovereignty does not require any amendment to the Chicago Convention.

### **Sovereignty is not Incompatible with the Delivery of Cross-Border Service Provision**

CANSO’s global vision for the future of air navigation services recognises that sovereignty remains a fundamental, valid and legitimate principle. It also supports the view that the delivery of cross-border services is not incompatible with the notion of States’ sovereignty.

### **States’ Obligations under Article 28 of the Chicago Convention are Regulatory in Nature**

State sovereignty is closely connected to the definition of States’ obligations under Article 28 of the Chicago Convention. The text and spirit of Article 28 do not oblige States to provide air navigation services over their territory themselves. Rather, Article 28 prescribes that when and where States elect to provide facilities and services to support international air navigation, these facilities and services must comply with the ICAO’s Standards and Recommended Practices.

In other words, States’ responsibilities are of a regulatory and supervisory nature. States are

required to take appropriate measures to ensure compliance in respect of safety and operational efficiency.

### **Delegation of Services is an Act of Sovereignty**

National sovereignty cannot be delegated. But the responsibility for the performance of functional responsibilities, such as the provision of air navigation services, can be delegated to third parties. States retain complete freedom to designate a third party service provider, be it a national or foreign entity.

A delegation to a foreign organisation is not an abandonment of sovereignty; sovereign competences are not impacted. On the contrary, it is an act of exercise of sovereignty. The delegating State prescribes the conditions under which the delegation is agreed, and the delegation can be reverted at any time.

Examples of successful cross-border ANS service provision exist in all regions of the world. There is a mutual delegation between the USA and Canada; Tonga and Samoa have a delegation to New Zealand; there are various delegations in Europe from and to Finland, France, Norway, Sweden and Switzerland. The legal basis for these delegations is not in question.

### **Liability Considerations**

When delegating the functional responsibility for service provision to a foreign entity, the delegating State retains a residual liability under Article 28 of the Chicago Convention. However, that liability is limited to the obligation to ensure that the service delivery activity is properly regulated, the service provider duly certified, and that adequate and effective supervision is exercised.

### **Ensuring Performance**

The regulatory framework itself establishes overall safety and efficiency standards. Compliance is monitored through supervisory measures. Performance is measured against safety, operational efficiency, cost-effectiveness and environmental criteria.

Incentives to improve performance can be introduced by a variety of means. The regulatory



framework itself establishes overall standards, for example on safety, efficiency and environment. In addition, delegation arrangements based on time-limited contractual Service Level Agreements, which include clear Key Performance Indicators, constitute a powerful incentive to perform.

Failure to meet the performance criteria will result in a loss of the State mandate.

### **Addressing National Security and Military Concerns**

One central preoccupation of States in respect of cross border delegation of services relates to the need to ensure permanent monitoring of national airspace for national security purposes, and to be able to respond to security or military threats at any time. The civil ANS provider must be able to support the appropriate military authorities in this task.

The security and military risks are primarily mitigated through solid and comprehensive coordination procedures agreed between military authorities and the ANS provider. Delegation agreements which include clear KPIs in respect of civil-military coordination also act as incentives for the service provider. Finally, delegation agreements will always include a provision reserving the right for the delegating

State to withdraw the delegation at any time with immediate effect in the event of a crisis or serious threat to national security.

Other network industries, such as telecoms and energy provide numerous examples demonstrating that effective measures can be implemented to reassure States that their military and security interests are not compromised through cross-border service delivery arrangements.

### **Conclusion**

A mature understanding of national sovereignty, aligned with the political, economic and social realities of the present and future global environment will significantly improve the performance (safety, operational efficiency, cost-effectiveness and environment) of the ANS system worldwide.

It should be actively promoted by all stakeholders in the aviation industry as a key enabler for the implementation of global and regional ANS initiatives.

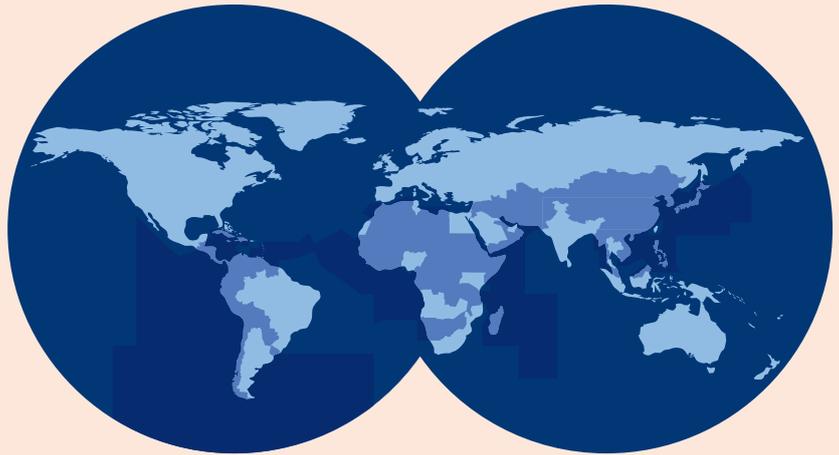
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