
Strengthening the ASEAN Single Aviation Market:
**Implementing the AEC Blueprint 2025
for Air Transport**

Jae Woon Lee



I. Overview

Aviation has been an integral component in the establishment of the ASEAN Economic Community (AEC). Since ASEAN designated air transport as one of the twelve priority sectors for economic integration in November 2004, significant integration and liberalization have taken place in the past 15 years.

The number of passengers carried in ASEAN countries has tripled, from 98 million in 2004 to 329 million in 2016. (The World Bank, 2018) Chart 1 shows the total (international and domestic) scheduled traffic carried by the air carriers registered in each ASEAN country. (The World Bank, 2018)

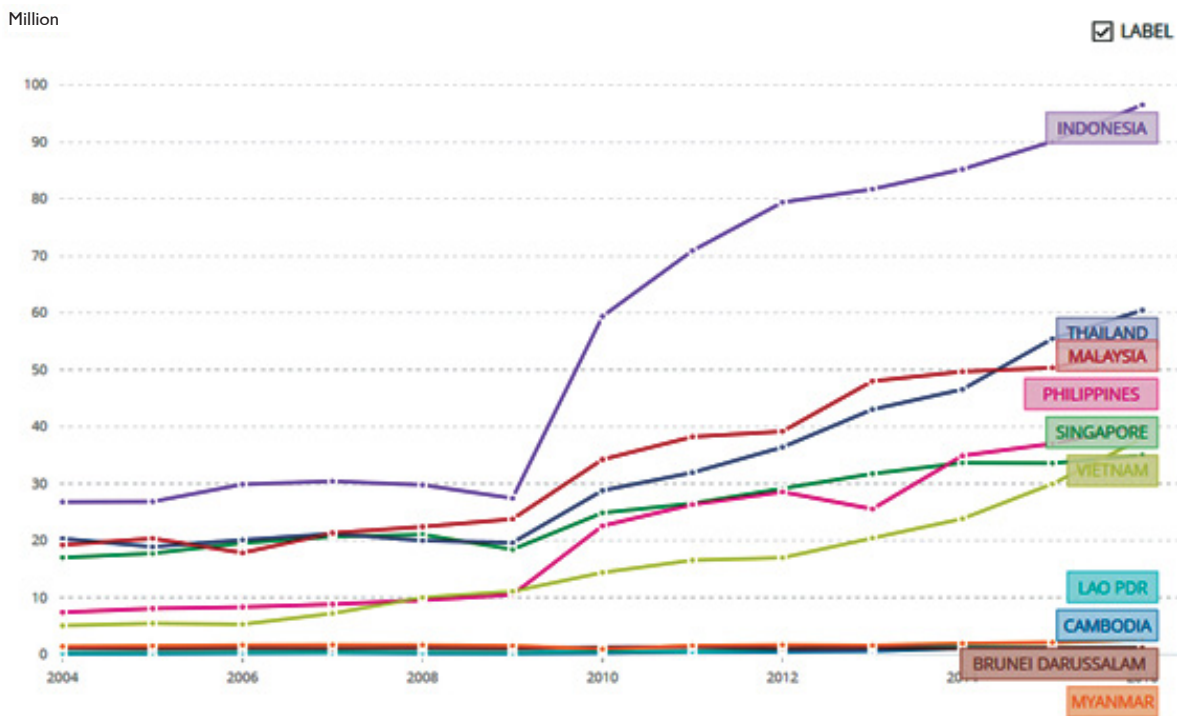
In particular, intra-ASEAN traffic has increased significantly. With the substantial growth, some ASEAN city pairs are now ranked as the busiest international routes worldwide.



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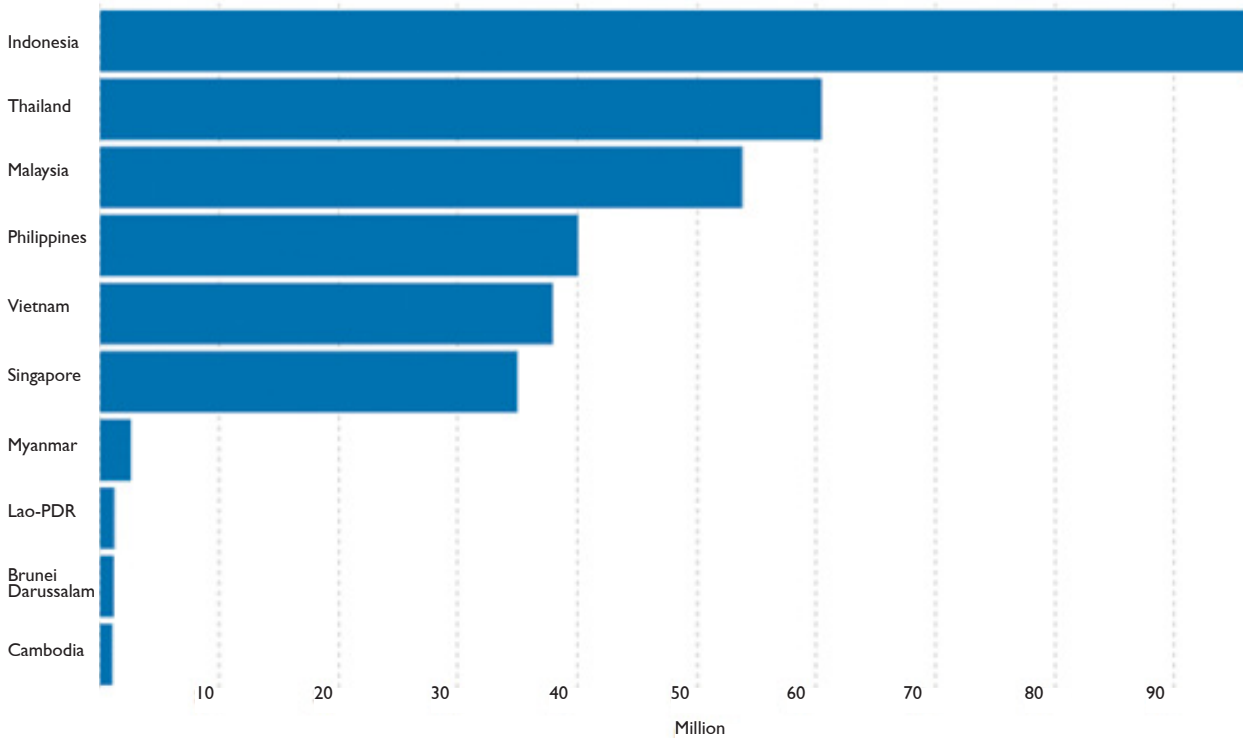
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Chart 1: Passenger Traffic Growth within ASEAN



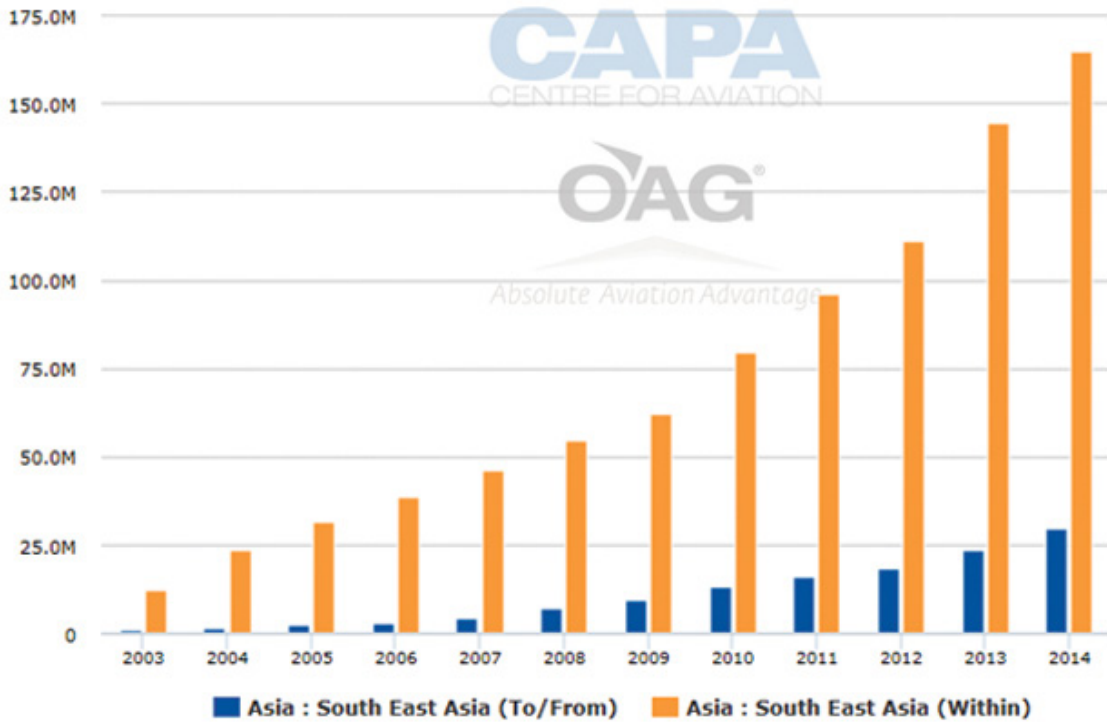
Source: World Bank and ICAO (2018)

Chart 2: Passenger Traffic by ASEAN State (2016)



Source: World Bank and ICAO (2018)

Chart 3: Expansion of Revenue Passenger Kilometres (RPK) of Air Transport in ASEAN



Source: Centre for Aviation (CAPA)

Chart 4: Top 20 Busiest Air Traffic Routes

OAG busiest routes

Rank	Route	Frequency (Mar17-Feb18)
1	KUL-SIN	30,537
2	HKG-TPE	28,887
3	CGK-SIN	27,304
4	HKG-PVG	21,888
5	CGK-KUL	19,849
6	ICN-KIX	17,488
7	HKG-ICN	17,075
8	LGA-YYZ	16,956
9	DXB-KWI	15,332
10	HKG-SIN	15,029
11	BKK-SIN	14,859
12	BKK-HKG	14,832
13	HKG-PEK	14,543
14	DUB-LHR	14,390
15	KIX-TPE	14,186
16	JFK-LHR	13,888
17	KIX-PVG	13,576
18	ICN-NRT	13,517
19	AMS-LHR	13,170
20	ORD-YYZ	13,100

Based on frequency in the 12 months to February 2018
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Source: OAG Aviation Worldwide (2018)

Remarkable progress has been initiated under the leadership of the ASEAN Transport Ministers (ATM). During their 10th meeting in 2004, the ATM adopted the Action Plan for ASEAN Air Transport Integration and Liberalization 2005–2015 and the Roadmap for Integration of the Air Travel Sector (RIATS). The roadmap has been successfully incorporated into three formal legal agreements to be signed by ASEAN member states. The three agreements are the 2009 Multilateral Agreement on Air Services (2009 MAAS), the 2009 Multilateral Agreement for the Full Liberalization of Air Freight Services (2009 MAFLAFS), and the 2010 Multilateral Agreement for the Full Liberalization of Passenger Air Services (2010 MAFLPAS).

The first phase of the ASEAN Single Aviation Market (ASAM) was completed when the 2010 MAFLPAS was ratified by the 10th state, Indonesia, in April 2016 (discussed further in Section 4). ASEAN is now looking at a greater level of integration as stated in the AEC Blueprint 2025:

Air transport: Strengthen the ASEAN Single Aviation Market (ASAM) for a more competitive and resilient ASEAN, through the following key measures:

- a. *Advance safer and more secure skies in ASEAN;*
- b. *Enhance air traffic management efficiency and capacity through a seamless ASEAN sky; and*
- c. *Foster greater connectivity, including the conclusion of aviation agreements with Dialogue Partners.*

The AEC Blueprint 2025 for air transport cooperation will be geared towards higher connectivity, efficiency, integration, safety, and sustainability of ASEAN air transport to strengthen ASEAN's competitiveness and foster inclusive growth and development in the region.

However, the AEC Blueprint 2025 does not provide a detailed action plan for the next stage of ASEAN air transport integration and liberalization. The ASEAN Transport Strategic Plan or the Kuala Lumpur Transport Strategic Plan (KLTSP) was agreed in 2016 and provides further detail but implementation has been mixed. Indeed, two different voices are observed within the ASEAN member states. One camp advocates that ASEAN should speed up air transport integration and liberalization. Essentially, this camp thinks that the ASEAN Single Aviation Market should be as integrated and comprehensive as the EU Single Aviation Market and criticizes the slow progress of the ASAM. The other camp is not fully convinced about further development. They believe ASEAN has already achieved significant integration and liberalization. In brief, they are not comfortable with what, in their view, are radical developments. This kind of conflict is not new to ASEAN. As they have done before, the ASEAN member states will find the 'ASEAN way' and come up with mutually agreeable solutions.

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In doing so, ASEAN member states should be mindful of what can be achieved and what cannot be achieved in the near future. In other words, pragmatic and realistic approaches should be adopted when devising an action plan for the AEC Blueprint 2025 with regard to air transport.

The objective of this paper is to analyse what the ASEAN Economic Community agreed to in the AEC Blueprint 2025 and to suggest how that agreement can be implemented. Rather than suggesting visionary ideas that can be considered as long-term goals, this paper focuses on short-term goals that can ideally be reached by 2020. The remainder of the paper is divided into four parts. Each section is based on the key measures that the AEC Blueprint 2025 indicated. Section 2 examines how to advance safer and more secure skies in ASEAN and points out that the idea of a common aviation safety regulator may be premature but there are concrete steps that can be taken to harmonise safety standards. Section 3 discusses how to enhance air traffic management efficiency and capacity while clarifying some member states' concerns over sovereignty. Sections 4 and 5 explore how to foster connectivity within ASEAN and between ASEAN and the Dialogue Partners. The final section concludes with a summary of the main points and provides policy recommendations.

2. Advancing Safer and More Secure Skies in ASEAN

Aviation safety has always been a primary concern of international aviation. On a global level, the legal framework for aviation safety regulation is more collaborative and less controversial than any other topic in aviation law. The ASEAN member states fully agreed that advancing safer and more secure skies in ASEAN is a fundamental goal and precondition to strengthening the ASAM.

The major problem ASEAN is facing is that the level of aviation safety in its 10 member states varies considerably. When assessing a nation's aviation safety, the Universal Safety Oversight Audit Program (USOAP), established by the International Civil Aviation Organization (ICAO) in 1998, is commonly used.

USOAP audits focus on a state's capability to provide safety oversight by assessing whether it has effectively and consistently implemented the critical elements of a safety oversight system and determining the state's level of implementation of the ICAO's safety-related standards and recommended practices (SARPs) (ICAO Annual Safety Report, 2017). The eight critical elements (CI) that are evaluated are 1. primary aviation legislation; 2. specific operating regulations; 3. state civil aviation system and safety oversight functions; 4. technical personnel qualifications and training; 5. technical guidance, tools, and the provision of safety-critical information; 6. licensing, certification, authorisation, and approval obligations; 7. surveillance obligations; and 8. resolution of safety concerns.

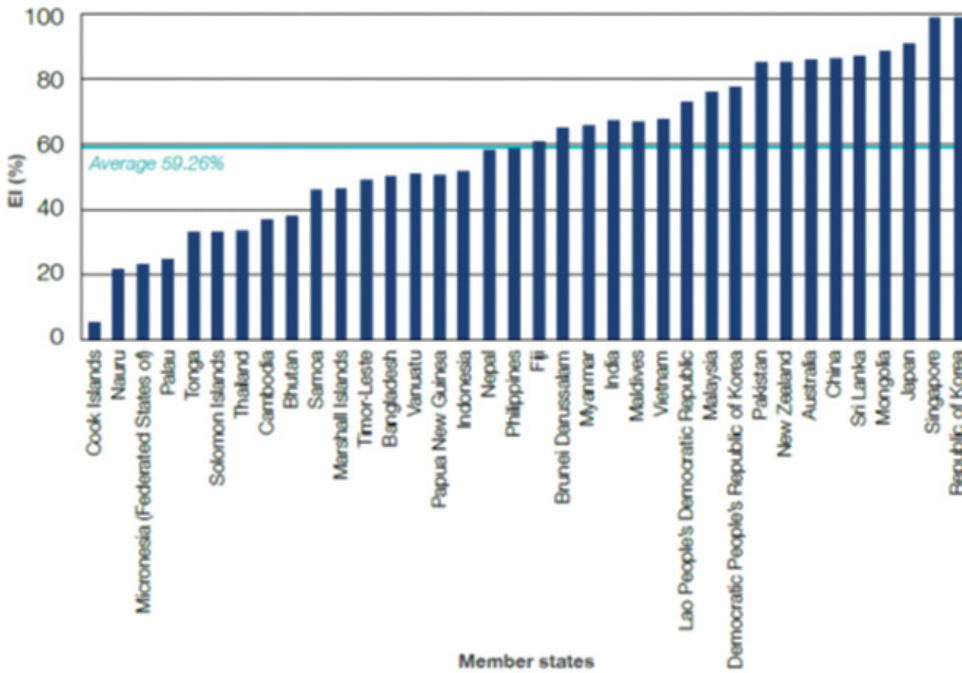
The audits are performed by ICAO audit teams composed of experts from the ICAO Secretariat and from contracting states other than the states being audited. In 2004, the ICAO Assembly passed a resolution requiring the ICAO Secretary General to make all final audit reports available to all contracting states and to post them on the secure portion of the ICAO web site. An even more significant action was taken in 2006, when civil aviation directors general from 153 of 190 member states (now 192 member states) agreed that the names of those states that fail to agree to full transparency on their USOAP audits will be posted on the ICAO website. (Dempsey, 2008)

According to ICAO, the overall USOAP effective implementation score around the world in 2017 was 64.44 percent while the average score for Asia-Pacific countries was 59.26 percent. Unfortunately, some ASEAN member states are ranked below average.

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Chart 5: Overall Effective Implementation for Asia-Pacific States



Source: ICAO Annual Safety Report, 2017

Clearly, this transparency mechanism at the USOAP is based on the power of naming and shaming. The essence of naming and shaming is targeting some nations for particular attention and condemnation in hopes that through such publicity, their governments will be pressured into changing their practices.

However, ASEAN should look at the issue as a common problem. Enhancing the safety and technical standards of individual ASEAN member states should be a common goal for ASEAN. As part of that goal, capacity-building activities should be undertaken proactively. Capacity building has typically been defined as the development and strengthening of human and institutional resources.

In fact, ICAO initiated the No Country Left Behind (NCLB) campaign, which highlights its efforts to assist states in implementing ICAO standards and recommended practices (SARPs). The main goal of the NCLB is to help ensure that SARPs implementation is better harmonized globally.

On the ASEAN level, ASEAN member states should assist the other member states in better implementing SARPs. The KLTSP notes the requirement to “Promote capacity building and align aviation security measures with ICAO Standards and Recommended Practices”, but ASEAN should now adopt concrete targets to achieve this.. For instance, ASEAN can set the target of all ASEAN member states exceeding 60% on the USOAP Effective Implementation score by 2020. In brief, the ASEAN member states must see that enhancing the aviation safety level of all ASEAN member states is a precondition for further development. In order to integrate and strengthen the ASEAN single aviation market, it is necessary to bridge the aviation safety gap as soon as possible.

A Common Aviation Safety Regulator?

How to enhance aviation safety in ASEAN is debatable. One idea is to create a common aviation safety regulator in ASEAN that would be similar to the European Aviation Safety Agency (EASA) in the EU. The EASA, founded in 2002, pursues technical harmonization in air transport to ensure the highest common level of safety.

European states had a long history of cooperation and integration in aviation safety long before the establishment of the EASA. Several European states joined together and formed the Joint Aviation Authorities (JAA) in 1970. This was partly motivated by the need to develop the then-new European consortium Airbus. Indeed, the JAA was originally known as the Joint Airworthiness Authorities, and its aim was to produce common certification codes. (Pettitt & Dunlap 1995) Although the JAA developed common safety regulatory standards and procedures, its decisions and regulations were not mandatory on each state. Following the European Commission (EC)'s plan for the Single European Sky in 1999, EC members signed Regulations (EC) 1592/2002 and established EASA. The EASA was supposed to gradually take over the role of JAA and, more importantly, to monitor the uniform application of EC's legislation on aviation.

Unlike the EU, ASEAN has no legal or executive body to create regional organizations that can oversee aviation safety and air traffic control. More importantly, most ASEAN stakeholders believe that aviation safety should be left to national regulators. This view was recognized in the landmark study on the prospects for the ASAM, "Developing ASEAN's Single Aviation Market and Regional Air Services Arrangements with Dialogue Partners" (the 2008 report) as follows:

"As with the EU, the establishment of the ASAM gives rise to opportunities to further progress with harmonisation of aviation regulations and systems. This has the potential to raise standards of safety and technical regulation across ASEAN and develop an integrated airspace system capable of efficiently handling the anticipated high growth in movements generated by the ASAM. For this reason, we are recommending that well-defined programmes should be put in place to progressively harmonise the currently fragmented regulatory regime and ATM operating procedures to meet the challenges ahead. Our view is that, unlike the EU's centralisation plans for aviation regulation and ATM, ASEAN should maintain responsibility for these functions with the national providers through the harmonisation process. The lack of a homogenous structure, as well as issues of sovereignty and varying standards of provision within the region, makes an EU-style approach untenable."

Even though 10 years have passed since the 2008 report was released, the fundamentals of ASEAN have not changed vis-à-vis the EU. Conceptually, the EU follows the "pooling sovereignty" model while ASEAN follows the "cooperative sovereignty" model. The "pooling sovereignty" model is based on the departure from unanimous decision-making, whereby a qualified majority can pass a bill even if a minority object to it (McLean & McMilan, 2009). On the other hand, the "cooperative sovereignty" model is based on consensus building and reaching mutually agreed-upon solutions. This fosters greater cooperation between the member states since a single member can essentially veto a potential agreement if it does not agree with the particular policies being proposed (Hiep, 2016). Therefore, the idea of a common aviation safety regulator seems a long way off. The idea can only be feasible when and if the overall aviation safety standards of the ASEAN member states begin to level off and a significant political decision is made at a high level.

The lack of resources is another barrier. There are more than 800 skilful aviation experts and administrators working at the Cologne-based EASA with an annual budget of 161 million euros. ASEAN is unlikely to recruit a large number of aviation experts with a substantial budget in the near future.

Therefore, ASEAN should continue to focus on close coordination and cooperation between national regulators. That coordination and cooperation should be institutionalized at the ASEAN level so that member states can learn best practices from the other ASEAN member states. In this view, national regulators should establish a formal Working Group to oversee the harmonisation of safety standards. The working group should be supported with additional capacity, including aviation experts from member states and potentially also the seconding of resources from industry and academia.

The focus should be highly practical, focussing on concrete results in the short term. The first goal should be to enhance each member state's overall safety standards in line with the targets outlined above. The second goal should be to identify and implement harmonisation of regulations, including through mutual recognition. The KLTSP included actions to "[e]stablish a mechanism to facilitate mutual recognition of approvals, certificates and licenses" but progress has been slow, suggesting greater institutional oversight and capacity is needed, which the National Regulators Working Group can provide. In addition, agreements should be progressed on a faster timescale for those member states in a position to do so. ASEAN has utilised such a "multi-speed" approach in the past, with some member states moving ahead with greater cooperation. In this case the priority areas should be Mutual Recognition Agreements (MRAs) covering licensing and certification for personnel (pilots, engineers, air traffic controllers) and technical equipment. As overall safety standards converge, more member states can adopt the MRAs.

For a mid-term plan (2025), ASEAN might consider the JAA model, building on the established cooperation of national regulators and progress equalising overall safety levels and harmonising standards.

3. Enhancing Air Traffic Management Efficiency and Capacity

The Concept of “Seamless ASEAN Sky”

In the AEC Blueprint, ASEAN uses the term “Seamless ASEAN Sky.” ASEAN clearly adapted this concept from the EU’s Single European Sky (SES). The SES is an initiative to reform the architecture of European air traffic management in order to meet future capacity and safety needs at a European rather than a local level, thereby increasing the overall efficiency of the European air transport system.

The vision of SES was developed in 1999 when the EU Commission called for structural reform that would permit the creation of the Single European Sky by way of the integrated management of airspace and the development of new concepts and procedures of air traffic management. The European Organization for the Safety of Air Navigation (Eurocontrol) is deeply involved in the SES. Established in 1960, Eurocontrol was the first organization tasked with air transport management on a regional level. Eurocontrol began operation in 1962 when four states (the Netherlands, West Germany, Belgium, and Luxembourg) agreed to have a single international air traffic control body manage their upper airspace. Eurocontrol now contributes to both the regulatory and the technological aspects of the SES.

Similarly, the creation of Seamless ASEAN Sky by way of the integrated management of airspace will be beneficial to ASEAN aviation. As ASEAN air transport has been growing, more coordination is required. In fact, ASEAN air transport is facing overcapacity problems, both at the airports and in the skies. Major airports in ASEAN such as Jakarta, Manila, and Bangkok are operating over capacity. Airport congestion has led to significant flight delays in the region. For instance, the three largest carriers in the region (Garuda Indonesia, AirAsia, and Lion Air) could only achieve on-time performance of little above 70% according to the on-time performance report published by OAG in February 2018 (SEASIA 2018).

As aviation traffic will continue to increase in ASEAN, ASEAN must enhance the efficiency and capacity of air traffic management. A common air navigation organization, like Eurocontrol, is not the only option for developing Seamless ASEAN Sky. However, since there are multiple flight information regions (FIRs) in ASEAN, close cooperation and greater coordination between ASEAN member states are required to achieve more seamless air traffic management in ASEAN. Indeed, the 2011 Implementation Framework of the ASEAN Single Aviation Market (2011 Implementation Framework), which was adopted in December 2011 in Phnom Penh, already identified the key elements needed to enhance air transport management in ASEAN.

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Table I – Air Traffic Management Key Measures in the 2011 Implementation Framework

Measures	Timeline
Develop an inventory or share information for the purpose of gap analysis	2012
Identify and endorse key enabling technologies and initiatives for regional implementation	2012
Support the ICAO's efforts and implementation plan for air traffic management in the Southeast Asia region	2012
Enhance training for the identified key technologies and initiatives	2012
Continue to support the ICAO's efforts and implementation plan for air traffic management in the Southeast Asia region	2015
Track the EU's Single European Sky Air Traffic Management Research Programme (SESAR) and the Federal Aviation Administration's Next Generation Air Transportation System (NextGen) and other regional concepts/developments; adapt concepts/framework/technologies and/or identify new building blocks that may be essential for harmonisation of air traffic management procedures	2015
Explore options for an ASEAN Air Traffic Management Harmonisation Master Plan	2015
Integrate some of these initiatives together with other stakeholders such as the IATA, CANSO, ICAO, etc.	Beyond 2015
Review the key elements/building blocks and work towards full harmonisation of air traffic management procedures	Beyond 2015
Seek to comply with the interoperability of air traffic management requirements together with the rest of the Asia-Pacific region	Beyond 2015

Put bluntly, there is no evidence that shows meaningful progress on each measure. One reason why there is no meaningful progress in the realm of air transport management is because some member states view air transport management as an exercise of sovereignty.

Sovereignty Concerns?

The Chicago Convention of 1944 is an overarching treaty for international air law with 192 member states including all the ASEAN members. The Chicago Convention, its Annex 11, and subsequent Assembly resolutions provide clear-cut rules regarding relations between air traffic management and sovereignty.

Article 1 of the Chicago Convention says that every state has complete and exclusive sovereignty over the airspace above its territory, and Article 28 says that each state provides air navigation services in its territory. However, Chicago Convention Annex 11 allows the delegation of air navigation services and states that such delegation has nothing to do with sovereignty.

Chicago Convention Annex 11 Air Traffic Services

2.1.1 Contracting States shall determine, in accordance with the provisions of this Annex and for the territories over which they have jurisdiction, those portions of the airspace and those aerodromes where air traffic services will be provided. They shall thereafter arrange for such services to be established and provided in accordance with the provisions of this Annex, except that, by mutual agreement, a State may delegate to another State the responsibility for establishing and providing air traffic services in flight information regions, control areas or control zones extending over the territories of the former.

Note.— If one State delegates to another State the responsibility for the provision of air traffic services over its territory, it does so without derogation of its national sovereignty. Similarly, the providing State's responsibility is limited to technical and operational considerations and does not extend beyond those pertaining to the safety and expedition of aircraft using the concerned airspace. Furthermore, the providing State in providing air traffic services within the territory of the delegating State will do so in accordance with the requirements of the latter which is expected to establish such facilities and services for the use of the providing State as are jointly agreed to be necessary. It is further expected that the delegating State would not withdraw or modify such facilities and services without prior consultation with the providing State. Both the delegating and providing States may terminate the agreement between them at any time.

In the most recent ICAO Assembly in 2016, member states adopted Resolution A38-12 *Consolidated statement of continuing ICAO policies and associated practices related specifically to air navigation*. In Appendix G: Delimitation of air traffic services (ATS) airspaces of Resolution A38-12, the Assembly again emphasized that:

- any Member State which delegates to another State the responsibility for providing air traffic services within airspace over its territory does so without derogation of its sovereignty; and
- the approval by the Council of regional air navigation agreements relating to the provision by a State of air traffic services within airspace over the high seas does not imply recognition of sovereignty of that State over the airspace concerned.

Undoubtedly, sovereignty is the most fundamental principle in international law and international relations. But obsession with sovereignty can deter meaningful and beneficial inter-governmental projects such as Seamless ASEAN Sky. Thus, the ASEAN member states should work proactively to facilitate air transport management in ASEAN.

Some specific tensions are detected in ASEAN. Airspace over Batam, Bintan, Riau, and Natuna islands (all Indonesian territories) is controlled by the Singaporean authority based on the 1995 Indonesia-Singapore Agreement (Nugraha, 2018). In a nutshell, Indonesia wants to regain control while Singapore worries that reducing its FIR would have a significant impact in managing flights going in and out of Changi Airport. Currently, Indonesia is trying to raise its standards of aviation safety to level off with other states in order to strengthen its argument to regain control over the region. This is a step in the right direction, ensuring high safety standards for the world's aviation needs.

In principle, if Indonesia wants to control its own airspace and has the capabilities and capacity to seamlessly and efficiently manage flights in the region, it should regain control. At the same time, states should be flexible about the delegation of air navigation services. In any case, air navigation should not be seen as a question of a state's sovereignty. An excessively rigid position on sovereignty can be detrimental to ASEAN's goal of Seamless ASEAN Sky. Although the EU model is completely different from the ASEAN model, it is worth remembering that the EU member states took pragmatic approaches, rather than doctrinal approaches, for improving the efficiency of the European air transport system and upholding a high standard of aviation safety.

ASEAN Member States should consider what steps can be taken to reassure all Members that delegation of Air Transport Rights does not compromise sovereignty. The recognition of this principle should be more explicitly adopted at the ASEAN level.

4. Fostering Connectivity within ASEAN

First of all, the ASEAN Single Aviation Market should be praised for its steady progress in fostering connectivity. ASEAN successfully completed the basic integration of the aviation market by providing the 3rd, 4th, and 5th freedoms of the air for both passenger and cargo services.

The 2009 MAAS provided a step-by-step approach consisting of six implementing protocols that aim to ease market access liberalization in the region. Protocols 1 to 4 had a limited impact, mainly covering secondary cities in growth areas (sub-regions) straddling borders with neighbouring states. Protocol 5 allows unlimited 3rd and 4th freedoms between capital cities (A's carriers between A's capital and another capital, e.g. Singapore–Bangkok and vice versa by Singapore Airlines). Protocol 6 allows unlimited 5th freedom between capital cities (A's carriers from A's capital to C's capital via B's capital, e.g. Singapore–Kuala Lumpur–Hanoi routes, all by Singapore Airlines).

The 2010 MAFLPAS was designed to supplement MAAS and to include the rest of the ASEAN cities. MAFLPAS contains two protocols. Protocol 1 permits unlimited 3rd and 4th freedoms between all cities (A's carriers from A's capital to B's non-capital, A's non-capital to B's capital, and A's non-capital to B's non-capital, e.g. Philippine Airlines' Manila–Ho Chi Minh, Cebu–Jakarta, and Cebu–Ho Chi Minh routes). Protocol 2 allows unlimited 5th freedom between all cities (except capital–capital–capital), e.g. Garuda Indonesia's Surabaya–Singapore–Bangkok, Jakarta–Kuala Lumpur–Ho Chi Minh, Jakarta–Chiang Mai–Hanoi, and Jakarta–Kota Kinabalu–Cebu routes.

The 2009 MAFLAFS, consisting of two protocols, deals with the liberalization of the cargo market. It aims to remove market access barriers for ASEAN carriers on the operation of air cargo transport. Protocol 1 provides unlimited 3rd, 4th, and 5th freedoms between designated points, e.g. Vietnam Airlines' Hanoi–Clark and Hanoi–Vientiane–Bangkok cargo routes. Protocol 2 allows unlimited 3rd, 4th, and 5th freedoms between all points with international airports, e.g. Vietnam Airlines' Ho Chi Minh–Singapore and Hanoi–Singapore–Manila cargo routes.

Ownership and control

Interestingly, the 2009 MAAS, the 2010 MAFLPAS, and the 2009 MAFLAFS provide for a so-called ASEAN community carrier by relaxing the ownership and control restrictions. In a nutshell, an airline that is substantially owned and effectively controlled by ASEAN interests in the aggregate would fulfill the ownership and control requirement. However, under the current laws, there is a risk that the contracting state will reject the application of an ASEAN community carrier. In the Brief IDEAS No.8, Professor Alan Khee-Jin Tan effectively proposed the following actions (Tan 2017).

- i. Amend their domestic laws to allow non-national majority ownership and control;
- ii. Amend the ASEAN agreements to remove the consent of individual states to a community carrier's operations;
- ii. Amend the air services agreements with non-ASEAN states to recognize an ASEAN community carrier.

Implementing these recommendations will help foster connectivity within ASEAN and promote investment in ASEAN's airline industry, in turn encouraging innovation. They should therefore be prioritised by ASEAN Member States.

7th Freedom

All three agreements above and their implementing protocols have been ratified by all of the ASEAN member states recently, which is a significant achievement and enables the next steps for improving connectivity to be identified. The KLTSP included an action to “[r]eview the MAAS, MAFLAFS, MAFLPAS, and their respective protocols and implementation as well as discuss further liberalisation of key economic elements, where necessary, under the ASEAN Single Aviation Market (ASAM) Implementation Framework”. Now that the 3rd, 4th, and 5th freedoms of the air have been granted in ASEAN, the next logical step is to open up the 7th freedom. (The 6th freedom is simply a combination of the 3rd and 4th freedoms, so it does not require an international agreement.) However, the 7th freedom – an airline’s right to carry traffic between one foreign country and another without servicing its home country – is typically viewed as a serious threat to local air carriers (Tan 2009). Most ASEAN states would not move toward relaxing the 7th freedom without a tangible benefit for their national carriers or people. In particular, passenger air services are closely associated with traditional aero-political calculations. The 7th freedom is considered controversial as foreign countries and their national airlines could regard a 7th freedom airline as encroaching on their own markets.

Defining what international markets an airline is entitled to is never simple and is often controversial (Lee & Horton, 2018). A traditional view is that an airline is entitled to routes between its country of registration and foreign destinations (thus, 3rd and 4th freedom markets). This gives rise to the notion that an airline ‘owns’ the passengers in these markets. However, this view has been challenged, particularly by emerging 6th freedom airlines (i.e., airlines of which the majority of passengers are ultimately destined for states other than the states where the airlines are based). For instance, Emirates Airlines openly declares that ‘despite what some carriers may think, air passengers are not proprietary to airlines’ (Emirate, 2015). Nonetheless, many government policy makers oppose the use of 7th freedom rights for passenger air services.

However, liberalising 7th freedom for cargo services has been less controversial than passenger services as states have traditionally been far more willing to provide market access to foreign carriers carrying cargo than they have for passengers. According to the ICAO, as of the end of October 2012, more than 100 of the 400-plus open skies agreements in effect granted the 7th freedom for air cargo or all cargo services, thus providing greater opportunities for the growth of such services (ICAO, Liberalization of Air Cargo Services).

Over half of the open skies agreements that the U.S. has concluded include 7th freedom traffic rights for all cargo services. For instance, the U.S.-EU Agreement includes 7th freedom rights for all cargo services. The EU airlines have open 7th freedom rights for all cargo services between the U.S. and other countries. The U.S.-China Agreement, provides 7th freedom traffic rights and enhanced change of gauge rights for a carrier that operates a cargo hub in the other country. Because of this relaxed provision, FedEx, a U.S. air cargo operator, was able to build an Asia-Pacific hub in Guangzhou.

Indeed, cargo service has been easier to liberalize than passenger service in many regional liberalization models. Cargo air transport is less complex than passenger air transport, and it provides speedy and efficient access to supply chains that reduce logistics costs. In short, it facilitates trade through exports and imports. Therefore, ASEAN should consider opening up the 7th freedom only for cargo as the next stage of fostering connectivity within ASEAN. Liberalizing the 7th freedom for cargo services will strengthen the overall viability of the ASEAN economy.

5. Fostering Connectivity between ASEAN and Dialogue Partners

The ASEAN SAM has attempted to establish a common external relations strategy for the group. In fact, this is remarkable given that ASEAN does not have strong institutions with enforcement functions like the EU. However, ASEAN has yet to complete the integration of its internal market. In contrast, the EU started to tackle external affairs after it had completed its internal market integration – full access to all international and domestic routes within the EU (i.e., the 3rd, 4th, 5th, 6th, 7th, 8th, and 9th freedoms).

ASEAN's approach to a common external strategy has been different. Since the early stage of the ASEAN SAM, the member states have been aware of the need to establish a common external strategy vis-à-vis third countries and regions. (Tan 2009) At the request of the ASEAN Secretariat, the aviation expert group conducted a comprehensive study on the ASAM and recommended that ASEAN adopt aviation Dialogue Partners including the three East Asian states of China, Japan, and South Korea as an initial priority, followed by India and the EU. There has been substantial development in the ASEAN-China agreement, and good progress is expected in the ASEAN-EU agreement.



China

ASEAN agreed to work with China toward an ASEAN-China Regional Air Services Agreement at the 6th ASEAN-China Transport Ministers Meeting in 2007. The result was the adoption of the 2007 ASEAN-China Aviation Cooperation Framework, which includes provisions for the gradual liberalization of cargo and passenger services.

It is worth noting that the ASEAN-China Free Trade Agreement was the explicit justification for the ASEAN-China Regional Air Services Agreement, which was subsequently adopted in 2010. The 2007 ASEAN-China Aviation Cooperation Framework states that the ASEAN-China Regional Air Services Agreement should be concluded by 2010 “to support the realisation of the ASEAN-China Free Trade Agreement in 2010” and “to implement the agreement thereafter in line with the establishment of the ASEAN-China FTA.”

The ASEAN-China free trade area came into effect on 1 January 2010. And unsurprisingly, the Air Transport Agreement between ASEAN and China was adopted in November 2010. The ASEAN-China Air Transport Agreement and its Protocol 1 provide for unlimited 3rd and 4th freedom access for airlines on both sides and effectively supersede the capacity restrictions in the bilateral agreements between the individual ASEAN states and China (the bilateral agreements are still in place – only the capacity has changed). The ASEAN-China Air Transport Agreement and its Protocol 1 have been ratified by China and all ten of the ASEAN states.

The two sides concluded talks in 2013 for a new Protocol 2 on 5th freedom rights that would take the Air Transport Agreement beyond 3rd/4th freedom liberalization. However, Protocol 2 offers only a finite list of secondary cities through which 5th freedom rights can be exercised. The 5th freedom routes that this would make possible are not commercially viable options. Thus, it is necessary to conclude an agreement to further expand 5th freedom rights.

In any case, it is important to remember that Protocol I is one of the very few open skies agreements that China has signed. ASEAN carriers have unlimited penetration into all of China (with the exception of Hong Kong, Macao, and Taiwan, points excluded in the ASEAN-China Agreement), which would not have been possible if the 10 states had negotiated with China separately.

At the same time, ASEAN should evaluate the economic benefits of the ASEAN-China Air Transport Agreement. When the agreement was concluded, there was a perception that it would be a big win for ASEAN carriers. However, this is not necessarily true as Chinese carriers and consumers may have benefited equally or even more than ASEAN carriers. Research into the economic benefits is important for the next stage of negotiations, including full liberalization of the 5th freedom.



The EU

In 2014, the EU and ASEAN agreed to commence negotiations on a comprehensive air transport agreement between the two regions. A prime motivation of this initiative was to neutralize the formidable Middle Eastern carriers that capture a significant amount of traffic in the EU–ASEAN market (Tan 2015). At the same time, the two parties are negotiating various topics including not only market access but also fair competition. Reflecting these ambitious goals, the initiative has been named the ASEAN-EU Comprehensive Air Transport Agreement (CATA). Since both the EU and ASEAN are willing to adopt the agreement, it is expected to be concluded soon. This will be the first ever region-to-region aviation agreement. It will be interesting to watch not only the substantive changes this agreement brings to these two regions, but also its impact on other parts of the world.



India

ASEAN has hoped to secure an open skies agreement with India from the very beginning. The ASEAN-India Aviation Cooperation Framework was adopted at the 14th ATM Meeting in 2008, which hosted air services consultations by the ASEAN-India Working Group on Regional Air Services Arrangements. Despite a promise to work towards concluding an Air Transport Agreement between ASEAN and India based on open skies principles covering both air freight and passenger services, there has been no substantial progress thus far.



Japan

The ASEAN-Japan Working Group on Regional Air Services Arrangement (AJWG-RASA) was established in 2014. Since then, the two parties have been meeting annually. On a bilateral level, Japan has signed open skies agreements allowing the 3rd and 4th freedoms for passenger and cargo services with eight ASEAN states. The key issue is the 5th freedom, and specifically 5th freedom operations via the Tokyo airports of Haneda and Narita. Japan has already opened all cities except Tokyo to 5th freedom operations in its bilateral air services agreements with six ASEAN states: Vietnam, Malaysia, Myanmar, Singapore,

Indonesia, and Brunei. From Japan's perspective, opening Tokyo to unlimited 5th freedom service could have undesirable results, such as multiple Singapore Airlines flights per day departing from Singapore and arriving in major U.S. cities (Los Angeles, New York, and Chicago, for example) via Tokyo. Allowing unlimited and likely profitable 5th freedom routes (e.g. Singapore–Tokyo–Los Angeles) is not an easy policy decision for Japan. Thus, it is expected that the ASEAN-Japan Regional Air Service Arrangement will be concluded in the near future while excluding Tokyo from the 5th freedom.



South Korea

ASEAN is actively looking to establish a new collective agreement with South Korea. Just as with Japan, the 5th freedom is the biggest obstacle here. In fact, South Korea is more sensitive than Japan in terms of the 5th freedom. While Korea has signed open skies agreements permitting the 3rd and 4th freedoms with six ASEAN members (Vietnam, Malaysia, Myanmar, Thailand, Cambodia, and Laos), none of these air services agreements contain unlimited 5th freedom. Although ASEAN is calling for the convening of the ASEAN-Korea Working Group on Air Services Arrangements, it is unlikely that they will reach a meaningful agreement in the near future.

Other considerations



ASEAN should bear in mind the challenges of its Dialogue Partners. When Dialogue Partners negotiate with ASEAN, there is no guarantee that the ten ASEAN member states (and particularly the states in which Dialogue Partners are interested) will ratify the agreement in question. For instance, one Dialogue Partner might want Indonesia in an agreement it signs with ASEAN, but that agreement might be only ratified by a few like-minded states in ASEAN, not by Indonesia. In that case, the Dialogue Partner would lose the advantage of signing an agreement with ASEAN. This is not the case when non-EU states negotiate with the EU because the EU has a supranational mechanism in place. In other words, the failure to strengthen internal coordination within ASEAN's ten states could weaken its ability to negotiate matters related to common external relations.

6. Recommendations

ASEAN has implemented a substantial amount of regional liberalization and integration. For the past 15 years, ASEAN effectively used a concrete action plan to push ahead with regional liberalization. Although some components of this plan have not been fully implemented according to the suggested timetable, the plan has been helpful in achieving meaningful results. The strength of the ASAM is that the member states share its vision. For instance, the 2011 Implementation Framework of the ASEAN Single Aviation Market clearly delineates the ASAM's vision:

“The development of the ASAM would include necessary actions and measures essential in improving the overall performance of the ASEAN air transport sector with respect to the independence, sovereignty, equality, territorial integrity and national identity of all ASEAN Member States. The ASAM will contribute towards a more competitive and resilient ASEAN, as it will bring people closer together and facilitate the efficient, safe and secure movement of goods, services, and capital closer together.”

Through this vision, the AEC Blueprint 2025 shows the directions that ASEAN should pursue. It is worth emphasizing that this paper focuses on short-term results. Therefore, the paper proposes the following recommendations be adopted to accelerate delivery of the AEC Blueprint 2025 for air transport:

Recommendations	Actions
 <p>Strengthening Institutional Capacity to deliver ASAM</p>	<ul style="list-style-type: none"> National Regulators to establish a formal Working Group to oversee harmonisation of standards within ASEAN, to meet at least once a year; working closely with the Air Transport Working Group; The Working Group to be supported by additional resources and staff, seconded from national governments industry and academia.
 <p>Advancing safer and more secure skies in ASEAN</p>	<ul style="list-style-type: none"> ASEAN Member States to adopt specific targets to improve ASEAN members states safety standards, overseen by the National Regulators Working Group, working closely with other capacity building programmes: <ul style="list-style-type: none"> By 2020 all ASEAN member states will exceed 60% on the USOAP Effective Implementation score By 2025 all ASEAN member states will exceed 70%; The National Regulators Working Group to develop Mutual Recognition Agreements between willing member states by 2020 covering the licensing and certification for personnel and technical equipment. The National Regulators Working Group to identify a roadmap to a Joint Aviation Authority-style model by 2025.



Enhancing air traffic management efficiency and capacity

- ASEAN Member States to agree a Memorandum of Understanding on the delegation of Air Traffic Management and the preservation of national sovereignty, to facilitate close cooperation and greater coordination between border states in ASEAN and provide a framework for flexibility over the delegation of air traffic services in the context of FIRs



Fostering connectivity within ASEAN

- ASEAN Member States to liberalise ownership and control:
 - Amend their domestic laws to allow non-national majority ownership and control;
 - Amend the ASEAN agreements to remove the consent of individual states to a community carrier's operations;
 - Amend the air services agreements with non-ASEAN states to recognize an ASEAN community carrier.
- ASEAN Member States to append a protocol to MAFLAFS opening the 7th freedom for cargo by 2020.



Fostering connectivity between ASEAN and Dialogue Partners

ASEAN Member States to commit to the following prioritisation and timescales for the advancing connectivity between ASEAN and Dialogue Partners:

- Agreement on the ASEAN-EU Comprehensive Air Transport Agreement by end 2018; and
- Further expand 5th freedom rights with China by end 2018.

References

ASEAN Economic Community Blueprint 2025, THE ASEAN SECRETARIAT (2015), <http://www.asean.org/storage/images/2015/November/aec-page/AEC-Blueprint-2025-FINAL.pdf>

ASEAN Framework Agreement for the Integration of Priority Sectors Vientiane, Lao PDR 29 November 2004, ASEAN (2009), http://asean.org/?static_post=asean-framework-agreement-for-the-integration-of-priority-sectors-vientiane-29th-november-2004

ASEAN Multilateral Agreement on Full Liberalisation of Passenger Air Services Bandar Seri Begawan, Brunei Darussalam, 12 November 2010, ASEAN (2010), <http://asean.org/wp-content/uploads/images/archive/transport/Agreement-101112.pdf>.

ASEAN Multilateral Agreement on the Full Liberalisation of Air Freight Services Manila, 20 May 2009, ASEAN (2012), <http://cil.nus.edu.sg/2009/2009-asean-multilateral-agreement-on-the-full-liberalisation-of-air-freight-services-signed-on-20-may-2009-in-manila-the-philippines-by-the-transport-ministers/>

ASEAN, Action Plan for ASEAN Air Transport Integration and Liberalization done at Phnom Penh, Cambodia, compiled in ASEAN DOCUMENTS SERIES 2004 (2004), <http://www.asean.org/storage/images/archive/ADS-2004.pdf>

ASEAN, Creating an Effective and Viable ASEAN Leadership Model for the 21st Century, (2009), http://asean.org/?static_post=creating-an-effective-and-viable-asean-leadership-model-for-the-21st-century-by-s-pushpanathan-deputy-secretary-general-of-asean-for-asean-economic-community-3.

CAPA, Southeast Asia low-cost airline fleet will grow only 13% in 2015. Lion Air is the exception, CAPA (2015), <https://centreforaviation.com/analysis/reports/southeast-asia-low-cost-airline-fleet-will-grow-by-only-13-in-2015-lion-air-is-the-exception-206545>

Dempsey, Paul Stephen, Public International Air Law (Montreal: Institute of Air and Space Law, 2008). EASA, The Agency, (2018), <https://www.easa.europa.eu/the-agency/the-agency>

Emirates, Open Skies (The International and Government Affairs Journal for Emirates) (2015), http://content.emirates.com/downloads/ek/pdfs/open_sky/OpenSky_21_v2.pdf

EU, The definition of capacity building, https://webgate.ec.europa.eu/fpfis/mwikis/aidco/index.php?title=Special:Pdfprint&page=9EDF:_Capacity_building

Eurocontrol, Our Areas of Expertise, (2018), <https://www.eurocontrol.int/articles/our-areas-expertise>

European Aviation Safety Agency (EASA), (2018), https://ec.europa.eu/transport/modes/air/safety/easa_en

Hakim C, *A strange anomaly in management of airspace*, THE STRAITS TIMES, March 21, 2016, <https://www.straitstimes.com/opinion/a-strange-anomaly-in-management-of-airspace>

Havel, Brian & Sanchez, Gabriel *The Principles and Practices of International Law* (2014).

- Hiep, Le Hong, *Can ASEAN Overcome the 'Consensus Dilemma' over the South China Sea* (October 2016), Yusof Ishak Institute https://www.iseas.edu.sg/images/pdf/ISEAS_Perspective_2016_58.pdf
- ICAO, Annual Safety Report Asia Pacific Region 2017, (2017), https://www.icao.int/APAC/RASG/Documents/annual_safety_Report_2017.pdf
- ICAO, Asia/Pacific Framework for Collaborative ATFM, (2017), https://www.icao.int/APAC/Documents/edocs/Asia_Pacific_Framework_for_Collaborative_ATFM.pdf
- ICAO, Liberalization of Air Cargo Services ATConf/6-WP/14 (2012) https://www.icao.int/Meetings/atconf6/Documents/WorkingPapers/ATConf6-wp014_en.pdf.
- McLean Iain & McMillan Alistair, *The Concise Oxford Dictionary of Politics*, 3rd edition (2009)
- Karamjit Kaur, *Airspace and Changi's Competitiveness*, THE STRAITS TIMES, , <https://www.straitstimes.com/singapore/airspace-and-changis-competitiveness>
- Khettiya Jittapong & Kanupriya Kapoor, *ASEAN Air Safety Regulator may still be Decades Away*, REUTERS, December 16, 2015, <https://www.reuters.com/article/us-airlines-asean-regulation/asean-air-safety-regulator-may-still-be-decades-away-idUSKBN0TZ0MB20151216>
- Lee, Jae Woon & Horton, *Will Fifth Freedom Traffic Rights: Formidable Threat or Theoretical Concern?*, 43 AIR AND SPACE LAW (2018)
- Nugraha, Ridha Aditya, *Flight Information Region above Riau and Natuna Islands – The Indonesia Effect to Regain Control from Singapore*, 67 GERMAN JOURNAL OF AIR AND SPACE LAW (2018)
- Pettitt, Maureen & Dunlap, Joseph, *The European Joint Aviation Authorities: Meeting the Challenges of International Cooperation*, 5 JOURNAL OF AVIATION/AEROSPACE EDUCATION & RESEARCH (1995)
- SEASIA, *Most On-time Airlines in Southeast Asia in February 2018* <https://seasia.co/2018/03/23/most-on-time-airlines-in-southeast-asia-in-february-2018>
- Tan, Alan Khee-Jin , *Aviation Policy in the Philippines and the Impact of the Proposed Southeast Asian Single Aviation Market*, 34 AIR AND SPACE L (2009)
- Tan, Alan Khee-Jin, *compiled in Toward a Single Aviation Market in ASEAN: Regulatory Reform and Industry Challenges*, 2013 ECONOMIC RESEARCH INSTITUTE FOR ASEAN AND EAST ASIA (ERIA) DISCUSSION PAPER 2013-22 (2013) http://www.eria.org/publications/discussion_papers/toward-a-single-aviation-market-in-asean-regulatory-reform-and-industry-challenges.html.
- Tan, Alan Khee-Jin, *Prospects for a Single Aviation Market in Southeast Asia*, 34 ANN. AIR & SP.L. (2009)
- Tan, Alan Khee-Jin, *The Proposed E.U. – ASEAN Comprehensive Air Transport Agreement: What Might It Contain and Can It Work?* 43 TRANSPORT POLICY (2015)

Tan, Alan Khee-Jin, Ownership and Control of Airlines in Southeast Asia: Prospect for an ASEAN Community Carrier, Brief IDEAS No.8 (2017), <http://www.ideas.org.my/wp-content/uploads/2017/12/Brief-IDEAS-No8-Ownership-and-Control-of-Airlines-in-Southeast-Asia.pdf>

Weber, Ludwig, International Civil Aviation Organization (ICAO) (2 ed.) (2015)

World Bank, Air transport, passengers carried, THE WORLD BANK (2018), https://data.worldbank.org/indicator/IS.AIR.PSGR?end=2016&locations=KH-SG-TH-PH-LA-ID-VN-MY-BN-MM&name_desc=false&start=1970&view=chart

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