

2008

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Recommended Citation

Ruwantissa Abeyratne, *Civil Aviation in the United Arab Emirates - Some Legal and Commercial Perspectives*, 73 J. AIR L. & COM. 3 (2008)
<https://scholar.smu.edu/jalc/vol73/iss4/1>

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CIVIL AVIATION IN THE UNITED ARAB EMIRATES— SOME LEGAL AND COMMERCIAL PERSPECTIVES

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I. INTRODUCTION

THE UNITED ARAB Emirates¹ (“UAE”) is a Middle Eastern country that comprises seven small emirates² located in the southeast of the Arabian Peninsula on the Arabian Gulf.³ These emirates were known as the Trucial States, or Trucial Oman, in reference to a series of nineteenth-century truces between Britain and several Arab Sheikhs.⁴ The rulers of six emirates (all except Ra’s al-Khaimah) ratified the Provisional Constitution of the UAE on July 18, 1971.⁵ This document took more than

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¹ The country consists of seven emirates: Abu Dhabi, Dubai, Ajman, Sharjah, Umm al-Qaiwain, Ras al-Khaimah, and Fujairah. U.A.E. MINISTRY OF INFO. & CULTURE, UAE AT A GLANCE 4 (2007), available at http://uaeinteract.com/uaeint_misc/glance/ataglance.pdf. The capital is Abu Dhabi, which is the richest of the emirates and contributes more than three-fifths of the national budget. See *Encyclopedia Britannica Online, United Arab Emirates*, <http://search.eb.com/eb/article-9110509> (last visited Feb. 10, 2008). See also *Abu Dhabi, U.S. – ARAB TRADELINE* (Nat’l U.S. – Arab Chamber of Commerce, Washington, D.C.), June 2007, at 13.

² An emirate designates a political territory that is “ruled by a dynastic monarch or emir.” Ali Jaafar, *Dubai at a Glance*, WKLY. VARIETY, Dec. 4, 2006, at B3, available at 2006 WLNR 21009961.

³ U.A.E. MINISTRY OF INFO. & CULTURE, *supra* note 1, at 4.

⁴ *Id.* *Sheikh* is a word in the Arabic language meaning chief of a tribe, learned man, or Islamic scholar. ENCYCLOPEDIA BRITANNICA ONLINE, *Sheikh*, <http://search.eb.com/eb/article-9067240> (last visited Feb. 10, 2008). *Sheikh* literally means a respected man of old age. *Id.* In recent centuries, sheikh became a traditional title of a Bedouin tribal leader. ENCYCLOPEDIA BRITANNICA ONLINE, *Bedouin*, <http://search.eb.com/eb/article-9014079> (last visited Feb. 10, 2008). A wife of a Sheikh is sometimes called Sheikha. OXFORD ENGLISH DICTIONARY ONLINE, *Sheikha*, http://dictionary.oed.com/cgi/entry/50222405?single=&query_type=word&queryword=sheikha&first=1&max_to_show=10 (last visited Feb. 10, 2008).

⁵ Provisional Const. of the U.A.E. art. 152. See also Ibrahim Al Abed, *The Historical Background & Constitutional Basis to the Federation*, in UNITED ARAB EMIRATES: A NEW PERSPECTIVE 121, 132 (Ibrahim Al Abed & Peter Hellyer eds. 2001).

three years of discussion and debate among the rulers before attaining fruition.⁶ It was promulgated on December 2, 1971, on the day the UAE became an independent State.⁷ Ra's al-Khaimah joined the union in February 1972.⁸

The 1971 establishment of the Federation was legitimized by the Provisional Constitution, which became permanent in 1996.⁹ Since then, "the seven emirates . . . have forged a distinct national identity through consolidation of their federal status and enjoy an enviable degree of political stability."¹⁰ The UAE's political system is a blend of traditional conservatism and modern liberalism.¹¹ This "combination . . . has underpinned this political success, enabling the country to develop a modern administrative structure while, at the same time, ensuring that the best of the traditions of the past are maintained, adapted and preserved."¹²

In aviation terms, the significance of the unique political structure of the UAE, which ratified the Convention on International Civil Aviation¹³ on April 25, 1972 and became a member state of the International Civil Aviation Organization ("ICAO"),¹⁴ lies in the demarcation of various functions of the federal authorities on the one hand and the local authorities on the other, in the field of aviation. This Article will discuss the unique symbiosis between the federal structure and the authorities of the individual emirates in apportioning legal responsibility with regard to international civil aviation.

⁶ See *History & Traditions*, 2007 U.A.E. Y.B. 7, 11, available at http://uaeinteract.com/uaeint_misc/pdf_2007/index.asp.

⁷ *Id.* at 15.

⁸ *Id.*

⁹ U.A.E. MINISTRY OF INFO. & CULTURE, *supra* note 1, at 6.

¹⁰ *Government*, 2007 U.A.E. Y.B. 35, 37, available at http://uaeinteract.com/uaeint_misc/pdf_2007/index.asp.

¹¹ *Id.*

¹² *Id.*

¹³ Convention on International Civil Aviation Foreword, Dec. 7, 1944, 61 Stat. 1180, 15 U.N.T.S. 295 [hereinafter Chicago Convention].

¹⁴ Int'l Civil Aviation Org. [ICAO], Status, <http://www.icao.int/icao/en/leb/chicago.pdf> (last visited Mar. 26, 2008) [hereinafter Status]. The ICAO, a specialized agency of the United Nations, was established by Article 43 of the Chicago Convention. Chicago Convention, *supra* note 13, art. 43. The main objectives of the ICAO "are to develop the principles and techniques of international air navigation and to foster the planning and development of international air transport." *Id.* art. 44. ICAO has 190 member States. Status, *supra*.

II. AVIATION IN THE UAE

In recent years, the Middle East has been the most dynamic region for airline growth. In just four years, from 2003 to 2007, Middle East carriers increased their global passenger capacity from four percent to eight percent.¹⁵ The demand is continuing to grow because of the high level of economic growth and the “significant investment by Middle East governments launching aviation infrastructure.”¹⁶ Additionally, airlines of the Middle East countries are continuously adding new routes and long-range aircraft capacity.¹⁷

The UAE has two prominent airlines, Emirates Airline and Etihad Airways.¹⁸ Emirates, established in 1985, is based in Dubai.¹⁹ It operates scheduled passenger services, with nearly “2,640 flights each week, serving 87 cities in 59 countries in Europe, North America, Middle East, Africa, India, [and] Asia-Pacific.”²⁰ Cargo activities are undertaken under the Emirates SkyCargo name.²¹ Its main base is Dubai International Airport.²² Etihad Airways is the national airline of the UAE.²³ Etihad is based in Abu Dhabi.²⁴ “Etihad” means “United,” and serves as “a symbol of the bonding among the seven emirates

¹⁵ *Perspective: IATA Cuts Middle East 2008 Profit Outlook*, MONTHLY ESSENTIAL MIDDLE EAST (Centre for Asia Pacific Aviation, Sydney, Austl.), Sept. 2007, at 4, available at <http://www.centreforaviation.com/samples/meme.pdf>.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *The UAE Takes Flight with Emirates & Etihad*, U.S. – ARAB TRADE LINE (Nat’l U.S. – Arab Chamber of Commerce, Washington, D.C.), June 2007, at 22.

¹⁹ See Emirates, *The Emirates Story*, http://www.emirates.com/english/about/the_emirates_story.aspx (last visited Mar. 26, 2008) [hereinafter Emirates].

²⁰ *Warsaw Airport May Be Air Transfer Center of Eastern Europe*, KRAKOW POST, Aug. 30, 2007, <http://www.krakowpost.pl/articles/2007/08/30/424.html>. “[N]early 40 per cent of all flight movements in and out of Dubai International Airport” are by Emirates aircraft. Emirates, *supra* note 19. By 2010, that figure is expected to rise to 70 percent. *Id.* Emirates’ route portfolio of more than ninety destinations in over 60 countries is expanding. *Id.* During the 2006–2007 financial year, “Emirates carried 17.5 million passengers and 1.2 million tonnes of cargo.” *Id.*

²¹ Emirates SkyCargo, *Company Overview*, <http://www.skycargo.com/about-us/companyoverview/companyoverview.asp?lnid=13110> (last visited Mar. 26, 2008).

²² See Aaron Karp, ‘*Cautiously Bullish*’ Emirates, AIR CARGO WORLD, Nov. 4, 2004, at 38.

²³ Etihad Airways, *Our History*, <http://www.etihadairways.com/etihadairways/global/en/aboutetihad/etihadstory/EtihadHistory.htm> (last visited Mar. 26, 2008).

²⁴ *Id.*

that constitute the UAE.”²⁵ It operates services to the Middle East, Europe, North America, Asia, and Oceania.²⁶ Its main base is Abu Dhabi International Airport.²⁷

In 2006, Dubai International Airport handled approximately 28.7 million passengers.²⁸ It has set itself a target of thirty-three million for 2007.²⁹ The airport will be complemented by Dubai World Central, a new 140 square kilometer development that includes Dubai World Central International Airport, expected to be the world’s largest airport upon completion.³⁰ Situated less than three miles southeast of Dubai’s city center,³¹ the airport currently serves over 100 airlines, and millions of passengers pass through its terminals every year.³² It is estimated that by 2010 the airport will need to be able to accommodate up to sixty million passengers on an annual basis.³³

The airport is currently undergoing an extensive expansion program that seeks to improve the facilities.³⁴ The expansion began in 2002 and is due to be completed by 2007.³⁵ It is estimated that the envisaged changes will cost in the region of two billion pounds (4.1 billion dollars).³⁶ Proposed alterations and

²⁵ *Id.*

²⁶ Etihad Airways, Where We Fly, <http://etihadairways.com/etihadairways/global/en/planatrip/wherewefly.htm> (last visited Mar. 26 2008).

²⁷ Dominic Dudley, *Giant Threat to Local Rival*, MIDDLE EAST ECON. DIG., Nov. 2, 2007, available at 2007 WLNR 23907646.

²⁸ Press Release, Dubai Int’l Airport, DIA Registers 16.17 Per Cent Growth in 2006 (Jan. 11, 2007), <http://www.dubaiairport.com/DIA/English/TopMenu/News+and+Press/Arab+News/DIA+registers+16.17+per+cent+growth+in+2006.htm>.

²⁹ *Id.*

³⁰ Press Release, Dubai World Cent., Dubai World Central International to Be World’s Biggest Passenger & Cargo Hub (May 1, 2006), http://www.dubaiworldcentral.net/uploads/media/may_1_04.zip.

³¹ AME Info., Dubai International Airport, http://www.ameinfo.com/dubai_airport_guide_dxb/ (last visited Mar. 26, 2008).

³² Dubai International Airport, *supra* note 31.

³³ Press Release, Dubai Int’l Airport, Dubai: The World’s Aviation Hub in the Making (June 19, 2007), <http://dubaiairport.com/DIA/English/TopMenu/News+and+Press/Arab+News/Dubai++the+worlds+aviation+hub+in+the+making.htm>.

³⁴ See Press Release, Dubai Int’l Airport, DIA Registers Robust Overall Growth in October (Nov. 19, 2006), <http://www.dubaiairport.com/DIA/English/TopMenu/News+and+Press/Arab+News/DIA+registers+robust+overall+growth+in+october.htm>.

³⁵ Press Release, Dubai Int’l Airport, Concourse 2 Takes Shape (Sept. 19, 2005), <http://www.dubaiairport.com/DIA/English/TopMenu/News+and+Press/Arab+News/Concourse+2+takes+shape.htm>.

³⁶ *Id.*

additions include the creation of a new terminal and two concourses purely for the use of Emirates Airline planes and passengers.³⁷

Abu Dhabi International Airport, which celebrates its 25th anniversary in 2007, opened its second terminal in September 2005.³⁸ The new terminal, which is complete with a baggage handling system that employs inline security screening, also has a state-of-the-art “Flight Information Display System (FIDS), security surveillance and access control, 1000 [square meters] of duty free [shops] and cafeterias, business class lounge, e-gate and iris scan.”³⁹ The new terminal went from the drawing board to reality in months,⁴⁰ and a design competition was initiated to find a design for the new midfield terminal.⁴¹

Regulatory responsibility is vested in the General Civil Aviation Authority (“GCAA”) of the UAE, which “is a federal, autonomous body set up to oversee all aviation-related activities in the” country.⁴² The GCAA, “in coordination with local authorities and concerned bodies,” implements laws relating to civil aviation, and provides required services to civil aviation.⁴³ The GCAA also “implement[s] . . . international agreements and treaties in the field of Civil Aviation and meteorology,” and undertakes “scientific authentication of data, information, and [research]” in aviation.⁴⁴ It is the focal point in the UAE for cooperation with international organizations and bodies concerned with civil aviation.⁴⁵

III. LEGISLATIVE STRUCTURE OF THE UAE

Under the UAE Constitution, the government is divided into a federal government and the governments of the individual

³⁷ *Id.*

³⁸ Abu Dhabi International Airport, Welcome, <http://www.abudhabiairport.ae/theairport/index.asp> (last visited Mar. 26, 2008).

³⁹ Airport-Technology.com, Abu Dhabi International Airport (AUH/OMAA), http://www.airport-technology.com/projects/abu_dhabi/ (last visited Mar. 26, 2008).

⁴⁰ *See id.*

⁴¹ *Airport Designers Line Up*, MIDDLE EAST ECON. DIG., June 17, 2005, available at 2005 WLNR 10749314.

⁴² General Civil Aviation Authority, Welcome, <http://www.gcaa.ae/en/> (last visited Mar. 26, 2008).

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *See* General Civil Aviation Authority, Authority Functions, <http://www.gcaa.ae/en/?T=2&ID=6> (last visited Mar. 26, 2008).

emirates.⁴⁶ The federal government's powers are expressly identified in the constitution, and include such powers as "foreign policy, defense, security, immigration, and communications."⁴⁷ The emirates retain those "residual powers" not expressly given to the federal government.⁴⁸

The UAE's federal government is made up of executive, legislative, and judicial branches.⁴⁹ Despite this formal separation of powers into branches, the executive branch has significant legislative authority.⁵⁰ The executive branch is composed of the Supreme Council of the Union ("SCU"), the president, and the Council of Ministers.⁵¹ The rulers of the seven emirates comprise the SCU.⁵² The president is the chairman of the SCU, who is elected by the SCU for a five-year term of office.⁵³ The Council of Ministers, or cabinet, is appointed by the president and consists of twenty-five ministers, which includes a prime minister and two deputy prime ministers.⁵⁴

Each office or authority within the executive branch has certain powers. The SCU ratifies federal laws and treaties, and it approves the appointments of the prime minister and of Supreme Court of the Union judges.⁵⁵ The SCU acts by majority vote in procedural matters, but must have a five out of seven vote in substantive matters.⁵⁶ This five member super-majority must include Abu Dhabi and Dubai.⁵⁷ The president is the head of state and commander of the military, and he has the power to make cabinet and other appointments.⁵⁸ The Council of Ministers acts as the administration of the executive branch, and is the drafter of all federal legislation.⁵⁹

⁴⁶ Eric Hooglund & Anthony Toth, *United Arab Emirates—Government and Politics: Executive and Legislative Branches*, in PERSIAN GULF STATES: COUNTRY STUDIES (Helen Chapin Metz ed., 3d ed. 1994), available at <http://hdl.loc.gov/loc.gdc/cntrystd.ae>.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *See id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

The federal legislative branch consists of the Federal National Council (“FNC”).⁶⁰ The FNC is made up of forty members, each appointed to two-year terms by one of the emirate rulers.⁶¹ The members of the FNC are appointed proportionally according to the population and wealth of each emirate.⁶² The FNC has the power of consultation with the Council of Ministers to agree, disagree, or make suggestions about legislation, but the FNC has no veto power over the executive branch.⁶³ The FNC may disapprove of legislation, and the executive branch may enact such legislation over the FNC’s disapproval.⁶⁴

The federal government produces two types of laws: union laws and decrees.⁶⁵ Union laws are those which have gone through the traditional process of being drafted by the Council of Ministers in consultation with the FNC and the president, ratified by the SCU, and signed by the president for publication.⁶⁶ Decrees, on the other hand, are those laws which have not been ratified by the SCU because they were issued by the president and Council of Ministers while the SCU was not in session.⁶⁷ Decrees must later be ratified by the SCU to stay in effect.⁶⁸

The UAE Constitution bestows on the FNC, in the course of exercising its supervisory function, competence “to directly influence the executive authority works through definite tools,” such as the ability to [present] general subjects for discussion, [pose] questions, [express] recommendations and [resolve]” any complaints that are filed.⁶⁹

The federal government must inform the FNC of treaties ratified by the UAE, and the FNC has the discretion to express any comments as regards such treaties without adopting any resolution on the treaty itself.⁷⁰ It is worthy of note that the Constitution provides in Article 116 that individual “Emirates shall

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *See id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ United Arab Emirates Federal National Council, Supervisory Function, http://www.almajles.gov.ae/English/Subjects_Details.asp?Subject_ID=57&Section_ID=5C (last visited Mar. 26, 2008). However, “not all common political supervision forms are available for the FNC.” *Id.*

⁷⁰ U.A.E. Const. art. 91; *see also id.* art. 96.

exercise all powers not assigned to the [federation] by [the] Constitution.”⁷¹ This is reaffirmed in Article 122, which states that “Emirates shall have jurisdiction in all matters not assigned to the exclusive jurisdiction” of the federation.⁷²

It is also noteworthy that, unlike some constitutions, which grant absolute legislative power to their parliaments, no specific reference is made in the UAE Constitution as to the authority that undertakes the legislative power in the Federation.⁷³ According to the Constitution, a legislative authority is the one having the power to promulgate laws.⁷⁴ However, in the UAE, it is of compound nature and entrusted to more than one authority.⁷⁵ In the UAE, the executive is encumbered with a considerable responsibility toward legislative function, commencing with the proposal phase, which is the exclusive jurisdiction of the Cabinet, and ending with the promulgation and publishing phase.⁷⁶ The FNC’s role is seen during an intermediate phase, at which draft laws are discussed and voted upon.⁷⁷

The Constitution restricts the FNC’s power in exercising its legislative function to discussing the constitutional amendments and draft laws, which may be approved, amended, or dismissed by the FNC.⁷⁸ The FNC also has the opportunity to express any remarks on any international treaties and conventions about which it is notified,⁷⁹ and can discuss and express its remarks on the UAE budget and final account.⁸⁰ It has an indirect influence on the work of the executive authority that is crucial to the exercise of its legislative function. First, the FNC can introduce amendments to the draft laws proposed by the government reflecting government policy to be adopted. Second, the FNC can express views over treaties entered into by the federal government that are brought to the notice of the FNC.⁸¹ Third, the FNC has the power to discuss and make its views public on the national budget (of the Federation) and final accounts.⁸²

⁷¹ *Id.* art. 116.

⁷² *Id.* art. 122.

⁷³ See generally U.A.E. Const.

⁷⁴ See *id.* arts. 110–136.

⁷⁵ See *id.*

⁷⁶ See *id.* arts. 110–112.

⁷⁷ See *id.* art. 110.

⁷⁸ See *id.* arts. 89, 144.

⁷⁹ *Id.* arts. 91–92.

⁸⁰ *Id.* art. 90.

⁸¹ See *id.* arts. 89–93.

⁸² *Id.* art. 90.

IV. CONSTITUTIONAL PROVISIONS

The Constitution, in Article 11, provides that the emirates of the Union shall form one composite economic and customs entity.⁸³ It also provides that laws of the Union “shall regulate the progressive stages appropriate to the achievement of this [entity].”⁸⁴ This means that there is constitutional leeway for the federation not only to dictate a common aviation policy for the UAE, but also to apply different laws and policies on its national carriers as it deems fit in order to achieve economic progress. The provision also makes room for a common customs policy and common laws and regulations relating to customs in the UAE.⁸⁵ Article 11 also guarantees free movement of all capital and goods between the emirates of the Union, unless restricted by a Union Law, and obviates all “taxes, fees, duties, and tolls imposed on the movement of goods from one member Emirate” to another.⁸⁶

Articles 120 and 121 of the Constitution provide that responsibility for foreign affairs, security and defense, nationality and immigration issues, education, public health, currency, postal, telephone, and other communications services, air traffic control, and licensing of aircraft, as well as a number of other topics specifically prescribed, including labor relations, banking, delimitation of territorial waters, and extradition of criminals, devolve upon federal authorities.⁸⁷ With regard to immigration, as a contracting state to the Chicago Convention, the UAE is bound by Article 23 of the Convention, which requires states to act according to practices relating to customs and immigration established under the Convention.⁸⁸ Furthermore, Article 37(j) requires that States maintain “uniformity in regulations, standards, procedures, and organization in relation to aircraft, personnel, airways, and auxiliary services” on which ICAO would, from time to time, adopt Standards and Recommended Prac-

⁸³ *Id.* art. 11.

⁸⁴ *Id.*

⁸⁵ *Id.* Customs is “[t]he agency or procedure for collecting such duties” which are “imposed on imports or exports.” BLACK’S LAW DICTIONARY 161 (Pocket ed. 1996).

⁸⁶ U.A.E. Const. art. 11.

⁸⁷ *Id.* arts. 120–121.

⁸⁸ Chicago Convention, *supra* note 13, art. 23.

tices ("SARPs") in customs and immigration procedures.⁸⁹ These SARPs are in Chapter 3 of Annex 9 to the Convention.⁹⁰

In the UAE, conclusion of conventions, signature of treaties, and ratification of treaties are among the sovereign acts specified for the executive authority in accordance with the authorizing competencies in the Constitution.⁹¹ However, as stated earlier, Article 91 of the Constitution stipulates that the government must inform the FNC of any conventions and treaties concluded with "other states and the various international organizations," accompanied by any appropriate statement, which is to be recited at the first subsequent session, with the treaty and its attachments lodged with the Secretariat of the FNC.⁹²

V. LEGAL PROVISIONS

The legal framework of the UAE in matters of civil aviation is contained in Federal Act No. 20 of 1991, entitled "United Arab Emirates Civil Aviation Law."⁹³ According to Article 2 of the law, "Ministers and the Competent Authorities⁹⁴ in the Emirates, within their respective jurisdiction," are required to "implement the provisions of [the] Law."⁹⁵ Article 4 stipulates that "[t]he Ministry of Communications shall, in cooperation with the Appropriate Authorities, establish the policy for, and exercise supervision of commercial air transport in the light of present and future requirements of the national economy."⁹⁶ "To this end, [the Ministry] may, inter alia: 1. [n]egotiate with other States for the purpose of concluding agreements regarding scheduled and non-scheduled operations and any other agreements relating to international air transport."⁹⁷ This provision bestows power on the Ministries of Communications of separate emirates to negotiate the agreements mentioned for the benefit of the economy of the entire UAE.⁹⁸ The interesting feature of

⁸⁹ *Id.* art. 37.

⁹⁰ *Id.* annex 9.

⁹¹ *See* U.A.E. Const. arts. 47, 54, 60.

⁹² *Id.* art. 91; *see also id.* arts. 46–50.

⁹³ *See* Civil Aviation Law, Fed. Act No. 20 (1991) (U.A.E.).

⁹⁴ A Competent Authority is defined as "[t]he Ministry of Communications or the body designated from among its departments to supervise matters relating to civil aviation and its development." *Id.* art. 1(4).

⁹⁵ *Id.* pmbl., art. 2.

⁹⁶ *Id.* art. 4.

⁹⁷ *Id.*

⁹⁸ *See id.*

this provision is the term “any other agreements,” which seemingly grants the Ministry the right to negotiate other agreements such as ground handling, airport security, and air navigation services agreements that come under the purview of the emirate concerned.⁹⁹ In terms of implementation of such agreements, the responsibility falls on the Civil Aviation Authority of each emirate.¹⁰⁰ The United Arab Emirates General Civil Aviation Authority Law, encompassed in Article 6 of Federal Law No. 4 of 1996, provides that the Civil Aviation Authority shall, in particular, implement international agreements and treaties “in the field of Civil Aviation and meteorology.”¹⁰¹

Article 19 of the law raises an interesting point in that it provides that the “Chicago Convention and other protocols and agreements pertaining to civil aviation and its protection, of which the State is a party, shall be considered complementary to the provisions of this Law in as much as they do not contradict its provisions.”¹⁰² This provision makes the Chicago Convention subservient to the domestic law of the UAE, a point of contradiction in terms of Article 27 of the Vienna Convention on the Law of Treaties of 1969, which provides that “[a] party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.”¹⁰³ Article 46 of the Vienna Convention provides that “a State may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its consent unless that violation was manifest and concerned a rule of its internal law of fundamental importance.”¹⁰⁴

VI. CONCLUSION

The above discussion brings to bear the fact that, against its constitutional, legislative, and executive backdrop, civil aviation in the UAE has unique legal perspectives. To begin with, the UAE Constitution identifies the federal authorities, under the SCU, as the ultimate arbiters of the territorial boundaries of the

⁹⁹ *See id.*

¹⁰⁰ *See* General Civil Aviation Authority Law, Fed. Law No. 4, art. 6 (1996) (U.A.E.).

¹⁰¹ *Id.*

¹⁰² Civil Aviation Law, Fed. Act No. 20, art. 19.

¹⁰³ Vienna Convention on the Law of Treaties art. 27, May 23, 1969, 1155 U.N.T.S. 331.

¹⁰⁴ *Id.* art. 46.

country, including its airspace.¹⁰⁵ They are also responsible for foreign relations, which includes air services agreements, the provision of air traffic control services, and the issuance of licenses.¹⁰⁶ However, any treaty ratified must go before the FNC (another legislative authority that does not have the power to veto such treaties, nor to preclude them from becoming UAE law, but is merely vested with a consultative role), and the FNC can express its views to the SCU.¹⁰⁷ Federal laws are proposed and developed by the executive, which is the Cabinet, and voted on by the FNC.¹⁰⁸ This means that there is a harmonious blend of the executive and legislature in the adoption of laws with regard to aviation. Furthermore, since, administratively, the UAE is a federation of seven emirates, each with its own ruler, there is considerable autonomy given to each emirate with regard to aviation in terms of its impact on local government.¹⁰⁹ In this perspective, it is arguable that a ruler, or his civil servants acting under his authority, could make decisions regarding incoming or outgoing flights, airport administration and the passage of persons, and freight carried by air in a particular emirate.

Arguably, the most interesting feature is the symbiosis between the Ministry of Communications of each emirate and the federal authorities. The clear demarcation of functions and the greater flexibility in autonomy given to the ministries would only serve to facilitate the development of commercial air traffic into and out of the UAE.¹¹⁰ As Sheikh Ahmed Bin Saeed Al Maktoum, President of Dubai Department of Civil Aviation and Chairman and CEO of Emirates Group, said on September 17, 2006, at the opening of Dubai 2006, the 12th World Route Development Forum at the Dubai International Convention and Exhibition Centre:

“Air transport liberalisation is one of the most important issues the Middle East’s civil aviation industry faces today. Considering that population in the region has increased significantly over the years and billions of dollars are being invested across the region in projects connected to airports, airlines, tourism and trade,

¹⁰⁵ See U.A.E. Const. arts. 47, 54, 60.

¹⁰⁶ See *id.*

¹⁰⁷ See *id.* art. 110.

¹⁰⁸ *Id.*

¹⁰⁹ See *id.* arts. 116–123.

¹¹⁰ See *id.*

pursuing an open skies policy should be a natural choice for a sustainable growth of these sectors.”¹¹¹

¹¹¹ *Open Skies Policy Will Boost Region's Aviation and Tourism Sectors: Sheikh Ahmed*, AME INFO., Sept. 17, 2006, <http://www.ameinfo.com/96541.html>.

