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## Contents:

- 1 **Formation of Research Competence of Future Economists in the Process of Mastering Foreign Languages**  
by Nataliya N. Aleksandrova, and Larysa Sluchayna ... 2517
- 2 **Legislation Peculiarities of Kazakhstan on the Termination of Property Rights and Other Property Priorities**  
by Gulnara U. Balgimbekova, Kuralay K. Sadykova, Mirgul M. Narbinova, Marat A. and Alenov, Mukhtarkhan A. Utanov ... 2530
- 3 **The Place of Legal Custom in the System of Sources of Regulation of Private Relations**  
by Iryna I. Banasevych, Ruslana M. Heints, Mariya V. Lohvinova, and Ihor V. Myronenko ... 2540
- 4 **Perspective Directions of Multilateral Cooperation between the EU and the PRC in the Context of Stabilizing the Global Financial System**  
by Gulnara U. Birimkulova, Bekkozha Zhylybekuly, and Raihan Tashtemkhanova ... 2551
- 5 **On the Issue of Sense Benchmarks of Behavior (Economic-Legal Aspects)**  
by Valentina V. Dudchenko, Yuliia V. Tsurkan-Saifulina, and Oleksandr V. Tsurkan ... 2562
- 6 **The Role of Organizational Culture Factors to Psychological Contracts (Transactional Contracts, Balance Contracts, and Relational Contracts)**  
by Retno Dwiyantri, Suwanti, and Tri Naimah ... 2570
- 7 **The Quality of Life of the Population of the Arctic Zone of Russia and Financial and Economic Mechanisms for Improving It from the Standpoint of Strengthening National Interests**  
by Olga V. Gordyachkova, Inga V. Nikulkina, Tatiana S. Rotar, Sofya E. Gritsenko, and Lyudmila M. Filimonova ... 2578
- 8 **Digital Threats in the Transition of the Russian Economy to the Innovative Path of Development**  
by Marsel M. Imamov ... 2593
- 9 **Currency Circulation as a Factor of State Economic Stability**  
by Marsel M. Imamov ... 2603
- 10 **Commercial Use of Aircraft Based on Safety Risk**  
by Gulnar M. Imasheva, Nadezhda A. Dolzhenko, Raziya K. Anayatova, and Yelena V. Doronina ... 2615
- 11 **The Protection of Civil Rights and Interests in the Court**  
by Oleksandra O. Karmaza, Sergiy V. Sarana, Tetyana V. Fedorenko, Taras O. Gurzhii, and Alona V. Nefedova ... 2622

12	<b>The Essence and Principles of Combating Corruption in the Field of Public Procurement</b> by Nurbek A. Katayev, and Sarkytbek S. Moldabaev, Bakhytbek A. Begaliyev, Anna A. Aubakirova, and Yernar N. Begaliyev ... 2631
13	<b>Rules of Law and Rights-Terminating Legal Facts in the Mechanism of Legal Regulation</b> by Mykhailo M. Khomenko, Anatoliy V. Kostruba, and Oleksii O. Kot ... 2638
14	<b>Language Situation and Language Legislation of Ukraine in the Context of Experience of the Countries with Similar Historical Background</b> by Oksana I. Kobelianska, Tamara K. Komarnytska, Yuliia S. Kuzmenko, Svitlana M. Mazur, and Viktoriia O. Filonova ... 2643
15	<b>Criteria Measurement and Evaluation System of Functioning Efficiency of Ukraine's Regional Landscape</b> by Viktoriia Medvid, Tetiana Ustik, Margarita Lyshenko, and Oleksandr Kovbasa ... 2653
16	<b>Evolution of Labor Law in Kazakhstan: Overview and Commentary on Regulatory Objectives and Development</b> by Gulzhan N. Mukhamadiyeva, Nessibelikalkayeva, Ershat Ch. Bopabaev, Zhanel Yu. Sailibayeva, Zhanna A. Khamzina, and Yermek A. Buribayev ... 2664
17	<b>The Initial Condition of Legal Consciousness of Pedagogical College Students</b> by Galiya Nazkhanova, Natalya Khan, Gulzira Abdullayeva, Ardak Kalimoldayeva, and Asan Abdrakhmanov ... 2675
18	<b>Theoretical and Methodological Aspects of Anti-Corruption Mechanisms Formation in the System of Higher Education</b> by Galiya Nazkhanova, Natalya Khan, Asemqul Moldazhanova, Gulzira Abdullayeva, and Roza Abdrakhmanova ... 2689
19	<b>Accounting-Analytical and Evaluating Procedures for Defining the Economically Feasible Activities of the Oil Processing Enterprises of Kazakhstan</b> by Gulmira Nurbayeva, Rystysartova, Ainur Alshynbay, Madina Duisemaliyeva, and Zhanat Bulakbay ... 2695
20	<b>Russian Insurance Market: Federal, Regional Measures and Self-Regulation</b> by Tatjana Odinkova ... 2709
21	<b>State Policy of Innovative Development of National Economy: Situation and Issues of Implementation</b> by Igor V. Paryzkyy ... 2721
22	<b>Public-Private Partnership: Its Essence and Specificity</b> by Lyubov L. Pashina, Svetlana B. Pastushenko, Elena A. Volkova, Anton S. Ninya, and Maria V. Pashina ... 2733
23	<b>Normalization of Bilateral Relations between the USA and Myanmar (2008 – 2009)</b> by Inna E. Podbereznykh, Victoria V. Tsytko, Nataliia V. Ivasyshyna, Volodymyr M. Vasylichuk, and Kan-Den Sik ... 2740

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- 24 **Basic Directions of Foreign Trade and Internal Co-operation of the Eurasian Economic Union Countries**  
by Galina Podbiralina ... 2746
- 25 **Sociological Approach to Human Rights Research**  
by Tetiana S. Podorozhna, Olga B. Verba-Sydor, Liubomir V. Ziniak,  
and Polina V. Kazakevyc ... 2754
- 26 **The Cluster Approach Application for Economic Ecosystems in the Aspect of the Precision Instrumentation**  
by Olena S. Pokras, and Serhii V. Voitko ... 2762
- 27 **Competitive Advantages of Agricultural Enterprises from the Perspective of the Analysis of the Competition's Conditions**  
by Nadiia M. Pylypenko , Viacheslav V. Pylypenko , and Kristina O. Kuchkova ... 2774
- 28 **Complex Innovation Policy in Kazakhstan with the New Legal Regulations: Key Issues and Challenges**  
by Meiramkul Saiymova, Almira Seisinbinova, Rysgul Dauletova, Sanimzhan Iskakov,  
Buldyryk Suleimenova, Rakhima Bekbulatova, and Gulmira Kabdullina ... 2790
- 29 **Determination of Effective Balanced Indicators in the Airline Company Using a Modified Fuzzy Analytical Hierarchy Process Approach**  
by Dinara O. Satybaldiyeva, Gulmira S. Mukhanova, Oraz S. Satybaldiyev, Senymgul N. Dossova, and Karligash B. Shaldarbekova ... 2798
- 30 **Scientific and Methodical Approach to Determining the Competitiveness and Economic Independence of Pharmacy Organizations**  
by Klara D. Shertayeva, Gulnara I. Utegenova, Olga V. Blinova, Galiya G. Umurzakhova, Rauan Y. Botabayeva, and Elmira A. Serikbayeva ... 2811
- 31 **Barriers to Small and Medium Entrepreneurship in Kazakhstan: Qualitative and Quantitative Observations**  
by Sholpan Smagulova, Rysty Sabirova, Zhanat Yerniyazova, Yelmira Adietova,  
Kansulu Utepkalieva, Mukhit Dyusegaliev, and Zhanargul Bisembieva ... 2820
- 32 **General Sentencing Principles as a Guarantee of Respect for the Perpetrators' Rights**  
by Nurlan D. Tleshaliyev, Bakhytbekkalaganov, Akku T. Muksinova, Gulzhan N. Mukhamadiyeva, and Yermek A. Buribayev ... 2834
- 33 **Criteria and Priorities for Sustainable Development of Agriculture of Kazakhstan**  
by Ersultan Tolegen, Kassymkhan Zhumanazarov, Nurzhamal Kurmankulova, Gulzhan Kadirova, Muratbay Sikhimbayev, and Dinar Sikhimbayeva ... 2845
- 34 **Peculiarities of Patenting Artificial Intelligence in the United States and Countries of the European Union**  
by Valentina A. Vasylyeva, Alla V. Zelisko, and Liubomyr V. Zynych ... 2853

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- 35 **Economic Crime as a Category of Criminal Research**  
by Andrejs Vilks, and Aldona Kipane ... 2860
- 36 **Transformation of Financial Relations of Business Entities in the Context of Globalization**  
by Nataliya H. Vyhovska, Mariya M. Aleksandrova, Vita V. Dovgaliuk, Svitlana M. Diachek, and Iryna V. Lytvynchuk ... 2868
- 37 **Economic Development of Fruit and Vegetable Industry of Kazakhstan**  
by Peng Wei, Samazhan Y. Umirzakov, and Zhanna Sh. Kenzhalina ... 2885
- 38 **Comparative Statistical Analysis of the Main Approaches to Property Valuation**  
by Valery V. Yakubovsky, and Alexey S. Bychkov ... 2892
- 39 **On the Problem of Establishing a Trace in the Field of Falsification of Identification Numbers and State Registration Number Plates on Vehicles**  
by Yersultan S. Yermekov, and Yernar N. Begaliyev ... 2903
- 40 **Compulsory Termination of Legal Entities: Civil Legal and Criminal Issues**  
by Yurii M. Yurkevych, Ivan V. Krasnytskyi, Maria Z. Vovk, Oleksii V. Avramenko, and Nataliya M. Parasiuk ... 2910
- 41 **The Philosophy of Legal Education in Contemporary Ukraine: Worldview Basics**  
by Volodymyr O. Zarosylo, Vitalij V. Zarosylo, Julia H. Korostashivets, Nadiia P. Bortnyk, and Ulyana M. Parpan ... 2916
- 42 **Comparative and Legal Analysis of the Legal Entities System of Ukraine and the European Union**  
by Olga I. Zozulyak, Oleksandr R. Kovalyshyn, and Uliana P. Gryshko ... 2921

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## Commercial Use of Aircraft Based on Safety Risk

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### Abstract:

The relevance of the study is due to the fact that not a single sovereign country agrees to allow uncontrolled commercial activity of foreign airlines on its territory. Hence the need for a clear international legal regulation of the rights to carry out such commercial activities. In this context, the article aims to analyze the main forms and methods of commercial activity. Leading approach to the study of this problem is the descriptive method that has afforded revealing peculiarities of terms of commercial agreements and proposed air fares. The materials of the paper imply the practical significance for the university teachers of the economic and legal specializations.

**Keywords:** commercial activity; commercial agreements; air fares; contract of carriage; price policy.

**JEL Classification:** F20; F50; K33.

### Introduction

All air transport activities are an orderly process regulated by special provisions of the international and domestic level. Each year, the number of documents providing legal support for transportation activities is growing, but the Warsaw and Chicago conventions invariably remain the main documents regulating air transportation. The main activity of air transport is the transportation of passengers. The volume of passenger traffic in each country depends on its economic condition, therefore it is natural that the leading countries in the world in terms of passenger air traffic are the countries with the maximum economic indicators of their development: USA, UK, Germany, Japan, China. No aviation company is interested in obtaining only the right to fly in the airspace of other countries. It is interested in carrying out international transportation and receiving corresponding income for them. For this, the

airline must have the right to land, unload and take on board passengers, cargo and mail in the territory of those countries to which it flies.

Appendix 6 contains the Standards and Recommended Practices adopted by the International Civil Aviation Organization as the minimum standards for the operation of aircraft by operators authorized to perform international commercial air transport. These international commercial air services include scheduled international flights and occasional international flights operated for a fee or for hire. So, Appendix 6 describes, commercial air transportation is the flight of an aircraft for the transport of passengers, goods or mail for a fee or for hire (Appendix 6 of the Chicago Convention on Aircraft Operation 2017).

The Law of Kazakhstan dated July 15, 2010 'On the Use of the Airspace of Kazakhstan and the Activities of Aviation' defines the concept of commercial air transportation as the activity of legal entities in the transportation of passengers, baggage, cargo and mail items by civil aircraft for a fee or for hire in accordance with an air carriage agreement (The Law of Kazakhstan... 2010; Atanelishvili and Silagadze 2018). Civil aviation used for a fee or for hire is recognized as commercial aircraft (Rusu and Soare 2018).

Also, the law determines that airlines that have a valid operator's certificate have the right to carry out air transportation of passengers, baggage, cargo and mail for paid or self-employed (commercial air transportation) scheduled and non-scheduled flights. If the operator stops commercial air transportation for more than six months, the authorized body in the field of civil aviation revokes the certificate of the operator.

### **1. Features of Commercial Air Transportation**

Commercial air transportation is carried out on the basis of an air transportation agreement. The air transportation agreement is certified by the execution of transportation documents issued by the airline or its authorized persons (agents). Commercial air transportation of passengers, baggage and cargo is carried out in accordance with the Rules for the transport of passengers, baggage and cargo by air, approved by the authorized body in the field of civil aviation. Under commercial activities in air transport should be understood as a set of measures aimed at selling their activities in order to obtain a certain profit (Information and legal system of regulatory legal acts of Kazakhstan 2019).

Commercial activity has various forms and methods, but the main areas of commercial activity in air transport are contractual work and pricing policy. It is the terms of commercial agreements and the proposed tariffs for air transportation that determine the effectiveness of the airline. The commercial policy of each airline is individual. There is no general formula for success. At the heart of the strategy and tactics of its behavior, each enterprise determines its own priorities, based on a thorough marketing research of the air transportation market and forecasting its conjuncture. The commercial policy of an airline should be very flexible. Being one of the constituent parts of the global economy, air transport is largely subject to market fluctuations. A flexible commercial policy will allow the airline to respond almost instantly to any changes in the market situation (Uniting Aviation: A United Nations Specialized Agency 2019). Commercial activities in air transport largely depend on the activities of airlines. And although the tactics and strategy of the commercial policy of each airline are individual, it is possible to identify the main general directions inherent in commercial activities in air transport.

These areas are:

- maximum use of air freedoms,
- issues of commercial cooperation,
- pricing policy,
- improving transportation sales systems.

At the legislative level, the use of commercial aviation is regulated by order of the Minister for Investment and Development of Kazakhstan dated March 27, 2015 No. 352 'On approval of the Rules for admitting airlines to perform regular domestic commercial air transportation', which uses the following basic concepts:

- local (intraregional) commercial air passenger transportation – this is commercial air passenger transportation carried out between settlements within the same region;
- regional (intra-republican) commercial air passenger transportation is a commercial air passenger transportation carried out between settlements located in different regions, or connecting settlements with cities of republican significance, the capital.

The fundamental principle of international air law is the principle of the full and exclusive sovereignty of a state over its airspace. In this regard, the implementation of flights to or through the territory of a state for international transport is impossible without the express consent of this state. This provision is provided for by both the Chicago Convention and the national legislation of each country. Intergovernmental agreements on air traffic

are limited to defining only the basic principles and norms governing air services between the respective countries. Their specification takes place in commercial agreements.

As a rule, air service agreements explicitly provide, as a condition for starting flights on contractual lines, the conclusion of commercial agreements to provide technical and commercial services for aircraft and passengers, baggage, cargo and mail transported on them. It is also necessary to coordinate tariffs, schedules, and solve other issues of cooperation in the operation of contractual lines (Rabinskiy and Vakhneev 2018). Mutual service agreements were widely used in the fifties and sixties, when transportation was limited mainly to the third and fourth air freedoms (between the partner countries of the agreement). Against this background, the Code-Sharing Agreement (code-sharing), which is 'code sharing', which has gained widespread recently, looks quite promising.

In combination with the sharing of codes is carried out:

- blocking places;
- cooperation in baggage handling and/or ground handling, coordination in the development of flight schedules;
- coordination of the frequent flyer program;
- coordination of activities related to in-flight services;
- coordination of the activities of technical services;
- coordination of activities related to the procurement of fuel, on-board equipment and in the field of insurance;
- joint venture;
- joint marketing;
- sharing of airport facilities;
- permission to use commercial transportation rights.

Airlines agree that one of them operates the flight, receives income and bears all the costs of its implementation, and the other receives a block of seats on the flight of its partner. For this number of seats, transportation is sold, and the airline operating the flight only transfers money overboard meals and passenger fees. Approximately 90% of the revenue remains with the airline that received the block. Such an agreement is a veiled form of payment of compensation for the right to operate flights on the airline and at the same time helps to strengthen the image of the airline that has received a block of seats, since it is also designated as the carrier on the specified airline (Imasheva and Doronina 2018; Akhmetshin *et al.* 2018b).

## 2. The Main Features of Commercial Rights

The concept of 'commercial rights' includes the right to carry out flights when flying and the conditions for its use. The right to carry out transportation is granted between partner countries under agreements or from partner countries under agreements to certain third countries, geographical regions. The conditions for using commercial rights are primarily permissible volumes of traffic (frequency of movement, provided capacities, including in some cases the types of aircraft that can be used, the possibilities and conditions for their replacement). Since sovereign states act as the party providing the commercial rights and the user side (then these rights are delegated to the designated airlines), the issue of commercial rights is decided by agreement between these states and is usually agreed upon when concluding air service agreements.

Most often, the specific content of the commercial rights granted by the parties to each other, and the conditions for their use are formulated in the annex to the agreement or in special protocols that form an integral part of it and are reviewed and specified from time to time. Moreover, further coordination of amendments and additions to the relevant agreements may be entrusted to interested governments and their civil aviation departments (Kolosov and Krivchikova 2000; Akhmetshin *et al.* 2018a). Designated by their governments for flights on contractual lines of an airline, using the appropriate commercial rights, they can enter into pool agreements or adhere to a certain procedure for regulating the amount of income derived from the use of commercial rights. There may also be cases where the use of commercial rights will have to pay certain compensation. Some countries sometimes resort to the requirements of such monetary compensations as a 'compensation' for the fact that they themselves do not use the commercial rights granted to them.

Exchange of commercial rights under air services agreements is usually done 'in a package'. The volume (package) of all rights granted by one party to the other side must be balanced with the volume (package) of rights granted by this party to the first side. In this case, not only real, but also predicted benefits from the rights obtained can be taken into account. Commercial rights, for the convenience of using them, are conditionally divided depending on their volume into several categories (classes) and are called 'air freedoms'. Five of them were



formulated at the Chicago Conference in 1944 with the development of transit and international air transport agreements. Sixth and seventh freedoms appeared later (Imasheva 2017; Amirgaliyev *et al.* 2017).

In turn, these seven air freedoms can be divided into three groups: (1) auxiliary air freedoms, ensuring the passage of the territory of states lying on the flight route to third countries (first and second air freedoms); (2) primary air freedoms, providing transportation between partner countries by agreement (third and fourth air freedoms); (3) secondary air freedoms, allowing transportation from partner countries by agreement to third countries (fifth, sixth and seventh air freedoms). If the country with which air traffic is established does not have a common border with the state, then flights may be carried out:

- (1) using freedom of flight over the open sea to those countries, flights to which can be performed over the open sea, and, therefore, do not require the permission of any state; they also include flights using the right to fly through international straits, taking into account the status of each such strait;
- (2) with the permission of the countries lying on the flight route; such permission may include the right to use the first or second air freedoms; both of them are of an auxiliary character, since they ensure the passage of the territory of the partner country by agreement when flying to third countries; this implies that transportation is carried out to these third countries (they are usually specifically specified in the agreement, as well as the frequency of flights).

Unlike primary, secondary commercial rights can be exercised only if there are agreements (permits) for their use with both countries, transportation between which provide for the corresponding commercial rights. This is their feature. The main objective of any air services agreement is to establish air services between the partner countries by agreement. The first freedom of air is the right to carry out a transit flight without landing on the territory of the state granting this right. In a transit agreement, this freedom is defined as follows: 'Each Contracting State shall grant to the other Contracting States...'

- (1) preemptive right to fly through its territory without landing'. This freedom of air ensures the passage of the territory of the state without landing on its territory and, therefore, does not contain any rights to carry out transportation. At the same time, it allows transportation to third countries subject to appropriate agreement with these countries. This is its auxiliary character. By itself, taken separately, not supported by agreements with third countries providing for the transport, it does not matter. The second freedom of air is the right to carry out a transit flight through a foreign territory with landing for non-commercial purposes on the territory of the state granting this right. In a transit agreement, this freedom of air is defined as follows: 'Each Contracting State shall grant to the other Contracting States...'.
  - (2) the pre-emptive right to land for non-commercial purposes'. The wording of the definition of the second freedom of air from the Transit Agreement is somewhat different from the definition based on practice. The transit agreement speaks only about landing for non-commercial purposes and does not say about the passage of territory, since it is understood that this agreement applies as a whole, that is, its participants provide each other with the first freedom – the passage of the territory, and the second – landing in non-commercial purposes in this territory (Imasheva 2017; Hasan *et al.* 2016). In practice, when concluding bilateral agreements, both of these freedoms acquired independent significance and can be granted separately: either only the passage of territory without landing, or the passage of territory with non-commercial landing at certain points. There are also cases when the first freedom is granted – when flying to one country and the second freedom – when flying to other countries. Finally, both of these freedoms can be granted simultaneously. The third freedom of air is the right to disembark passengers in a foreign territory and unload cargo and mail taken on board an aircraft in the territory of a state whose nationality it has. The fourth freedom of air is the right to accept passengers traveling to the territory of a state whose nationality the aircraft has, as well as cargo and mail transported there, in foreign territory. These freedoms, as a rule, are not separately granted. In the Agreement on International Air Transport, these freedoms are defined as follows: 'Each Contracting State shall grant to the other Contracting States...'.
    - (3) the preemptive right to unload passengers, mail and cargo, taken on board in the territory of the state, the nationality of which the aircraft has.
    - (4) the preemptive right to take passengers, mail and cargo with destination on the territory of the state whose nationality the aircraft has on board' (Imasheva 2017). This definition is accompanied by a disclaimer that such rights apply only to such transportations that are carried out 'on reasonably direct routes to or from the state whose nationality the vessel has', that is, they cannot be applied to complex combined routes. As follows from the above texts, the definition of air freedoms under the Agreement

on International Air Transport can be interpreted in such a way that we are talking about transportation having their respective countries of origin and destination. In fact, practice understands these air freedoms in such a way that it refers to the right of the carrier to carry out transportation between the countries concerned, and the transportation itself can begin and end in completely different countries. All air services agreements concluded by Kazakhstan provide for the simultaneous and mutual use of the third and fourth air freedoms. The use of these freedoms is usually limited in scope by determining the frequency of movement, types of aircraft used, in some cases, by setting the quota of seats used for a certain period, etc. Participation in the transportation of routes and sections of routes lying outside the borders of the carrier country, as well as passing through its territory, but connecting points in third countries, is becoming an increasingly important role in the development of international air transport. Being secondary in nature – complementary to the main, primary transportation, providing transportation needs from one country to another, transportation between the partner country by agreement with third countries increases load and, therefore, the carrier's income contributes to better servicing the clientele of air transport, creating additional transportation opportunities to the services of national carriers (Imasheva *et al.* 2018; Prodanova *et al.* 2019).

Depending on the nature and characteristics of this type of transportation, they belong to the fifth, sixth or seventh air freedoms. The Fifth freedom of air – the right to accept in the territory of the partner country by agreement passengers traveling to the territory of a third state, as well as the goods and mail addressed there, and the right to drop off passengers and unload goods and mail coming from any such territory to the partner country by agreement. In an agreement on international air transport, the fifth air freedom is defined as follows: 'Each Contracting State shall grant to the other Contracting States...'

- (5) the preemptive right to board passengers, mail and cargo with a destination in the territory of any other Contracting State and the preemptive right to unload passengers, mail and cargo arriving from any such territory' (Imasheva 2017; Kholod *et al.* 2019).

This definition also includes the previous reservation to the third and fourth freedoms on direct routes. The Fifth Air Freedom applies both between points in countries on the route of flight (intermediate points) and points in the partner country by agreement, and between points in the partner country by agreement and points in countries beyond its borders. The full rights of the fifth air freedom ('any third countries') are extremely rare. Typically, specific third countries are specified, points in them, less often – geographical regions. The volume of traffic (frequency of flights, types of aircraft, etc.) is also determined.

In practice, sometimes truncated fifth freedom is used (the so-called 'stopover' – a stop at a point located on the flight route, with the right to continue transporting passengers to their destination in third countries). The difference of its full fifth freedom of air is that it is impossible to transport passengers from the partner country by agreement to a third country or vice versa, for which the point in the partner country by agreement is the point of departure or destination. You can only transport a passenger making a stop at this point and, therefore, involved in transportation in some other country.

The Sixth freedom of air – the right to transport passengers, cargo and mail between the partner country by agreement and the third country through its territory. The fundamental difference between the fifth and sixth freedom of air is that in case of the fifth freedom, the main load carried on an aircraft is the load on the third and fourth freedoms, and transportation from the partner's country to the third country by agreement has an additional character. With the sixth freedom, the main load is transportation from the partner country to the third country by agreement, participation in transportation between the international transportation markets that are outside the borders of 'your country', and transportation on the third and fourth air freedoms is additional. The frequency and types of aircraft in this case are also often regulated by agreement. When operating lines using the rights of the sixth freedom, it may be practical to conclude pool agreements with partners for the operation of lines, which allows you to streamline the distribution of income (Marcov 2017; Stroe *et al.* 2017; Turcanu and Moraru 2017; Lozici-Brinzei *et al.* 2017; Stroe and Andrei 2017; Rusu 2017).

The Seventh air freedom – the right to transport passengers, cargo and mail between the partner country by agreement and third countries, bypassing its territory. At the same time, transportation between countries interested in this is ensured in those cases when they themselves, for whatever reason, are not able to fulfill them. There is another type of commercial right – the so-called 'cabotage'. In literature, it is sometimes called the eighth freedom of air. This is air transportation between points in the same foreign state. The right to carry out such transportation is extremely rarely granted to foreign carriers. None of the air services agreements concluded by Kazakhstan provide for such rights. Article 7 of the Chicago Convention expressly provides for the right of the state

to refuse permission for such transport. The division of cabotage into eighth and ninth air freedom is also used. Eighth freedom ('sequential cabotage') refers to domestic transportation on the relevant section of an international airline. Ninth freedom ('autonomous cabotage') is understood as internal transportation carried out along a route that completely passes through the territory of the state granting this right.

## Conclusions

One of the main strategic tasks of managing air transport production is to attract a clientele and possibly fully satisfy its needs with a simultaneous economic effect for the air carrier itself. Demand for air transportation is closely dependent on the size and mobility of the population, annual per capita income, social structure, national, domestic characteristics and traditions, state policy in the field of aviation and other modes of transport, geographical location and climatic conditions of the area served by this airline, competition conditions for airlines and ground modes of transport, speed and comfort of aircraft, the level of passenger service at airports, etc.

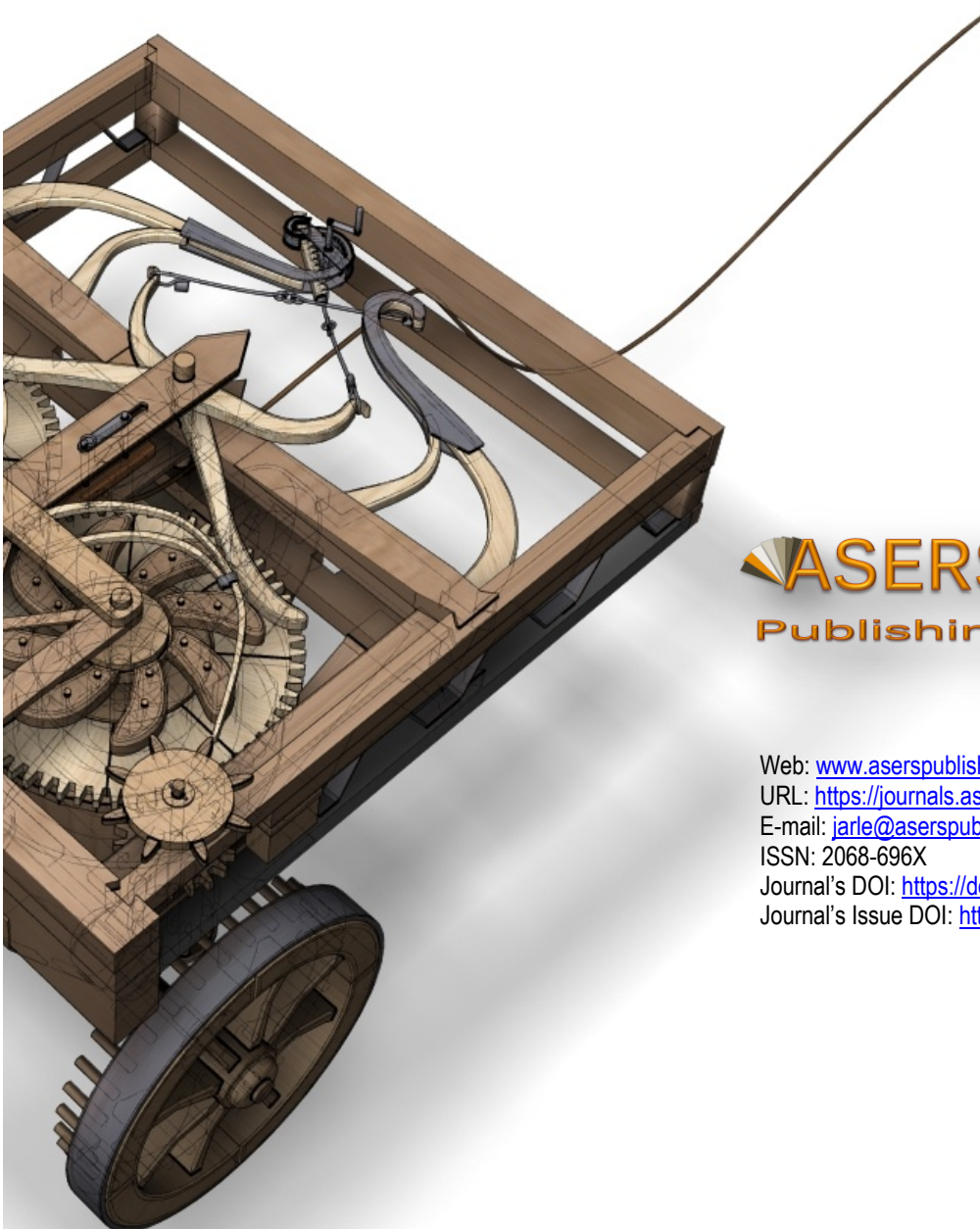
Air transport was the last to be included in the number of universal vehicles, but it is of great importance for international transport. It is estimated that although only 1% of the world's cargo is transported by air, the total cost of such goods is between 20% and 30% of the total cost of all goods transported. Nowadays, air transport consists of modern aircraft, capable of flying over great distances without refueling and stops, which was completely impossible in the past. As a result, non-stop transatlantic flights are now being carried out, and in the future flights will be carried out over long distances.

The state and development of air transport has an impact on many aspects of socio-economic relations, including on ensuring the national security of states. The last decade has clearly demonstrated that, in addition to the state of the economy, the industry management system has a significant impact on the functioning of air transport. The nineties of the last century were for some countries a kind of 'black stripe' for air transport. However, after the recession in the 90s. of the last century, air transport began to recover. The statistics of the last three years allow us to optimistically assess the prospects for the commercial use of air transport. Sustainable growth in recent years in the main sectors of the economy, the growth of GDP of states, create the basis for a positive assessment of the growth rate of air transport. However, rising fuel prices also affect the value of tariffs – airlines are forced to increase tariffs, and a further increase in fuel prices, according to experts, will lead to a further increase in tariffs, which will affect the volume of air transport.

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