

Taxing Aviation in Light of International Law: From Fiscal Privilege to Legal Obligation

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Introduction

Few sectors embody the contradictions of the climate era more starkly than aviation. Flying has become a symbol of globalization – linking economies, enabling tourism, and connecting families across continents. Yet aviation is also one of the most GHG-intensive activities an individual can undertake. A single long-haul flight can emit more carbon per passenger than many people generate in an entire year.

And yet, aviation remains under-taxed. International flights are generally exempt from fuel taxes, often free from value-added tax (VAT), and have historically received generous subsidies.

This imbalance – between aviation’s climate footprint and its fiscal privileges – has long been criticized by environmental advocates. But recent developments in international law give the issue new urgency through potentially legally binding obligations.

In 2025, the International Court of Justice (ICJ) issued its Advisory Opinion on Climate Change. For the first time, the court clarified states’ legal duties to cooperate in climate matters and to mitigate their impact on global warming, and above all, to ensure that activities under their jurisdiction do not cause harm to others. In 2024, the European Court of Human Rights (ECtHR) delivered its landmark *KlimaSeniorinnen* judgment, ruling that inadequate climate action can amount to a violation of fundamental human rights.

Together, these decisions have reshaped the legal landscape. Aviation taxation is no longer simply a question of policy discretion but one of binding international obligations. The central question has shifted. It is no longer: May states tax aviation? The question is increasingly: Do states now have a legal obligation to tax aviation?

The Legal Obligations Clarified by the ICJ

The ICJ’s advisory opinion is rich in detail, but two obligations (based on several treaties) stand out as particularly relevant for aviation policy.

1. The Obligation to Mitigate

States must take proactive steps to reduce emissions. This is not optional or aspirational: it is a legal duty of due diligence. Tax policy is explicitly part of the toolkit. The ICJ noted that states may incur responsibility if they fail to use available instruments to mitigate emissions, for instance, through tax subsidies. For aviation, this raises a pressing question: how can governments justify maintaining tax exemptions for one of the most polluting industries?

2. The Obligation to Cooperate

Climate change is by definition a transboundary problem. No state can address it alone. The ICJ stressed that states must cooperate in good faith – through international organizations, multilateral agreements, and coordinated national policies. For aviation, this means that fragmented or voluntary measures are no longer enough. States should work together on coordinated taxation regimes, carbon pricing mechanisms, and subsidy reform.

However, perhaps the most far-reaching aspect of the opinion is its reaffirmation of a foundational norm of customary international law: states must ensure that activities within their jurisdiction do not cause harm to other states or to people beyond their borders. Aviation emissions are quintessentially transboundary. Or in a more provocative terms: A flight departing from one country contributes to floods, droughts, and heatwaves in another. By subsidizing or exempting aviation, states are effectively facilitating harm abroad. Under the ICJ's reasoning, this may give rise to international legal responsibility for countries.

From Permission to Duty: The Changed Legal Landscape

For decades, governments argued that they could not tax aviation, pointing above all to the Chicago Convention of 1944, which prohibited certain forms of fuel taxation on international flights. Alongside bilateral air service agreements, this created a strong presumption that aviation was a tax-free zone at least with respect to fuel taxation but more surprisingly also regarding VAT. The ICJ opinion and the ECtHR judgment disrupt this logic.

Hierarchy of norms: Climate obligations as part of international treaties or customary international law and human rights treaties are (very likely) higher-order norms. Where treaty provisions conflict, for instance, the obligation to prevent serious transboundary harm must take precedence.

Changed interpretation: The Chicago Convention was drafted long before climate change was recognized as a global threat. Interpreting it today cannot ignore the binding obligations to mitigate and cooperate to reduce the impacts of climate change.

Shift from permission to obligation: Where states once claimed they were not allowed to tax aviation fuel or tickets, the new legal environment suggests they may now be obliged to do so.

This is a dramatic reversal. What was once a matter of sovereign discretion or even prohibition may now be a matter of legal necessity. The ECtHR's *KlimaSeniorinnen* judgment adds another layer. The Court found that inadequate climate action can violate Articles 2 and 8 of the European Convention on Human Rights—the rights to life and to private and family life. In practice, this means: States must adopt effective measures to protect their populations from foreseeable climate harms. Policies that allow aviation emissions to grow unchecked risk being incompatible with human rights duties. The case establishes that aviation taxation is not just an economic or environmental question. It does also have a human right component.

The Regulatory Context: CORSIA and Its Limits

Many policymakers point to the CORSIA scheme (Carbon Offsetting and Reduction Scheme for International

Aviation), adopted under the International Civil Aviation Organization (ICAO), as evidence that the sector is already regulated. CORSIA relies on two main strategies:

Offsets: Airlines purchase certificates to offset emissions.

Sustainable Aviation Fuel (SAF): Gradual transition to alternative fuels.

Both approaches are problematic:

Offsets do not reduce emissions at source. They allow airlines to continue polluting while claiming reductions elsewhere. Evidence shows that many offset projects do not deliver real or permanent reductions.

SAF remains technologically and economically uncertain. Large-scale production is far from feasible. And as the ICJ stressed, when the consequences of a technology are uncertain, states must proceed with caution. Betting aviation's climate future on SAF is not consistent with the obligation to mitigate. Of course, if the newest SAF generations would indeed enable a transformation, the assessment can again change.

CORSIA therefore does not absolve states of responsibility. It may complement other measures, but it cannot substitute for effective taxation and demand "management".

Aviation Taxation as a Legal and Policy Necessity

Tax policy serves a dual role. It generates revenue for the climate transition, and it also creates price signals that reduce demand and incentivize alternatives. What does that mean?

States have an obligation to tax kerosene. Inter alia, to avoid legal responsibility – fossil fuel subsidies seem to be an obvious case for potential legal responsibility. But the same might be true for VAT. Buying or renting a car and driving from Zurich to Berlin triggers different VAT obligations which are not triggered by a flight to Berlin.

Redirecting or earmarking tax revenues into sustainable transport alternatives, such as high-speed rail seems one potential political answer at least for intra-European transport. However, this requires political (and not just legal) action. Another path would be to expand emissions trading schemes to cover all flights, not just intra-EU or domestic routes and to immediately stop all free certificates. However, it is highly unclear whether this will suffice to reduce the impact of the aviation sector.

The uncomfortable truth is that no short-term technological solution exists to significantly reduce GHG emissions at scale. However, as indicated in the most recent advisory opinion of the ICJ we need deep, rapid, and sustained reductions in greenhouse gas emissions. Currently, it seems efficiency improvements are incremental (e.g. compared to projected industry growth). Offsets are unreliable. The use of SAF is uncertain and scarce and non-CO2 emissions might still have a forcing effect.

This triggers the politically delicate question of whether reducing demand is the only way out. From a political perspective, these measures are sensitive. Flying is tied to freedom, aspiration, and economic opportunity. From a societal point of view, increase air travel costs will separate wealthy air travelers and less wealthy travelers, who cannot afford air travel anymore. But from a legal perspective, the ICJ and ECtHR rulings make clear: inaction is not an option. If technological solutions are unavailable, demand "management" becomes the only path consistent with international law. Therefore, we need an urgent debate of whether, how quickly, and at what cost more climate-sensitive transport options exist, at least within Europe.

A Call to Immediate Action

Besides these political debates, the legal implications are immediate. Administrations must ask themselves:

1. *Do we have a legal obligation today derived from international law to levy VAT on all flight services?*
2. *Should oil taxes apply to aviation fuel, in line with international law obligations?*
3. *Can subsidies or exemptions be maintained without breaching the no-harm principle?*

At minimum, governments must urgently conduct legal analyses of their aviation tax regimes in light of the ICJ and ECtHR rulings. Delay increases both climate harm and legal exposure. And beyond analysis, action is required. Of course, whether there is an immediate legal obligation to tax flight services and/or kerosene depends on each jurisdiction's legal system and the role international law plays. Of course, besides there are further obligations in domestic law that need to be assessed.

Conclusion: From Privilege to Responsibility

Aviation has long been treated as exceptional (and probably justified!) – exempt from taxes, partly shielded by international agreements, and sustained by subsidies. However, the ICJ advisory opinion and the ECtHR's KlimaSeniorinnen judgment make clear that states are under binding obligations: to cooperate, to mitigate, and to prevent harm to others. These obligations cut across policy domains and reach into fiscal policy itself.

For aviation globally, the message seems clear: taxation is no longer optional.

Maintaining exemptions and subsidies risks international responsibility. Relying on uncertain technologies is inconsistent with the duty to mitigate. Protecting human rights requires immediate and concrete measures. The debate must therefore shift. The real question is not whether aviation should be taxed, but how—and how soon. What was once seen as politically sensitive is now legally necessary. What was once dismissed as radical is now required by international law. Aviation taxation is no longer a matter of policy preference. It is a legal obligation.