



International Civil Aviation Organization

**THIRTEENTH MEETING OF THE
ASIA/PACIFIC AIR NAVIGATION PLANNING AND
IMPLEMENTATION REGIONAL GROUP (APANPIRG/13)
Bangkok, Thailand, 9 to 13 September 2002**

Agenda Item 2.4: Other Air Navigation Matters

**AGENDA, DATE, ORGANIZATION AND SITE FOR FIFTH
WORLDWIDE AIR TRANSPORT CONFERENCE**

(Presented by the Secretariat)

SUMMARY

The Council of ICAO has approved the convening of the Fifth Worldwide Air Transport Conference with the theme: Challenges and Opportunities of Liberalization (ATConf/5) which will be held at ICAO Headquarters in Montreal from Monday 24 March to Saturday 29 March 2003. The objectives, agenda, the organization plan and the structure of the conference are presented in Appendix A of this working paper. The background to the conference is provided in Appendix B and the key issues to be addressed by the conference are at Appendix C.

Action by the APANPIRG is proposed at paragraph 4.

1. INTRODUCTION

1.1 On 28 February 2001, the Council of ICAO decided to convene the Fifth Worldwide Air Transport Conference with the theme: Challenges and Opportunities of Liberalization which will be held in Montreal from Monday 24 March to Saturday 29 March 2003.

2. AGENDA AND ORGANIZATION PLAN

2.1 The objectives, agenda and the organization plan for the conference is presented in Appendix A hereto. The background to the conference is shown in Appendix B and the key issues to be addressed by the conference are at Appendix C. The languages of the conference will be English, French, Spanish, Russian, Arabic and Chinese.

3. **PREPARATORY SEMINARS**

3.1 As part of the preparatory process for the conference, the ICAO HQ Secretariat, in consultation with ICAO Regional Offices and regional civil aviation bodies, will be holding a series of regional seminars in or around the fourth quarter of 2002. In addition, an informal preparatory seminar will be held immediately prior to the Conference on 22 and 23 March 2003. These seminars are intended to provide a forum in which participants could review regulatory developments, highlight issues and share liberalization experiences, thereby paving the way for more substantive discussions at the conference.

3.2 In the Asia and Pacific Regions, the seminar will be in the form of a half day session on 17 October 2002 at the 39th Conference of Directors General of Civil Aviation of the Asia and Pacific Regions, scheduled to take place in Cebu, Philippines from 14 to 18 October 2002.

4. **ACTION BY APANPIRG**

4.1 The meeting is invited to:

- a) Note the agenda of the Conference as contained in Appendix A hereto; and
- b) Request States to note the regulatory issues that would be addressed in this conference and its ramification in their work programme.

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APPENDIX A

CONFERENCE OBJECTIVES, AGENDA AND ORGANIZATION PLAN

Objectives

The objectives of the conference are to develop a framework for the progressive liberalization of international air transport, with safeguards to ensure fair competition, safety and security, and including measures to ensure the effective and sustained participation of developing countries. The work of the conference will include a thorough and comprehensive examination of regulatory issues and policy options in light of the experience of liberalization during the past decade and recent international developments. Following up on the outcome of the last worldwide air transport conference (1994) regarding the process of liberalization, the conference is expected to focus on examination of “how to” rather than “whether to” liberalize, and the resulting framework will serve to guide and/or facilitate future regulatory reform in international air transport.

Conference agenda

The agenda for the conference has been developed on the basis of the proposed structure and tentative list of topics approved earlier by the Council (State letter SC 5/1-01/44 dated 6 April 2001) and the comments received from States on that structure and list. The agenda has also taken into account recent international developments that are likely to have an impact on the liberalization process and related actions taken at the 33rd Session of the Assembly.

The conference agenda, approved by the Council on 5 December 2001, is structured around four integral components:

1. PREVIEW

- 0.1 **Background to and experience of liberalization:** Basic concept and approaches; issues in regulation and commercialization of air carriers, airports and air navigation service providers; benefits and drawbacks; influence of broader regulatory environment including trade, fiscal, competition, social and labour policies.
- 0.2 **Safety and security aspects of liberalization:** Safety and security implications of commercialization, outsourcing and transnational commercial arrangements.

1. EXAMINATION OF KEY REGULATORY ISSUES IN LIBERALIZATION

- 1.1 **Air carrier ownership and control:** Alternative criteria for designation and authorization; inward (foreign) investment; right of establishment; nationality of aircraft.
- 1.2 **Market access:** Traffic rights (primarily beyond third and fourth freedoms but including, for example, routing and operational flexibility); capacity/frequency; airport access and slot allocation; airline alliances, codesharing and franchising; leasing; specific aspects relating to air cargo and express services and to intermodal transport.

- 1.3 **Fair competition and safeguards:** Safeguards against anti-competitive practices (such as in pricing, capacity provision, sales and marketing); application of competition laws/policies (including implications for multilateral cooperative arrangements amongst air carriers); sustainability of air carriers and assurance of service (including provision of State aid); preferential measures for, and effective participation of, developing countries.
 - 1.4 **Consumer interests:** Consumer rights and obligations (including conditions of carriage); measures to safeguard consumer interests.
 - 1.5 **Product distribution:** Commercial presence; electronic business to customer (B2C) commerce (including computer reservation systems and the Internet).
 - 1.6 **Dispute resolution:** Alternative dispute settlement mechanisms and their inter-relationship (in the context of bilateral, regional or multilateral arrangements).
 - 1.7 **Transparency:** Registration of agreements/arrangements (including obligations under Article 83 of the Convention on International Civil Aviation) and access to information.
2. **REVIEW OF TEMPLATE AIR SERVICES AGREEMENT**
 - 2.1 Comprehensive template air services agreement containing alternative approaches for discretionary use by States (selectively or in full) in a bilateral, regional or multilateral context.
3. **CONSIDERATION OF GLOBAL FRAMEWORK FOR ONGOING LIBERALIZATION**
 - 3.1 **Mechanisms to facilitate further liberalization:** Role and future work programme of ICAO; relations with other international organizations (multilateral and regional, governmental and non-governmental).
 - 3.2 **Declaration of global principles for international air transport:** Adoption of a declaration based on a draft text prepared in advance, but taking into account discussions on all above Agenda items.

Organizational arrangements

The Conference will work as a single body throughout. The working languages will be Arabic, Chinese, English, French, Russian and Spanish. In order to conserve time, there is no provision for opening statements from States or Observers at the conference.

There will be a small contact booth Exhibition at ICAO Headquarters, from Tuesday, 25 March to Thursday, 27 March 2003, held in association with the conference.

Information concerning the conference as well as other related material are posted on the ICAO Web site as they become available. The dedicated Conference Web site may be accessed directly via <http://www.icao.int/icao/en/atb/atconf5/index.html> or via the ICAO home page at www.icao.int under the heading of “List of meetings”.

APPENDIX B

BACKGROUND TO THE CONFERENCE

The last ICAO worldwide air transport conference (ATConf/4) was held in 1994. Since then, there have been significant developments on the air transport regulatory scene and in the industry.

One notable development is the considerable increase in the number of liberal bilateral agreements involving unrestricted route rights and market access provisions. For example, by December 2001 some 85 “open skies” agreements had been concluded between approximately 70 countries. These agreements involved not only developed countries but also an increasing number of developing countries. Two-thirds of them involve the United States as one of the partners, but the remainder do not. With respect to market access, these agreements generally provide for unrestricted route and operational rights, as well as Third to Fifth and “Sixth” Freedom rights; many also grant “Seventh Freedom” rights for all-cargo service. Some of them allow progressive or phased introduction.

On the regional level, there were just two regional/sub-regional liberalization arrangements before the 1994 Conference (i.e. the European Union and the Andean Pact); since then, eight more arrangements have emerged with a worldwide dispersion. They include: the Caribbean Community Air Service Agreement amongst 14 States in the Caribbean (1996); the Fortaleza Agreement amongst 6 States in South America (1997); the CLMV Agreement by 4 States in Southeast Asia (i.e. Cambodia, Lao People’s Democratic Republic, Myanmar and Viet Nam, signed in 1998); an agreement amongst 16 States of the Arab Civil Aviation Commission (ACAC) in the Middle East (1998); and four others in Africa (i.e. the 1997 Banjul Accord by 6 States, agreements signed in 1999 amongst the six States of the Central African Economic Union and amongst the 21 States of the Common Market for Eastern and Southern Africa, the Yamoussoukro II Ministerial decision of November 1999 for gradual liberalization amongst 53 African States). Of these agreements, 7 provide for instant or phased-in liberalization leading to full market access.

At the multilateral level, ICAO has continued to play an active role in facilitating air transport liberalization. In recent years, the emphasis of ICAO’s work in the economic regulatory field has been on promoting and assisting States in implementing a whole range of ICAO policy and guidance, particularly that developed pursuant to the recommendation of ATConf/4. ICAO has been closely monitoring developments in the field and has developed guidance on emerging regulatory issues that are of general interest to Contracting States (e.g. on airline codesharing, leasing, and slot allocation).

Another significant development is the increasing involvement of some other organizations in air transport matters, most notably the World Trade Organization (WTO-OMC). In 2000, the WTO-OMC launched a review process of the General Agreement on Trade in Services (GATS), which includes an Air Transport Annex, with a view to the possible extension of its application. During the review process, there were some indications that certain additional elements of “soft” rights (for example, ground handling) were considered appropriate by some WTO-OMC Members for inclusion in the Annex. As for “hard rights”, a small number of WTO-OMC Members seemed prepared also to consider the inclusion of at least some aspects in the Annex, for example, air cargo, non-scheduled and multimodal transport. However, there has been no consensus on this. Some Members also raised questions on why air transport should be subjected to a separate regulatory regime when the outcome is not certain to advance the process of further safeguarded liberalization. At the time of preparation of this paper, the review has not reached any firm conclusion.

There were initiatives on air transport liberalization in other fora including: the development of a model bilateral protocol and a multilateral agreement on the liberalization of air cargo transport by the Organisation for Economic Co-operation and Development (OECD), the tabling in the WTO-OMC of a proposed Tourism Annex to the GATS which is supported by the World Tourism Organization and the United Nations Conference on Trade and Development (UNCTAD), a study undertaken by the International Labour Office (ILO) on the impact of air transport liberalization on labour and social policies, and the signing of a plurilateral “open skies” agreement in 2001 by five members of the Asia Pacific Economic Cooperation (APEC).

The airline industry has also undergone major transformation in an increasingly competitive environment. Airline alliances, including codesharing arrangements, continue to proliferate with a wide variety of content and scope, many involving cross equity investment. Recent years have also seen the emergence of several competing global alliance groupings. There has also been a substantial increase in the use of leased aircraft. Furthermore, the advance of information technology has had a profound impact on the way the airlines conduct their business. In addition to the widespread use of computer reservation systems (CRSs), the use of the Internet and electronic ticketing are rising rapidly. All these developments have regulatory implications, some affecting market access, ownership and control, competition, safety, security or liability.

The use of competition laws in dealing with air transport activities has occurred with increasing frequency in recent years. Moreover, capacity constraints at airports and in airspace are becoming an increasing challenge to the continued growth of air transport, with knock-on effects worldwide. Environmental issues involving civil aviation including market-based options such as charges, taxes and emissions trading, have also drawn increasing attention by governments and other interested parties, bringing a new dimension to air transport regulation.

Against this background, there have been growing calls, by both governments and industry, for regulatory reform to move forward beyond the existing regulatory regime. Significantly, many have voiced a preference that it be coordinated at the worldwide level through ICAO. In light of the on-going liberalization and the needs of States, the Council of ICAO decided on 28 February 2001 to convene this fifth Worldwide Air Transport Conference with the theme “challenges and opportunities of liberalization” from 24 to 29 March 2003 in Montreal.

The events of 11 September 2001 in the United States have had a profound impact on the world economies and on civil aviation in particular. They have given rise to certain new issues such as war risk insurance, impact of enhanced security requirements on the industry, consumers and labour, etc. which have implications for the liberalization process and need to be addressed. The Conference will provide an opportunity to examine all the pertinent and contemporary issues, including safeguards to ensure security and safety within a global framework for the progressive liberalization of air transport.

APPENDIX C

KEY ISSUES TO BE ADDRESSED

The Conference will address the following contemporary and substantive issues under Agenda item 2, which could build on ICAO's existing work and lead to conclusions or recommendations as guidance for Contracting States.

1) Air carrier ownership and control (including: alternative criteria for designation and authorization; inward (foreign) investment; right of establishment).

This is a complex issue which has implications for many other aspects of air transport regulation such as market access, safety and security. Regulation of air carrier ownership and control is closely linked with air carrier designation and authorization in international air transport. The traditional criteria used in most existing bilateral agreements (i.e. the designated airline must be substantially owned and effectively controlled by the designating State or its nationals) are perceived as the major barrier to broader liberalization as well as a constraint for access to international financing. There are growing calls for regulatory reform to enable airlines to adapt to the fast changing environment.

A global understanding of the issue and the evolution of ownership and control provisions through ICAO would be a key contribution towards ensuring the safe, secure and orderly growth of civil aviation. It would bring air transport into line with other economic sectors, and could produce substantial economic benefits both for the industry and, through the multiplier effect, for the economy at large. It could also remove the inhibitions of States, particularly developing countries regarding liberalization beyond their regions.

The ICAO Secretariat has recently completed a survey of States' policies and practices on air carrier ownership and control. The survey revealed, inter alia, that despite limited progress at the bilateral level, many States would be quite receptive to the use of certain broadened criteria. It confirmed the usefulness of ICAO's guidance in this area and the need for ICAO to undertake further work. The findings suggested that the key to advancing liberalization lies with devising or refining practical regulatory arrangements that would address the needs and concerns of States.

As part of its preparation for ATConf/5, the Secretariat is currently working, with the assistance of the Air Transport Regulation Panel, on the development of alternative regulatory arrangements on airline designation and authorization by building on the existing guidance developed by ICAO and emerging provisions in liberal air services agreements, taking into account the findings of the survey.

2) Market access (including: traffic rights; capacity/frequency; airport access and slot allocation; airline alliances, codesharing and franchising; aircraft leasing; air cargo and express services).

In liberalization of international air transport, the role and treatment of market access remains the most important element in relations between States and pivotal to any substantive regulatory liberalization. Since the 1994 Worldwide Air Transport Conference, there has been considerable progress in liberalization with respect to market access on both the bilateral and regional levels. However, disparity remains as to the extent and degree of liberalization among States.

A global review of market access issues is timely nearly a decade after the last air transport conference. The issue of airport access is likely to be of particular interest given increasing congestion and limits on capacity. The growing and widespread use of leased aircraft in international air services have, in some cases, given rise to safety and economic issues which need to be addressed. The subject of liberalization of air cargo services is also likely to be accorded increasing attention given its distinct nature and important role in international trade and global economy.

3) Fair competition and safeguards (including: safeguards against anti-competitive practices; application of competition laws/policies; sustainability of air carriers and assurance of service; preferential measures for developing countries).

In a deregulating environment, the issue of what constitutes fair competition and how to control abuse is of increasing concern. Sustainability of air carriers and assurance of service are also important issues, particularly for developing countries. Given the competitive disadvantages faced by many developing country carriers, preferential measures are needed in the period of transition to liberalization to ensure their effective and sustained participation in the international air transport system.

With an increasing number of countries adopting competition laws, the use of such laws to deal with air transport has not only occurred with more frequency, it has also encompassed an increasing number of issues, such as the extra-territoriality of some rules, others involving conflicting regimes (for example, regulations dealing with mergers or alliances, denied boarding) which could cause particular difficulties for airlines operating international air services. Although ICAO has guidance on the avoidance and resolution of conflicts over the application of national competition laws, given the increasing complexity of the issues involved, there is a need to review the guidance in view of the developments.

4) Consumer interests (including: consumer rights and obligations; measures to safeguard consumer interests).

Perceived declines in customer service following deregulation have recently led to proposals for or introduction of consumer protection legislation in the United States and the European Union. Some governments in other regions (e.g. Australia, New Zealand and Latin America) also adopted measures to address this issue. In response to these developments, the airline industry developed, in consultation with regulatory authorities, voluntary commitments to meet passenger needs. There would be merit in having these developments reviewed on a worldwide governmental basis. ICAO has already developed some relevant guidance, notably as regards computer reservation systems, conditions of carriage, air carrier tariffs and codesharing, and there will be value in reviewing and updating this material for optional use by States for their air carriers and service providers.

5) Product distribution (including: electronic commerce, computer reservation systems and the Internet).

Airline product distribution has been undergoing rapid and fundamental changes in recent years, in the CRS industry itself and the increasing use of the internet to market air transport through a variety of Web sites. There has been a radical shift from CRS services being provided by a few large companies first to travel agents then to a plethora of Web sites by individual airlines, groups of airlines, and other companies giving consumers direct access to CRSs. These changes have raised issues as to the necessity, the coverage and applicability of CRS rules and regulations. The issue of bias is again looming large and amending regulation is under study in both the United States and Europe.

Although the ICAO Code of Conduct for the Regulation and Operation of Computer Reservation Systems which was revised in 1996 may, at the discretion of States, apply to Internet travel networks, there are instances where the ICAO CRS Code had no applicable provision as a result of industry or regulatory changes. The ICAO Code of Conduct is accordingly in need of review in light of all the developments.

6) Dispute resolution (including alternative dispute settlement mechanisms).

Liberalization, globalization and privatization in the air transport sector have brought about increased competition and new market forces that can potentially result in different kinds of disputes. In addition, the growing number of bilateral, especially “open skies” agreements, as well as multilateral agreements have also necessitated new measures in dealing with disputes arising from such arrangements. Yet dispute settlement under the present bilateral regulatory regime is perceived as a major weakness, with disputes being lengthy, expensive and not always definitive in conclusion. ICAO has already taken one step to improve the regime through the development in 1997 of a new dispute resolution mechanism and subsequently a list of air transport experts for mediation or dispute resolution, but this whole subject warrants the consideration and development of more effective and efficient dispute resolution mechanism(s), adaptable to a liberalized environment.

7) Transparency (including: registration of agreements with ICAO and access to information).

One of the perceived weaknesses of the existing international air transport regulatory regime is the relative lack of transparency. By no means are all agreements filed with ICAO in accordance with Articles 81 and 83 of the Chicago Convention. In addition, many agreements are subject to side notes and memoranda of understanding which are not filed at all. While some governments have made use of the worldwide web in publishing relevant documents, this approach has not yet been widely applied.

To facilitate and assist the process of liberalization, there is an urgent need for improved transparency so that States could have as much information as possible on experiences of liberalization and related developments in the industry. The ICAO Secretariat is working towards expanding the database of bilateral air services agreements (published as Doc 9511) to encompass regional agreements and make it, as well as the texts of the agreements themselves, more readily accessible. Moreover, the Secretariat is considering ways to increase registration of agreements, and a model clause for insertion in air services agreements.