



WORKING PAPER

WORLDWIDE AIR TRANSPORT CONFERENCE (ATCONF)

SIXTH MEETING

Montréal, 18 to 22 March 2013

Agenda Item 2: Examination of key issues and related regulatory framework

Agenda Item 2.3: Consumer protection

**PROPOSAL FOR THE INTERNATIONALIZATION AND STANDARDIZATION OF
CONSUMER PROTECTION REGULATIONS IN THE FIELD OF AIR TRANSPORT**

(Presented by Chile)

EXECUTIVE SUMMARY

This working paper summarizes the experience of Chile with the protection of consumer rights in the field of air transport and gives an analysis of the effects of regulation. It also proposes that ICAO should develop an orientation guide, a code of conduct or a draft multilateral agreement, which standardizes regulations related to the protection of passenger rights. These measures should avoid overregulation and strike the right balance between protecting air passengers and the competitiveness of airlines.

Action: The Conference is invited to agree to the recommendation presented in paragraph 3:

References: ATConf/6 reference material is available at www.icao.int/meetings/atconf6.

**1. CHILE'S EXPERIENCE WITH THE PROTECTION OF
CONSUMER RIGHTS IN THE FIELD OF AIR
TRANSPORT**

1.1 Chilean air commercial policy establishes free access to markets, freedom to set prices, minimum State intervention in commercial matters and liberalization of ownership and control as principles of commercial aviation, with the aim of providing efficient air services of the best possible quality at the lowest cost.

1.1.1 This air commercial policy has meant that air transport is not subsidized by the Chilean State and is a constantly growing market. Thus, 15 233 980 passengers were transported in Chile in 2012 via national and international operations, which represents a growth of 17.3 per cent compared to 2011.

¹ Spanish version provided by Chile.

1.2 National regulation of passenger rights is derived from both aeronautical law and consumer law and refers fundamentally to the issues of the right to information; delays, flight cancellation; denied boarding due to overbooking; lost luggage and the liability of travel agencies and air carriers.

1.2.1 The law on the protection of consumer rights contains obligations that are general in nature and apply across the board to all purchases of goods or services. As far as aeronautical law is concerned, it covers, as a general rule, the right that transport be provided on the stipulated date, time and in accordance with any other stipulated conditions, with the air carrier being able to suspend, delay or cancel the flight or modify the conditions pertaining thereto, for reasons of security or “force majeure”. When there is non-fulfilment attributable to the carrier, compensation for related damages follows.

1.2.2 With regard to international flights, the applicable legislation is contained in the Montreal Convention (1999), which entered into force in Chile as of 2009.

1.3 Chile has placed special emphasis on the provision of information about air passenger rights and the encouragement of a claims culture.

1.3.1 Asymmetric information exists in all consumer relationships and this is further heightened in air transport due to its complexity, which is both regulatory and technical in nature. Therefore, regulations in this sector should aim to provide the passenger with as much information as possible about his rights and how he can have them enforced.

1.3.2 Chile’s aeronautical authority publishes and promotes brochures that provide relevant information for air passengers and periodically publishes service quality indexes (delays, cancellations and claims), with the aim of promoting information for passengers.

1.4 The claims procedure for air transport users includes an entity for mediation with the airline before the administrative authority that protects consumer rights, as well as legal proceedings before courts of justice.

1.4.1 Almost 13 million passengers were transported in 2011 and 3 103 claims were submitted, which is equivalent to 0.02 per cent of passengers and in 2012 over 15 million passengers were transported and 4 510 claims were submitted, which is also equivalent to 0.02 per cent. The claims index remains low in spite of the increase in passenger traffic. Most claims are made because of flight cancellation and delay (1 030 claims) and problems related to luggage (767 claims).

2. FRAGMENTATION OF REGULATIONS AND A PROPOSAL FOR ICAO

2.1 Regulatory fragmentation, both nationally and internationally, leads to asymmetric information, which in turn, leads to a lack of protection for passengers, given the difficulty of knowing one’s rights, in accordance with the various types of applicable legislation.

2.1.1 The solution to this regulatory fragmentation lies in internationalization and a standardized regulation on passenger rights. This would reduce asymmetric information and create greater legal certainty for passengers and operators.

2.2 ICAO should lead this process of standardization of regulations on air passenger rights through orientation guides, codes of conduct or a draft multilateral agreement. ICAO has a fundamental

role to play here since it is the organization that regulates and guides air operations as a whole. Developing initiatives that establish regulations outside of ICAO could cause more fragmentation. Indeed, protection should not be reduced to solely passengers travelling as tourists, but should also take into consideration business passengers, those with reduced mobility, ethnic passengers, those travelling for study reasons, etc.

2.3 The regulation proposed by ICAO should avoid overregulation and find the right balance between adequate protection for air passengers and the competitiveness of airlines. If the regulation is excessively onerous then costs will increase for the airlines. This increase is passed on to consumers, with a subsequent rise in prices, which may then limit certain passengers' access to air transport.

2.4 On the other hand, an increase in operating costs mainly affects small airline companies. Large airlines have more capacity to deal with excessive requirements, for example: they have newer fleets with less maintenance problems; replacement crews; aircraft for relocating passengers and/or strategic alliances, which all allows them to provide services, even in difficult or onerous situations.

2.4.1 Overregulation may cause small airlines to have to cease operations, leading to competition being concentrated in the hands of only large companies that can survive the costs imposed upon them by overregulation, thereby reducing the supply of air transport.

2.5 Given the above, ICAO should lead multilateral progress towards an international regulation and standardize the protection of passenger rights, with the emphasis placed on information rather than overregulation, which could endanger the competitiveness of the air market.

3. **RECOMMENDATION**

3.1 In accordance with the arguments described previously, the Conference is invited to consider Chile's proposal that ICAO should develop an orientation guide, code of conduct or draft multilateral agreement, which standardizes regulations on the protection of passenger rights. These measures should avoid overregulation and achieve an appropriate balance between air passenger protection and the competitiveness of airlines.

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