



FACILITATION (FAL) DIVISION — TWELFTH SESSION

Cairo, Egypt, 22 March to 2 April 2004

- Agenda Item 5: Modernizing airport facilities and service delivery systems**
5.2: National, regional and airport FAL programmes

STATES' SUPERVISION OF PRIVATIZED AIRPORTS IN FACILITATION MATTERS

(Presented by the Secretariat)

1. INTRODUCTION

1.1 Privatization, when essentially related to the change of ownership and management in the provision of airports services, is rather loosely associated with any deviation or movement away from government ownership and management of facilities and services.

1.2 Perhaps the most important feature of privatization is that it is essentially a political process involving a change in the role of the State with the sale of State or publicly owned property, or with transfer of management from State to private sources. This inevitably leads to issues of responsibility and legal liability. For instance, an airport previously publicly owned may not be under the same rules of legal liability as it would once privatized.

1.3 The United Nations General Assembly, at its 93rd Plenary Session in December 1992 endorsed privatization in the context of economic restructuring, economic growth and sustainable development. By Assembly Resolution A 47/171 the General Assembly, while noting that many countries were attaching growing importance, in the context of their economic restructuring policies, to the privatization of enterprises, urged member States to support when requested the national efforts of States in implementing privatization. In 1993 the General Assembly followed up on its stance on privatization by adopting Resolution A 48/180 which *inter alia* requested the Secretary General to strengthen the activities of the United Nations System related to the promotion of entrepreneurship and to the implementation of privatization programmes.

2. REGULATORY ISSUES

2.1 The fundamental postulate which establishes a global legal basis for the provision of airports is contained in Article 28 of the Convention on International Civil Aviation which provides that each Contracting State undertakes, as far as practicable, to provide in its territory, airports, radio services, meteorological services and other air navigational facilities to facilitate international air navigation in accordance with the standards and practices recommended or established from time to time, pursuant to the Convention. In addition, the Chicago Convention also stipulates in Article 10 that every aircraft which enters the territory of a State shall, if the regulations of that State so dictate, land at an airport designated

by that State for purposes of customs and other examination. Each Contracting State to the Chicago Convention could also, subject to the provisions of the Convention, designate an aircraft which passes through the airspace over the territory of the State and another State to the route it may follow within the territory of the State concerned and the airports it may use within the territory of the State.

2.2 Annex 9 to the Chicago Convention contains guidelines on facilitation, particularly in Appendices 11 and 12, which could be used in the instance of new policy and improvement being affected in an airport undergoing privatization. Appendix 12, which contains guidelines for the establishment and operation of national air transport and airport facilitation committees, calls for an airport facilitation committee to implement the national FAL programme of that State and to examine problems arising in connection with the clearance of aircraft, passengers, baggage, cargo, mail and stores and to make recommendations as required to the relevant authorities aimed at alleviating problems. The significance of these provisions in the Annex lies in the fact that, whatever may be the corporate or governing structure of an airport, States have been provided with established guidelines for the continued regulatory control of their airports. Conversely, a privatized airport retains the obligation to implement the provisions of Annex 9.

2.3 It is incontrovertible that the responsibility of the State is not extinguished merely because an airport is made subject to private ownership or private management control. In international air transport, the mere fact that the State has to provide airport services under Article 28 of the Chicago Convention and indeed designate airports within its territory for landing purposes as per Articles 10 and 68 imposes legal responsibility upon the State to be accountable at public international law for any liability incurred as a result of action on the part of airports within its territory. The provisions of the Chicago Convention, which is an international treaty, are binding on contracting States to the Convention and therefore are principles of public international law.

2.4 Neither the State nor the airport can avoid responsibility on account of privatization. Primarily, responsibility devolves upon the State for the continued regulation of air transport policy in its territory irrespective of the corporate or economic status of the airport. Thus the provision of adequate facilities and measures for border control and compliance therewith should not be affected by privatization.

3. ACTION BY THE DIVISION

3.1 The Division is invited to:

- a) note the contents of this paper in its consideration of Agenda Item 5.2; and
- b) recommend that Contracting States ensure that the provisions of Annex 9 continue to be implemented in the event an airport becomes privatized.

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