



INTERNATIONAL CIVIL AVIATION ORGANIZATION

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English and
Spanish only¹

ASSEMBLY — 35TH SESSION

ECONOMIC COMMISSION

Agenda Item 27: Regulation of international air transport services, and outcome of the fifth Worldwide Air Transport Conference

DESIGNATION, OWNERSHIP AND CONTROL

(Presented by the Latin American Civil Aviation Commission)²

SUMMARY

The purpose of this paper is to acknowledge, together with the participating delegations, the need to reaffirm the fact that ICAO was established within the framework of the Convention on International Civil Aviation, and that it will celebrate 60 years as a necessary world forum which, with its long years of experience with effective recommendations, has served and continues serving in guidance of its members in the implementation of economic regulations for air transport, in the interest of the entire international aeronautical community.

Action by the Assembly is in paragraph 4.

1. INTRODUCTION

1.1 ICAO is a global organization with 188 contracting States, which, throughout almost 60 years, has fostered discussions aimed at maintaining the proper balance among the interests of all its members. ICAO is a universal forum with a long experience as focal point for the exchange and dissemination of information, in addition to being a source of appropriate criteria and guidance for its extended use.

1.2 ICAO has participated in a broad range of economic regulatory matters and this activity has

¹ Spanish version provided by LACAC

² Presented by 21 Members (Argentina, Aruba, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, the Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay and Venezuela)

been intensified in recent years because contracting States have resorted to it for guidelines, advice, harmonization and cooperation on regulatory matters, and as a world forum and focal point for the aeronautical community on economic regulatory matters and, especially, on the liberalization process.

1.3 An overwhelming majority has agreed that the issue of liberalization must be addressed within the framework of ICAO, in a gradual and uniform manner, without haste. For that same reason, most of the members have agreed that the World Trade Organization (WTO-OMC) is not the forum for discussing air transport issues, since it offers a purely trading environment that gives no consideration to the specific characteristics of air transportation, where State sovereignty is not under discussion.

2. ANALYSIS

2.1 Member States of the European Civil Aviation Conference (ECAC) have expressed that, in recent years, other economic sectors, including the most sensitive and strategic ones, with complex regulatory regimes such as telecommunications and financial services, have seen their ownership and control restrictions eliminated and modified.

2.2 A recent ruling by the European Court of Justice established that the normal ownership and control clauses of most air service agreements entered into with member States of the European Union (EU) contradict community law provisions on freedom of establishment. The Community and its member States are considering the changes that will be necessary in their bilateral relations with other ICAO members as a result of this ruling.

2.3 This specifically means that “a country of the EU will be allowed to designate airlines which ownership and control belong not only to that same country but also to other countries members of this Union, provided they are established in said country”.

2.4 Regarding liberalization of air transport, ICAO, which in all of its activities, specifically those related to designation, ownership and operational control of air carriers, has taken into account all the criteria of its members, and formulated, during the fifth Worldwide Air Transport Conference, a draft clause eliminating the traditional concepts in this area, which represents a step forward, although not achieving full liberalization. Thus, ICAO promotes a gradual and uniform liberalization by recommending flexible transition policies.

2.5 Let us recall that it was decided that States will only be able to achieve gradual liberalization of air transport regulation within the framework of ICAO.

2.6 Taking into account these considerations, common criteria consistent with the spirit of ICAO should prevail. The internal legislation of the countries and regions should be developed or modified and applied in such a way that they do not affect the balance and integrity of other countries.

2.7 We do not wish to suffer the adverse repercussions of airline competition as a result of a possible concentration in the aviation sector; i.e., a small group of mega-carriers dominating the air transport system.

2.8 With respect to the designation of airlines by member States in the region for operations to and from Europe, the Latin American Civil Aviation Commission (CLAC) is drafting a model clause for use

by its member States in their agreements with the EU.

3. **CONCLUSIONS**

3.1 The fifth Worldwide Air Transport Conference also agreed that States should consider the draft model clause elaborated by the Air Transport Regulation Panel and endorsed by the Council (**Appendix**), and proposed that this 35th Assembly recommends that States apply said clause in negotiations of their air service agreement.

3.2 Notwithstanding the above, the Latin American Civil Aviation Commission (LACAC) is drafting a model clause for use by its member States in their agreements with the EU. This clause will be applied by a member State to designate an airline from another member State for operations to and from Europe.

4. **ACTION BY THE ASSEMBLY**

4.1 The Assembly is invited to:

- a) review the conclusions contained in paragraph 3 above;
- b) recommend adoption of the decision whereas ICAO member States consider in their bilateral air service agreements the model clause shown in the Appendix concerning the designation and authorization (designation, ownership and control) of airlines.

APPENDIX

(Model Clause recommended by the Fifth Worldwide Air Transport Conference (ATConf/5))

“Article X: Designation and Authorization

1. *Each Party shall have the right to designate in writing to the other Party [an airline] [one or more airlines] [as many airlines as it wishes] to operate the agreed services [in accordance with this Agreement] and to withdraw or alter such designation.*
2. *On receipt of such a designation, and of application from the designated airline, in the form and manner prescribed for operating authorization [and technical permission,] each Party shall grant the appropriate operating authorization with minimum procedural delay, provided that:*
 - a) *the designated airline has its principal place of business* [and permanent residence] in the territory of the designating Party;*
 - b) *the Party designating the airline has and maintains effective regulatory control** of the airline;*
 - c) *the Party designating the airline is in compliance with the provisions set forth in Article __ (Safety) and Article __ (Aviation security); and*
 - d) *the designated airline is qualified to meet other conditions prescribed under the laws and regulations normally applied to the operation of international air transport services by the Party receiving the designation.*
3. *On receipt of the operating authorization of paragraph 2, a designated airline may at any time begin to operate the agreed services for which it is so designated, provided that the airline complies with the applicable provisions of this Agreement.*

Integral Notes:

- (i) **evidence of principal place of business is predicated upon: the airline is established and incorporated in the territory of the designating Party in accordance with relevant national laws and regulations, has a substantial amount of its operations and capital investment in physical facilities in the territory of the designating Party, pays income tax, registers and bases its aircraft there, and employs a significant number of nationals in managerial, technical and operational positions.*

***evidence of effective regulatory control is predicated upon but is not limited to: the airline holds a valid operating licence or permit issued by the licensing authority such as an Air Operator Certificate (AOC), meets the criteria of the designating Party for the operation of international air services, such as proof of financial health, ability to meet public interest requirement, obligations for assurance of service; and the designating Party*

has and maintains safety and security oversight programmes in compliance with ICAO standards.”

- (ii) *The conditions set forth in paragraph 2 of this Article should also be used in the Article __ (Revocation of authorization).”*

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