



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 2.1 : Market access

Agenda Item 2.2: Air carrier ownership and control

**ISSUES OF LABOUR AND SOCIAL POLICY TO BE CONSIDERED IN CONNECTION WITH
LIBERALIZATION OF INTERNATIONAL AIR TRANSPORTATION**

(Presented by the International Federation of Air Line Pilots' Associations
(IFALPA))

EXECUTIVE SUMMARY

This working paper addresses the critical need to include aviation labour groups participation in all international liberalization efforts with respect to market access and air carrier ownership and control. The working paper points to the recommendations from the Fifth Worldwide Air Transport Conference (ATConf/5), discusses labour concerns with regards to issues raised in Agenda item 2.1 and 2.2 of the Sixth Worldwide Air Transport Conference (ATConf/6), and offers a way forward for cooperative engagement with labour through specific channels.

Action: The Conference is invited to:

- a) review the concerns raised in this working paper and consider the repercussions of liberalization actions on the aviation labour market;
- b) endorse the conclusions presented in paragraph 3; and
- c) adopt the recommendations presented in paragraph 4

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

1. INTRODUCTION

1.1 The International Federation of Air Line Pilots Associations (IFALPA) is an international federation composed of 100 separate national associations of commercial airline pilots. In the aggregate, IFALPA represents the pilots employed by most of the major airlines around the world. IFALPA has had recognized observer status at ICAO since 1948 and permanent observer status to the Air Navigation Commission since 1960. In this capacity the Federation has participated in the development of virtually all ICAO technical rules and standards and has played an integral role in the creation of the safest transportation system in the world. It is essential that any regulatory changes proposed at this Conference do not have the effect of reducing the level of safety in the system.

1.2 IFALPA's principal purpose in presenting this paper is to call attention to the needs of an important group of stakeholders in the international air transportation industry whose interests are too often forgotten or overlooked when issues of regulatory reform or liberalization are considered – mainly airline workers. Among the Conclusions of the Fifth Worldwide Air Transport Conference (ATConf/5) were the following:

- a) Liberalization may have various implications for labour, which should continue to participate as an important stakeholder for the development of the air transport industry. States should observe and respect the ILO Declaration on Fundamental Principles and Rights at Work, and take the necessary measures to promote social dialogue with the active participation of labour as a way to find innovative and socially responsible solutions. (Agenda Item 1.1, Conclusion f.); and
- b) In liberalizing the conditions for air carrier designation and authorization, States should ensure that the economic and social impact, including the concerns of labour, are properly addressed, and that other potential risks associated with foreign investments (such as flight of capital, uncertainty).

Similarly, the Declaration of Global Principles issued at ATConf/5 declared, among other things, that:

- a) ICAO and its contracting States, together with the air transport industry and other stakeholders in civil aviation, will work together to ensure that international air transportation continues to develop in a way that . . . has due regard for the interests of all stakeholders, including air carriers and . . . labour" (Declaration, paragraph 1.1.1.);
- b) "Further economic liberalization must be implemented in a way so as to ensure that there is a clear point of responsibility for each of safety and security in a clearly identified State or other regulatory authority designated by that State for any given aircraft operation." (Declaration, paragraph 2.6.);
- c) "The objective of on-going regulatory evolution is to create an environment in which international air transport may develop and flourish in a stable, efficient and economical manner without compromising safety and security and while respecting social and labour standards." (Declaration, paragraph 4.1.); and
- d) "Cooperation between and among States facilitates liberalization and avoids conflicts, especially in dealing with competition law/policy issues and labour conditions involving international air transport." (Declaration, paragraph 5.2.).

1.3 Every industrialized country in the world has domestic laws and regulations that protect and promote labour rights and labour welfare. Even though such laws and regulations often make competition more difficult and business operations more expensive, governments have long recognized the importance of striking a balance between business freedom and efficiency on the one hand and labour welfare on the other. It would be anomalous indeed if the same countries that recognize the need for such balance domestically were to ignore it when considering international regulatory reform.

1.4 The remainder of this Working Paper will identify the labour and social policy implications of certain specific items on the agenda of this Conference, and explore how various proposed liberalization measures might affect the needs and interests of airline workers.

2. DISCUSSION

Market Access

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2.3 WP/13 proposes that ICAO assume a leadership role in developing an international agreement to facilitate market access expansion by States. IFALPA believes that such an undertaking would require a substantial and excessive dedication of resources by ICAO. IFALPA would also note that any template multilateral agreement would have to include provisions recognizing that labour standards are not to be reduced because of the agreement and establishing a mechanism to hear and effectively address concerns raised by airline labour. The existing Air Transport Agreement between the United States and the European Union and its Member States includes provisions that are aimed at accomplishing those objectives.

2.4 IFALPA also believe that market access issues touch on core national air transport policies and how those policies are addressed should be for States to determine on a case-by-case basis in particular negotiations. The principle of reciprocity should be respected.

Air Carrier Ownership and Control

2.5 WP/12 states that the continuation of legal restrictions on ownership and control in State's laws and bilateral agreements are often characterized as "abnormal and harmful" and the "need to enable air carriers to adapt to the dynamic global environment . . . call for a change." (Paragraph 1.4). The Paper recommends that "States should continue to liberalize air carrier ownership and control through various means" and that "ICAO should initiate the development of an international agreement for States to liberalize air carrier ownership and control . . .". The paper notes that one purpose of such an agreement would be to "relax ownership and control requirements for airline designation and to facilitate airline access to international capital." (WP/12 at Paragraph 3.4).

2.6 WP/12 does not address the labour and social implications of eliminating traditional ownership and control requirements. Because labour and social legislation is national in scope, the legal rights, protections, and benefits that airline workers enjoy are those provided by the laws of the country under which their airline is established. Elimination of the ownership and control requirement would give airline managements the ability to choose the country in which to establish their airline, to establish subsidiary airlines in different countries, or even to migrate from one country to another. They would be able to make those decisions based on which country's labour and social laws offer the least benefits and protections to workers, limited only by restrictions on their route rights. The effect would be to place at an increasing competitive disadvantage the airlines of those States with the most enlightened labour and social legislation. In addition, the living standards and careers of the employees of those airlines would be in jeopardy of being undermined through the loss of their airlines' market share, or migration of their airlines (in whole or part) to other countries. Airline employees could also see changes in their own countries' labour and social laws brought about as a result of competitive pressure from other countries. Finally, the ability of airlines to establish foreign subsidiaries could lead to the significant downsizing or even disappearance of home-base airlines, with the attendant tax, employment and other economic loss.

2.7 Elimination of the ownership and control rule would also allow airlines to establish multinational airline holding companies with affiliated airlines in multiple countries. This would make it possible for the holding company to allocate flying to one affiliated airline or another based on which country's labour and social laws are most favourable, or which airline's employees are most willing to accede to management's needs and demands. The ability of airline management to pit one employee group against another in this manner could well weaken or destroy the ability of employees in any single affiliate to engage in effective collective bargaining. Moreover, as long as the laws governing labour relations are national in scope, there would be no effective way for the employees of affiliated airlines in different countries to band together as a single collective-bargaining group.

2.8 Because of these concerns, the ownership and control requirements should not be eliminated unless a legal framework is established to provide standard social and labour protections with enforceable rights. The existence of these requirements does not preclude the negotiation of specific exceptions on a case-by-case basis where such action is found to serve the legitimate interests of the parties and there is no adverse effect on labour interests. But the general rule that a designated airline must be substantially owned and effectively controlled by the government or nationals of the designating country should be preserved as an essential safeguard against the use of "flags of convenience" to undermine labour or social standards. Accordingly, IFALPA does not believe that States should endorse the recommendation in Paragraph 5.1.c. in WP/12 that ICAO should develop an international agreement for States to liberalize air carrier ownership and control.

3. CONCLUSIONS

3.1 Airline employees, particularly those who work aboard aircraft that operate on international routes, are stakeholders whose interests would be affected by changes in international air transport regulation.

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3.3 On February 20-22 of this year, the ILO held a Global Dialogue Forum on the Effects of the Global Economic Crisis on the Civil Aviation Industry. The Points of Consensus (PIC) issued at the Forum stated that "liberalization . . . has increased competitive pressure and this could have led to enhanced challenges for decent and competitive work." The PIC also stated that certain airline business models had led to "a concern about the complexity of determining legal jurisdiction, particularly over labour issues," and that "social dialogue is an essential element to improve sustainability, and decent and productive work in civil aviation . . . ". Further, the PIC stated that "fair competition and the observance of the right to work as stipulated in the ILO Declaration on the fundamental principles of rights to work should be applied by all actors in the civil aviation industry regardless of their business model." The PIC recommended that the ILO and ICAO should consult on ways of strengthening cooperation between the two bodies.

4. RECOMMENDATIONS

4.1 The following recommendations are proposed for consideration by the Conference:

- a) in any future work program developed by ICAO there should be an explicit recognition that airline workers are one of the stakeholders whose interests must

be considered in evaluating any proposed recommendations or guidelines. To ensure proper identification and consideration of such interests, any such future work program should provide for the participation of IFALPA and other appropriate labour organizations in order that the concerns of labour are fully considered and effectively addressed; and

- b) any future work plan developed by ICAO should provide for the participation of the ILO, and States should observe and respect the ILO Declaration of Fundamental Principles and Rights at Work and the ILO Conventions.

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