



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
2.8: Implementation of ICAO policies and guidance**

**THE WAY FORWARD: ACTION PLAN FOR THE IMPLEMENTATION OF AN IMPROVED
REGULATORY FRAMEWORK**

(Presented by the Secretariat)

EXECUTIVE SUMMARY

This working paper proposes an action plan for use by ICAO and its Member States with a view to fostering a more harmonized and efficient regulatory framework for international air transport in a global economy.

Action: The Conference is invited to:

- a) review the information and assessment provided in this paper;
- b) endorse the conclusions presented in paragraph 5; and
- c) adopt the recommendations presented in paragraph 6.

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

1. INTRODUCTION

1.1 Taking into account the ever evolving nature of international civil aviation, the ICAO Council approved on 27 June 2012 a proposed Vision and Mission Statement as well as the Strategic Objectives for the 2014-2015-2016 triennium. The Vision of the Organization is to “Achieve *the sustainable growth of the global civil aviation system*”, and five Strategic Objectives have been defined by which its Mission can be accomplished.

1.2 Stemming from this vision and mission, the need to create a distinct Strategic Objective for *Economic Development of Air Transport* was identified and dedicated to fostering the development of a sound and economically viable air transport system. This Strategic Objective recognizes the need for ICAO leadership in harmonizing the regulatory framework for international air transport with due focus on economic policies and supporting activities.

2. BACKGROUND

2.1 In 1944, at which time the Convention on International Civil Aviation (the “Convention”) was signed in Chicago, the Parties recognized the paramount importance of ensuring the sustainable development of air transport services. The Preamble of the Convention states: “the undersigned governments (...) and that international air transport services may be established on the basis of equality of opportunity and operated soundly and economically.”

2.2 In accordance with Article 44 of the Convention, the aims and objectives of ICAO are to “develop the principles and techniques of international air navigation and to foster the planning and development of international air transport so as to:

- a) meet the needs of the peoples of the world for safe, regular, efficient and economical air transport;
- b) prevent economic waste caused by unreasonable competition;
- c) insure that the rights of contracting States are fully respected and that every contracting States has a fair opportunity to operate international airlines.”

2.3 However, as noted by the ICAO Air Transport Symposium (IATS, 18 – 20 April 2012), the current air transport environment suffers from both geographical and economic fragmentation.

2.4 Despite the objective of a global approach, traffic rights are governed by a complex system of several thousand bilateral air services agreements that geographically fragment the air services markets in a manner unfamiliar to other economic sectors. The criterion of airline nationality is pivotal to this system: it fragments the world of commercial aviation, thwarts economies of scope and scale, and is increasingly seen as fundamentally incongruent with the global economy. As a result of these national divisions, air carriers face hurdles in accessing the financial resources and building the transnational scope that could help ensure sustainable development and long-term success in a competitive market.

2.5 Some fragmentation is economic. Profits are not spread equally among the aviation value chain. The air transport return on invested capital is reported to range from net losses to a small return of 2 per cent and, for some stakeholders, to a high return of 20 per cent. This raises the issue of whether such fragmentation in the profitability of services that form part of a single air transport system is sustainable in the long term. Whether the fragmentation is geographic or economic, or a combination of the two, the barriers posed to an economically sustainable air transport system derive from the current regulatory framework. These barriers impede efficiency, generate friction and hinder growth.

2.6 During the conclusion of the last IATS session (*The Last Word: Strategies and Tools for Sustainability*), the moderator expressed the collective view of the panel as follows: “ICAO must indeed develop the smart, efficient, effective and harmonized global framework and value-added ground rules to ensure that all the stakeholders of air transport enjoy optimum benefits. Effectiveness would require ICAO and the Sixth ICAO Worldwide Air Transport Conference (ATConf/6) to work towards developing an Annex to the Chicago Convention on the sustainability of air transport.”

2.7 The possibility of developing an Annex to the Chicago convention is not new. In 1998, when preparing the agenda for the Conference on the Economics of Airports and Air Navigation Services (CEANS), the Air Transport Committee considered the possibility of incorporating the policies and charging principles contained in *ICAO’s Policies on Charges for Airports and Air Navigation Services* (Doc 9082) in an Annex. However, since none of the comments received from States in preparation for

CEANS addressed this issue, this approach was not pursued. Four key charging principles (i.e. non-discrimination, cost-relatedness, transparency and consultation with users) are already included in national legislation or regulation in a number of States (e.g. The European Union Directive on Airport Charges) and in many air services agreements (e.g. the United States–European Union bilateral).¹

2.8 When discussing the implementation of ICAO policies and guidance in the field of air transport, the Air Transport Regulatory Panel (ATRP/11) recommended that ICAO should conduct a survey, directed at States and concerned organizations, on the relevance and the use of existing ICAO policies and guidance; as well, it was recommended that ICAO should provide States with further information on the proposed coverage and content of a possible new Annex to the Chicago Convention so as to allow States to properly consider the proposal.

3. DISCUSSION

3.1 In preparation for ATConf/6, and in accordance with the recommendation of ATRP/11, proposals for the modernization of the global regulatory system were developed for presentation to the Conference. In this regard, an online survey was posted by ICAO; and State letter SC 6/1-12/57 dated 4 October 2012, urged States to complete the survey; as of 14 December 2012, 60 Member States had responded.

3.2 As indicated in Appendix A, Question 7 of the survey requested States to assess the feasibility of the proposed Annex; 80 per cent of respondents supported the proposal. Also provided in Appendix A are States' suggestions as to the areas to be covered by the Annex.

3.3 Although there was broad support by responding States for the development of an Annex, including coverage of a range of regulatory issues, it is not clear that States have yet reached a consensus on the core substance of such an Annex which is expected to secure the highest practicable degree of harmonization in regulations, standards, procedures, and organization (Article 36 of the Chicago Convention refers) and to help increase awareness and implementation of the existing ICAO policies and guidance related to air transport matters. To pursue the concept of an Annex, it will be necessary first to determine whether a consensus can be developed on the nature and the content of standards and recommended practices governing aspects of the economic regulatory framework for international air transport.

3.4 The survey responses provide insight into the regulatory framework that States would expect ICAO to develop in the areas of market access, air carrier ownership and control and, more generally, the relevance and the use of existing ICAO policies and guidance. The results of the survey show significant support for the development by ICAO of an international agreement on the exchange of commercial rights (ATConf/6-WP/13) and of a multilateral agreement to relax ownership and control requirements for airline designation and to facilitate airline access to international capital (ATConf/6-WP/12).

3.5 Finally, regarding the validity of ICAO policy and guidance material on the economic regulation of international air transport, the survey illustrates that the main problem is not a lack of awareness of ICAO policies and guidance but rather a lack of implementation of such policies and guidance, which are non-binding. Adherence to ICAO policies is in the best interest of States as it

¹ Report of the Conference on the Economics of Airports and Air Navigation Services (Doc 9908 – CEANS 2008), Recommendation 15 d) and 15 e), where the Conference recommended that ICAO should encourage States to adopt the said four key charging principles into national legislation, regulation or policies, and into air service agreements, to ensure compliance by airports and ANSPs.

promotes the efficient and orderly development of international air transport, and can contribute to trade and economic development. The lack of implementation raises a question as to whether there is need to give more weight to ICAO policies, and to increase effort to encourage States in the application.

4. THE WAY FORWARD

4.1 Considering the complexity and sensitivities involved for States, industry and concerned stakeholders, the different impediments to the sustainable development of air transport can only be addressed in a gradual way. The survey suggests that several areas may be more likely than others to be incorporated into a comprehensive policy guidance tool, such as an Annex to the Chicago Convention or a set of core principles. Those include economics of airports and air navigation services (i.e. the above-mentioned four key charging principles), consumer protection and price transparency, market access; air carrier ownership and control, and taxation of international air transport.

4.2 Although these areas that could be covered by an Annex are all related to air transport regulation and economics, they are substantially different in content. One possible approach would be to treat each principle as a module of a global framework in the envisioned Annex. This conceptual framework would allow individual and independent modules to be developed progressively over time. Such an endeavour could take the form of the development of core principles in different areas that would lend themselves to such a format, such as key charging principles for airports and air navigation services, consumer protection and price transparency.

4.3 In due course, those different modules could be considered for incorporation into a single tool, i.e. an Annex. On the other hand, if consensus is found to be lacking with respect to establishing standards and recommended practices, the exploration of the modules might still enhance regulatory convergence and adoption of ICAO policies and guidance.

4.4 Particular situations of States and industries must be taken into account, as well as legitimate concerns of States for the conditions of specific air transport industries. The different policies contained in existing or future modules could be adopted as recommended practices or standards, as applicable. In any event, the creation of a new Annex to the Chicago Convention would respond to an aspiration by a broad cross-section of States and stakeholders for greater economic regulatory convergence or harmonization. It is therefore likely to lead to a significant enhancement of the implementation of ICAO policies. Such an endeavour would require substantial consultation, preparation and implementation work. A preliminary assessment of the impact on ICAO resources required for this task, which will be undertaken over several trienniums, is indicated in the Appendix B.

5. CONCLUSIONS

5.1 In light of the discussion above, the following conclusions may be drawn:

- a) the current fragmentation of air transport is detrimental to a globally sound and economically viable air transport system;
- b) there is State support for a new Annex on sustainable economic development of air transport that would include items related to consumer protection, market access, economics of airports and ANSPs, taxation and air carrier ownership and control; and

- c) there is a need for the Secretariat to provide further information on the content and coverage of a possible Annex to the Chicago Convention in consultation with the concerned regulatory panels such as ATRP and Airport Economic Panel (AEP)/Air Navigation Services Economic Panel (ANSEP).

6. **RECOMMENDATIONS**

- 6.1 The following recommendations are proposed for consideration by the Conference:
 - a) ICAO should consider the definition of a modular strategy for encouraging the harmonization and modernization of a global air transport regulatory framework;
 - b) ICAO should develop a cost benefit analysis for consideration by States regarding the added value of an Annex to achieve this goal; and
 - c) ICAO should provide States with further information on the content and coverage of a possible Annex for wider implementation of ICAO policies.

APPENDIX A

**RATE OF POSITIVE RESPONSES ON THE INCLUSION OF
POTENTIAL ITEMS INTO AN ANNEX
(Based on responses provided by 60 States)**

Question 7 of the survey: It has been suggested that, in order to increase the application of its policies and guidance, and to ensure a harmonized regulatory framework, ICAO develop a new Annex to the Convention on International Civil Aviation that would address the economic development of air transport. Do you support the view that ICAO develops an Annex to the Convention?

Area	Positive response rate
Economics of airports and air navigation services and Air Services Agreement Framework	94 %
Consumer protection and price transparency	92 %
Market access	92 %
Transparency and consultation with users	90 %
Air carrier ownership and control	85 %
Taxation of international air transport	83 %
Economic market-based measures aimed at reducing or limiting the environmental impact of aircraft engine emissions	79 %

APPENDIX B

AIR TRANSPORT REGULATORY MODERNIZATION MODULES

Modules	PROPOSED DEVELOPMENT OVER SEVERAL TRIENNIUMS					
						TAXATION MODULE
					AIR CARRIER Ownership and Control MODULE	
				FAIR COMPETITION MODULE		
			MARKET ACCESS MODULE			
		CONSUMER PROTECTION MODULE				
	AIRPORT/ANS ECONOMICS MODULE					
Impact on ICAO resources	neutral	neutral	neutral	neutral	neutral	neutral

— END —