

**INTERNATIONAL CIVIL AVIATION ORGANIZATION****AFI PLANNING AND IMPLEMENTATION REGIONAL GROUP
FOURTEENTH MEETING (APIRG/14)
(Yaounde, Cameroon, 23-27 June 2003)**

Agenda Item 8: Air Transport Conference (March 2003)**RESULTS OF THE WORLDWIDE AIR TRANSPORT CONFERENCE (ATCONF/5)****1. INTRODUCTION**

1.1 The fifth Worldwide Air Transport Conference: Challenges and Opportunities of Liberalization was held in Montreal from 24 - 28 March 2003. It was attended by 794 delegates from 145 Contracting States and 26 Observer organizations. The Conference was preceded on 22-23 March by a Seminar arranged in association with IATA, ACI and two local universities. Approximately 700 participants attended the Seminar, which was addressed by prominent speakers from government, industry and academia. Also held in conjunction with the Conference was an exhibition, with 15 exhibitors drawn from industry associations, academic institutions, service suppliers and consultancies.

1.2 The final Report of the Conference is currently being prepared for publication and distribution to States as ICAO Doc 9819 - ATConf/5. This paper summarizes the Conference results. The results will be disseminated in the first instance by a State letter in the usual manner, highlighting certain action States have been requested to take, followed by separate State letters on several subjects which the Conference decided would require additional follow-up action.

2. CONDUCT AND OUTCOME OF THE CONFERENCE

2.1 The Conference was able to complete successfully a comprehensive agenda in less than the time allotted. This was in large part attributable to the significant lead time from the decision to convene the Conference in December 2001 and the detailed planning, preparation and promotion of the meeting. Build-up for the Conference used the Air Transport Regulation Panel (ATRP), Regional Offices, an information package, regional seminars and the ICAO Web site, through which documentation was disseminated on a timely basis. This enabled States to come to the Conference familiar with the objectives, issues and the basic proposals being put forward.

2.2 The Conference theme of "Challenges and Opportunities of Liberalization" was well reflected in the discussions and the Conference results. Those results provide a clear framework for safeguarded economic liberalization, together with practical policy guidance which States may use at their discretion and in a flexible manner.

2.3 Unlike the outcome of the Worldwide Air Transport Conference in 1994, which consisted of a single comprehensive Recommendation, the results of this Conference consist of several elements: a *Declaration of Global Principles for the Liberalization of International Air Transport*; two Recommendations, one on the liberalization of air carrier ownership and control and the other on the role of ICAO; a total of 67 Conclusions encompassing all agenda items; and seven model clauses for optional use in air services agreements and covering air carrier designation and authorization, aircraft leasing, air cargo services, safeguards against anti-competitive practices, a transition annex (for participation and preferential measures), dispute settlement and transparency. In addition, there was widespread support for two draft Template Air Services Agreements (TASAs) developed by the Secretariat in consultation with the ATRP, one for use by States in their policy development and bilateral air services relationships and the other for regional/plurilateral situations. All the results and decisions of the Conference were adopted by consensus.

2.4 The many and detailed Conclusions include not only expressions of opinion and statements by the Conference but also propose a number of actions to States as well as certain tasks to ICAO. The following review deals with the results sequentially by agenda item.

3. CONFERENCE RESULTS

3.1 **Agenda Item 1.1: Background to and experience of liberalization**

3.1.1 The Conference reached several Conclusions on this item. The Conclusions address: the use of case studies as an aid in the liberalization process and ICAO's role in this work; the relationship amongst airlines, airports and air navigation service providers; the impact of liberalization on infrastructure and the environment; and labour as a participant in the liberalization process.

3.1.2 The Conclusions call on ICAO to continue to develop and disseminate case studies and information on liberalization experiences and on States to submit such information to ICAO. This overlaps with similar Conclusions on Agenda items 2.2 on Market access and 3.1 on Review of template air services agreement (TASA). For each of these Conclusions the Secretariat will use all possible means to gather information on liberalization experiences and case studies in order to build up a reference database of practical source material and assessments on a variety of liberalization experiences. This information would be made available using the ICAONET as well as traditional means of dissemination to Contracting States. A separate State letter to invite the submission of case studies and information may be necessary.

3.2 **Agenda item 1.2: Safety and security aspects of liberalization**

3.2.1 Safety and security aspects of liberalization were a theme throughout the Conference deliberations and results, including being the first specific topic covered in the Declaration of Global Principles. Under this preview agenda item the Conference Conclusions stress: the paramount importance of safety and security; the need for clear lines of responsibility and points of contact for safety and security; the leading role of ICAO in developing global strategies for safety and security under liberalization; and means to address the limited resources available in many developing States to ensure safety and security.

3.2.2 The Conclusions call for a clarification of the definition of the State or States responsible for safety and security oversight, with a view to possible amendments to existing ICAO regulatory provisions. The Secretariat will carry out this task, in the first instance, through a coordinated inter-Bureau

review of existing provisions to determine any gaps in safety and security responsibility as a result of liberalization.

3.3 **Agenda item 2.1: Air carrier ownership and control**

3.3.1 Air carrier ownership and control - and particularly the need for alternatives to traditional criteria for the designation and authorization of carriers pursuant to the exchange of market access - had been foreseen as one of the most important issues to be dealt with by the Conference. The deliberations on this issue resulted in a number of Conclusions, a model clause on designation and authorization based on “principal place of business” and “effective regulatory control”, and a Recommendation on the liberalization of air carrier ownership and control. These decisions represent one of the major outcomes of the Conference and will provide a basis for adjustment and liberalization of this key regulatory element in a progressive manner.

3.3.2 The Conclusions declare widespread support for liberalization of the traditional criteria and emphasize that States approach such liberalization in a flexible manner and at their own pace, taking both the benefits and risks into account. The Conference also considered that States should accommodate the approaches chosen by others. The Conclusions again stress that safety and security remain paramount in any liberalized arrangements.

3.3.3 The model clause adopted under this item contains an alternative designation and authorization clause based on “principal place of business” and “effective regulatory control”. The Recommendation reflects many of the Conclusions and emphasises the flexible yet discretionary approach to liberalization; the provision of adequate safety and security oversight for designated carriers; and the use of coordinated action by States that wish to liberalize in the absence of the adoption, bilaterally, of alternative criteria to ownership and control.

3.3.4 The Conclusions propose that ICAO continue to play a leading role and that it promote the Organization’s guidance, keep developments under review and study further the underlying issues. The Recommendation proposes an information system with States notifying ICAO of their policies, positions and practices on designation and air carrier ownership and control criteria, and ICAO making such information available. It also proposes monitoring, assisting States on the coordinated action approach if requested and addressing these issues as required. The Secretariat will pursue these tasks of promoting the guidance and assisting States through the regular programme of missions, correspondence, workshops and seminars and will develop further the existing database of ownership and control practices that resulted from the survey on ownership and control conducted in 2001 - 2002 preparatory to the Conference. Follow up work on these matters may require a separate State letter.

3.4 **Agenda item 2.2: Market access**

3.4.1 This item was dealt with by the Conference in three parts: (i) the liberalization of market access; (ii) aircraft leasing; and (iii) air cargo. On the **Liberalization of Market Access** the Conference reached a number of Conclusions which: note the considerable progress since 1994 and emphasise the coexistence of different approaches and flexibility and the impact of “open skies” and other liberal agreements (the momentum of which it encourages); urge adherence to the International Air Services Transit Agreement (IASTA); and address airport congestion and the use of air services agreements to resolve airport access problems pursuant to traffic rights, as well as a fair, non-discriminatory and transparent slot allocation system. The Conference noted that there was no consensus on the use of the General Agreement on Trade in Services (GATS), or whether it was an effective option, for air transport liberalization.

3.4.2 The Conference called on the Organization to monitor and develop an inventory of the experiences of States with liberalization, and disseminate the information, as well as keep current policy guidance under review, and develop new guidance as necessary. For proposed action on this see paragraph 3.1.2 above. A separate State letter promoting adherence to the IASTA may be necessary.

3.4.3 On **Aircraft leasing** the Conference concluded that while there were considerable benefits from leasing, States should review their regulatory responses to leasing and should ensure clear responsibility for safety oversight and compliance. A model clause on aircraft leasing to address the economic and safety aspects was presented to the Conference, which requested that it be made available to States once certain additional explanatory notes as to its scope and application were developed. The Secretariat will develop the additional explanatory material on the model clause in consultation with the ATRP, then make the clause available and insert it in the TASAs.

3.4.4 On **Air cargo** the Conference reached several conclusions and adopted a model Annex for optional use in air services agreements. In its Conclusions the Conference states that air cargo, and in particular all-cargo operations, should be considered for accelerated liberalization and regulatory reform in view of its distinct features. Such liberalization could be undertaken unilaterally, bilaterally or through a multilateral or plurilateral approach. The model Annex addresses the liberalization of air cargo in general, through increased opportunities, flexibility and non-discriminatory treatment, and all-cargo operations through a full market access regime without restrictions.

3.5 **Agenda item 2.3: Fair competition and safeguards**

3.5.1 Fair competition and safeguards was treated in two parts: (i) safeguards to ensure fair competition; and (ii) sustainability and participation. Discussion on each resulted in Conclusions and model clauses. On **Safeguards to ensure fair competition** the Conference concluded that: safeguards are integral part of the liberalization process; competition laws are an effective tool in many cases but aviation specific safeguards, which could be based on a list of unfair competitive practices, may also be needed; States should cooperate and avoid conflict over competition laws and use existing ICAO guidance in this area; and extra-territorial application of competition laws can affect industry cooperation arrangements such as interlining. The model clause on safeguards sets out an indicative list of airline practices that may merit further regulatory attention, including consultation between the parties to an agreement.

3.5.2 On **Sustainability and participation** the Conclusions address the circumstances where State aids/subsidies could be justified as well as their potential distorting effect on competition. The Conclusions open up the possibility of assistance for essential services or public service routes. Conceptually, this overarches a suggestion raised regarding assistance for tourism routes in the context of Agenda item 4.1, Mechanisms for further liberalization, and action is addressed under that heading. Finally, the Conclusions propose that States consider granting preferential and participation measures to assist in the effective and sustained participation of developing States. To assist in this process the Conference adopted a model “Transition Annex” which provides a framework within which partners to air services agreements could agree on the types and terms of preferential and participation measures that would be granted during a transition period of liberalization.

3.6 **Agenda item 2.4: Consumer interests**

3.6.1 The Conference adopted several Conclusions on this item which address indicative consumer interests and regulatory approaches to them, and propose that States rely initially on voluntary commitments to regulate and that they minimize differences when regulating to avoid legal uncertainty. As regards ICAO’s

role, the Conference proposed that it continue to monitor developments and provide information to States in order to assist in the harmonization of regulatory approaches on consumer interest matters.

3.7 **Agenda item 2.5: Product distribution**

3.7.1 The Conference Conclusions on this item deal with: the ICAO Code of Conduct for the Regulation and Operation of Computer Reservation Systems (CRSs) as a reference framework for regulating CRSs; the applicability of the Code to the internet; and States ensuring that internet systems provide comprehensive and non-deceptive information. The Conference called on ICAO to monitor developments, disseminate information and keep the effectiveness of the ICAO Code under review.

3.8 **Agenda item 2.6: Dispute resolution**

3.8.1 The Conference adopted Conclusions and a model clause under this item. The Conclusions state the need for a more efficient dispute mechanism between the traditional consultation and arbitration mechanisms in air services agreements. Such an intermediate mechanism should cover not only competition issues but could also encompass other matters under the air services agreement. The Conclusions also set out the objectives of this mechanism. In the model clause the Conference adopted a settlement of dispute mechanism which included the possibility of mediation and certain procedural time frames, but left it to the parties to agree on details for implementation. The model clause builds on earlier work by the ATRP which had involved the establishment by the Secretary General of a list of air transport experts from which disputants could choose to undertake mediation and similar work in air transport disputes. A separate State letter may need to be sent to update the list of experts and to promote the use of this alternative mechanism in a liberalizing environment and as an integral part of the safeguard mechanism.

3.9 **Agenda item 2.7: Transparency**

3.9.1 The Conference adopted Conclusions and a model clause under this item. The Conclusions: identify transparency as an objective and an essential element in the liberalization process; identify approaches that might be used to improve transparency, including registration of agreements in accordance with Article 83 of the Chicago Convention; propose that States review their internal procedures on obligations under Article 83; propose that States make use of Government Web sites for the electronic dissemination of information including air services agreements; and invite States to consider some general administrative and procedural guiding principles to ensure transparency at the national level.

3.9.2 The Conclusions also call on ICAO to encourage Article 83 registration and to make its database of bilateral agreements more accessible and useful. The Secretariat will explore ways and means of enhancing the database in light of the limited registration of agreements thus far, and of using electronic means for its dissemination and access to information. A separate State letter will urge registration and to follow up on several of the Conclusions.

3.10 **Agenda item 3.1: review of template air services agreement (TASA)**

3.10.1 The Conference expressed widespread support and approval for the concept and content of the two TASAs developed by the Secretariat in consultation with the ATRP. The Conclusions on this item note that the TASAs are a useful tool and are intended to facilitate the liberalization process. The Conference considered that the TASAs should continue to be developed as “living documents”, including the evolution of additional guidance on their use and application. The Conference also concluded that States be encouraged

to use the TASAs and to provide feedback to ICAO on their use, and that ICAO monitor regulatory experiences in liberalization as well as provide assistance to States on their use and application. These Conclusions on the TASAs are an important outcome of the Conference. They will enable ICAO to continue to develop guidance and will help States with practical material for making liberalization choices and developing their options.

3.10.2 The TASAs that were presented to the Conference will be amended to incorporate some changes made to model clauses by the Conference as well as certain proposals for refinement to wording made by some States following an invitation to submit suggestions. The TASAs, in addition to their being disseminated under cover of a State letter, will be made available also by electronic means. There will be a need to update the wording in the TASAs every few years to take account of changes in air services agreements and State practices in this area. This task would be carried out in consultation with the ATRP. Further development of additional material could focus initially on improving and expanding the explanatory notes that accompany the provisions in the TASAs. This could be undertaken in part through interaction with States in workshops and seminars. Agenda items 1.1 and 2.2 also address the need for monitoring liberalization experiences of States.

3.11 **Agenda item 4.1: Mechanisms to facilitate further liberalization**

3.11.1 The Conference adopted several Conclusions and a Recommendation which address the role of ICAO. The Conclusions and Recommendation propose that ICAO refocus its economic regulation work on liberalization and that ICAO facilitate, promote and provide assistance to States on liberalization. The Conference also included in its Conclusions the concept of ICAO exploring the feasibility and possible benefits of serving as a global marketplace for the exchange of market access. This idea, which is directed at the future, will necessitate careful examination of all related issues, addressing both the realities of States' practices on the exchange of market access as well as the practicalities of such an arrangement. The idea will be kept under active consideration and be brought forward to the governing bodies when circumstances permit and sufficient study and refinement have been given to all aspects of it. A positive, but realistic and cautious approach to this task is advocated.

3.11.2 The Conference Conclusions address relations with other organizations having an interest or an involvement in global regulatory matters. The Conclusions consider that ICAO should cooperate to ensure that ICAO's mandate and the broader interests of the aviation community are taken into account by such bodies. The Conference also stated that there should be coordination with such organizations to harmonize and avoid duplication of effort at the global level. The Secretariat will be guided by these Conclusions in its relations with other organizations.

3.11.3 In addition to refocusing the role of ICAO towards practical assistance on liberalization the Recommendation also addresses relations with the World Trade Organization (WTO-OMC) and proposes that ICAO continue to draw the attention of the WTO-OMC to the Organization's policy on trade in services and the inter-linkage between safety, security and economic regulation and to the Organization's focus on liberalization. The Secretary General will write to the WTO-OMC concerning the views of the Conference including this part of the Recommendation.

3.11.4 One suggestion raised under this item, though not covered by a Conclusion, concerned support for a possible joint project with the World Tourism Organization (WTO-OMT) to study the development and assistance to tourism routes to Least Developed Countries along the lines of the essential

service or public route concepts (see paragraph 3.5.2 above). This will be pursued further with the WTO-OMT.

3.12 **Agenda item 4.2: Declaration of Global Principles for international air transport**

3.12.1 The Conference adopted by acclamation a *Declaration of Global Principles for the Liberalization of International Air Transport*. The result of intensive work leading up to and during the Conference, the Declaration provides a broad framework of concepts, principles, statements and actions on liberalization in a single package. Most of the actions in it are directed to States. The Declaration contains sections on overall principles, safety and security, participation and sustainability, liberalization, competition and cooperation, and the role of ICAO. It gives ICAO a document to present to the world beyond the aviation sector. In view of its unanimous adoption by States and the rest of the aviation community, as represented at the Conference, and its comprehensive coverage as a declaratory framework, the Declaration should be given wide circulation and promotion by all appropriate means.

4. **OVERVIEW OF FOLLOW UP ACTION**

4.1 Through its Conclusions, Recommendations and the Declaration, the Conference identified a number of tasks for the Organization as follow up action. Many of the monitoring tasks involve a continuation of existing work and further development of databases that have already been established. Particular attention will need to be given to the most effective means of disseminating information and greatly increased use of the ICAONET, to which most Contracting States now subscribe, is expected.

4.2 A number of tasks, such as the additional explanatory notes on the aircraft leasing model clause, case studies on liberalization, and ongoing assistance with evolution of the TASAs project will benefit from the assistance of the ATRP.

4.3 As regards general assistance to States on the liberalization process, this will continue to be provided through the normal avenues of missions, correspondence, workshops and seminars. The Secretariat will focus its future seminar work on liberalization experiences and use of the TASAs with smaller groups of States, in keeping with the theme of “how to liberalize” emphasised by the Council when convening the Conference. The role of Regional Offices, and in particular the RO/ATs, through their missions to States and at meetings of regional organizations will be an important element in the follow-up process.

4.4 Two basic documents which will require updating as a consequence of the Conference results are Doc 9587 *Policy and Guidance Material on the Economic Regulation of International Air Transport* and Doc 9626 *Manual on the Regulation of International Air Transport*.

5. **SUMMARY**

5.1 The Conference produced a wide-ranging and comprehensive package of results which should help to guide States and ICAO in the liberalization process. Unlike the 1994 Conference, this Conference reached definitive results on nearly all its agenda items and did not request a major programme of further policy and guidance developments. Nonetheless, the Conference recognized that economic regulation of air transport is a rapidly evolving subject area and, given that the cycle of recent air transport conferences has been every 8-10 years, there will likely be specific issues emerging for attention by ICAO

in the interim. The Conference therefore proposed an active programme of monitoring and exchange of information with States together with a reorientation of the Organization's work on economic regulation, specifically to liberalization. This programme will entail considerable effort. Proposals for the programme budget for the next triennium will reflect this refocus of effort.

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