



WORKING PAPER

ASSEMBLY — 40TH SESSION

ECONOMIC COMMISSION

Agenda Item 32: Economic Regulation of International Air Transport – Policy

**OPEN SKIES MULTILATERAL AGREEMENT FOR LACAC MEMBER STATES –
PROGRESS IN THE LIBERALIZATION OF AIR TRANSPORT IN LATIN AMERICA**

(Presented by Peru, supported by the Member States of LACAC²)

EXECUTIVE SUMMARY

This working paper examines the background, substance and advantages of the *Open Skies Multilateral Agreement for Member States of the Latin American Civil Aviation Commission (LACAC)* which entered into effect this year, as well as its relevance and importance for multilateralism and the process of gradual liberalization of air transport in the Latin America Region.

Action: The Assembly is invited to:

- a) take note of the entry into effect of the *Open Skies Multilateral Agreement for Member States of the Latin American Civil Aviation Commission (LACAC)* and of the significant progress toward international air transport liberalization that this represents, in keeping with the *ICAO Long-term Vision*; and
- b) recommend that Member States replicate such regional undertakings for the benefit of multilateralism in aviation international relations.

<i>Strategic Objectives:</i>	This working paper relates to Strategic Objective – <i>Economic Development of Air Transport</i> .
<i>Financial implications:</i>	None.
<i>References:</i>	Sixth Worldwide Air Transport Conference (ATConf/6): <i>ICAO Long-term Vision for the Liberalization of International Air Transport</i> , SP 38/1-15/54 of 15 July 2015.

¹ Spanish version provided by Peru, supported by the Member States of LACAC.

² Aruba, Belize, Brazil, Cuba, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Uruguay and Venezuela.

1. INTRODUCTION

1.1 *Liberalization*, understood as a public policy and regulation intended to guarantee free market access to international air transport services, is a proposition as old as modern civil aviation itself. As we know, it was elaborated at the Chicago Conference of 1944.

1.2 Since the early 1980s, following aviation deregulation policies enacted by the United States in 1979 and up until today, renewed liberalization has proven to be a more advantageous policy for commercial air transport than the policies advocated by its critics, though not without its problems and shortcomings. Liberalization has boosted the development and sustained growth of international civil aviation as well as the economies and connectivity of those States that have effectively implemented it.

1.3 For this reason and on the recommendation of 6th Worldwide Air Transport Conference (ATConf/6), the Council of ICAO in the 205th session approved and issued its *ICAO Long-term Vision for International Air Transport Liberalization* resolving, on behalf of all member States, to actively promote the continuing liberalization of air transport, on the basis of fairness and equal opportunity for States and stakeholders and in accordance with the highest standards of aviation safety and security.

This general vision, meant to achieve “the ultimate goal of liberalization”, was announced to all member States in 2015 in a letter from then Secretary General Raymond Benjamin encouraging them to consider incorporating the Vision into their respective policies and standards and tell ICAO about their experiences and difficulties encountered in its implementation (SP 38/1-15/54 of 15 July 2015 refers).

1.4 The purpose of this working paper is to respond to this request by ICAO and describe the progress achieved toward liberalization in the Latin America Region, mainly the entry into effect this year of the *Open Skies Multilateral Agreement for Member States of the Latin American Civil Aviation Commission* (hereinafter, the *LACAC Agreement*), which is unprecedented in Latin American aviation in terms of its modernity and geographical scope.

2. DISCUSSION

2.1 In March 2008, the LACAC Executive Committee called for the development of a draft “Open Skies” multilateral agreement to accelerate the pace of intra-regional air transport liberalization, designed for the gradual accession of its 22 Member States.

2.2 The LACAC Agreement was finally reached on 4 November 2010 following successive meetings and consultations, and was adopted by LACAC in Resolution A19-03 approved by the 19th Ordinary Session of its Assembly in Punta Cana, Dominican Republic. It was opened for signing to the 22 Member States on 5 November 2010. The same Assembly passed Resolution A19-15 whereby Member States also had the option to sign and accept the Provisional Implementation of the LACAC Agreement. Seven (7) Member States have signed the Provisional Implementation of the Agreement³, thus binding themselves to its provisions.

³ Chile, Dominican Republic, Guatemala, Honduras, Panama, Paraguay and Uruguay.

2.3 Nine (9) Member States are signatories⁴ to the LACAC Agreement, which came into effect on 7 April 2019 with ratification by three (3) Member States: Panama (15 January 2013), Uruguay (15 December 2017) and Brazil (7 March 2019).

2.4 The LACAC Agreement now in effect, with its Preamble and 40 Articles, is the first regional multilateral agreement on air transport services in Latin America. It is a fully liberalised *Open Skies* agreement in that it seeks to enshrine free and unrestricted granting of traffic rights among its Parties up to the 9th Freedom of the Air.

The provisions of the LACAC Agreement can be summarised as follows:

- a) option for multiple designation of airlines by each Party, replacing the criterion of *substantial national control and ownership* with *place of incorporation and principle place of business* as the eligibility requirement for any designated airline, in order to facilitate investment in civil aviation in each State Party;
- b) for the granting of traffic rights, Article 2 calls on Parties to recognise the full rights of airlines of all other Parties up to the 6th Freedom. In separate sections, 7th Freedom rights are recognised for cargo-only services and for combined passenger-cargo services, as well as the 8th and 9th Freedoms or cabotage;
- c) free determination of capacity, frequency and flight crews for designated airlines on the basis of market considerations, with no restrictions, quotas or other requirements;
- d) freedom to set fares for designated airlines, on the basis of market considerations;
- e) in terms of competition, the legislation of each Party is recognised within its territory, as well as the duty to cooperate and share information regarding competition regulations and procedures;
- f) finally, the Agreement contains the same provisions as all modern air service agreements (ASAs) to facilitate operations and marketing such as sales and marketing, computer reservation systems (CRS), airport use, ground handling, commercial cooperation agreements (code-sharing), aircraft leasing, operational flexibility, capacity change, multimodal transport, as well as standard provisions of administrative, non-aviation nature; and
- g) to enable as many Member States as possible to join the LACAC Agreement and provide the necessary flexibility for the diverse and evolving national legislations and policy frameworks, there is an unlimited right to lodge reservations.

2.5 The unlimited right to lodge and withdraw reservations at any time is a proactive response to the said diverse and evolving national legislations and policy frameworks throughout the region as regards economic regulation in general and air transport liberalization in particular. This facilitated the signing of the LACAC Agreement and, starting from its entry into effect, will enable more Member States to accede. Indeed, as expected, seven (7) of the nine (9) Member States that signed the

⁴ Those cited in footnote 2 in addition to Brazil and Colombia.

treaty have lodged reservations, all in respect of cabotage (the 8th and 9th Freedom). Three (3) have lodged reservations with respect to the 7th Freedom, and three (3) Member States have added reservations on non-aviation matters such as free competition rules, taxation and dispute settlement because their domestic legislation differs from the provisions of the Agreement. Chile and Uruguay have not lodged any reservations.

2.6 In our experience, particularly in a multilateral treaty on such a politically sensitive issue as airspace use that has legal and even constitutional implications for each Member State, the unlimited reservations option is a convenient way to allow all Member States in the Region to strive toward the longstanding common goal of optimising air connectivity to the rest of the continent and the world through reciprocal recognition of the first six Freedoms, without having to pass difficult or impossible legislative reforms. As the irreversible liberalization process moves forward, it may become possible in future to incorporate the 7th, 8th and 9th Freedoms of the Air. This mechanism is a tangible achievement in pursuit of the ICAO Long-term Vision, which ultimately seeks to enable gradual liberalization.

2.7 Notwithstanding the cyclical economic and financial problems that occasionally affect our countries, international and domestic air traffic in Latin America is seeing growth rates above the world average, though lower than in certain other regions. This together with the large and mountainous geographical span drives home the need for governments in the region to favour air transport liberalization as a means of progress and decentralised development of tourism and trade.

2.8 Various multilateral air agreements limited to the sub-region were signed in Latin America and the Caribbean in the 1990s. However, ten years on, only a few are beginning to yield results, in some cases only partial.

This is the case of the Fortaleza Agreement of 1996 which was initially undertaken by MERCOSUR countries before being expanded to all seven countries of central and southern South America in 2000⁵. The Agreement does not have the support of an organisation, as is the case for the Andean Community and LACAC, and its goals are less ambitious albeit necessary: development of new sub-regional routes to and between secondary airports not operated under the bilateral agreements existing between their Parties. Thus, the Fortaleza Agreement co-exists with a multiplicity of different types of bilateral ASAs.

A broader and more successful example, more comprehensive both in scope and substance, is the Andean Community of Nations (CAN)⁶, which came into effect with CAN Decision 297 of 1991 and was officialised and improved with CAN Decision 582 of 2004 creating the Andean Community of Aviation Authorities together with the Technical Secretariat and CAN supporting entities. The arrangement was further consolidated by Decision 619 on Consumer Protection and Decision CAN 650 on Statistics, and covers all scheduled and non-scheduled services in the sub-region up to the 5th Freedom with no limitations on capacity. This Andean sub-regional air transport system has been highly useful, going so far as to replace all of the bilateral agreements among its Parties. It was only in the last decade that the goal was achieved of diversifying connectivity by integrating new airports, although cabotage and services on routes going outside the sub-region are not covered.

Sub-regional agreements have also been signed among the countries of CARICOM (1996) and the ACS (Association of Caribbean States, 1994).

⁵ Argentina, Brazil, Paraguay and Uruguay were the founding members. Bolivia, Chile and Peru acceded subsequently.

⁶ Bolivia, Colombia, Ecuador and Peru (Venezuela until 2006).

2.9 The advantages and benefits of the LACAC Agreement are unprecedented and go much further than the aforementioned agreements:

- a) It is a regional Agreement that seeks to integrate the airspace of 22 States;
- b) It removes barriers to market access among its Parties and their airlines, with no restrictions in numbers or capacity quotas, granting traffic rights up to the 5th and 6th Freedoms not just within the region, but also with third-party States, thus creating major opportunities for investment;
- c) With a flexible arrangement for reservations that adapts to the legislative practices and policies of its Parties, it allows each State Party to potentially be granted up to the 7th, 8th and 9th Freedoms;
- d) It facilitates investment in airlines by establishing the criterion of *place of incorporation and principal place of business* instead of *national ownership and control*;
- e) It goes beyond the former country-of-origin rules to the broad recognition of the right to set fares, consistent with national free competition rules; and
- f) Last but not least, the LACAC Agreement may provide a legal and aviation policy basis for the region for joint aviation negotiations with other regional blocks or organisations on the global stage.

3. CONCLUSION

3.1 The Assembly is invited to take note of the entry into effect of the Open Skies Multilateral Agreement for Member States of the Latin American Civil Aviation Commission (LACAC) and of the significant advances brought by multilateralism for the liberalization of international air transport, in keeping with the ICAO Long-term Vision.

3.2 The Member States of ICAO are invited to promote multilateralism in air services agreements with a view to optimising and developing air routes and the international air transport system.

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