



ATRP/11

# International Civil Aviation Organization

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## AIR TRANSPORT REGULATION PANEL

**ELEVENTH MEETING (ATRP/11)**

Montréal, 4–8 June 2012

**REPORT**

**ELEVENTH MEETING OF THE  
AIR TRANSPORT REGULATION PANEL (ATRP) (2012)**

**LETTER OF TRANSMITTAL**

To: Chairperson, Air Transport Committee

From: Chairperson, Air Transport Regulation Panel (ATRP)  
(2012)

I have the honour to submit the report of the eleventh meeting of the Air Transport Regulation Panel (ATRP/11) which was held in Montréal, from 4 to 8 June 2012.



Tshepo Peege  
Chairperson

Montréal, 08 June 2012

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## **AIR TRANSPORT REGULATION PANEL (ATRP)**

### **ELEVENTH MEETING**

**Montréal, 4 to 8 June 2012**

### **HISTORY OF THE MEETING**

#### **1. DURATION**

1.1 The eleventh meeting of the Air Transport Regulation Panel (ATRP/11) was held at ICAO Headquarter in Montreal from 4 to 8 June 2012.

1.2 The Chairman of the Air Transport Committee, Mr. Engelbert Zoa Etundi, opened the meeting with a welcoming address. The Director of the Air Transport Bureau, Mr. Boubacar Djibo, introduced the members of the Secretariat.

#### **2. ATTENDANCE**

2.1 The meeting was attended by members, alternates and observers, as well as their advisers, from 29 Members States and 5 international organizations. The list of participants is shown below :

<b>Names</b>	<b>Designations</b>	<b>Nominated By</b>
Mr. Stephan Borthwick	Member	Australia
Mr. Samuel Lucas	Alternate	Australia
Mr. Ricardo Bisinotto Catanant	Alternate	Brazil
Mr. Rogério Teixeira Coimbra	Advisor	Brazil
Mr. José Barreto de Andrade Neto	Advisor	Brazil
Mr. André Airton de Macedo Rebouças	Advisor	Brazil
Mr. Marc Rioux	Member	Canada
Ms. Wendy-Anne Jones	Alternate	Canada
Mr. Jaime Binder Rosas	Member	Chile
Mr. Guillermo Novoa	Alternate	Chile
Mr. Alvero Lisboa Montt	Alternate	Chile
Ms. Liang Nan	Member	China
Ms. Zhang Xuan	Advisor	China
Mr. Ding Chunyu	Advisor	China

<b>Names</b>	<b>Designations</b>	<b>Nominated By</b>
Mr. Khaled Abdel Moneim Abdou Mohamad	Member	Egypt
Mr. Samir M. Desoki	Advisor	Egypt
Mr. François Théoleyre	Member	France
Mr. Matthias Schaufler	Alternate	Germany
Ms. Marva Gordon	Member	Jamaica
Ms. Beth Ndinda Mwakio	Member	Kenya
Ms. Mercy Awori	Advisor	Kenya
Mr. Hans de Jong	Member	Netherlands
Dr. Jeroen Mauritz	Alternate	Netherlands
Mr. Peter Omoarebun Alawani	Member	Nigeria
Ms. Oyetoun Foluwake Adegbesan	Alternate	Nigeria
Ms. Anna Kolmas	Alternate	Poland
Ms. Valery Paslukhov	Advisor	Russian Federation
Mr. Tshepo Peege	Member	South Africa
Ms. Bella Sithole	Advisor	South Africa
Ms. Ana Belén de Castro Reyero	Advisor	Spain
Mr. Manuel Keller	Member	Switzerland
Ms. Laurence Fontana Jungo	Advisor	Switzerland
Mr. Simon Knight	Alternate	United Kingdom
Mr. Abdalla Yousif Al Hosani	Member	United Arab Emirates
Mr. Rashed Al Kaabi	Alternate	United Arab Emirates
Mr. Alejandro Piera	Advisor	United Arab Emirates
Mr. J. H. Kiser	Member	United States
Ms. Clarisa Coll Fuenmayor	Member	Venezuela

**Observers****States/Organizations**

Mr. Feliks Baci	Albania
Mr. Jorge A. Gelso	Argentina
Ms. Silvia Gehrler	Austria
Mr. Antonino Bardaro	Italy
Mr. Lim Yonk Heng	Malaysia
Mr. Ali Al Moghraby	Saudi Arabia

<b>Observers</b>	<b>States/Organizations</b>
Ms. Margaret Tan	Singapore
Mr. Vincent Wu	Singapore
Mr. Nicholas Ng	Singapore
Mr. Alojz Krapez	Slovenia
Mr. Klemen Ferjan	Slovenia
Dr. Rafael Echevarne	Airports Council International (ACI)
Mr. Iliia Lioutov	Airports Council International (ACI)
Mr. Eugene Hoeven	Civil Air Navigation Services Organization (CANSO)
Ms. Patricia Reverdy	European Civil Aviation Conference (ECAC)
Mr. Mate Gergely	European Union
Mr. Bombay	European Union
Mr. Chaitan Jain	International Air Transport Association (IATA)
Mr. Mike Comber	International Air Transport Association (IATA)

### 3. OFFICERS AND SECRETARIAT

3.1 The Panel elected Mr. Tshepo Peege, Panel Member from South Africa, as Chairperson of the meeting, and Mr Hans de Jong, Panel Member from the Netherlands, as the Vice-Chairperson.

3.2 Mr. Yuanzheng Wang, Air Transport Officer in the Economic Analysis and Policy Section (EAP), was Secretary of the meeting. Mrs. Narjess Teyssier, Chief of EAP, Mrs. Magda Boulos, Mr. Julian de la Camara, Mr. Luis Fonseca, Mr. Frederic Malaud, Mr. Bernard Peguillan, and Mr. Philippe Villard provided the necessary support, assistance and advice.

### 4. TERMS OF REFERENCE

4.1 The ICAO Air Transport Committee had established the following Terms of Reference for the Panel:

The Air Transport Regulation Panel will undertake the following tasks to assist the Secretariat in the preparation of the Sixth Worldwide Air Transport Conference (ATConf/6), and its follow up work:

- 1) Development of the agenda for ATConf/6;
- 2) Examination of issues to be considered by ATConf/6, with a view to developing appropriate policy guidance or regulatory arrangements, as necessary;

- 3) Review of existing ICAO policy and guidance material on the regulation of international air transport, with a view to keeping it current and responsive to the requirements of ICAO Contracting States; and
- 4) Necessary follow up work of ATConf/6.

The Panel will take into account the interests of all stakeholders and the importance to States of effective and sustained participation in international air transport, as well as the Strategic Objectives of ICAO.

## 5. AGENDA OF THE MEETING

5.1 The agenda for the meeting was approved by the Air Transport Committee and comprised the following items:

Agenda Item 1: Review of the Panel's tasks and work programme

Agenda Item 2: Examination of the issues to be addressed by the Sixth Worldwide Air Transport Conference (ATConf/6), including reviewing corresponding conclusions or recommendations, and possible new regulatory arrangements or instruments

- 2.1: Market access
- 2.2: Air carrier ownership and control
- 2.3: Consumer protection
- 2.4: Fair competition
- 2.5: Safeguards
- 2.6: Taxation of and other levies on international air transport
- 2.7: Economics of airports and air navigation services
- 2.8: Implementation of ICAO policies and guidance

Agenda Item 3: Review of existing ICAO policy and guidance material on the regulation of international air transport

Agenda Item 4: Any other business

## 6. WORKING ARRANGEMENTS

6.1 The Panel met as a single body. Interpretation service was provided for the meeting in Arabic, Chinese, English, French, Russian and Spanish. The report was issued in Arabic, Chinese, English, French, Russian and Spanish. A list of the documentation prepared or made available for the meeting is as shown below:

WP/IP No.	ATRP/11 Agenda	Title
WP/1	Item 1	<b>Terms of reference, agenda and work programme</b>
WP/2	Item 1	<b>Overview of the Panel's tasks and working methods</b>
IP/1	Item 2	<b>Global overview of trends and developments</b> (IP on ATConf/6 agenda item 1.1)

<b>WP/IP No.</b>	<b>ATRP/11 Agenda</b>	<b>Title</b>
IP/2	Item 2	<b>Other areas of ICAO's work that may have economic implications</b> (IP on ATConf/6 agenda item 1.2)
IP/4	Item 2	<b>Review of the outcomes of the ICAO Air Transport Symposium (IATS)</b>
WP/3	Item 2.1	<b>Liberalization of market access</b>
WP/12	Item 2.1	<b>Views on additional roles for ICAO to advance air transport liberalization</b> ( presented by the Member of the United Arab of Emirates (UAE), English only)
WP/4	Item 2.1	<b>Slot allocation and night-flight restrictions</b>
WP/5	Item 2.2	<b>Liberalization of air carrier ownership and control</b>
WP/6	Item 2.3	<b>Consumer protection</b> (English only)
WP/7	Item 2.4	<b>Fair competition</b> (English only)
WP/8	Item 2.5	<b>Safeguards for air transport liberalization</b>
WP/9	Item 2.6	<b>Taxation of international air transport</b>
IP/3	Item 2.7	<b>Economics of airports and air navigation services</b> (IP on ATConf/6 agenda item 2.7)
WP/10	Item 2.8	<b>Implementation of ICAO policies and guidance in the field of air transport</b>
WP/11	Item 3	<b>ICAO policy and guidance material on the regulation of international air transport</b> (English only)

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**Agenda Item 1: Review of the Panel's tasks and work programme**

1.1 The Panel reviewed the agenda and work programme as well as the Panel's tasks and working methods on the basis of two working papers (WPs/1 and 2). The Panel noted that in view of the objectives of the Sixth Worldwide Air Transport Conference (ATConf/6) and its relatively short duration, the success of the Conference would rely heavily on substantial and solid preparatory work. This would be undertaken by the Secretariat with the assistance of the Panel, with the intention of completing all substantive work by November 2012 to allow States adequate time to review the material before the Conference.

1.2 In view of this timeframe, the Panel noted that its remaining work, undertaken through correspondence, would need to be completed no later than September 2012 to give the Secretariat the necessary time to finalize the documentation for the Conference.

1.3 In noting the Agenda of ATConf/6, on which the agenda of the Panel meeting was based, a suggestion was made for ATConf/6 to consider moving the order of discussion of item 2.1 Market access to a later stage of the Conference, so as to take account of the outcome of discussions of other items, such as air carrier ownership and control and fair competition which might have relevance to market access. The Panel was advised that the Agenda of ATConf/6 was approved by the Council and that the Conference would be in a position to decide how best to conduct its business under the Agenda.

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**Agenda Item 2: Examination of the issues to be addressed by the Sixth Worldwide Air Transport Conference (ATConf/6), including reviewing corresponding conclusions or recommendations, and possible new regulatory arrangements or instruments**

2.1 In examining this item, the Panel noted that Agenda Item 1 of ATConf/6 was designed to provide a preview of the global trends and developments in international air transport. In this connection, the Secretariat provided the following information on how it intended to prepare for this item.

***Global Overview of Trends and Developments — (IP/1)***

2.2 Through Information paper IP/1, the Secretariat informed the Panel of its plan concerning preparation of the documentation for ATConf/6 Agenda Item 1.1 on this topic. Specifically, the Secretariat intended to produce two information papers, one on a global overview of major regulatory and industry developments, and the other on airline economics and viability. The Panel noted that these papers were intended to help set the scene for the Conference subsequent examination of key issues and possible solutions. In this regard, the Panel suggested that the coverage of the papers should be broader to cover all players of the aviation value chain.

***Other areas of ICAO's work that may have economic implications — (IP/2)***

2.3 Through Information paper IP/2, the Secretariat provided information on its plan regarding the preparation of documentation for ATConf/6 Agenda Item 1.2. The Panel noted that the Secretariat planned to prepare reports on the progress made by the Organization in addressing safety or security issues arising from economic liberalization, particularly on the outcome of the Twelfth Air Navigation Conference (ANConf/12) to be held from 19 to 30 November 2012 and those of the High-level Conference on Aviation Security (12 to 14 September 2012). Both conferences were expected to produce important recommendations in their respective fields, possibly including ones that could have economic implications, such as the funding of safety oversight functions. Another paper the Secretariat intended to prepare would be related to ICAO's work in the area of environment. The Panel noted that ICAO was expected to complete, by the end of 2012, a framework of the market-based measures (MBMs), which could have significant implications for States and the industry, as well as on ICAO's existing policies and guidance on economic regulation.

***Review of the outcomes of the ICAO Air Transport Symposium (IATS) — (IP/4)***

2.4 The Secretariat, through IP/4, provided information on the ICAO Air Transport Symposium (IATS) held in April 2012, in partnership with the Air Transport Research Society (ATRS). As the Symposium covered inter alia some of the same topics to be addressed by ATConf/6, its discussion and conclusions were of relevance to the Panel's consideration of the related issues for the preparation of ATConf/6.

2.5 The Panel noted with interest the information provided in IP/4. A comment was made regarding the issue of jet fuel discussed at the Symposium. The Panel took note of a suggestion that this issue might need to be addressed from a global perspective. Comments were also made regarding the idea of a new Annex to the Chicago Convention to cover air transport issues. It was noted that this idea was raised at the IATS without detailed elaboration, and that further careful examination would be required in considering this proposal related to the economic development of air transport. The Panel agreed that this be left for further consideration under its agenda item 2.8 on implementation of ICAO policies and guidance.

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## **2.1: Market access**

### ***Liberalization of Market Access — (WP/3)***

### ***Views on Additional Roles for ICAO to Advance Air Transport Liberalization — (WP/12)***

#### **2.1.1 INTRODUCTION**

2.1.1.1 The Panel considered this subject on the basis of WP/3 presented by the Secretariat, and WP/12 presented by the member from the United Arab Emirates (UAE).

2.1.1.2 In WP/3, the Secretariat provided information on major developments since the 2003 Fifth Worldwide Air Transport Conference (ATConf/5) in the areas of liberalization of traffic rights, and air cargo services, as well as on ICAO's work and related policy guidance. It noted the progress made and the fact that the bilateral approach remained the main tool used by States in the exchange of market access rights.

2.1.1.3 The paper discussed options for further liberalization, focussing on possible ways to move beyond the bilateral approach. Suggested ways included: making more efforts to promote awareness and application of ICAO policy guidance; developing an air cargo specific multilateral agreement; and most importantly, developing a multilateral or plurilateral air service agreement for accession by the "willing and ready" States initially, to be joined by others when they felt ready.

2.1.1.4 In WP/12, the member of UAE provided an overview of his country's experience in liberalization and the resulting benefits. The paper also suggested that ICAO should consider the following actions: a) to promote the ratification of the International Air Transport Agreement of 1944; b) to develop a more comprehensive multilateral agreement for liberalization of both cargo and passenger services; c) to continue developing policy and guidance material for States; and d) to create an index that will permit the comparison of the level of liberalization progress by ICAO Member States.

#### **2.1.2 DISCUSSION**

2.1.2.1 The Panel took note of the information contained in WPs/3 and 12. In the ensuing discussion, the Panel identified several factors that impede liberalization of market access. One was a lack of awareness of the benefits of liberalization by some States. Another was a lack of political will by some governments, although tools were available at their disposition. A third one was that some airlines might have exerted an influence on their governments to take a more protectionist stance. It was also noted that the current unfavourable economic situation in some States and regions might also be a factor influencing the attitude on liberalization.

2.1.2.2 In considering the proposed ways to move forward, the Panel noted that more States have embraced liberalization and that air services agreements granting unrestricted rights have become widespread. There was also progress at the regional level, where regional liberalization programmes have been adopted by States in many regions. Although the majority of States continued to use the bilateral approach in pursuing liberalization of market access, the prospect of multilateralism was improving.

2.1.2.3 With respect to the proposal for the development of an all cargo specific multilateral or plurilateral agreement for liberalization at a faster pace, some support was expressed. However, a point

was made that proper consideration should also be given to the potential risk that such an agreement for all cargo might have a possible negative or discriminatory effect on combination services.

2.1.2.4 As regards to the proposal for developing a multilateral or plurilateral agreement for exchange of commercial rights, while noting the support expressed to the approach, the Panel agreed that before presenting such a proposal to ATConf/6, a survey of States' views would be useful and necessary in order to gauge the interest of States towards such an approach. The Panel further agreed that the survey should include views on the proposed air cargo multilateral agreement.

2.1.2.5 The Panel noted with satisfaction the value of the ICAO Air Services Negotiation Conference (ICAN) to States, and agreed that ICAO should continue providing this facility and service, and that States should be encouraged to use it not only for bilateral negotiations but also for plurilateral and multilateral talks.

2.1.2.6 The Panel took note of the proposed actions in WP/12. Many felt that as the 1944 International Air Transport Agreement contained a number of provisions that would not meet the current liberalization objectives, it did not warrant efforts to pursue further action.

2.1.2.7 With regard to the idea of developing an index or indicators for evaluating the degree of liberalization of States in market access, views were divided. Some strongly supported the suggestion while others had doubts about the value and the cost for the development and maintenance. Considering the potential benefits of such an index or indicators for facilitating liberalization, the Panel agreed that the ICAO Secretariat should consider this task. In this regard, it was suggested that the Secretariat could learn from other organizations or States who had experience in similar exercises.

2.1.2.8 A suggestion for ICAO to prepare case studies of liberalization experiences of States and regions received broad support. It was felt that sharing such information would be useful to States in the liberalization process. Some offered to provide the Secretariat with information of their national or regional experiences.

2.1.2.9 Some discussion took place on another suggestion for ICAO to develop additional guidance on the issue of aircraft leasing to help clarifying the obligations of the parties to a leasing arrangement and the role of the governments concerned. The Panel, having noted the background information provided by the proponent and the fact that ICAO already had guidance on aircraft leasing, agreed that the Secretariat should verify if there would be a need for additional guidance on aircraft leasing related to government functions.

### 2.1.3 CONCLUSIONS

2.1.3.1 On the basis of documentation and its discussion, the Panel reached the following conclusions:

- a) since the ATConf/5, more States have embraced liberalization of market access. The air transport industry continues to call for more commercial freedoms and regulatory flexibility. More regions have adopted intra-regional liberalization programmes, including open market access commitments;

- b) while a momentum is building towards more open or full market access between and among States, reluctance remains by some States for further or fully opening up their market access, as well as for going beyond the bilateral approach towards a multilateral agreement for exchange of traffic rights. Some of the factors impeding liberalization include a lack of awareness of, or confidence in, the benefits of liberalization, a lack of political will by some governments, and in some cases, the influence of some airlines to decision making of their governments;
- c) before a globally acceptable substitute is in place, the bilateral approach continues to be a primary tool used by the majority of States to exchange commercial rights for international air transport. However, there is a need for the aviation community to modernize the global regulatory regime to achieve more efficient and sustainable international air transport. In this regard, ICAO should continue to play a primary role in developing policy guidance, take concrete actions to facilitate regulatory evolution, and pursue its objective of multilateralism in the exchange of commercial rights;
- d) the ICAN facility has proven its value as a platform for States to enhance the efficiency of their air services negotiations and to forge a path toward greater liberalization. States should be encouraged to use this facility for plurilateral or multilateral negotiations; and
- e) ICAO guidance on liberalization of market access remains relevant and valid, but more efforts are needed to promote its application. In addition, ICAO should keep its policy guidance current and responsive to the changing situation and the requirements of States and stakeholders.

#### 2.1.4 RECOMMENDATIONS

2.1.4.1 The Panel considered the proposed recommendations and agreed on the following:

- a) ICAO should take more vigorous measures to promote its policy and guidance material on air transport regulation and liberalization and to facilitate and assist States in the liberalization process;
- b) with respect to the proposals presented in WP/3 on the development of a plurilateral or multilateral agreement specifically for liberalizing all cargo services, and on the development of a plurilateral or multilateral agreement on exchange of commercial rights, the ICAO Secretariat should first undertake a survey to seek the views of States before presenting the proposals for consideration by ATConf/6; and
- c) ICAO should consider developing additional guidance to facilitate and assist States in liberalization, such as: preparing case studies on liberalization experiences of States, studying the feasibility of developing indicators of market access liberalization by States, and verifying if there is any need for additional guidance on aircraft leasing related to government functions.

***Slot Allocation and Night Flight Restrictions — (WP/4)*****2.1.5 INTRODUCTION**

2.1.5.1 On the issue of slot allocation, the Secretariat, through WP/4, presented information on current situation and some major recent developments. It also described the work done by ICAO in this regard, including the guidance it has developed, notably three options of bilateral model clauses for possible use by Sates. The paper concluded that the difficulties of concerned States (both on the demand and supply sides) should be recognized, and that efforts should be made to resolve them where possible. But due to the local nature of the problem, it would be difficult to have a global across the board solution. The most practical way to handle it would be through consultation and dispute settlement mechanisms available to concerned parties.

2.1.5.2 On the issue of night flight restrictions (or night curfews), WP/4 provided information on the current situation and discussed the effects or impacts of such restrictions, particularly on cargo operations. It also provided information on what ICAO has done in addressing this issue, including guidance on a “balanced approach” to noise management. The paper concluded that as there are many local factors (sometimes beyond civil aviation) affecting the decision for imposing night curfews, it would be difficult to prescribe an across the board solution. A practical approach is for States to address the difficulties through consultation and dispute settlement mechanisms between concerned parties.

**2.1.6 DISCUSSION**

2.1.6.1 In the discussion of the slot allocation issue, the Panel agreed that this should be considered in a broader context, including all players of the aviation value chain (airlines, airports and air navigation services providers (ANSPs) etc.) and infrastructure capacity and constraints worldwide, as well as the sustainability of air transport and its socio-economic impact. While noting the assessment of the situation and the existing ICAO guidance in addressing the issue, the Panel felt that it would be useful for ATConf/6 to consider the issue if the Secretariat, with the assistance from States and industry partners, could provide data and forecasts on the present and future capacity constraints of airports and the air traffic management (ATM) system. Such information would help the Conference and States to take into account capacity situations not only at present but also in the longer term.

2.1.6.2 The Panel took note of the concerns raised by some members over the issue of grandfather rights in the slot allocation system and their possible effect on market access, as well as the clarification by the IATA observer that the widely applied IATA slot allocation system was designed to seek the most efficient use of slots in capacity-constrained airports. The Panel also noted the view that airports wanted a role in participating in the slot allocation process.

2.1.6.3 With respect to the information contained in WP/4 regarding the European Union’s (EU) proposed regulation on slot allocation including slot trading, the Panel noted the update provided by the EU observer that the EU rule-making process had evolved, which included the removal of the slot trading proposal, and that the proposed regulation on slot allocation was expected to be finalized by the end of 2012.

2.1.6.4 In the consideration of the issue of night flight restrictions, the Panel noted the information provided in WP/4 and agreed that, like the slot issue, a comprehensive picture on the causes of such restrictions was also needed.

2.1.6.5 There was support to the view that the technological improvements in aircraft noise abatement had significantly reduced the need for night curfews, and that removal of such restrictions would considerably improve market access, alleviate slot problems and contribute to economic development and trade. At the same time, it was recognized that many factors were involved in the decision on night curfews, and that an across the board solution was hard to prescribe.

2.1.6.6 The Panel agreed that States should address the issue by using the balanced approach developed by ICAO on noise management, and by using the consultation and dispute settlement mechanisms available to them.

2.1.6.7 To facilitate the consideration of ATConf/6, the Panel agreed that the conclusions and recommendations related to slot allocation and night flight restrictions should be presented separately as shown below.

### ***Slot Allocation***

#### **2.1.7 CONCLUSIONS**

2.1.7.1 On the basis of documentation and its discussion, the Panel reached the following conclusions:

- a) States should give due consideration to airport and ATM capacity constraints, and particularly the long term needs of traffic growth for planning and development of their infrastructure capacity;
- b) the issue of slot allocation is linked to specific local situations, but has impact on market access and operation of international air services from other States. As air traffic continues to grow, this issue will remain. While global across-the-board solutions are unlikely, States should give due consideration to the concerns of other States and the negative impact on international air services and where possible, use their best efforts to resolve the problem;
- c) ICAO has addressed the issue of slot allocation extensively and has developed related guidance for use by States. As the situation varies from State to State and airport to airport, the most practical method to resolve specific difficulties is through consultation between the parties concerned, taking into account their obligations under relevant international agreements, applicable national and regional rules, and the interest of all stakeholders; and
- d) ICAO should continue to monitor the situation and States' practices in handling this issue, raise the awareness of States of its policy guidance, and encourage its use by States. ICAO should also keep States informed of any significant developments and States' experience in addressing the issue.

**2.1.8 RECOMMENDATION**

2.1.8.1 Based on the discussion, the Panel agreed on the following recommendation:

2.1.8.1.1 The Secretariat should inform the Conference on present and future airport and ATM capacity constraints.

***Night Flight Restrictions***

**2.1.9 CONCLUSIONS**

2.1.9.1 On the basis of documentation and its discussion, the Panel reached the following conclusions:

- a) the issue of night curfews is linked to specific local situations, but has impact on market access and operation of international air services from other States. As air traffic continues to grow, this issue will remain. While global across-the-board solutions are unlikely, States should give due consideration to the concerns of other States and the negative impact on international air services and where possible, use their best efforts to resolve the problem;
- b) in addressing noise problems related to night flights, States should respect the ICAO Balanced Approach principle in their regulatory action, giving due regard to the views of all stakeholders, examining alternative means of addressing the problems, and striving for the most beneficial and cost-effective solutions. Difficulties or disputes in this regard should be resolved between the States concerned through the consultation mechanisms available to them; and
- c) ICAO should continue to monitor the situation and States' practices in handling this issue, raise the awareness of States of its policy guidance, and encourage its use by States. ICAO should also keep States informed of any significant developments, as well as results of ICAO's work in this regard.

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## **2.2: Air carrier ownership and control**

### ***Liberalization of air carrier ownership and control — (WP/5)***

#### **2.2.1 INTRODUCTION**

2.2.1.1 The Panel considered the subject of liberalization of air carrier ownership and control on the basis of WP/5. In the paper, the Secretariat reviewed the major developments since ATConf/5 and provided information on ICAO's work and related policy guidance, which provided many options for use by States.

2.2.1.2 In exploring more practical ways for further liberalization in this area, the paper discussed some options, including: a) continue to encourage States to use the means recommended by ICAO, such as those adopted by ATConf/5; and b) develop a multilateral or plurilateral agreement based on the concept that State parties to the agreement commit legally to waive the nationality clause in their Air Services Agreements (ASAs).

#### **2.2.2 DISCUSSION**

2.2.2.1 The Panel noted the major developments in this area and agreed that this issue is critical to air transport liberalization, including to market access. Although many States continued to use the "nationality clause" in their ASAs, the Panel noted that some progress in liberalization has been achieved in the past decade, including at the regional level where a number of regional agreements had been implemented, notably in regions where a broader economic integration has taken place.

2.2.2.2 There was general agreement that more needed to be done in this area in order to meet the changing situation and the requirements of States and the industry, particularly the need for better access to international capital. There was support to ICAO continuing to promote its existing policy guidance and encouraging use of the guidance by States.

2.2.2.3 In the discussion of the proposal for the development of a multilateral or plurilateral agreement on air carrier ownership and control, there was support to the multilateral approach for liberalization in this area. Some agreed that an agreement for waiving the nationality clause in ASAs was a possible way to further liberalization. However, others felt that the proposed agreement based on a "pick your own partner" approach would not meet the liberalization objective and that more open options should be explored. The Panel agreed that the Secretariat should study other options, including more open ones for such an agreement, for presentation to ATConf/6 for consideration.

2.2.2.4 A view was expressed that in addition to exploring the multilateral approach for liberalization, there could be value for the Secretariat to study other liberalization approaches applied by States, including more liberal provisions in some bilateral agreements.

#### **2.2.3 CONCLUSIONS**

2.2.3.1 On the basis of documentation and its discussion, the Panel reached the following conclusions:

- a) since ATConf/5, although diverging views and regulatory approaches remain with regard to air carrier ownership and control, more States are willing to liberalize as evidenced by allowing substantial ownership in their own airlines or accepting designations of other States' airlines with majority foreign ownership notwithstanding the nationality clause in the bilateral agreements;
- b) considerable progress has also been made at the regional level, as States in several regions or sub-regions have adopted regional arrangements in liberalizing air carrier ownership and control among their respective members;
- c) despite some progress in liberalization and the continued validity of ICAO policy guidance, States are hesitant to make globally applicable policy statements or commit to allow all airlines from all States to have unlimited foreign ownership. There is a need to explore other more flexible options that can achieve wider acceptance and allow liberalization to move forward, without affecting national legislations; and
- d) ICAO should continue to play a primary role in developing policy guidance, and to take concrete actions to facilitate regulatory evolution, including the development of a multilateral or plurilateral arrangement to meet the needs of States and the industry.

#### 2.2.4 **RECOMMENDATIONS**

2.2.4.1 The Panel considered the proposed recommendations and agreed on the following:

- a) ICAO should continue to promote its policy guidance on the subject of air carrier ownership and control, and encourage States to use ICAO's guidance in their regulatory practice; and
  - b) ICAO should consider the development of a multilateral or plurilateral agreement, including possible options for consideration by the ATConf/6.
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## **2.3: Consumer protection**

### ***Consumer Protection — (WP/6)***

#### **2.3.1 INTRODUCTION**

2.3.1.1 The Panel considered the item on the basis of WP/6, which described developments in this field, notably the perceived deterioration of passenger service, the impact of travel disruptions caused by extreme weather or natural phenomena, and recent regulatory activities in the United States and in the EU, including in the area of airline pricing transparency.

2.3.1.2 In the paper, the Secretariat presented some possible ways to address the shortcomings and fragmentation of existing rules and regulations, including through the development of further policy guidance to foster regulatory harmonization; basic principles for the protection of air passengers; and a possible global code of conduct.

#### **2.3.2 DISCUSSION**

2.3.2.1 The Panel noted the major developments in this respect, and agreed on the need for the protection of consumers in international air transport. It also recognized that in addressing the issue, the reliance on market forces on the one hand, or regulatory intervention on the other, may differ according to the conditions or characteristics of each State or region.

2.3.2.2 While recognizing that harmonization of regulatory regimes was desirable, scepticism was expressed on the feasibility of such endeavour. Many felt that development of a global code of conduct was premature at this stage. However, there was support for fostering regulatory compatibility and for the suggestion of developing a set of core principles on the protection of consumers in international air transport, such as in the areas of airline pricing transparency, overbooking, flight delays, and treatment of passengers in case of air carrier insolvency.

2.3.2.3 In order to develop a set of basic principles on consumer protection, and to determine if some form of global code of conduct may eventually be needed at a later stage, the Panel agreed that additional information was needed, particularly on the efficiency of existing consumer protection regulations and airline voluntary commitments or initiatives. Such information should be collected to cover a broader spectrum of States and regions.

2.3.2.4 The dissemination of transparent information to consumers was also seen as necessary, especially in the absence of a global organization representing air travellers. A discussion ensued on the practice of “unbundling” of services by airlines in relation to pricing. Such practice would offer different fares for the same flight by separating as many cost components as possible, for instance free baggage allowance, assigned seating, and in-flight amenities. While airlines claimed that such pricing practice was a way to meet different customer demands, it was pointed out that the decline of passenger satisfaction suggested that these may not have resulted from market or consumer demand.

2.3.2.5 The Panel noted the information on the work of the World Tourism Organization (UNWTO) in the development of a draft convention on the protection of tourists and tourism services providers, and the potential implications on the regulatory regime concerning protection of air travellers.

The Panel agreed on the need for close coordination between the two organizations in order to avoid overlap of work.

2.3.2.6 The Panel took note of the existence of different rules on the handling of disabled passengers or persons with reduced mobility in some States and regions, but recognized the challenge for harmonization of different consumer protection regimes as the situation and needs of States and regions differed. In this regard, the Panel noted that ICAO's work relating to facilitation of air travel by disabled passengers was being handled by the Facilitation Panel.

### 2.3.3 CONCLUSIONS

2.3.3.1 On the basis of documentation and its discussion, the Panel reached the following conclusions:

- a) consumer protection in international air transport has gained increasing importance. Governments in different parts of the world have paid more attention to consumer interests. Some have taken various regulatory and non-regulatory approaches on these issues. However, regulatory approaches taken by States vary, rules and regulations remain fragmented, and the efficiency and effectiveness of regulatory interventions continues to be a contentious issue;
- b) airlines have continued to take various measures, including voluntary commitments, to serve their customers and respond to market demands. However, passenger satisfaction seems to have declined with respect to service quality and customer treatment, particularly with respect to the "unbundling" of services such as free baggage allowances and assigned seating, which suggests that these developments have not always resulted from market or customer demand. Concerns have also risen with respect to flight delays and other travel disruptions;
- c) ICAO guidance related to consumer interests remains relevant and needs to be kept current and responsive to the changing situation. More efforts should be made to foster compatibility of rules and regulations between States; and
- d) ICAO should continue to play a primary role in developing policy guidance to address emerging issues concerning consumer protection at the global level, taking into account the interests of States, the industry, the air travellers and other aviation stakeholders. In this regard, ICAO should continue to cooperate and coordinate with international organizations concerned under the respective constitutional responsibilities in order to avoid overlap of efforts.

### 2.3.4 RECOMMENDATIONS

2.3.4.1 The Panel considered the proposed recommendations and agreed on the following:

- a) States are encouraged to use ICAO policy guidance on consumer interests in their regulatory practices as appropriate, and where possible, to cooperate in seeking compatibility and minimizing conflicts in related rules and regulations;

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- b) ICAO should conduct a study on the effectiveness of regulatory interventions in different regions with respect to consumer protection, as well as on the respective advantages and disadvantages of regulation and voluntary industry commitments;
  - c) ICAO should consider the development of a set of basic principles for the protection of air passengers; and
  - d) ICAO will continue to cooperate with UNWTO on matters of mutual interest and keep States informed of the work carried out by UNWTO in the area of protection of tourists and tourism service providers affecting air transport.
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## **2.4: Fair competition**

### ***Fair Competition — (WP/7)***

#### **2.4.1 INTRODUCTION**

2.4.1.1 The Panel considered this item on the basis of WP/7 presented by the Secretariat, which examined recent developments, such as the intensification of competition between airlines or airline alliances, as well as the resulting consolidation between air carriers. The paper noted the fragmentation of regulatory responses to competition issues, and the absence of a common view of what constitutes a “level playing field”.

2.4.1.2 In exploring possible work with regard to the issue of fair competition, the Secretariat suggested measures to better promote use by States of ICAO existing guidance. It also proposed some possible approaches to foster harmonization or compatibility of rules in this field, including ways to encourage cooperation, dialogue and exchange of information between competition authorities.

#### **2.4.2 DISCUSSION**

2.4.2.1 The Panel noted the assessment of the situation by the Secretariat. It was pointed out that liberalization of international air transport did not necessarily entail anti-competitive behavior or practices. Even when markets were highly regulated there could be cases of competitive distortions, including in monopoly or oligopoly situations. Some were also of the view that while some bilateral agreements may restrict competition, others on the contrary contribute towards the liberalization of air transport, and thus foster competition.

2.4.2.2 While ICAO’s policy guidance was recognized as useful, it was agreed that updating was needed. It was broadly recognized that due to the significant differences existing between States and the dynamic nature of competition in international air transport, consensus between States on a definition of “level playing field” would be difficult to achieve at this stage.

2.4.2.3 The Panel noted and agreed on the usefulness of the suggested measures to promote cooperation between competition authorities in dealing with competition issues in international air transport. In this regard, a point was made that competition authorities in some States have independent status, where aeronautical authorities might not have an influence over their positions and practices.

2.4.2.4 In examining possible ways to foster regulatory convergence and compatibility, there was support for the idea of developing a set of guiding principles on the conditions likely to constitute fair competition in international air transport. In this regard, it was suggested that ICAO should take into account experiences or initiatives of other organizations involved in dealing with international competition matters. Such guiding principles should also be adaptable and kept responsive to the fast evolution of the market and regulatory situations.

**2.4.3 CONCLUSIONS**

2.4.3.1 On the basis of documentation and its discussion, the Panel reached the following conclusions:

- a) competition between airlines and alliances has intensified since ATConf/5, and concentration and consolidation among carriers have also picked up speed. The increasingly competitive environment can create more opportunities for air operators but can also give rise to more disputes. States should give due consideration to the concerns of other States over application of national competition laws or policies to international air transport; and
- b) where possible, States should use their best efforts to seek convergence or achieve compatibility in the application of their competition rules and policies to international air transport. In this regard, cooperation between States, especially their competition authorities, should be encouraged.

**2.4.4 RECOMMENDATIONS**

2.4.4.1 The Panel considered the proposed recommendations and agreed on the following:

- a) ICAO should continue to monitor developments in this area and update its guidance in response to changes and the needs of States. ICAO should also encourage States to use its guidance where appropriate and desirable, including in their ASAs and national or regional competition rules;
- b) ICAO should consider ways and means to foster cooperation, dialogue and exchange of information between and among competition authorities to achieve a better competitive environment for international air transport;
- c) ICAO should consider, in preparation for ATConf/6, collecting information regarding competition policies and practices developed or applied by other organizations; and
- d) ICAO should explore the possibility of developing a set of core principles on fair competition in international air transport.

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## **2.5: Safeguards**

### ***Safeguards for Air Transport Liberalization — (WP/8)***

#### **2.5.1 INTRODUCTION**

2.5.1.1 The Panel considered this item on the basis of WP/8, presented by the Secretariat. The paper examined the issue of safeguards with respect to the following aspects: sustained and effective participation of States in international air transport; assurance of services, and State aids/subsidies; the need to ensure essential air service and develop tourist routes; and the concern over unilateral actions.

2.5.1.2 The Panel noted that the issue of safeguards for fair competition was addressed separately in WP/7 under agenda item 2.4.

#### **2.5.2 DISCUSSION**

2.5.2.1 The Panel noted and endorsed the assessment of the current situation made by the Secretariat with respect to the four areas described in the paper. The Panel agreed that in a liberalizing environment, there was a continuing need for safeguards in these areas, and that the related ICAO policy guidance continued to be relevant and valid.

#### **2.5.3 CONCLUSIONS**

2.5.3.1 On the basis of documentation and its discussion, the Panel reached the following conclusions:

- a) in a liberalizing environment of international air transport, safeguards continue to be needed by some States due to the disparity in the stages of development, competitive strength of their air carriers and geographical location;
- b) in the liberalization process, States should give due regard to the principles agreed by the aviation community at the various ICAO fora, including on safeguard measures to ensure the sustained and effective participation of all States in international air transport, and the need to give special consideration to the interests and needs of developing countries;
- c) the guidance developed by ICAO on safeguard measures dealing with specific aspects discussed above namely, measures for participation, assurance of service and State aid/subsidies, essential air services, and avoidance of unilateral action, continues to be relevant and valid. States should be encouraged to use the relevant ICAO guidance in their regulatory practices, and to share with ICAO and other States their experiences in liberalization; and
- d) ICAO should continue to monitor the developments in these aspects, keep related guidance current and responsive to the changing situation, and where necessary, address emerging issues of global importance.



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**2.6: Taxation of and other levies on international air transport*****Taxation of International Air Transport — (WP/9)*****2.6.1 INTRODUCTION**

2.6.1.1 The Panel considered this item on the basis of WP/9, which examined the issues relating to taxes, charges and other levies imposed on civil aviation and their impact on the development of international air transport. The paper reviewed ICAO's policies and work on the taxation issue, and the situation of implementation by States. It also described the work undertaken by some regional organizations and industry associations.

2.6.1.2 The Secretariat presented some suggested measures to improve the situation, including promoting the ICAO policies and enhancing the awareness of States, and a proposed regulatory arrangement in the form of a model clause to be included in the ICAO Template Air Services Agreement (TASA), aimed at strengthening the implementation of the policies.

**2.6.2 DISCUSSION**

2.6.2.1 The Panel took note of the assessment of the situation and other related information provided in the paper. In noting the concerns over the continued proliferation of taxes or other levies on air transport and their negative impact, a point was made that States have the sovereign right to determine their taxation policies and rules, and that civil aviation authorities sometimes have limited influence over such policies as the prerogative over tax matters lie with other national authorities.

2.6.2.2 While acknowledging that States retain sovereignty over fiscal matters, the Panel noted the continued relevance and validity of ICAO long standing policies on taxation in the air transport field, and endorsed the suggested measure for ICAO to promote States' awareness and application of such policies.

2.6.2.3 The Panel considered the proposed model clause to be inserted in the TASA, and agreed that this arrangement be offered as an option for use by States at their discretion, either in the ASA itself or in a Memorandum of Understanding (MoU) or Memorandum of Consultation (MoC). The Secretariat was requested to reflect this clarification clearly in the Explanatory Notes in the TASA on the Taxation Article. It was further requested that a note be added to indicate that taxation matters on air transport may not be within the competencies of aeronautical authorities but under the prerogatives of other national authorities.

2.6.2.4 The Panel agreed on a suggestion that States' attention be drawn to the importance of avoidance of double taxation on air transport activities. The Panel also noted the view that transparency in taxation matters was essential, which was also a core element for consumer protection, such as in the case of airline pricing.

### 2.6.3 CONCLUSIONS

2.6.3.1 On the basis of documentation and its discussion, the Panel reached the following conclusions:

- a) unlike the case of the reciprocal exemptions for fuel and technical supplies of air carriers engaged in international air transport, and income of aircraft and movable property, States have not included in their ASAs a commitment to reduce or eliminate taxes on the sale and use of international air transport. On the contrary, recent years have continued to witness the proliferation of various types of taxes and levies, and the situation is likely to deteriorate in the coming years. Such trend, coupled with the lack of transparency and discriminatory practices against air transport vis-à-vis other modes of transport are causing serious concerns to the industry, and will have a negative impact on the sustainable development of air transport, which will negatively affect the national economic development; and
- b) ICAO has clear policies on taxation and user charges, which remain valid. States should be urged to follow and apply these policies in their regulatory practices, as requested by Assembly Resolution A37-20, Appendices E and F. ICAO should continue to take necessary measures to enhance States' awareness of its policies on taxation and user charges and promote more vigorously their application.

### 2.6.4 RECOMMENDATIONS

2.6.4.1 The Panel considered the proposed recommendations and agreed on the following:

- a) States are urged to follow ICAO policies on taxation and to avoid double taxation in the field of air transport; and
- b) ICAO should add in the TASA Article on Taxation an optional regulatory arrangement on the imposition of taxes on the sale or use of international air transport, which reads as follows:

*“... Each party shall undertake to reduce to the fullest practicable extent and make plans to eliminate as soon as its economic conditions permit all forms of taxation on the sale or use of international air transport, including such taxes for services which are not required for international civil aviation or which may discriminate against it.”*

This clause is an option for use by States at their discretion. States may instead choose to use the arrangement in a MoU or a MoC. These will be reflected in the Explanatory Notes along with the clause in the TASA Article on Taxation.

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**2.7: Economics of airports and air navigation services*****Economics of Airports and Air Navigation Services — (IP/3)*****2.7.1 INTRODUCTION**

2.7.1.1 Through information paper IP/3, the Secretariat informed the Panel of its plan with regard to the preparation of documentation for ATConf/6 Agenda Item 2.7: Economics of Airports and Air Navigation Services. Three papers would be prepared for the Conference, namely, a report on the financial situation of airports and ANSPs; a paper reporting on the implementation of the recommendations adopted by the Conference on the Economics of Airports and Air Navigation Services (CEANS - 2008); and a third paper discussing the issue of funding of oversight functions (e.g. safety, security, and economic oversight of civil aviation).

**2.7.2 DISCUSSION**

2.7.2.1 The Panel noted the information provided in IP/3 and endorsed the plan of the Secretariat for the preparation of the related papers for ATConf/6. With respect to the possible proposals on funding of oversight functions to be considered by the Conference, a view was expressed that the proposal of funding safety oversight functions, such as regional safety oversight organizations, through a possible passenger safety charge or levy could have serious implications, including on ICAO existing policies on taxes and charges. Proper attention should therefore be drawn to such implications by the Conference.

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## **2.8: Implementation of ICAO policies and guidance**

### ***Implementation of ICAO Policies and Guidance in the Field of Air Transport — (WP/10)***

#### **2.8.1 INTRODUCTION**

2.8.1.1 The Panel considered this item on the basis of WP/10, which addressed the issue of relevance and effectiveness of existing ICAO policies and guidance on the economic regulation of international air transport.

2.8.1.2 The paper noted that while ICAO guidance and policies remained relevant, there was a lack of awareness and implementation by States. To improve the situation, the Secretariat stressed the need for more effective tools and means to promote ICAO policy guidance, including working with States, the industry and other relevant organizations to improve implementation of ICAO's policy guidance. One suggested means was to encourage States to incorporate ICAO principles, policies and guidance, in national legislation, policies, regulations and ASAs. Another idea was to consider the development of a new Annex to the Chicago Convention on air transport matters.

#### **2.8.2 DISCUSSION**

2.8.2.1 The Panel noted the information provided in the paper. While agreeing that there was value in the suggested approach for inclusion of ICAO policy guidance in States' national legislation, policy and regulations, and in ASAs, the Panel felt that it was not in a position to provide views or advice at this stage on the idea of establishment of a new Annex to the Chicago Convention due to the lack of information of the proposed scope and coverage. The Panel therefore suggested that the Secretariat should provide States with further information on this Annex, including the proposed scope and coverage, to allow States to properly consider the proposal.

2.8.2.2 The Panel considered it useful for the Secretariat to conduct a survey to States and concerned organizations on the relevance and the use of existing ICAO policies and guidance, including the *ICAO Policy and Guidance Material on the Economic Regulation of International Air Transport* (Doc 9587) and the *Manual on the Regulation of International Air Transport* (Doc 9626), the result of which could assist in the preparation of ATConf/6 paper on the subject. It was also suggested that the Conference paper should urge States to comply with their obligations under the Chicago Convention to file their ASAs, including related MoUs, with ICAO.

#### **2.8.3 CONCLUSIONS**

2.8.3.1 On the basis of documentation and its discussion, the Panel reached the following conclusions:

- a) ICAO's leadership role should be re-affirmed in economic regulation of international air transport, and in the development of comprehensive policy guidance to assist States in the creation of a favourable regulatory environment for the sustainable development of air transport and the benefit of all stakeholders;

- b) States should recognize the importance and relevance of ICAO policies and guidance and should exert all efforts to ensure that they adhere to their commitments relating to provisions of Assembly Resolutions in the air transport field; and
- c) ICAO, in cooperation with the industry, should take all relevant measures to ensure a widespread awareness and knowledge of its policies as well as the use of the guidance material developed by ICAO on economic regulation.

#### 2.8.4 **RECOMMENDATIONS**

2.8.4.1 The Panel considered the proposed recommendations and agreed on the following:

- a) ICAO should encourage States to incorporate ICAO principles, policies and guidance in their national legislation, rules and regulations, and in air services agreements;
- b) ICAO should conduct a survey to States and concerned organizations on the relevance and the use of existing ICAO policies and guidance, including Doc 9587 and Doc 9626. The information collected would form the basis of a report to be presented at ATConf/6; and
- c) ICAO should provide States with further information on the proposed coverage and content of a possible new Annex to the Chicago Convention to allow States to properly consider the proposal.

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**Agenda Item 3: Review of existing ICAO policy and guidance material on the regulation of international air transport; and**

*ICAO Policy and Guidance Material on the Regulation of International Air Transport — (WP/11)*

**3.1 INTRODUCTION**

3.1.1 Through WP/11, the Secretariat provided information on existing ICAO policy and guidance material on the regulation of international air transport, mainly Doc 9587 and Doc 9626, as well as its plan to update them.

**3.2 DISCUSSION**

3.2.1 There was broad agreement that existing ICAO policy and guidance material on the regulation of international air transport was useful to States in their regulatory practices, and that ICAO should continue to provide such guidance to facilitate and assist States in the liberalization process.

3.2.2 The Panel noted the plan of the Secretariat for the updating of the two publications. As many parts of the existing ICAO policy and guidance were already reviewed in conjunction with the Panel's examination of corresponding issues under the meeting agenda, the Panel agreed to focus mainly on the general structure and content of the two documents, with the aim of further improving the presentation. The Panel also agreed to provide further advice, suggestions and other input as requested by the Secretariat before the end of September 2012.

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**Agenda Item 4: Any other business**

4.1 The Panel did not raise any matters for discussion or attention under this item.

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