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REPORT OF THE WORLDWIDE AIR TRANSPORT CONFERENCE

CHALLENGES AND OPPORTUNITIES OF LIBERALIZATION

Montreal, 24 – 28 March 2003

Approved by the Conference and published by authority of the Secretary General

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2/03

LETTER OF TRANSMITTAL

To: President of the Council

From: Chairman, Worldwide Air Transport Conference

I have the honour to submit the Report on the work of the Worldwide Air Transport Conference, held at ICAO Headquarters in Montreal from 24 to 28 March 2003.

Ahovaleamoemapa Faletau
Chairman
Worldwide Air Transport Conference

Montreal, 28 March 2003

TABLE OF CONTENTS

Letter of Transmittal		(i)
Table of Contents		(iii)
Introduction		1
Agenda Item 1:	Preview	6
Agenda Item 1.1:	Background to and experience of liberalization	7
Agenda Item 1.2:	Safety and security aspects of liberalization	12
Agenda Item 2:	Examination of key regulatory issues in liberalization	15
Agenda Item 2.1:	Air Carrier ownership and control	16
Agenda Item 2.2:	Market access	24
Agenda Item 2.3:	Fair competition and safeguards	34
Agenda Item 2.4:	Consumer interests	41
Agenda Item 2.5:	Product distribution	44
Agenda Item 2.6:	Dispute resolution	47
Agenda Item 2.7:	Transparency	50
Agenda Item 3.1:	Review of template air services agreement (TASA)	53
Agenda Item 4.1:	Mechanisms to facilitate further liberalization	55
Agenda Item 4.2:	Declaration of global principles for international air transport	58
Appendix A:	Opening addresses	64
Appendix B:	List of participants	68
Appendix C:	List of working papers	84

INTRODUCTION

Site and duration of the Conference

1. The Fifth Worldwide Air Transport Conference: Challenges and Opportunities of Liberalization (ATConf/5) was convened in the Assembly Hall of the Headquarters of the International Civil Aviation Organization (ICAO) in Montreal on 24 March 2003. Dr. Assad Kotaite, President of the Council, opened the Conference, which was also addressed by Ms. A. McGinley, Chairman of the Air Transport Committee. Mr. R.C. Costa Pereira, the Secretary General, welcomed the participants and introduced the Conference Secretariat. Addresses made at the opening meeting appear at Appendix A. The Conference completed its work on 28 March 2003.

Agenda

2. The Conference adopted the following agenda which had been approved by the Council and presented in ATConf/5-WP/1:

1. **PREVIEW**

1.1 **Background to and experience of liberalization**: Basic concept and approaches; issues in regulation and commercialization of air carriers, airports and air navigation service providers; benefits and drawbacks; influence of broader regulatory environment including trade, fiscal, competition, social and labour policies.

1.2 **Safety and security aspects of liberalization**: Safety and security implications of commercialization, outsourcing and transnational commercial arrangements.

2. **EXAMINATION OF KEY REGULATORY ISSUES IN LIBERALIZATION**

2.1 **Air carrier ownership and control**: Alternative criteria for designation and authorization; inward (foreign) investment; right of establishment; nationality of aircraft.

2.2 **Market access**: Traffic rights (primarily beyond Third and Fourth Freedoms but including, for example, routing and operational flexibility); capacity/frequency; airport access and slot allocation; airline alliances, codesharing and franchising; leasing; specific aspects relating to air cargo and express services and to intermodal transport.

2.3 **Fair competition and safeguards**: Safeguards against anti-competitive practices (such as in pricing, capacity provision, sales and marketing); application of competition laws/policies (including implications for multilateral cooperative arrangements amongst air carriers); sustainability of air carriers and assurance of service (including provision of State aid); preferential measures for, and effective participation of, developing countries.

2.4 **Consumer interests**: Consumer rights and obligations (including conditions of carriage); measures to safeguard consumer interests.

2.5 **Product distribution**: Commercial presence; electronic business to customer (B2C) commerce (including computer reservation systems and the Internet).

2.6 **Dispute resolution**: Alternative dispute settlement mechanisms and their inter-relationship (in the context of bilateral, regional or multilateral arrangements).

2.7 **Transparency**: Registration of agreements/arrangements (including obligations under Article 83 of the Convention on International Civil Aviation) and access to information.

3. REVIEW OF TEMPLATE AIR SERVICES AGREEMENT

3.1 Comprehensive template air services agreement containing alternative approaches for discretionary use by States (selectively or in full) in a bilateral, regional or multilateral context.

4. CONSIDERATION OF GLOBAL FRAMEWORK FOR ONGOING LIBERALIZATION

4.1 **Mechanisms to facilitate further liberalization**: Role and future work programme of ICAO; relations with other international organizations (multilateral and regional, governmental and non-governmental).

4.2 **Declaration of global principles for international air transport**: Adoption of a declaration based on a draft text prepared in advance, but taking into account discussions on all above Agenda items.

Structure and rules of procedure

3. The Conference met as a single body and held 10 meetings. Formal consideration of the agenda was preceded on Saturday, 22 March and Sunday, 23 March by a seminar focussing on some key issues to be addressed by the Conference in an informal setting, with the Conference *per se* commencing on Monday, 24 March.

4. The rules of procedure were the *Standing Rules of Procedure for Meetings in the Air Transport Field* (Doc 8683-AT/721). Rule 26, which calls for the preparation of summary minutes, had been suspended by the Council.

Attendance

5. The following 145 Contracting States of ICAO were represented at the Conference:

Afghanistan	Armenia	Barbados
Algeria	Australia	Belarus
Angola	Austria	Belgium
Antigua and Barbuda	Azerbaijan	Belize
Argentina	Bahrain	Benin

Bhutan
Bolivia
Botswana
Brazil
Brunei Darussalam
Bulgaria
Burkina Faso
Burundi
Cambodia
Cameroon
Canada
Cape Verde
Chad
Chili
China
Colombia
Costa Rica
Côte d'Ivoire
Croatia
Cuba
Czech Republic
Democratic People's Republic of Korea
Democratic Republic of the Congo
Denmark
Dominican Republic
Ecuador
Egypt
Estonia
Ethiopia
Fiji
Finland
France
Gabon
Gambia
Germany
Ghana
Greece
Guatemala
Guinea
Haiti
Honduras
Hungary
Iceland
India
Indonesia
Iran (Islamic Republic of)
Ireland
Israel
Italy
Jamaica
Japan
Jordan
Kenya
Kuwait
Kyrgyzstan
Latvia
Lebanon
Lesotho
Libyan Arab Jamahiriya
Lithuania
Luxembourg
Madagascar
Malawi
Malaysia
Maldives
Mali
Malta
Mauritius
Mexico
Monaco
Mongolia
Morocco
Mozambique
Namibia
Nepal
Netherlands
New Zealand
Niger
Nigeria
Norway
Oman
Pakistan
Panama
Paraguay
Peru
Philippines
Poland
Portugal
Qatar
Republic of Korea
Republic of Moldova
Romania
Russian Federation
Rwanda
Saint Kitts and Nevis
Saint Lucia
Samoa
Saudi Arabia
Senegal
Serbia and Montenegro
Seychelles
Singapore
Slovakia
Slovenia
South Africa
Spain
Sri Lanka
Sudan
Suriname
Sweden
Switzerland
Thailand
The Former Yugoslav Republic of Macedonia
Togo
Tonga
Trinidad and Tobago
Tunisia
Turkey
Uganda
Ukraine
United Arab Emirates
United Kingdom
United Republic of Tanzania
United States
Uruguay
Uzbekistan
Venezuela
Viet Nam
Zambia
Zimbabwe

6. The following 26 Observer Delegations attended the Conference:

Palestine
African Civil Aviation Commission (AFCAC)
Airports Council International (ACI)
Arab Civil Aviation Commission (ACAC)
Caribbean Community (CARICOM)
Common Market for Eastern and Southern Africa (COMESA)
Economic Commission for Africa (ECA)
European Organisation for the Safety of Air Navigation (EUROCONTROL)
European Civil Aviation Conference (ECAC)
European Community (EC)
Interstate Aviation Committee (IAC)
International Air Carrier Association (IACA)
International Air Transport Association (IATA)
International Chamber of Commerce (ICC)
International Federation of Air Line Pilots' Associations (IFALPA)
International Labour Office (ILO)
International Law Association (ILA)
International Transport Workers' Federation (ITF)
Latin American Association of Air and Space Law (ALADA)
Latin American Civil Aviation Commission (LACAC)
Organization for Economic Co-operation and Development (OECD)
The International Air Cargo Association (TIACA)
Economic and Monetary Union of West Africa (WAEMU)
World Bank
World Tourism Organization (WTO-OMT)
World Trade Organization (WTO-OMC)

7. A list of participants in the Conference appears at Appendix B.

Officers of the Conference

8. The following officers were elected:

Chairman of the Conference:	Mr. A. Faletau (Tonga)
First Vice-Chairman:	Mr. G. Donadille (Argentina)
Second Vice-Chairman:	Mr. N. Kavadas (Greece)

Secretariat

9. Mr. M. Elamiri, Director of the Air Transport Bureau, served as Secretary of the Conference, and Mr. J.D. Gunther, Chief, Economic Policy Section, served as Deputy Secretary. Assistant Secretaries were Mr. Y.Z. Wang, Mrs. M. Boulos, Mr. T. Hasegawa and Mr. C.H. Dudley. Conference Administration and Liaison for the Air Transport Bureau was carried out by Mr. R.I.R. Abeyratne, Conference Bulletin by Mr. L. Fonseca, documentation coordination and general supervision by Mrs. A. Fuchs-Ledingham,

credentials coordination by Mr. Z. Anwar, Web page coordination by Mrs. S. Joseph, and secretarial supervision by Mrs. S. Brain and Mrs. J. Nounou. Mr. C.B. Lyle, Deputy Director of the Air Transport Bureau, acted as Adviser to the Conference.

10. Administrative services were provided under the supervision of Mr. A.P. Singh, Director, Bureau of Administration and Services, by Mr. M. Blanch, Chief, Conference and Office Services Section, Miss A. Craig, Document Control Officer and Mr. S. Gauthier, Supervisor, Internal Distribution Unit. Language services were provided under the supervision of Mr. Y.N. Beliaev, Chief, Language and Publications Branch, assisted by Mrs. R.J. Ezrati, Chief, Interpretation Section.

Documentation

11. A list of the documentation associated with the work of the Conference is presented in Appendix C.

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Agenda Item 1: Preview

1.0.1 Documentation

Secretariat (WP/2) described briefly the administrative origins and convening of the Conference, preparations by the Secretariat and some organizational and procedural arrangements for the conduct of the Conference.

Secretariat (WP/4) provided an overview of the Conference task against the background of industry and regulatory developments and explained the main tasks under its agenda as well as its expected outcome.

1.0.2 Discussion

1.0.2.1 At the outset of the Conference, widespread support was expressed for gradual, progressive and safeguarded liberalization and for the focus of the present Conference on "how to" rather than "whether to" liberalize international air transport.

1.0.2.2 The meaning of the term "gradual and progressive liberalization" was clarified by reference to the Recommendation of the Worldwide Air Transport Conference (ATConf/4) in 1994 wherein each State would "determine its own path and own pace of change in international air transport regulation" with "a general goal of the gradual, progressive, orderly, and safeguarded change towards market access". Furthermore, the objective of the present Conference referred, *inter alia*, to "a framework for progressive liberalization". It was up to each State to decide what would constitute "gradual and progressive liberalization".

1.0.2.3 The liberalization process needed to take into account the differences among States, airline size and competitiveness, air transport infrastructure and financial resources to ensure the effective and sustained participation of all States in international air transport. In this context, the process should emphasize "fair competition" as opposed to "free competition", since there were concerns that unfettered competition might lead to irreversible changes which could be detrimental to the international air transport network.

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Agenda Item 1: Preview
1.1: Background to and experience of liberalization

1.1.1 Documentation

Secretariat (WP/5) provided several case studies, which describe in summary form liberalization experiences in the State(s) concerned, as a suitable vehicle for the analysis and dissemination of information on such experiences of States at national, sub-regional, regional or plurilateral level. The paper also proposed the further development and dissemination by ICAO of case studies to assist States in the liberalization process.

Secretariat (WP/20) provided a brief overview of commercialization developments in the airline industry, including changes in corporate structures and business models and the commercialization of airports and air navigation service providers. The paper also discussed implications arising from the commercialization of airlines, airports and air navigation service providers in the broader context of the liberalization experience.

France (WP/88) presented measures taken to accompany the liberalization of air transport in France to mitigate certain phenomena with regard to airport congestion and environmental nuisances. Based on experience, the paper recommended that it was highly desirable to anticipate, to the extent possible, certain effects that may result from the liberalization of air transport.

Georgia (WP/43) called for a study on liberalization, and requested ICAO to provide States with the most realistic and comprehensive information on the results of the liberalization that has already taken place in certain States and regions and on how the liberalization of civil aviation influences other sectors of the economy.

India (WP/86) highlighted the measures taken by India in unilaterally liberalizing air cargo and tourist charter operations, and on the basis of its experience, commended this approach to other States for these two aviation sectors.

Members of LACAC (WP/98) presented an overview of liberalization in Latin America, which has been promoted by harmonization and coordination to permit a gradual approach through more flexible sub-regional and bilateral agreements, while safeguarding less developed countries.

ILO (WP/31 Rev.) called upon the Conference to reaffirm its 1994 recognition that labour is a major stakeholder in aviation and should be a participant in any discussions on the future economic regulation of the industry. The paper also requested the Conference to adopt recommendations about the observance of the ILO *Declaration on Fundamental Principles and Rights at Work*, the key role of labour, the employment effects, promoting social dialogue and participation, and the role of the State.

Secretariat (WP/23 - information paper) provided information linking a faster growing air transport sector with the general economy, described the industry's current state and presented an estimated global passenger traffic growth of 4.3 per cent annually until 2020.

China (WP/25 - information paper) provided information on the rapid growth of the aviation sector, playing an increasingly important role in the country's socio-economic development and modernization drive.

Cuba (WP/54 Rev. - information paper) explained Cuba's experience in the gradual development of air transport, which is an essential feature of liberalization. The paper also asked that the Template Air Services Agreements (TASAs) be based on uniform and gradual changes to regulation, taking into account the differences in aeronautical infrastructure of Member States.

Fiji (WP/45 - information paper) believed that, in order to ensure Fiji's sustained participation in a liberalized environment and to promote the interest of its national carrier, the most ideal and realistic method of liberalization of Fiji's international air services is through bilateral basis in lieu of multilateral basis.

Singapore (WP/37 - information paper) provided a brief information on air services liberalization at the Asia Pacific Economic Cooperation (APEC) forum and through the Multilateral Agreement, and urged States to pursue parallel tracks for air service liberalization, and to consider a phased liberalization approach where necessary, in order to make maximum headway and encourage as many partners to come on-board the liberalization process as possible.

United States (WP/67 - information paper) presented information and conclusions from its empirical studies on the Transatlantic and Canada/US markets, which demonstrated the beneficial effect of liberalized air services agreements.

United States (WP/90 - information paper) provided its model "open skies" bilateral agreement, the Multilateral Agreement on the Liberalization of International Air Transport among seven APEC States (the "MALIAT" or "Kona" agreement) and the Protocol to the "Kona" agreement as useful examples of recent liberalization instruments.

United States (WP/97 - information paper) presented the Model Air Commerce Act, which provided a flexible template for States to develop their own regulations regarding the economic aspects of civil aviation, and can be used by States at any level of liberalization.

53 African States (WP/81 (French Rev.) - information paper) provided background information on liberalization in Africa, focussing on the implementation of the Yamoussoukro Decision Relating to the Liberalization of Access to Air Transport Markets in Africa. The paper also referred to operational experiences as regards liberalization policies of other regions.

Cambodia, Lao People's Democratic Republic, Myanmar and Viet Nam (CLMV) (WP/58 - information paper) provided an overview on CLMV sub-region and the establishment of the CLMV sub-regional cooperation on air transport including its contents and principles, and discussed the experiences and future perspectives.

Members of ECAC and the European Union (EU) (WP/61 - information paper) outlined European experience with the liberalization of its air transport market, which has been positive with means addressing many of the concerns that were raised at the beginning of the process. The annexes contained detailed information on specific aspects of a liberalized market in different Member States.

APEC (WP/30 - information paper) described the development, using consensus and cooperation of their Eight Options, for more competitive air service at a pace consistent with each Member's national interest, which were endorsed in 1999.

CARICOM Secretariat (WP/89 - information paper) highlighted the initiatives of the CARICOM to liberalize its air transport sector within the context of its commitment to the establishment of a Single Market and Economy.

WAEMU (WP/60 - information paper) outlined its common air transport programme based on a series of integrated actions involving safety, security, and infrastructure leading to the liberalization of the air transport services provided in the eight African Member States.

ICC (WP/35 - information paper) reviewed the experience of liberalization to date at the bilateral and regional levels, which faces obstacles such as limits on foreign investment and divergent competition policies. The paper also highlighted various outstanding issues, and discussed potential paths to further liberalization as well as a pragmatic approach.

ILO (WP/66 - information paper) provided the Executive Summary of a study by the ILO entitled, *The Impact of the Restructuring of Civil Aviation on Employment and Social Practices.*

Pacific Islands Forum Secretariat (WP/72 - information paper) explained the rationale for the initiative in developing the Pacific Islands Air Services Agreement (PIASA), outlined the expected benefits of an eventual agreement, responded to some of the issues that have been raised in other fora, and described next steps for continued development of the single aviation market for the Pacific.

1.1.2 Discussion

1.1.2.1 The Conference noted and considered useful the submissions of liberalization experiences in States and regions.

1.1.2.2 In the experience of several States, the unilateral liberalization of certain aspects of air transport, such as cargo services and tourist charters, without the necessity of a bilateral agreement, reciprocity, or change in ownership and control criteria, had proved beneficial, although other States indicated a preference to use bilateral approaches and reciprocity when liberalizing these services.

1.1.2.3 The Conference noted that several regional and subregional approaches to liberalization have proved successful while in some other regions liberalization efforts had been hampered by difficulties in obtaining the necessary resources for infrastructure, safety and security. Some States continued to prefer a pragmatic bilateral policy toward liberalization rather than a regional approach.

1.1.2.4 A number of delegates pointed out that case studies on liberalization experiences should include both positive and negative results of the process.

1.1.2.5 It was pointed out that liberalization which included the offer of cabotage raised questions concerning recognition of aircraft certification and domestic taxation with respect to foreign airlines operating domestic services.

1.1.2.6 The view was expressed that the impact of the re-structuring of civil aviation on employment and social practices indicates a need to observe relevant labour standards, and to reorganize the importance of a well-trained and motivated labour force for harmonious labour relations. It was felt that further liberalization of the industry could meet varying degrees of resistance by labour groups. It was therefore necessary to take measures to prevent disruption in the social dialogue and for labour to take an active role in the liberalization process.

1.1.3 **Conclusions**

1.1.3.1 From the documentation and ensuing discussion on background to and experience of liberalization under Agenda Item 1.1, the Conference concluded that:

a) a case study approach to liberalization experiences, while of necessity limited in scope, provides a suitable vehicle for the analysis and dissemination of information on such experiences of States at national, sub-regional, regional or plurilateral levels. Case studies on liberalization may assist States to further develop their liberalization approaches and policy options;

b) ICAO should continue to develop and disseminate by appropriate means case studies and information on liberalization experiences. States should be urged to submit such information to ICAO for general dissemination;

c) for more than a decade, airlines, airports and air navigation service providers have become more commercialized in an increasingly competitive environment. The dynamic development of commercialization and the spread of liberalization will continue to interact and have implications on each other;

d) while airlines and providers of airport and air navigation services are interdependent, their commercialization and privatization in a liberalized environment has a number of competitive consequences and financial implications for both sides. Long term cooperation between airlines and service providers is one means to bring stability in that environment. Furthermore, the use of consultation should be an essential part of their relationship;

e) States should evaluate in advance and anticipate, to the extent possible, certain effects of the increase in traffic on the infrastructure and the environment that may result from the air transport liberalization process; and

f) liberalization may have various implications for labour, which should continue to participate as an important stakeholder for the development of the air transport industry.

States should observe and respect the ILO *Declaration on Fundamental Principles and Rights at Work*[*], and take the necessary measures to promote social dialogue with the active participation of labour as a way to find innovative and socially responsible solutions.

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[*] Secretariat note. – The texts of the ILO *Declaration on Fundamental Principles and Rights at Work* are available on the ILO Web site at: http://www.ilo.org/public/english/standards/decl/declaration/index.htm

Agenda Item 1: Preview
1.2: Safety and security aspects of liberalization

1.2.1 **Documentation**

Secretariat (WP/6) discussed the implications of economic liberalization for aviation safety and security, and examined specific issues and policy options, with emphasis on the paramount importance of safety and security regulation.

United States (WP/96) noted some recent improvement in safety but also a danger that political developments and changes in economic regulatory arrangements may blur the responsibilities for safety oversight activity unless the responsibility and lines of authority for safety and security oversight remain clear.

53 African States (WP/76) made an in-depth analysis of the implications of liberalization for aviation safety and security in terms of promoting liberalization, on ensuring safety and guaranteeing security, and urged assistance for developing States in addressing the needs of safety and security, including the implementation of Cooperative Development of Operational Safety and Continuing Airworthiness Programme (COSCAP) projects.

Members of ECAC and EU (WP/68 - information paper) identified some key issues requiring to be addressed when discussing safety aspects of liberalization and particularly those with regard to the ownership and control of airlines.

1.2.2 **Discussion**

1.2.2.1 There was widespread support for safety and security to be paramount, regardless of the type of economic regulation employed, and a need to ensure that liberalization did not compromise safety and security. Furthermore, public confidence in international air transport was essential. In respect of aviation security the maintenance of such confidence required vigilance and measures by States and industry to address new forms of security threat.

1.2.2.2 It was felt that liberalization efforts could be de-railed where there were insufficient resources for States to meet their safety and security responsibilities; consequently there was a need for cooperation and financial assistance in this area. International financial institutions, and ICAO itself, recognized this need and were actively providing assistance.

1.2.2.3 Concerns were expressed that some types of liberalization could lead to flags of convenience and efforts to enhance safety and security through, for example, the use of agreements under Article 83 *bis* of the Chicago Convention on the lease, charter and interchange of aircraft must take this into account.

1.2.2.4 A safety and security system based on the single State concept is becoming increasingly complex given regional liberalization and the global organization of the world economy. While the ultimate responsibility for safety and security lies with the State, regional agreements for safety oversight may prove effective.

1.2.2.5 It was suggested that ICAO should undertake study aiming at specifying which State or States, or even the designated regulatory authority best suited to exercise these responsibilities; and eventually to recommend amendments to the existing ICAO regulatory arrangements on this matter.

1.2.3 Conclusions

1.2.3.1 From the documentation and ensuing discussion on safety and security aspects of liberalization under Agenda Item 1.2, the Conference concluded that:

a) economic liberalization has implications for safety and security regulation, which need to be properly addressed at the national, bilateral, regional and global levels, as appropriate, in order to ensure continued safe, secure and orderly development of civil aviation;

b) the Chicago Convention imposes responsibility on Contracting States for compliance with standards and practices related to safety and security. Irrespective of any change in economic regulation, safety and security must remain of paramount importance in the operation and development of air transport. In a liberalized economic environment, safety and security regulation must not only be maintained but should also be strengthened. Measures to ensure compliance with applicable safety and security standards and enhance regulatory oversight should form an integral part of the safeguards for liberalization;

c) when introducing economic liberalization, States should ensure that safety and security not be compromised by commercial considerations, and that clear lines of responsibility and accountability for safety and security be established for the parties involved in any liberalized arrangements. Regardless of the form of economic regulatory arrangements, there should be a clear point of contact for the safety and security oversight responsibility in a clearly identified Contracting State or other regulatory authority designated by that State for any given aircraft operation;

d) ICAO should continue to play a leading role in developing global strategies for the regulation and oversight of aviation safety and security, both definitively and in the context of facilitating economic regulatory reform. The changing regulatory and operating environment in international air transport calls for the development of new regulatory devices capable of adapting to the changes and addressing related concerns. Pending such new regulatory arrangements, measures must be taken in the interim to ensure that the existing safety and security regulatory system continues to function effectively. Meeting this challenge requires seamless international cooperation and concerted efforts from all Contracting States, regional aviation bodies, the industry and all other stakeholders in civil aviation;

e) bearing in mind the limited human and financial resources available in many developing countries required to ensure safety and security when liberalizing, all avenues, including contributions to the ICAO aviation security mechanism, the ICAO technical cooperation programme, the International Financial Facility for Aviation Safety (IFFAS) and the support of other complementary regional and international arrangements (including

COSCAP and similar cooperative development projects), should be utilized to assist these States to improve safety and security oversight and rectify deficiencies identified by the ICAO safety and security audits; and

f) ICAO should conduct a study with a view to clarifying the definition of the State or States responsible for safety and security oversight, and possibly to recommend amendments to the existing ICAO regulatory provisions in this area.

Agenda Item 2: Examination of key regulatory issues in liberalization

2.0.1 Documentation

Secretariat (WP/22) provided a draft revision of the *Manual on the Regulation of International Air Transport* (Doc 9626, 1996) as a reference for the items to be considered under this agenda item.

Agenda Item 2: Examination of key regulatory issues in liberalization
2.1: Air carrier ownership and control

2.1.1 Documentation

Secretariat (WP/7) reviewed the efforts to use alternative criterion to traditional national ownership and control of air carriers for market access and examined issues and policy options in liberalizing ownership and control. The paper proposed a new optional criterion for airline use of market access (in addition to existing ICAO-endorsed options for "community of interest" and predefined group ownership), based on principal place of business and effective regulatory control by the designating State. Proposed conclusions and a recommendation for action by States and ICAO were designed to facilitate application of more flexible arrangements by States wishing to liberalize while protecting the position of all States and ensuring that safety and security are not only maintained but enhanced.

Barbados (WP/48) described the difficult financial situation facing airlines of developing countries and their need for foreign investment. The paper suggested, as an advancement of the liberalization already taken under the "community of interest" principle for developing States, that "substantial" ownership rules should be relaxed to permit authorization of airlines which have at least 25 per cent of share ownership vested in the nationals of the designating State.

Cuba (WP/52), noting the changes in the international air transport regulations of States as well as the experience in the sector, believed that the Secretariat's new proposals would assist the evolution of international air transport in a safe, orderly, gradual and efficient manner.

New Zealand (WP/114) proposed an amendment to the draft recommendation on air carrier ownership and control.

Pakistan (WP/57) believed that national ownership and control criteria could be applied more flexibly in existing bilateral air services agreements, on a case-by-case basis, without excessive change which could lead to "flags of convenience".

Republic of Korea (WP/101) believed that national ownership and control criteria are more appropriate for the bilateral air transport framework, while the principal place of business criterion could be applied more appropriately in regional frameworks. Although the principal place of business criterion includes safeguards to prevent concerns about third party "free riders" as well as safety and security, there were still concerns with a third party "free rider" situation if a member State in a region concluded a bilateral containing this criterion with a State outside of the region.

Singapore (WP/39) urged States to liberalize air carrier ownership and control criteria and emphasized the importance of an open and consultative approach by States to understand and identify solutions to their unique concerns. Such an approach would pave the way for States to find common middle ground for adapting existing frameworks for liberalization without compromising their interests.

United States (WP/96) noted that, under new regimes that change the traditional rules involving airline ownership and control, the responsibility and lines of authority for safety and security oversight must remain clear. There must be a clear point of contact for safety and security which in almost all cases will be the State of the operator, regardless of the extent to which it has delegated execution of its responsibilities to others.

53 African States (WP/80) examined issues and policy options in liberalizing air carrier ownership and control as presented by the Secretariat and supported the adoption of the proposed model clause on airline designation and authorization provided States spell out in their laws and regulations the conditions of both "evidence of principal place of business" and "evidence of effective regulatory control".

Members of ACAC (WP/65) explained their preference for the liberalization of the traditional ownership and control criteria for non-scheduled transport of passengers and cargo. As for scheduled transport of passengers and cargo, they called for "adopting of the principle of liberalizing ownership and control at the level of regional groupings while using the traditional regime with other parties".

Greece on behalf of EU, ECAC and their Members (WP/84) considered that the economic situation of many airlines, the need to make international financial resources more accessible for aviation, and the wish of the air transport industry to have the same commercial freedom enjoyed by other sectors of the economy could be met by three key principles: 1) States should accommodate any other State that wishes to liberalize its ownership and control restrictions unilaterally or as part of a group of like-minded States; 2) with appropriate assurances on safety, consideration should be given to designation of airlines based in a third country; and 3) ICAO Member States should develop a common approach to liberalizing ownership and control requirements while ensuring high standards in aviation safety.

Members of LACAC (WP/99) noted that although liberalization of ownership and control has been extensively debated, no solution acceptable to the majority of States has yet been found. Special attention should be paid to concerns such as the potential emergence of "flags of convenience", deterioration of safety and security standards, possible flight of capital; impacts on labour, national emergency requirements and assurance of service; and, in the long run, anti-competitive effects from industry concentration.

IACA (WP/33) supported the IATA position on ownership and control described in WP/26.

IATA (WP/26) advocated four steps to liberalize airline ownership and control: 1) distinguish between commercial control conferred by ownership and regulatory control exercised by the licensing authority; 2) remove restrictions on ownership; 3) make regulatory control the responsibility of the designating State(s); and 4) provide control of safety and security through adoption and implementation of the relevant ICAO/ECAC Model Clauses.

ITF (WP/75) doubted the beneficial effects claimed by proponents of liberalizing the national ownership and effective control criteria and believed such action may lead to the "flags of convenience" situation prevalent in the maritime industry. The paper recommended

that the national ownership and control criteria be retained in the interest of stability, reliability and economic security of air transport, that States retain effective regulatory tools to meet the public interest dimension of air transport and that ICAO identify measures to prevent safety and security "dumping".

IFALPA (WP/34 - information paper) considered that the proposed changes to the ownership and control criteria did not address the labour and social implications and that the general rule that a designated airline must be substantially owned and effectively controlled by the national of the designating country should be preserved as an essential safeguard against the use of "flags of convenience" which would undermine labour and social standards.

ALADA (WP/71 - information paper) recognized that relaxing the traditional notion of substantial ownership and effective control of airlines to allow foreign investment has to be subject to the legislative criteria of each country, and that the responsibility of the State where the airline operates has to be maintained.

2.1.2 Discussion

2.1.2.1 Air carrier ownership and control was regarded as a key issue facing the Conference. Broadening the criteria for the use of market access could bring benefits such as wider access for airlines to capital markets, reducing their dependence on government financial support, allowing airlines to build more extensive networks through mergers and acquisitions; and improving the health of the industry, efficiency and competition in international air transport. However, it was pointed out that broadening the criteria also had some potential risks including "free riders" (where an airline of a third party uses bilateral traffic rights which its government does not have), industry concentration that could result in anti-competitive actions against consumers and smaller airlines, the emergence of "flags of convenience", degradation of safety and security, the reduction of labour standards and protection for airline workers. There was therefore a need to provide adequate safeguards in the liberalization process. As with liberalization generally, there was widespread support for gradual, progressive, and orderly change with respect to air carrier ownership and control.

2.1.2.2 At the same time support was expressed by a number of States for retaining the use of the traditional national ownership and control criteria, particularly in bilateral air services agreements, to take into account the disparities in economies, markets and competitiveness of airlines of the partners to the agreement as well as to ensure reciprocity. It was noted that there were also instances over the years of mutual agreement between bilateral partners for the use of alternate, or even no specific ownership and control criteria, on a case-by-case basis.

2.1.2.3 At the regional level, there was support for gradually liberalizing air carrier ownership and control, for example applying liberalized criteria such as "community of interest" within the region while using the traditional criteria for bilateral agreements with third parties. At the same time, States from several regions favoured the proposed principal place of business/effective regulatory control criteria as an improvement over the "community of interest" concept as fostering access to additional capital not available within the region. One plurilateral agreement used principal place of business and effective control without an ownership criterion. Small island States without airlines favoured broadened criteria as a means of

attracting service by foreign airlines or for attracting capital if they should decide to establish an airline in the future.

2.1.2.4 Given the wide divergence in practices and the number of different mechanisms being employed at the bilateral and regional levels, detailed prescribed criteria were unlikely to be effective. For example, the proposed criteria of principal place of business and effective regulatory control by the designating State did not take account of airline mergers. What was required was a flexible and voluntary approach which allows each State to choose the type of air carrier ownership and control that meets its needs, while accepting that a partner in an air services agreement may make a different choice. The key point was authorizing services by a designated air carrier which uses different, or alternative, criteria as long as safety and security are safeguarded. This would allow States which wish to liberalize airline ownership and control to do so while States which prefer the traditional ownership and control criteria may retain them.

2.1.2.5 In view of the range of options now available through State practice over the years or as adopted previously by ICAO, the model clause proposed in the Secretariat paper should be for discretionary use and as one among a number of available options.

2.1.2.6 Recognizing that liberalization of air carrier ownership and control might be given further impetus among like minded States, the proposal by the Secretariat for a practical mechanism to facilitate liberalization was considered useful, subject to some modifications.

2.1.2.7 To give effect to its consideration of this item the Conference reached the following conclusions, and proposed the adoption of a draft model clause and a Recommendation.

2.1.3 Conclusions

2.1.3.1 From the documentation and ensuing discussion on air carrier ownership and control under Agenda item 2.1, the Conference concluded that:

a) growing and widespread liberalization, privatization and globalization call for regulatory modernization in respect of conditions for air carrier designation and authorization in order to enable carriers to adapt to the dynamic environment. While there are concerns to be addressed, there could also be benefits in liberalizing air carrier ownership and control provisions. Past experience of liberalization in ownership and control has demonstrated that it can take place without conflicting with the obligations of the parties under the Chicago Convention and without undermining the nature of international air transport;

b) there is widespread support by States for liberalization, in some form, of provisions governing air carrier designation and authorization. Particular approaches vary widely from substantial broadening of provisions beyond national ownership and control in the near term, through gradual reduction of specified proportions of national ownership, to limited change for the time being regarding certain types of operations (for example non-scheduled or cargo), application within certain geographic regions, or simply case-by-case consideration;

c) there is a consequential need for flexibility in associated regulatory arrangements to enable all States to follow the approach of their own choice at their own pace while accommodating the approaches chosen by others;

d) whatever the form and pace of liberalization, conditions for air carrier designation and authorization should ensure that safety and security remain paramount, and that clear lines of responsibility and accountability for safety and security are established for the parties involved in liberalized arrangements;

e) in liberalizing the conditions for air carrier designation and authorization, States should ensure that the economic and social impact, including the concerns of labour, are properly addressed, and that other potential risks associated with foreign investments (such as flight of capital, uncertainty for assurance of service) are fully taken into account;

f) the regulatory arrangement in paragraph 2.1.3.2 below provides a practical option for States wishing to liberalize provisions regarding air carrier designation and authorization in their air services agreements. Complementing other options already developed by ICAO (including that of "community of interest"), it would facilitate and contribute to the pursuit by States of the general goal of progressive regulatory liberalization. While it is up to each State to choose its liberalization approach and direction based on national interest, the use of the arrangement could be a catalyst for broader liberalization. However, use of the arrangement by a State would not necessitate that State changing its existing laws or regulations pertaining to national ownership and control for its own carriers;

g) given the flexibility already existing in the framework of air services agreements, States may, in the short term and at their discretion, take more positive approaches (including coordinated action) to facilitating liberalization by accepting designated foreign air carriers that might not meet the traditional national ownership and control criteria or the criteria of principle place of business and effective regulatory control;

h) States may choose to liberalize air carrier ownership and control on a unilateral, bilateral, regional, plurilateral or multilateral basis; and

i) ICAO has played, and should continue to play, a leading role in facilitating liberalization in this area, should promote the Organization's guidance, keep developments under review and study further, as necessary, the underlying issues in the broader context of progressive liberalization.

2.1.3.2 Without prejudice to the specificities of regional agreements, the Conference agreed that States should give consideration to the following model clause as an option for use at their discretion in air services agreements:

"Article X: Designation and Authorization

1. Each Party shall have the right to designate in writing to the other Party [an airline] [one or more airlines] [as many airlines as it wishes] to operate the agreed services [in accordance with this Agreement] and to withdraw or alter such designation.

2. On receipt of such a designation, and of application from the designated airline, in the form and manner prescribed for operating authorization [and technical permission,] each Party shall grant the appropriate operating authorization with minimum procedural delay, provided that:

a) the designated airline has its principal place of business [and permanent residence] in the territory of the designating Party;*

*b) the Party designating the airline has and maintains effective regulatory control** of the airline;*

c) the Party designating the airline is in compliance with the provisions set forth in Article __ (Safety) and Article __ (Aviation security); and

d) the designated airline is qualified to meet other conditions prescribed under the laws and regulations normally applied to the operation of international air transport services by the Party receiving the designation.

3. On receipt of the operating authorization of paragraph 2, a designated airline may at any time begin to operate the agreed services for which it is so designated, provided that the airline complies with the applicable provisions of this Agreement.

***Integral Notes**:*

*(i) *evidence of principal place of business is predicated upon: the airline is established and incorporated in the territory of the designating Party in accordance with relevant national laws and regulations, has a substantial amount of its operations and capital investment in physical facilities in the territory of the designating Party, pays income tax, registers and bases its aircraft there, and employs a significant number of nationals in managerial, technical and operational positions.*

***evidence of effective regulatory control is predicated upon but is not limited to: the airline holds a valid operating licence or permit issued by the licensing authority such as an Air Operator Certificate (AOC), meets the criteria of the designating Party for the operation of international air services, such as proof of financial health, ability to meet public interest requirement, obligations for assurance of service; and the designating Party has and maintains safety and security oversight programmes in compliance with ICAO standards."*

(ii) The conditions set forth in paragraph 2 of this Article should also be used in the Article __ (Revocation of authorization)."

2.1.4 Recommendation

RECOMMENDATION 1 – LIBERALIZATION OF AIR CARRIER OWNERSHIP AND CONTROL

THE CONFERENCE RECOMMENDS THAT:

a) air carrier designation and authorization for market access should be liberalized at each State's pace and discretion progressively, flexibly and with effective regulatory control in particular regarding safety and security;

b) States, when dealing with air carrier designation and authorization in their international air transport relationships, use as an option at their discretion and in a flexible manner, the alternative criterion in the model clause;

c) States may at their discretion take positive approaches (including coordinated action) to facilitate liberalization by accepting designated foreign air carriers that might not meet the traditional national ownership and control criteria or the criteria of principle place of business and effective regulatory control. States that wish to liberalize the conditions under which they accept designation of a foreign air carrier in cases where that air carrier does not meet the ownership and control provisions of the relevant air services agreements, may do so by:

   i) issuing individual statements of their policies for accepting designations of foreign air carriers;

   ii) issuing joint statements of common policy; and/or

   iii) developing a binding legal instrument;

   while assuring whenever possible that these policies are developed in accordance with the principles of non-discrimination and non-exclusive participation;

d) the State designating the air carrier provides or ensures the provision of adequate oversight of safety and security for the designated air carrier, in accordance with standards established by ICAO;

e) States notify ICAO of their policies, positions and practices including retention of the traditional criteria, and individual or joint statements of common policy, on the conditions under which they accept the designation of an air carrier pursuant to an air services agreement;

f) ICAO maintain and make public information on States' policies, positions or practices on air carrier ownership and control;

g) ICAO assist States or groups of States requesting development and further refinement of the option in paragraph c); and

h) ICAO continue to monitor developments in the liberalization of air carrier ownership and control, and address related issues as required.

Agenda Item 2: Examination of key regulatory issues in liberalization
2.2: Market access

Note - Consideration of this item was divided into three parts: 1) liberalization of market access; 2) aircraft leasing; and 3) liberalization of air cargo services.

PART I - LIBERALIZATION OF MARKET ACCESS

2.2.1 Documentation

Secretariat (WP/8) reviewed recent developments in the liberalization of market access including exchange of basic market access rights as well as airport constraints on market access. Although progress in liberalizing market access had occurred both at the bilateral and at the subregional and regional levels, the Secretariat felt that conditions were still not ripe for a global multilateral agreement for the exchange of traffic rights. The problem of market access at capacity constrained airports and associated issues of slot allocation were highlighted, and the need for States to give due regard to airport capacity constraints and long-term infrastructure needs in liberalizing market access was stressed.

Secretariat (WP/21) reviewed liberalization developments related to market access from the regulatory perspectives of bilateral, regional and plurilateral agreements and arrangements, and from the industry perspective with respect to airline alliances, codesharing and mergers/acquisitions.

Cuba (WP/51) concluded on the basis of its experience that the inclusion of three air transport services in the General Agreement on Trade in Services (GATS) has had little impact due to their limited coverage and that application of the most favoured nation (MFN) principle was unacceptable for air transport. Consequently the present and future of air transport lie with ICAO whose efforts with respect to the gradual, progressive and orderly liberalization achieve an appropriate balance with the interests of States to maintain effective and sustained participation.

Georgia (WP/42) provided its views on ways to achieve not only equal market rights but equal opportunities through commercial agreements between strong and weak airlines.

Georgia (WP/44) described its views of the term "carriage" and the status of the so-called Sixth, Seventh, Eighth and Ninth Freedoms of the air.

India (WP/85) highlighted the problem of imbalance in the provision of air transport services caused by the non-availability of slots at some airports while other airports have adequate capacity to accommodate additional services. This situation goes against the basic principle of reciprocity and is further compounded by night curfews imposed by some States. As remedies, the paper suggested preferential treatment in the IATA slot allocation process similar to that presently accorded new entrants, and removal of night curfews coupled with strict adherence to ICAO Standards and Recommended Practices (SARPs).

India (WP/86) highlighted the measures taken by India in unilaterally liberalizing air cargo and tourist charter operations, and on the basis of its experience, commended this approach to other States for these two aviation sectors.

Pakistan (WP/57) explained its rationale for continuing to follow a bilateral approach to market access without eliminating the concept of reciprocity. The paper cited a need for a mechanism whereby the airlines of developing countries can obtain airport slots of their choice so as to be able to provide the necessary air links between developed and developing States.

United States (WP/50) believed that unrestricted access to the international market for air service providers is a key component for allowing the air transport sector to maximize its contribution to the global economy. Liberalization momentum should be maintained through the use of "open skies" agreements at the bilateral, regional, plurilateral and multilateral levels. Airport congestion had not been a significant constraint on conclusion by States of liberalized air service agreements. There was no evidence to date that progress in liberalization would be enhanced by expansion of the current scope of the GATS Annex on Air Transport Services.

United States (WP/96) noted some recent improvement in safety but also a danger that political developments and changes in economic regulatory arrangements may blur the responsibilities for safety oversight activity unless the responsibility and lines of authority for safety and security oversight remain clear.

53 African States (WP/79) favoured the gradual liberalization of market access on a regional basis for Africa under the Yamassoukro Decision of 1999. They did not support liberalization of market access on a global basis that would include unrestricted granting of traffic rights beyond the Third and Fourth Freedoms of the air. Underlying traffic rights should be the basis for the authorization of operations within the framework of commercial agreements. Third country airlines should not be allowed market access through these arrangements. To ensure their effective participation in international air transport, African carriers should benefit from a non-reciprocal preference in the allocation of airport slots.

Members of ACAC (WP/64) suggested that ICAO develop guidelines and regulations on slot allocation which would identify a means for obtaining slots at airports for carriers that are unable to access the market at slot-constrained airports, taking into account Article 15 of the Chicago Convention and the principles of transparency, non-discrimination and equal opportunity. ICAO should develop with IATA detailed and clear criteria to safeguard fair competition amongst air carriers so as to enable them to access markets in capacity-constrained airports.

Members of LACAC (WP/99) described the process and measures to achieve more flexible market access in the Latin American region, including harmonization of standards for issuing operating permits, the gradual and orderly granting of Third, Fourth and Fifth Freedom rights, beginning at the sub-regional and regional levels, and promoting non-scheduled operations that do not affect scheduled services as well as regional flights between non-traditional airports.

ACI (WP/91) believed that airport operators should play a leading role in the slot establishment process and oversee the efficient allocation of slots to airlines. When slots are allocated, airlines should be granted usage rights to the slots but not property rights.

ACI (WP/92) supported greater flexibility for airports to expand capacity in a timely and cost-effective manner to meet future traffic growth from liberalization. Speedy implementation of the airport-related recommendations of ICAO's Conference on the Economics of Airport and Air Navigation Services (ANSConf 2000) will help provide airports with some of the economic and financial tools they need to increase capacity.

ACI (WP/93) concluded that noise-sensitive airports depend on a credible reduction in noise at the source to expand capacity, and advocated more stringent aircraft noise certification standards under ICAO Annex 16.

IATA (WP/27) stressed that the existing IATA schedule coordination provides flexible and fair guidelines for slot allocation on a global basis, and that national or regional rules can complicate the system, particularly if they are not compatible with the global system. The paper suggested that any slot allocation system should respect such principles as: globally compatible; market-driven and aimed solely at the maximum effective use of airport capacity; transparent, fair and non-discriminatory; and simple, practical and economically sustainable.

ITF (WP/74) advocated that States should actively manage their traffic rights to ensure reciprocity, a balance of benefits, the protection of the public interest dimension and the participation of all States in the provision of air transport services. There should be no further extension of the GATS in the air transport sector.

United States (WP/90 - information paper) provided its model "open skies" bilateral agreement, the Multilateral Agreement on the Liberalization of International Air Transport among seven APEC States (the "MALIAT" or "Kona" agreement) and the Protocol to the "Kona" agreement as useful examples of recent liberalization instruments.

IFALPA (WP/34 - information paper) noted that wet-leases can work to the detriment of employees of the lessee carrier, particularly where the lessor's wages and benefits are inferior to those of the lessee, or where the labour and social laws of the lessor's home country provide less protection and fewer employee rights than the laws of the lessee's home country. The paper therefore considered it appropriate for each State to be able to regulate the extent to which its own carriers will be permitted to enter into wet-lease arrangements with carriers from other States.

ALADA (WP/71 - information paper) recognized that it is not possible, in the medium term, to implement radical changes to the exchange of market access rights, and believed that a transition period which allows regional structures of commercial negotiation should be implemented.

2.2.2 Discussion

2.2.2.1 The Conference noted that allowing States to choose their own pace and path to liberalize market access on a gradual and orderly basis has produced positive results in the liberalization of international air transport and has avoided the unfettered market access which could lead to unfair competition by dominant carriers. Although there were certain risks, small countries which obtain liberalized access to large markets for their airlines through "open skies" agreements could significantly benefit their trade and tourism sectors. It was important to bear in mind that market access involved more than just traffic rights; there was also a need to liberalize capacity, pricing, non-scheduled operations, and related services such as codesharing, ground handling and computer reservation systems.

2.2.2.2 There were differing views on the problem of airlines which could not exercise traffic rights because of a lack of airport slots. Some developing countries sought preference in the allocation of slots while other States supported the IATA system as providing common provisions for all States. It was suggested that the abolishment of night curfews would increase airport capacity and go a long way to resolving the problem of airlines unable to exercise traffic rights at certain airports. However, this would create difficult environmental problems at airports concerned. ICAO had published a study on *Regulatory Implications of the Allocation of Flight Departure and Arrival Slots at International Airports* (Circular 282, 2001). It was suggested that ICAO undertake a further study which would identify a means for obtaining slots at airports for carriers that are unable to access the market at slot-constrained airports, taking into account Article 15 of the Convention and the principles of transparency, non-discrimination and equal opportunity.

2.2.2.3 There was support for not extending the GATS Annex on Air Transport Services beyond the three services presently covered, but some States saw merit in including other services as a means to encourage competition.

2.2.2.4 There was widespread agreement that ICAO should continue to take a leading role in developing policy guidance on the regulation of international air transport.

2.2.3 Conclusions

2.2.3.1 From the documentation and ensuing discussion on the liberalization of market access under Agenda Item 2.2, the Conference concluded that:

a) since the Worldwide Air Transport Conference (ATConf/4) in 1994, considerable progress has been made in liberalization of market access, particularly at the bilateral, subregional and regional levels. More importantly, States have generally become more open and receptive towards liberalization, with many adjusting their policies and practices to meet the challenges of liberalization;

b) experience in the past decade has confirmed that the existing bilateral, regional and multilateral regulatory regimes based on the Chicago Convention can and do coexist, and can each accommodate different approaches to air transport regulation. These regimes continue to provide a viable and flexible platform for States in pursuing liberalization according to their specific needs, objectives and circumstances. The number of "open skies" and other liberal agreements are evidence that these regimes

have been very effective in increasing liberalization, and the momentum should be maintained;

c) the International Air Services Transit Agreement (IASTA) is important for liberalization and the operation of international air services. States should therefore be urged to pursue, and ICAO continue to promote, universal adherence to and implementation of the IASTA;

d) applying the basic GATS principle of most favoured nation (MFN) treatment to traffic rights remains a complex and difficult issue. While there is some support to extend the GATS Annex on Air Transport Services to include some so-called "soft rights" as well as some aspects of "hard rights", there is no global consensus on whether or how this would be pursued. It is also inconclusive at this stage as to whether the GATS is an effective option for air transport liberalization;

e) while multilateralism in commercial rights to the greatest extent possible continues to be an objective of ICAO, conditions are not ripe at this stage for a global multilateral agreement for the exchange of traffic rights. States should continue to pursue liberalization in this regard at their own choice and own pace, using bilateral, regional and/or multilateral avenues as appropriate. The ICAO Template Air Services Agreements (TASAs) provide detailed guidance on liberalization options and approaches;

f) airport congestion has not thus far been a significant constraint on the conclusion by States of liberalized air services agreements. However, in liberalizing market access, due consideration should be given to airport capacity constraints and long-term infrastructure needs. Problems involving air carriers which are unable to exercise their entitled traffic rights at a capacity-constrained airport may, if necessary, be addressed in the context of discussions on the relevant air services agreements. In this regard, sympathetic consideration should be given to the request for preferential treatment from those States whose airports are not slot-constrained but whose air carriers are unsuccessful in obtaining slots at slot-constrained airports, consistent with relevant national legislation and international obligations;

g) any slot allocation system should be fair, non-discriminatory and transparent, and should take into account the interests of all stakeholders. It should also be globally compatible, aimed at maximizing effective use of airport capacity, simple, practicable and economically sustainable; and

h) ICAO should continue to monitor closely regulatory and industry developments, develop an inventory of States' practical experience with liberalization and disseminate relevant information to Contracting States. ICAO should also continue to keep current the existing guidance material on the economic regulation of international air transport and develop new guidance, as necessary, to facilitate liberalization and improve harmonization, for example, through the TASAs.

PART II - AIRCRAFT LEASING

2.2.4 Documentation

Secretariat (WP/9) documented the increasing importance of airport leasing in the use of market access, describes regulatory approaches of States to the practice, noted potential safety issues and means to address them, and proposed a model regulatory clause covering safety and economic aspects of this practice.

IACA (WP/33) considered it vital that airlines be permitted the freedom to lease aircraft, including crew or not, subject to essential safety requirements.

ITF (WP/73) recommended that States adopt a restrictive approach to leases except in cases where issues which impact on aircraft occupants (passengers and crew) and which relate to unlawful interference, insurance, applicability of employment legislation and the legal jurisdiction applicable are fully resolved in a manner that affords the highest level of safety and of protection to aircraft occupants. The exercise of traffic rights which have not been designated or authorized should be prohibited.

2.2.5 Discussion

2.2.5.1 Leasing was regarded as providing flexibility and benefits to airlines in all States although there were concerns about airlines with a high proportion of wet-leased (with crew, normally from another airline) aircraft and the possibility of blurring the clear line of responsibility for safety and security. Agreements under Article 83 *bis* of the Chicago Convention on the lease, charter and interchange of aircraft, or through the bilateral air services agreement could address some safety concerns. It was also necessary to ensure that wet-leasing did not result in an airline using traffic rights for which it was not authorized.

2.2.5.2 There was support in principle for the model clause on leasing proposed in the Secretariat paper WP/9, although it should be clear that this was for the optional use of States at their discretion and certain aspects should be clarified.

2.2.6 Conclusions

2.2.6.1 From the documentation and ensuing discussion on aircraft leasing under Agenda Item 2.2, the Conference concluded that:

a) leasing (both wet and dry) offers considerable benefits to air carriers, enables expanded and more flexible air services and provides opportunities for the establishment of new carriers. However, it also raises economic and safety regulatory issues which need to be addressed;

b) States should, where necessary, review their regulatory responses to the use of leased aircraft in international services to and from their territory, and should ensure clear responsibility for safety oversight and compliance with minimum safety standards, whether through the inclusion of appropriate provisions in their air services

arrangements or by the establishment of agreements pursuant to Article 83 *bis* of the Chicago Convention. In this regard, ICAO *Guidance on the Implementation of Article 83 bis of the Convention on International Civil Aviation* (Circular 295, 2003) may be used; and

c) ICAO should make available to Contracting States, as an option for use at their discretion, the model clause on leasing proposed by the Secretariat after amendment and the addition of explanatory notes to:

i) clarify the meaning of "appropriate authority";

ii) make a clear distinction with respect to "wet" leased and "dry" leased aircraft; and

iii) take into account short-term, *ad hoc* wet-leases.

PART III - AIR CARGO

2.2.7 Documentation

Secretariat (WP/10) addressed the distinctive features of international air cargo and its regulatory treatment by States, discussed the need for regulatory change and proposes measures including a proposed annex on air cargo services for greater liberalization of this sector.

India (WP/86) highlighted the measures taken by India in unilaterally liberalizing air cargo operations, and on the basis of its experience, commended this approach to other States for this aviation sector.

Republic of Korea (WP/100) underlined the necessity for a balanced liberalization of air cargo services with the Third and Fourth Freedom traffic rights included initially. If the Fifth and Seventh Freedom traffic rights are to be liberalized in the cargo sector, the Eighth Freedom should also be included for balance between/among the States involved.

Singapore (WP/38) highlighted the benefits of the liberalization of airfreight services and proposed a phased multilateral or plurilateral approach with three elements: 1) designated carriers would exercise Third through the Seventh Freedoms of the air for all cargo services operated on a scheduled or non-scheduled basis; 2) non-discriminatory treatment of carriers with respect to access to ground facilities, clearance and other services with cooperative arrangements such as codesharing; and 3) a definitive timeline for the phased and progressive multilateral liberalization of air freight taking into account the varying conditions and levels of development of the various economies. This multilateral air freight liberalization could be achieved independently of the liberalization of passenger services.

United States (WP/49) noting that many air service agreements do not accord air cargo the commercial and operational flexibility to meet user demand in the manner achieved by "open skies" agreements, is prepared to pursue air cargo liberalization separately from passenger liberalization where it does not inhibit liberalization of the passenger sector. The

imposition of restrictions such as night curfews has a particularly adverse affect on air cargo and States should refrain from such actions as a first resort, but rather implement the balanced approach to noise management contained in Assembly Resolution A33-7.

53 African States (WP/79) believed any liberalization process in cargo should take account of the realities in economies, resources, size and competitiveness of African airlines and be marked by gradual, progressive, orderly and safeguarded change, differentiation between combined, air cargo and integrated carriers, liberalization of combined cargo and passenger services to follow the same principles as passenger services and complete global liberalization of all cargo and specialized cargo operations.

ACI (WP/94) advocated the liberalization of the air cargo market to encourage the optimum use of airport and airspace capacity and to stimulate world trade and job creation by permitting market forces to determine flows of cargo in the interdependent global marketplace.

TIACA (WP/83) believed that all cargo liberalization should be pursued on a fast track, independently of proposals to liberalize passenger services because it represents a different set of economics from passenger services and can have positive benefits for the world economy. Combination carriers should always be accorded the right to carry cargo with passengers.

ICC (WP/36 - information paper) noting that the overall liberalization of air transport may be a long-term objective, advocated an agreement covering air cargo services in the short term. A successful air cargo agreement could possibly pave the way to the liberalization of the air transport sector, but will require all interested parties to pursue it at national, regional and international levels.

OECD Secretariat (WP/59 - information paper) provided information on an extensive study by the OECD Secretariat on reforming the regulation of air cargo services with its comprehensive air cargo liberalization package for use bilaterally and multilaterally.

2.2.8 **Discussion**

2.2.8.1 Although there was widespread support for the liberalization of air cargo services proposed in the Secretariat paper WP/10, including measures related to all cargo services, there were concerns that greater liberalization for all cargo services could adversely affect combination services (passengers and cargo). There was also a view that "open skies" agreements were the best means of liberalizing air cargo services.

2.2.8.2 There were differing views on the value of unilateral liberalization of air cargo; and although several States had already done so, there were fears this would cause confusion in the liberalization process and some States preferred to pursue liberalization using the bilateral framework to ensure reciprocity.

2.2.8.3 There was a need to modify the proposed annex on air cargo services to take into account cases where an all cargo airline may not be permitted to operate other modal transport services directly, cases where carriers may have to file cargo tariffs and cases where airlines operating cargo services may not

be able to self handle because of physical constraints resulting from considerations of airport safety and security. It was agreed that meeting safety and security requirements was an important aspect of the liberalization of air cargo and for that purpose States could rely on the appropriate ICAO SARPs as well as bilateral, regional and multilateral agreements.

2.2.8.4 It was suggested that ICAO provide information on the experience of States in air cargo liberalization.

2.2.9 Conclusions

2.2.9.1 From the documentation and ensuing discussion on air cargo under Agenda Item 2.2, the Conference concluded that:

a) air cargo, and in particular all cargo operations, should be considered for accelerated liberalization and regulatory reform in view of its distinct features, the nature of the air cargo industry and the potential trade and economic development benefits possible from such reform;

b) States should consider the possibility of liberalizing all cargo services using one or more of the following:

i) unilateral liberalization of market access for all cargo services without bilateral reciprocity or negotiation;

ii) liberalizing all cargo services through bilateral agreements and negotiations to ensure reciprocity; and

iii) using a multilateral/plurilateral approach for the liberalization of all cargo services.

2.2.9.2 The Conference agreed that States should give consideration to the following model clause as an option for use at their discretion in air services agreements:

ANNEX ON AIR CARGO SERVICES

The Parties agree that:

1. Every designated airline when engaged in the international transport of air cargo:

a) shall be accorded non-discriminatory treatment with respect to access to facilities for cargo clearance, handling, storage, and facilitation;
b) subject to local laws and regulations may use and/or operate directly other modes of transport;
c) may use leased aircraft, provided that such operation complies with the equivalent safety and security standards applied to other aircraft of designated airlines;

d) may enter into cooperative arrangements with other air carriers including, but not limited to, codesharing, blocked spaced, and interlining; and

e) may determine its own cargo tariffs which may be required to be filed with the aeronautical authorities of either (any) Party.

2. *In addition to the rights in paragraph 1 above, every designated airline when engaged in all cargo transportation as scheduled or non-scheduled services may provide such services to and from the territory of each (any) Party, without restriction as to frequency, capacity, routing, type of aircraft, and origin or destination of cargo.*

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Agenda Item 2: Examination of key regulatory issues in liberalization
2.3: Fair competition and safeguards

Note - Consideration of this Item was divided into two parts: 1) Safeguards to ensure fair competition, and 2) Sustainability and participation.

PART I - SAFEGUARDS TO ENSURE FAIR COMPETITION

2.3.1 Documentation

Secretariat (WP/11) examined the issue of how to ensure fair competition in a liberalizing environment, and believed that appropriate safeguard measures are needed during the transition. Such measures may include progressive introduction of liberalization, general competition laws, and/or aviation-specific safeguards. The paper also presented a proposal for a regulatory arrangement in the form of a model clause in air services agreements which States may use as an additional means to identify, prevent and eliminate anti-competitive abuses.

Georgia (WPs/40 and 42) presented its views on a need for phased liberalization in tariff regulation, and on a need to assist weak airlines in developing countries through comprehensive commercial agreements.

Pakistan (WP/56) believed that effective measures to ensure meaningful participation should be in place before liberalization, and that a mechanism for maintaining healthy competition needs to be developed. The paper recommended that the Conference define criteria for determining what is capacity dumping or insufficiency.

United States (WP/47) believed that one of the most effective curbs on anti-competitive behaviour is operation of normal, undistorted market forces, and effective mechanisms are already in place, including general competition law, appropriate transition arrangements and other provisions of bilateral air services agreements. It saw no need to develop a sector-specific safeguard mechanisms for international air transport.

53 African States (WP/87) highlighted fair competition mechanisms being instituted in Africa to enable the continent to participate fully in air transportation, and expressed its concurrence with the conclusions and the proposed model clause in WP/11.

Members of ACAC (WP/70) recognized the importance for a system that guarantees fair competition in a liberalized environment and the need for a code of conduct and a dispute settlement mechanism, and suggested that ICAO update the code of conduct and safeguards related to fair competition and develop a dispute settlement mechanism for inclusion in the TASAs.

Members of LACAC (WP/99) presented, *inter alia*, their position on competition and safeguards, and believed that there should be safeguards to ensure fair and equitable

competition opportunities for the provision of air transport services in the liberalization process.

IATA (WP/28) emphasized the importance of and the need to maintain the IATA multilateral interline system and called on States to support the system and avoid its fragmentation.

ALADA (WP/71 - information paper) noted the LACAC position on this issue, and considered it necessary to reach an international agreement for application of competition laws so as to avoid legal uncertainty in the light of the new open competition scenarios.

2.3.2 **Discussion**

2.3.2.1 There was a wide range of views on the need for a safeguard to ensure fair competition when States undertook the liberalization of air transport services. In one view existing competition law was adequate for this task, but, in this connection, it was pointed out that not all States had competition laws, and moreover, there were differences in States understanding and application of such laws. Predetermination of capacity and double approval of tariffs along with other *ex ante* and *ex post* measures were offered as a means to prevent anti-competitive actions but there were concerns that this approach would nullify the benefits of liberalization. Furthermore, a detailed prescriptive list of what might constitute anti-competitive behaviour was not regarded as a good idea. Previous efforts to quantify terms involved in defining anti-competitive actions such as predatory pricing and capacity dumping had proved unsuccessful and it was pointed out that what might constitute unfair competition in one market may be acceptable competition in another one.

2.3.2.2 Nevertheless, a substantial number of developing States, citing the imbalance in their economies and airlines *vis-a-vis* those of developed States, saw a need for an aviation mechanism to ensure fair competition and safeguard their effective and sustained participation in international air transport. There was strong support for the mechanism proposed in the Secretariat paper WP/11. However, care should be taken that this safeguard mechanism is not used to frustrate liberalization or result in pre-liberalization practices such as the predetermination of capacity.

2.3.2.3 There was also support for a code of conduct for fair competition which would rely on general principles. In this connection, it was noted that the Air Transport Regulation Panel had previously addressed this issue.

2.3.2.4 There was support for maintaining IATA's global multilateral interline system although the view was expressed that the increase in number and operations of low-cost air carriers and airline alliances appeared to undermine industry support for this program which enjoyed a privileged place in the international community. It was pointed out, however, that the number of airlines participating in the interline system remains high and efforts were being made to make it more efficient.

2.3.3 Conclusions

2.3.3.1 From the documentation and the ensuing discussion on safeguards to ensure fair competition under Agenda Item 2.3, the Conference concluded that:

a) liberalization must be accompanied by appropriate safeguard measures to ensure fair competition, and effective and sustained participation of all States. Such measures should be an integral part of the liberalization process and a living tool corresponding to the needs and stages of liberalization. Such measures may include progressive introduction of liberalization, general competition laws, and/or aviation-specific safeguards;

b) while general competition laws may be an effective tool in many cases, given the differences in competition regimes, the differing stages of liberalization among States and the distinct regulatory framework for international air transport, there may be a need for aviation-specific safeguards to prevent and eliminate unfair competition in international air transport. This may be done by means of an agreed set of anti-competitive practices which can be used, and if necessary modified or added to, by States as indications to trigger necessary regulatory action;

c) in cases where national competition laws are applied to international air transport, care should be taken to avoid unilateral action. In dealing with competition issues involving foreign air carriers, States should give due consideration to the concerns of other States involved. In this context, cooperation between or among States, especially between or among competition authorities, and between such authorities and aviation authorities, has proved useful in facilitating liberalization and avoiding conflicts;

d) harmonization of different competition regimes continues to be a major challenge. In cases where disputes arise from the use of aviation-specific safeguards or the application of competition laws, States should seek to resolve their disputes through the consultation and dispute settlement mechanisms available under relevant air services agreements, and in the case of the latter, by making use of the existing ICAO guidance on competition laws contained in *Policy and Guidance Material on the Economic Regulation of International Air Transport* (Doc 9587, 1999);

e) the extraterritorial application of national competition laws can affect cooperative arrangements regarded by many as essential for the efficiency, regularity and viability of international air transport, certain forms of which benefit both users and air carriers alike. Consequently, where antitrust or competition laws apply to such arrangements, decisions should take into account the need for inter-carrier cooperation, including interlining, to continue where they benefit users and air carriers; and

f) ICAO should continue to monitor developments in this area, and update its guidance material on competition and safeguards, where necessary and in light of the evolution of liberalization.

2.3.3.2 The Conference agreed that States should give consideration to the following model clause as an option for use at their discretion in air services agreements:

"***Safeguards against anti-competitive practices***

1. The Parties agree that the following airline practices may be regarded as possible unfair competitive practices which may merit closer examination:

a) charging fares and rates on routes at levels which are, in the aggregate, insufficient to cover the costs of providing the services to which they relate;

b) the addition of excessive capacity or frequency of service;

c) the practices in question are sustained rather than temporary;

d) the practices in question have a serious negative economic effect on, or cause significant damage to, another airline;

e) the practices in question reflect an apparent intent or have the probable effect, of crippling, excluding or driving another airline from the market; and

f) behaviour indicating an abuse of dominant position on the route.

2. If the aeronautical authorities of one Party consider that an operation or operations intended or conducted by the designated airline of the other Party may constitute unfair competitive behaviour in accordance with the indicators listed in paragraph 1, they may request consultation in accordance with Article __ (Consultation) with a view to resolving the problem. Any such request shall be accompanied by notice of the reasons for the request, and the consultation shall begin within 15 days of the request.

3. If the Parties fail to reach a resolution of the problem through consultations, either Party may invoke the dispute resolution mechanism under Article __ (Settlement of disputes) to resolve the dispute."

PART II - SUSTAINABILITY AND PARTICIPATION

2.3.4 Documentation

Secretariat (WP/12) addressed, in the context of fair competition and safeguards, the issue of sustainability of air carriers and assurance of services, including the provision of State aids/subsidies. It concluded, *inter alia*, that States should ensure that State aids/subsidies for the purpose of restructuring of air carriers and assurance of services do not adversely impact on competition by taking transparent and effective measures. The paper also discussed regulatory measures to ensure the effective and sustained participation of developing countries in international air transport, and proposed a regulatory arrangement on participation and preferential measures in the form of a framework for a "Transition Annex".

53 African States (WP/82) reiterated the need for preferential measures on a non-reciprocal basis for developing countries as adopted by the 32nd Assembly. The paper pointed out that the situation in developing countries has still not improved despite the significant developments of air transport, and thus proposed that ICAO develop a model clause on preferential measures to facilitate their implementation.

2.3.5 Discussion

2.3.5.1 There was support for reaffirming the validity of preferential measures. There was also broad support for the measures to ensure sustained participation in air transport proposed in the Secretariat paper WP/12, although the view was expressed that there was no need for the "Transition Annex" if the existing bilateral agreement or its route schedule could be changed to achieve the same ends.

2.3.5.2 State aids to airlines, which were transparent and did not distort competition, were regarded as acceptable means to sustain participation in international air transport. In view of the importance of tourism to the less developed countries, it was suggested that subsidized air services for essential tourism development routes, similar to the essential air services or public interest routes in developed countries, would be appropriate.

2.3.6 Conclusions

2.3.6.1 From the documentation and ensuing discussion on sustainability and participation under Agenda Item 2.3, the Conference concluded that:

a) in a situation of transition to liberalization or even in an already-liberalized market, States may wish to continue providing some form of assistance to their airlines in order to ensure sustainability of the air transport industry and to address their legitimate concerns relating to assurance of services. However, States should bear in mind that provision of State aids/subsidies which confer benefits on national air carriers but are not available to competitors in the same market may distort trade in international air services and may constitute unfair competitive practices;

b) because of the lack of an acceptable quantification method and the existence of various non-monetary measures, it is very difficult to estimate accurately the full scale of State assistance and the impact of specific State assistance on competition. Given this difficulty, States should recognize that any actions against foreign airlines which receive State aids/subsidies might lead to retaliatory action by the affected State and hamper the ongoing liberalization of international air transport;

c) there may be some instances where State assistance can produce economic and/or social benefits in terms of restructuring of air carriers and assurance of services. Even in such special cases, however, States should take transparent and effective measures accompanied by clear criteria and methodology to ensure that aids/subsidies do not adversely impact on competition in the marketplace;

d) States should consider the possibility of identifying and permitting assistance for essential service on specified routes of a public service nature in their air transport relationships; and

e) to ensure the effective and sustained participation of developing countries and to facilitate the liberalization process, States should take into consideration in their air transport relationships the interests and needs of States with less-competitive air carriers and, wherever appropriate, grant preferential and participation measures. Such measures may be incorporated in the "Transition Annex" in their air services agreements.

2.3.6.2 The Conference agreed that States should give consideration to the following regulatory arrangement, in the form of a framework for a "Transition Annex" together with explanatory notes as an option for use at their discretion in air services agreements:

TRANSITION ANNEX*

The following transitional measures shall expire on (date), or such earlier date, as is agreed upon by the Parties:

1. *Notwithstanding the provisions of Article __ (or Annex __), the designated airline (or airlines) of Party A (or each Party) may (shall) ....*

2. *Notwithstanding the provisions of Article __ (or Annex __), the designated airline (or airlines) of Party A (or each Party) may (shall) ... as follows:*

   a) From (date) through (date), ...; and
   b) From (date) through (date), ...

3. *Notwithstanding the provisions of Article __ (or Annex __), the following provisions shall govern ....*

*Explanatory Notes

a) The first clause would be used when a particular Article (or Annex) would not take effect immediately but be implemented in a limited way during the transition period. The second clause would be similar to the first clause but with phase in periods. The third clause would be used when an Article (or Annex) would not take effect immediately and a different scheme would be applied during the transition period; and

b) The following is an indicative list in the form of a framework for a Transition Annex, for States to use at their discretion in bilateral, regional or plurilateral air services agreements: the number of designated airlines, ownership and control criteria, capacity and frequency, routes and traffic rights, codesharing, charter operations, intermodal services, tariffs, slot allocation and "doing business" matters such as ground handling. The language in the Annex is a framework, into which the Parties would need to agree

on the terms and wording. ICAO Doc 9587 contains material on possible participation and preferential measures.

Agenda Item 2: Examination of key regulatory issues in liberalization
2.4: Consumer interests

2.4.1 Documentation

Secretariat (WP/13) reviewed recent developments in consumer interest issues, particularly as regards air passenger rights, and discussed various options available for States and the airline industry in responding to these issues, i.e. competitive responses, voluntary commitments and regulatory measures. The paper also raised issues associated with varying regulatory regimes (including the contract regime applying to airlines), and concluded that ICAO's monitoring role and dissemination of information on this subject could facilitate the broader harmonization process.

Georgia (WP/41) called for a development of "Convention on the Rights of the Passenger", where the basic rights of the passenger would be reflected in a unified form.

Cuba (WP/53) recognized that air transport has the nature of a public service and thus it is necessary to protect the interests of passengers within the context of liberalization, and recommended measures for the protection of passengers related, *inter alia*, to airline tickets, computer reservation systems, codesharing, insurance and airport activities.

Pakistan (WP/57) recognized that ICAO had developed guidance material for condition of carriage, which could be extended globally for use as required by States for their airlines and service providers.

Members of ACAC (WP/63) emphasized the need for standardized regulations in all Contracting States so that consumer interests are protected on the basis of ICAO provisions The paper also described a number of negative aspects, which have an adverse effect on passengers and require more attention.

Members of LACAC (WP/99) highlighted its Recommendation A14-2 "User rights" and A15-7 "Customer service and total quality criteria and guidelines", which were adopted by the member States in order to offer the necessary protection of the user rights and to obtain an optimum air transport and airport services.

ACI (WP/95) described its main policies and actions aimed to protect the interests of passengers, and urged States to implement ICAO Annex 9 - Facilitation SARPs concerning passenger facilitation as soon as possible, protect passengers' interests and encourage air transport liberalization.

IACA (WP/33) urged States to be fully aware of the differences, both legally and operationally, between scheduled flights and charter flights, and act accordingly. The paper stressed the importance of enhancing competition, which creates opportunities for the consumers to make their own choice, rather than strengthen the consumer's position by burdening the airlines through an increase in costs. Any regulatory measures should be fully justified and proportionate.

Members of ECAC and EU (WP/69 - information paper) provided information on the Passenger Rights Commitments developed by airline and airport organizations under the auspices of ECAC and EU.

2.4.2 Discussion

2.4.2.1 It was noted that there were differences in approach to consumer rights and protection. For example, States which considered air transport as unquestionably a public service had a tendency to rely on regulatory measures; other States which considered air transport primarily a commercial activity tended to rely on competition and, at least initially, voluntary air carrier measures supplemented as necessary with regulatory measures to respect consumer rights.

2.4.2.2 Attention was drawn to the fact that low-fare airlines offer products with lower prices and corresponding benefits and this should be reflected in consumer protection measures. It is important for information on terms and conditions to be clearly made available to the consumer.

2.4.2.3 There was support for the conclusions in the Secretariat paper WP/13. It was suggested that European rules to protect the consumer could prove useful in future work on this subject and that consideration could be given to extending globally ICAO's guidance material for condition of carriage. It was also suggested that ICAO prepare guidance material on air carrier obligations *vis-a-vis* the consumer.

2.4.2.4 The Conference noted the view that the implementation of SARPs concerning passenger facilitation would protect passengers' interests and encourage air transport liberalization.

2.4.3 Conclusions

2.4.3.1 From the documentation and ensuing discussion on consumer interests under Agenda Item 2.4, the Conference concluded that:

a) as a premise in addressing consumer interests issues, States need to carefully examine what elements of consumer interests in service quality have adequately been dealt with by the current commercial practices of airlines (and service providers if applicable) and what elements need to be handled by the regulatory and/or voluntary commitment approaches*;

b) States need to strike the right balance between voluntary commitments and regulatory measures, whenever the government intervention is considered necessary to improve service quality. States should rely generally and initially on voluntary commitments

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* Secretariat note. – The following indicative lists, together with airlines' conditions of contract/carriage, could serve as checklists of many of the consumer interest subjects States may wish to monitor: 1) availabilities of lower fares including fares at Web site; 2) reservation, ticketing and refund rules; 3) advertisements; 4) airline's commercial and operational conditions; 5) check-in procedures; 6) handling of and compensation for flight delays, cancellation and denied boarding; 7) baggage handling and liability; 8) operational performance disclosure such as on-time performance and complaints; and 9) assistance for the disabled and special-needs passengers (i.e. people with reduced mobility). The revised ICAO Doc 9626 will refer to these subjects.

undertaken by airlines (and service providers), and when voluntary commitments are not sufficient, consider regulatory measures;

c) in implementing new regulatory measures, States should minimize the unnecessary differences in the content and application of regulations. Efforts to minimize differences would avoid any potential legal uncertainty that could arise from the extra-territorial application of national laws, without diminishing the scope for competition and hampering the operating standards and procedures for interlining; and

d) ICAO should continue to monitor developments regarding voluntary commitments to and government regulation of consumer interests with a view to providing useful information to States to assist in the harmonization process. Such monitoring should, in due course, enable ICAO to decide whether some form of action at multilateral level, such as the eventual development of a global code of conduct, is feasible or necessary to ensure harmonization of regulatory measures.

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Agenda Item 2: Examination of key regulatory issues in liberalization
2.5: Product distribution

2.5.1 **Documentation**

Secretariat (WP/14) reviewed the rapid and fundamental changes in the area of airline product distribution, and discussed recent industry and regulatory developments, focussing on computer reservation systems (CRSs) and the internet. The paper addressed the issue of regulatory responses to developments of the internet, which have implications for consumer protection, industry competition and participation. It also assessed the applicability of the ICAO Code of Conduct for the Regulation and Operation of CRSs, and suggested that the ICAO CRS Code already potentially applied to the internet though there exist several instances it had no applicable provisions.

Pakistan (WP/57) declared that non-discriminatory treatment in CRSs was important for all airlines, and stressed that carriers from developing countries should receive fair and equal treatment in CRS in foreign markets.

53 African States (WP/77) stressed the need for continued regulation of CRSs despite the current development in airline product distribution. The paper also highlighted that development in internet technology was still at an early stage and that many airlines in developing countries were constrained from benefiting from such developments.

Members of ACAC (WP/62) reviewed the issue of airline product distribution and the removal of all restrictions imposed by certain States on the direct sale of airline products in the light of the current developments in the sale and marketing of air transport services via the internet and CRSs. The paper also emphasized the need to ensure neutrality of system vendors and to protect consumers in interlining and codesharing arrangements, including compliance with ICAO guidance material in CRSs.

Members of ACAC (WP/107) expressed concerns about some regulatory approaches towards the amendments of the current CRS codes, which would lead to discrimination among airlines and hinder fair competition. The paper also proposed the collective purchase of the market information data tapes and that a proper definition be given to the word "group" so that smaller airlines could access the same information obtained by larger airlines.

Members of LACAC (WP/99) stressed that States should use the ICAO CRS Code and introduce a model clause on CRSs in their bilateral and multilateral air services agreements. The paper also asked States to post airlines' fares electronically on the internet, through which all users can easily obtain the fare information.

ALADA (WP/71 - information paper) recommended treating special "doing business" issues related to CRS as tools for the distribution of air transport, considering application of the so-called national treatment among the regional group under the General Agreement on Tariffs and Trade (GATT).

2.5.2 Discussion

2.5.2.1 There was broad support for the conclusions in the Secretariat paper WP/14. Since some States (and one group of States) have been reviewing the existing national and regional CRS codes/rules to address the issue of the newly-developed electronic technologies including internet, ICAO's continued monitoring on this issue was considered necessary.

2.5.2.2 The Conference noted that the development in internet technology was not evenly distributed and many airlines in developing countries have not yet benefited from such developments. Particular concern was expressed about potential negative effects on fair competition by the inaccessibility of the market information data tapes and by amending the principles of the existing CRS codes/rules. It was therefore felt that regulation of CRSs was still necessary in order to ensure fair and equal treatment, neutrality, easy-access and transparency and to avoid any discrimination. A concern was also raised about unilateral measures imposed by other States, which prohibit the participation of the carriers in CRSs.

2.5.2.3 The view was expressed that costs of CRS fees have driven airlines to use a new distribution channel, the internet, which would have an implication for travel agents. Although the current CRS codes/rules do not specifically regulate the internet, it was suggested that States could apply generic competition laws to the internet.

2.5.3 Conclusions

2.5.3.1 From the documentation and ensuing discussion on product distribution under Agenda Item 2.5, the Conference concluded that:

a) the principles of ICAO Code of Conduct for the Regulation and Operation of Computer Reservation Systems (CRSs) should be considered as the reference framework for the regulation of CRSs in Contracting States or any other code of conduct of a regional nature. States should bear in mind that amendments of such regulations or codes of conduct do not undermine the principles of transparency, accessibility and non-discrimination;

b) while there exist several instances where the ICAO CRS Code has no applicable provisions as a result of industry or regulatory changes, the scope of application of the ICAO CRS Code already potentially applies to the internet, and States may take this up at their discretion according to their particular circumstances;

c) States should consider the need to ensure that internet-based systems provide consumers with comprehensive and non-deceptive information and airlines with a comparable opportunity to use these new systems as they have with conventional global CRSs, where necessary; and

d) although it is not yet clear whether new regulations covering airline product distribution through the internet should be adopted, some States have been actively examining this issue under the existing CRS rules/regulations, consumer protection laws and competition laws. ICAO should continue monitoring developments closely and disseminating information on this issue, and keep the effectiveness of the ICAO CRS Code under review.

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Agenda Item 2: Examination of key regulatory issues in liberalization
2.6: Dispute resolution

2.6.1 **Documentation**

Secretariat (WP/15) addressed the need for an efficient and expeditious dispute settlement mechanism that can deal with different kinds of disputes arising, in a liberalized environment, at the bilateral and regional/plurilateral levels. The paper proposed as an option, a model clause for a mediation mechanism, additional to the traditional consultation and arbitration processes which builds on ICAO's previous work and which does not affect the right of the parties to have access to other dispute mechanisms within the air services agreement framework, including competition laws.

Pakistan (WP/57) pointed out that the dispute mechanism requires further development and expressed the need for a fool-proof mechanism that addresses the concerns of developing States and which includes specific criteria for the selection of the dispute panel of experts.

53 African States (WP/78) highlighted the dispute mechanisms being developed in Africa to allow mediation and an expeditious settlement of conflicts. The paper also pointed out to the need for a global approach to resolving disputes arising from increased competition and suggested the adoption of the proposed model clause on dispute resolution as presented in WP/15.

IATA (WP/29) recognized that the liberalization of air transport has consequences for the type of disputes and parties involved and that the traditional consultation and arbitration processes may not be suitable. The paper proposed an expedited process using a mediator or dispute settlement panel working to a fixed timetable, with the parties agreeing on clear criteria to implement decisions of a mediator/panel and to accept the possibility of proportional counter-measures in the event of non-implementation of a panel finding.

ALADA (WP/71 - information paper) indicated the need to study alternative dispute resolution mechanisms within Aeronautical Law as they are essential for the regional integration of all countries.

2.6.2 **Discussion**

2.6.2.1 There was broad support for the model clause on a dispute settlement mechanism, as proposed in the Secretariat paper WP/15. The clause was seen as an option for States to resolve disputes in a more efficient and expeditious manner. Such an intermediate mechanism between lengthy consultations and expensive arbitration would benefit States moving towards liberalization of their air services and would instill confidence in the process. The mechanism should be broad enough to include the full range of disputes that might arise from a liberalized environment.

2.6.2.2 The view was expressed that parties should make an effort to implement the decision of the mediator or panel and that one should not over-estimate the benefits nor ignore possible negative aspects of

the mechanism. However, the Conference felt that, in order to be effective, the mediation should encourage parties to commit to implementing any decisions reached, unless the process is used for fact finding.

2.6.2.3 Some concern was expressed regarding the timeframes indicated in the proposed mechanism which may seem inappropriate to resolve some kind of disputes, such as situations involving safety and security matters, in a timely manner. It was also recognized that the setting of time limits on the implementation of the decision may avoid potential abuses.

2.6.3 Conclusions

2.6.3.1 From the documentation and ensuing discussion on dispute resolution under Agenda Item 2.6, the Conference concluded that:

a) in a liberalized environment, different kinds of disputes may arise as a result of increased competition and new market forces and, therefore, there is a need for States to resolve such disputes in a more efficient and expeditious manner; and

b) States and the air transport industry need a dispute mechanism that:

i) instills trust and is supportive of safeguarded liberalization and participation by developing States;

ii) is customized to the particular circumstances of international air transport operations and competitive activity;

iii) ensures that the interests of third parties directly affected by a dispute can be taken into account; and

iv) as regards interested parties directly affected by the dispute, is transparent and provides access to relevant information in a timely and efficient manner.

2.6.3.2 The Conference agreed that States should give consideration to the following model clause as an option for use at their discretion in air services agreements:

"***Article X: Settlement of disputes***

...

x. Any dispute which cannot be resolved by consultations, may at the request of either [any] Party to the agreement be submitted to a mediator or a dispute settlement panel. Such a mediator or panel may be used for mediation, determination of the substance of the dispute or to recommend a remedy or resolution of the dispute.

x. The Parties shall agree in advance on the terms of reference of the mediator or of the panel, the guiding principles or criteria and the terms of access to the mediator or the panel. They shall also consider, if necessary, providing for an interim relief and the

possibility for the participation of any Party that may be directly affected by the dispute, bearing in mind the objective and need for a simple, responsive and expeditious process.

x. A mediator or the members of a panel may be appointed from a roster of suitably qualified aviation experts maintained by ICAO. The selection of the expert or experts shall be completed within fifteen (15) days of receipt of the request for submission to a mediator or to a panel. If the Parties fail to agree on the selection of an expert or experts, the selection may be referred to the President of the Council of ICAO. Any expert used for this mechanism should be adequately qualified in the general subject matter of the dispute.

x. A mediation should be completed within sixty (60) days of engagement of the mediator or the panel and any determination including, if applicable, any recommendations, should be rendered within sixty (60) days of engagement of the expert or experts. The Parties may agree in advance that the mediator or the panel may grant interim relief to the complainant, if requested, in which case a determination shall be made initially.

x. The Parties shall cooperate in good faith to advance the mediation and be bound by any decision or determination of the mediator or the panel, unless otherwise agreed. If the Parties agree in advance to request only a determination of the facts, they shall use those facts for resolution of the dispute.

x. The costs of this mechanism shall be estimated upon initiation and apportioned equally, but with the possibility of re-apportionment under the final decision.

x. The mechanism is without prejudice to the continuing use of the consultation process, the subsequent use of arbitration, or Termination under Article __."

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Agenda Item 2: Examination of key regulatory issues in liberalization
2.7: Transparency

2.7.1 Documentation

Secretariat (WP/16) emphasized the importance of transparency in international air transport, particularly in a liberalized environment; noted that transparency is a fundamental principle of the Chicago Convention whereby Article 83 establishes the obligation for States to register "forthwith"with the Council their aeronautical agreements and arrangements and explained several problems with respect thereto. As a means to improve the registration of agreements with the Organization, a model clause specifying which State was responsible for registration and that it be accomplished upon signature was proposed.

Pakistan (WP/57) considered that the nature of the confidential Memoranda of Understanding (MOUs) did not enhance transparency and expressed doubts about progress in this area.

United States (WP/46) believed that transparency in national and regional regulatory procedures dealing with international civil aviation was an essential element in the liberalization process and promoted a fair and equal opportunity to compete. States should adopt and apply transparency principles such as those in the APEC Transparency Standards which aim to ensure that States' regulations, procedures and administrative rulings are publicly and widely disseminated and that interested parties are informed and have the opportunity to participate in administrative proceedings affecting their interests.

Members of LACAC (WP/99) believed that States should fully apply Article 83 of the Convention and explained that, within the framework of LACAC, the collection and dissemination of information on agreements was an on-going task which facilitated a constant review of the instruments related to the status of international air transport.

2.7.2 Discussion

2.7.2.1 The Conference recognized the importance of promoting and enhancing transparency in a liberalized environment and the obligation of States to register their air services agreements under Article 83 of the Chicago Convention. With regard to the proposed model clause in the Secretariat paper WP/16, the Conference recognized the need to identify the party responsible for registration. However, the formula in the proposed model clause for registration at the time of signature may not be consistent with some States' constitutional requirements for the ratification and entry into force of agreements. This prevented them from registering agreements until that process had been completed.

2.7.2.2 It was recognized that making the texts of registered agreements available via the ICAO Web site would improve transparency but it would be a time-consuming undertaking. It was also considered useful if ICAO could inform Contracting States of official national Web sites containing air services agreements and other related information.

2.7.3 **Conclusions**

2.7.3.1 From the documentation and ensuing discussion on transparency under Agenda Item 2.7, the Conference concluded that:

a) transparency should be regarded as an objective to be pursued within the regulatory framework and as an essential element in the liberalization process. States and interested parties in the regulatory system benefit from improved transparency;

b) in view of the ongoing liberalization in international air transport and the need to enable ICAO to fulfill its primary role in developing policy guidance, a number of approaches involving States can be used to render the regulatory regime more transparent, including the following:

i) States should register with ICAO any unregistered air services agreement in accordance with their obligation under Article 83 of the Chicago Convention;

ii) States should, as a matter of priority, review their internal procedures and, pursuant to their obligations under Article 83, should develop practical means to improve their registration process. States may consider attributing the responsibility of registering the agreements with ICAO to an official or department where this has not already been done; and

iii) States should consider making better use of electronic means of disseminating information, such as government Web sites for publicly available information on the status of their air transport liberalization as well as for posting information or the texts of relevant air services arrangements;

c) ICAO should further encourage States to comply with their obligation to register all agreements and arrangements, ensure the effectiveness of the system of registration and make the database of registered agreements more accessible and useful for States and the public; and

d) transparency should also be pursued within national and regional regulatory frameworks and States should be invited to adopt and apply transparency principles, such as those laid out in the APEC Transparency Standards*, for national and regional regulatory actions relating to international civil aviation.

2.7.3.2 The Conference agreed that States should give consideration to the following model clause as an option for use at their discretion in air services agreements:

* Secretariat note. – The text of the APEC Transparency Standards are available on the APEC Web site at: http://www.apecsec.org.sg/virtualib/econlead/10th_Leaders_Dec_ImplTranspStand.html

*"**Article X: Registration with the International Civil Aviation Organization***

This Agreement and any amendment thereto shall be registered upon its entry into force with the International Civil Aviation Organization by [name of the registering Party]."

Agenda Item 3: Review of template air services agreement
3.1: Comprehensive template air services agreement

3.1.1 **Documentation**

Secretariat (WP/17 and Addendum) provided bilateral and regional/plurilateral versions of the Template Air Services Agreement (TASA) for the guidance and optional use (selectively, adapted, or in full) by States in their air transport relationships. Based on existing ICAO guidance and model clauses as well as bilateral and regional/plurilateral agreements and arrangements, this document was intended to assist States as a practical tool in the liberalization process.

Pakistan (WP/57) noted that the TASA was for optional use by States wishing to liberalize.

United States (WP/90 - information paper) provided its model "open skies" bilateral agreement, the Multilateral Agreement on the Liberalization of International Air Transport among seven APEC States (the "MALIAT" or "Kona" agreement) and the Protocol to the "Kona" agreement as useful examples of recent liberalization instruments.

IFALPA (WP/34 - information paper) provided information on principles with respect to ownership and control, Seventh Freedom operations and wet-leasing for inclusion in the TASA.

3.1.2 **Discussion**

3.1.2.1 There was widespread support and approval for the concept and content of the TASAs. States found them a useful tool for the options and approaches contained therein. This enabled them to pursue a balanced approach to liberalization. It was also felt that the TASAs would provide flexibility and enhance the harmonization of language and practice in air services relationships.

3.1.2.2 As a "living document" the TASAs could be adapted and updated as experience was gained with the liberalization process. Moreover, it was important for States to inform ICAO of their experiences in this area and on their use of the TASAs. In turn, ICAO should circulate a summary of the feedback received from States on the use of the TASAs

3.1.3 **Conclusions**

3.1.3.1 From the documentation and ensuing discussion on review of template air services agreement under Agenda Item 3.1, the Conference concluded that:

a) in actively promoting its role in developing policy guidance for States on the economic regulation of international air transport, ICAO's development of the Template Air Services Agreements (TASAs) is intended to facilitate the liberalization process;

b) the TASAs provide practical source documents for liberalization for States to use at their discretion in their air services relationships as well as in the development of their approaches and options in liberalization, serving as a useful tool in the liberalization process. The TASAs are "living documents" that should continue to be developed, particularly regarding additional material as to their application, in order to provide comprehensive guidance to States to facilitate liberalization and improve the harmonization of air services agreements in terms of language and approach;

c) States should be encouraged to use the TASAs in their bilateral, regional or plurilateral relationships and to provide feedback to ICAO on the use of the TASAs; and

d) ICAO should continue to monitor closely the regulatory experiences of States and regions in liberalization and in the use of the TASAs. It should disseminate to States relevant information on these developments and provide assistance on the use and application of the TASAs.

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Agenda Item 4: Consideration of global framework for ongoing liberalization
4.1: Mechanisms to facilitate further liberalization

4.1.1 Documentation

Secretariat (WP/18) addressed the role of ICAO in facilitating liberalization and proposed that ICAO's future role on economic regulation should focus on the development of policy guidance for economic liberalization and should facilitate, promote and provide assistance to States in harnessing liberalization for their broader benefit. In its relations with the WTO-OMC, ICAO should continue to draw attention to the Organization's policy on trade in services while emphasizing the linkage and interrelationship between safety, security and economic regulation and the Organization's focus on assisting States in the liberalization process. A draft revision of ICAO Doc 9626 was also provided in the Secretariat paper WP/22.

Georgia (WP/43) explained the need for a comprehensive document on the experience accumulated with respect to liberalization.

Pakistan (WP/57) believed that bilateral and multilateral framework arrangements may coexist and when underdeveloped States attain a certain level of development they could gradually phase into the multilateral framework.

Uruguay (WP/109) considered that the GATS Annex on Air Transport Services should not be expanded and that redundancy should be avoided with respect to tasks already assigned to ICAO.

WTO-OMT (WP/32) noting that in general air transport to and from Least Developed Countries (LDCs) markets is high cost, high priced, with poor service levels which prevents sustainable tourism growth, proposed a joint cooperative program with ICAO and other interested stakeholders to study the possibility of using in these markets mechanisms for funding the development of air transport along the lines of the essential air service and public interest route programs of industrialized countries as a means of stimulating growth in tourism.

ICC (WP/35 - information paper) explained why it favoured a pragmatic approach to different potential paths to further liberalization which could be pursued in parallel and complementary to one another including liberalization within the bilateral framework, a lead sector approach, a phased multilateralism (plurilateralism) and full multilateralism.

IFALPA (WP/34 - information paper) explained why in any future work program developed by the Conference there should be an explicit recognition that airline workers are one of the stakeholders whose interest must be considered in evaluating any proposed regulatory changes.

4.1.2 Discussion

4.1.2.1 There was widespread support for ICAO's leading role in international air transport and that the Organization should pursue its work on economic regulation, with a refocus on liberalization and assistance to Contracting States in harnessing the benefits of liberalization. ICAO should continue to cooperate with all other organizations involved in the liberalization of international air transport, but the focus for economic regulation should remain with ICAO, whose responsibility for all aspects of international aviation ensures a coordinated and cohesive approach. However, the view was expressed that some States considered other organizations such as the WTO-OMC had a role to play in some areas of air transport.

4.1.2.2 ICAO's promotion of liberalization that permitted each State to choose its own path and pace was regarded as preferable to a multilateral approach. It was felt that the WTO-OMC did not provide a beneficial avenue for developing States to pursue gradual, progressive and orderly liberalization with their sustained participation in international air transport. However, the view was also expressed that the WTO-OMC and its GATS Annex on Air Transport Services offered another opportunity for air transport liberalization which should not be ignored and that ICAO should work positively with this organization to enhance liberalization.

4.1.2.3 The Conference broadly supported the idea for a future role for ICAO as a forum for States to exchange market access. This matter should be further explored by the Organization, it being understood that use of it by States would be voluntary and that ICAO's role would be as a venue and facilitative in nature.

4.1.2.4 There was widespread support for the study of mechanisms for funding the development of air transport to LDCs to stimulate tourism as proposed in WP/32 and it was felt that ICAO should cooperate with the WTO-OMT in this project, subject to reaching agreement on the methodology proposed.

4.1.3 Conclusions

4.1.3.1 From the documentation and ensuing discussion on mechanisms to facilitate further liberalization under Agenda Item 4.1, the Conference concluded that:

a) over the years ICAO's work on economic regulation has intensified as States have turned to the Organization for policy guidance and assistance, particularly in response to a rapidly evolving globalized and liberalized air transport marketplace;

b) ICAO's role on economic regulation needs to be refocussed in order to give a global impetus to regulatory reform and liberalization. ICAO's policy guidance, on which States have come to rely, should focus in particular on liberalization and the Organization should facilitate and promote the liberalization process through its work and in its assistance to States;

c) looking to the long term ICAO should explore the feasibility and possible benefits of serving as a global marketplace, where ICAO provides the facilities and any expertise that may be required, for States to discuss and exchange market access at the bilateral and/or plurilateral levels; and

d) in its relations with all organizations having an interest or involvement in global regulatory matters ICAO should cooperate to ensure that ICAO's mandate and role and the broader interests of the aviation community are taken into account by such bodies. Furthermore, ICAO and its Contracting States should ensure coordination with such organizations to harmonise and avoid duplication of effort at the global level. As a paramount objective in its relations with other organizations involved in economic regulation of international air transport, ICAO should ensure that safety and security are not compromised.

4.1.4 Recommendation

RECOMMENDATION 2 – ICAO'S FUTURE ROLE INCLUDING RELATIONS WITH THE WORLD TRADE ORGANIZATION

THE CONFERENCE RECOMMENDS THAT:

a) ICAO's future role on economic regulation should focus on the development of policy guidance for economic liberalization which permits States to choose their own path and pace and ensures the safety and security of international air transport. This role should also include the facilitation, promotion and provision of assistance to States in harnessing liberalization for their broader benefit; and

b) in its relations with the WTO-OMC, ICAO should continue to draw attention to the Organization's policy on trade in services, as currently reflected in A33-19, while emphasising the linkage and interrelationship between safety, security and economic regulation and the Organization's focus on facilitating, promoting and assisting States in the liberalization process.

Agenda Item 4: Consideration of global framework for ongoing liberalization
4.2: Declaration of global principles for international air transport

4.2.1 Documentation

Secretariat (WP/19) presented a draft Declaration of global principles for international air transport for adoption by the Conference. The Declaration would be a separate outcome of the Conference from the various conclusions and recommendations on specific subjects under previous agenda items. The draft Declaration was intended as a cohesive statement by the international aviation community regarding ongoing economic liberalization addressed to a much wider audience beyond the aviation community. It set out key principles designed to guide the future development of international civil aviation for many years to come. Comments were invited on this draft for further improvement. In accordance with the agreed procedure, **Secretariat** (WP/24) subsequently provided a revised draft Declaration which took account of the large number of comments received from Delegations to the Conference.

Pakistan (WP/55 - information paper) provided its views on a draft Declaration including: favouring a gradual approach in liberalization and co-existence of bilateral, regional and multilateral regimes; stressing the principles of equal opportunity and non-discrimination; and supporting ICAO's role in promoting the objectives of civil aviation.

IFALPA (WP/34 - information paper) sought recognition of the contribution by airline workers to the safety and growth of air transport, and of the need to ensure that labour's needs and interests were taken into account in developing the Declaration.

4.2.2 Discussion

4.2.2.1 There were widespread expressions of support for the revised draft of the Declaration as presented in the Secretariat paper WP/24. The Conference felt that the text was cohesive, clear and well-balanced, taking into account to the extent possible the wide-ranging and constructive input received. Subject only to a change agreed in wording in two clauses and some editorial and linguistic amendments (notably to align text more closely with that of Assembly Resolutions in force), the content fully met the objective of a forward- and outward-looking statement from a global perspective by the international aviation community as represented at the Conference.

4.2.3 Declaration

4.2.3.1 The Conference consequently adopted by acclamation the following final text:

DECLARATION OF GLOBAL PRINCIPLES FOR THE LIBERALIZATION OF INTERNATIONAL AIR TRANSPORT

The Worldwide Air Transport Conference on Challenges and Opportunities of Liberalization, convened by the International Civil Aviation Organization (ICAO) at its Headquarters in Montreal from 24 to 28 March 2003 and attended by 145 States and 29 organizations:

Recalling the noble goals in the *Preamble* to the *Convention on International Civil Aviation* (the Chicago Convention);

Conscious of the important role of international air transport and its contribution to national development and the world economy;

Emphasizing the critical importance of safety and security in international air transport;

Noting the changes since the fourth Worldwide Air Transport Conference in 1994 in the regulatory and operating environment of international air transport brought about by economic development, globalization, liberalization and privatization; and the desirability for ongoing regulatory evolution to facilitate commercial change in the air transport industry while ensuring the continued safe, secure and orderly growth of civil aviation worldwide;

Reaffirming that the basic principles of sovereignty, fair and equal opportunity, non-discrimination, interdependence, harmonization and cooperation set out in the Chicago Convention have served international air transport well and continue to provide the basis for future development of international civil aviation;

DECLARES that:

1. **Overall principles**

1.1 ICAO and its Contracting States, together with the air transport industry and other stakeholders in civil aviation, will work to ensure that international air transport continues to develop in a way that:

a) ensures high and improving levels of safety and security;

b) promotes the effective and sustainable participation in and benefit from international air transport by all States, respecting national sovereignty and equality of opportunity;

c) takes into consideration the differing levels of economic development amongst States through maintenance of the principle of "community of interest" and the fostering of preferential measures for developing countries;

d) provides adequate supporting infrastructure at reasonable cost;

e) facilitates the provision of resources, particularly for developing countries;

f) allows for growth on a basis that is economically sustainable, supported by adaptation of the regulatory and operating environment;

g) strives to limit its environmental impact;

h) meets reasonable expectations of customers and public service needs, particularly for low traffic or otherwise uneconomical routes;

i) promotes efficiency and minimizes market distortions;

j) safeguards fair competition adequately and effectively;

k) promotes cooperation and harmonization at the sub-regional, regional and global levels; and

l) has due regard for the interests of all stakeholders, including air carriers and other operators, users, airports, communities, labour, and tourism and travel services providers;

with the ultimate purpose of giving international air transport as much economic freedom as possible while respecting its specific characteristics and in particular the need to ensure high standards of safety, security and environmental protection.

2. **Safety and security**

2.1 Safety and security must remain of paramount importance in the operation and development of international air transport and States must accept their primary responsibility for ensuring regulatory oversight of safety and security, irrespective of any change in economic regulatory arrangements.

2.2 States should work in cooperation to ensure safety and security oversight worldwide consistent with their obligations under the Chicago Convention.

2.3 States should consider the safety and security implications of transborder operations involving aircraft leasing, airline codesharing and similar arrangements.

2.4 Safety and security measures should be implemented in a cost-effective way in order to avoid imposing an undue burden on civil aviation.

2.5 Security measures should to the extent possible not disrupt or impede the flow of passengers, freight, mail or aircraft.

2.6 Further economic liberalization must be implemented in a way so as to ensure that there is a clear point of responsibility for each of safety and security in a clearly identified State or other regulatory authority designated by that State for any given aircraft operation.

3. **Participation and sustainability**

3.1 All States share a fundamental objective of effective and sustained participation in and benefit from international air transportation, respecting national sovereignty and equality of opportunity.

3.2 States should develop and maintain safeguards to ensure safety, security, economic stability and fair competition.

3.3 States should ensure that the necessary infrastructure of airports and air navigation services is provided worldwide at reasonable cost and on a non-discriminatory basis.

3.4 Airport and air navigation services charges should only be applied towards defraying the costs of providing facilities and services for civil aviation.

3.5 The interests and needs of developing countries should receive special consideration, and preferential measures and financial support may be granted.

3.6 The global aviation community should continue to work to promote the development of air transport in an environmentally responsible way, limiting the impact of air transport so as to achieve maximum compatibility between safe and orderly development of civil aviation and the quality of the environment.

4. **Liberalization**

4.1 The objective of ongoing regulatory evolution is to create an environment in which international air transport may develop and flourish in a stable, efficient and economical manner without compromising safety and security and while respecting social and labour standards.

4.2 States which have not yet become parties to the International Air Services Transit Agreement (IASTA) should give urgent consideration to so doing.

4.3 Liberalization should be underpinned by the worldwide application of a modern uniform air carrier liability regime, namely the Montreal Convention of 1999.

4.4 Each State will determine its own path and own pace of change in international air transport regulation, in a flexible way and using bilateral, sub-regional, regional, plurilateral or global avenues according to circumstances.

4.5 States should to the extent feasible liberalize international air transport market access, air carrier access to international capital and air carrier freedom to conduct commercial activities.

4.6 States should give consideration to accommodating other States in their efforts to move towards expanded transborder ownership and control of air carriers, and/or towards designation of air carriers based on principal place of business, provided that clear responsibility and control of regulatory safety and security oversight is maintained.

4.7 States should give consideration to liberalizing the regulatory treatment of international air cargo services on an accelerated basis, provided that clear responsibility and control of regulatory safety and security oversight is maintained.

4.8 Transparency is an important element in promoting economic growth, competitiveness and financial stability at the domestic, regional and international levels, and enhances the benefits of liberalization.

4.9 The air transport industry should continue to be encouraged to improve services to passenger and freight customers, and to develop and implement appropriate measures to protect consumer interests.

5. **Competition and cooperation**

5.1 The establishment and application of competition law represents an important safeguard of fair competition as States progress towards a liberalized marketplace.

5.2 Cooperation between and among States facilitates liberalization and avoids conflicts, especially in dealing with competition law/policy issues and labour conditions involving international air transport.

5.3 States should avoid adopting unilateral measures which may affect the orderly and harmonious development of international air transport and should ensure that domestic policies and legislation are not applied to international air transport without taking due account of its special characteristics.

5.4 Where State aids provided for the air transport sector are justified, States should take transparent and effective measures to ensure that such aids do not adversely impact on competition in the marketplace or lead to unsustainable outcomes, and that they are to the extent possible temporary.

5.5 Subject to compliance with applicable competition law, States should continue to accept the availability of multilateral interline systems that enable States, air carriers, passengers and shippers to access the global air transport network on a non-discriminatory basis.

6. **Role of ICAO**

6.1 ICAO should continue to exert the global leadership role in facilitating and coordinating the process of economic liberalization and ensuring the safety, security and environmental protection of international air transport.

6.2 ICAO should continue to promote effective communication and cooperation with other intergovernmental and non-governmental organizations with an interest in international air transport, to harmonize and avoid duplication of effort at the global level.

6.3 States should consider using the regulatory options provided through ICAO for the liberalization of international air transport.

6.4 States should continue to keep ICAO informed of developments in international air transport, including liberalized arrangements introduced at various levels; and to promote, in other fora, a full understanding of the mandate and role of ICAO.

Address by the President of the Council of the International Civil Aviation Organization (ICAO), Dr. Assad Kotaite, at the Opening Session of the Fifth Worldwide Air Transport Conference

(Montreal, 24-28 March 2003)

It is indeed a special privilege and a pleasure to welcome you on behalf of the Council and the Secretary General of ICAO to this Worldwide Air Transport Conference, the fifth such conference to be held by ICAO. It is just over eight years since we last gathered in November-December 1994 to address the future of international air transport regulation in the face of the emerging forces of globalization, liberalization and privatization. The Conference in 1994 raised liberalization and regulatory change to the forefront of our consciousness. The present Conference, which is taking place in sombre days, and in turbulent times for the industry, must build on that foundation and give States the regulatory tools and the confidence to move forward on an agenda of regulatory reform.

The liberalization with which we are dealing is an irreversible yet gradual process. This fact underlies the objective of this Conference which is "to develop a framework for the progressive liberalization of international air transport with safeguards to ensure fair competition, safety and security and including measures to ensure the effective and sustained participation of developing countries". It is an objective that seeks balance in the reform process, and the achievement of that balance is in your hands.

It is fitting that in this, the 100th anniversary of powered, controlled and sustained flight, we are being called on to provide practical regulatory tools by which the commercial air transport industry, an industry that has contributed so much to modern society, can adjust to the globalized market place realities of the 21st century. As we take up our work, we cannot but be aware that our industry is presently riding through turbulence. ICAO's preliminary estimates are that traffic in 2002 still remains some 2 to 3 per cent below levels in 2000. Financially, many airlines in some regions have been continuing to accumulate massive losses, although others have been showing recovery and, in some cases, significant profits, till now. The present armed conflict in Iraq will inevitably worsen the financial situation. And yet we need to take the long view, much as we have done in the past. We should recall that the regulatory framework of the modern commercial air transport era was laid down during a time of conflict, the Second World War. Today's regulatory framework, arising out of the principles of our charter, the *Convention on International Civil Aviation*, is not a rigid one, but is one open to adaptation and evolution.

It is also fitting that the Conference theme "The Challenges and Opportunities of Liberalization", like the Conference objective, recognizes the need for balance. We need to balance our expectations, the realities of the global market place and the many perspectives that exist on regulatory issues.

In this globalized economic and trading environment, air transport regulators should be prepared to question any mind-sets or outmoded thinking which prevent us from meeting the needs for national and regional development, for a vibrant and responsible industry and for responding to the demands and expectations of users. This is not advocating regulatory change for the sake of change, but rather the use of regulatory reform for the betterment and efficiency of international air transport and its contribution to

our lives. But it must be reform that is implemented in a safe, economic and orderly manner in line with our guiding Convention principles.

Liberalization, as a process and a methodology rather than an objective, must be judged by its consequences and its benefits, and not by its theoretical underpinnings. The opportunities of liberalization must be placed in the context of its challenges. It is especially important that liberalization does not result in the omission of any State wishing to participate in international air transport. That participation is another well-established Convention principle. It is, of course, for each State to determine the nature of its participation in the light of realities and opportunities. This Conference, therefore, must address the concerns that many States have for the sustainability and viability of their participation in the liberalization process.

At the same time, we should acknowledge that there is also a widespread and understandable desire to quicken the pace of regulatory reform, especially on such issues as market access and air carrier ownership and control. Quite clearly, air transport lags behind other sectors in its adoption of the reform process and we should be conscious of that. Your challenge this week will be to accommodate both the concerns of some and the hopes of others. My appeal to you then is simple: do not obstruct the need for reform, but at the same time do not let reform threaten, in the long term, the viability, interdependence and multilateral nature of our sector. The other challenge facing you in the task ahead will be to ensure that safety and security do not take a back seat to economic opportunity. In the liberalization of air transport and the integration of a global air traffic management system, the synergy between the economic and air navigation aspects remains based on the safety and security of civil aviation. There can be no growth in air transport without safety and security, and no viable civil aviation without sound economic policies. Consequently, in order to bring about the necessary confidence in the liberalization process, your results should have built into them safeguards for a liberalized environment as well as the paramount need for safety and security. Your tasks then are ones of creative thinking, clarity of purpose and a truly consensual and global perspective to the regulatory issues that affect us all and the future of international air transport.

Finally, we should not lose sight of the fact that civil aviation is a human endeavour - one that uses man-made equipment and technology for humans to move humans and their goods safely and securely from one point to another around the world. Thus, the human element and its contribution must also be built into your deliberations.

It is my personal conviction that international air transport is a dynamic and forward-looking industry, and in spite of our current situation, we should face the future with courage, hope and optimism. Your work this week should provide the industry with the regulatory environment that they need to face the future in that same spirit.

I wish you every success in your endeavour, and I am confident of the positive outcome of your work. The Council will look forward in its forthcoming Spring Session to your results so that we can move forward as an aviation community into this new era of challenges and opportunities.

It is now an honour for me to declare open the Fifth Worldwide Air Transport Conference. Ms. Anne McGinley, the Representative of Ireland on the Council and Chairman of the Air Transport Committee, will provide more detailed explanations on the Agenda of this Conference.

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Address by the Chairman of the Air Transport Committee,
Ms. Anne McGinley,
at the Opening Session of the Worldwide Air Transport Conference
(Montreal, 24 - 28 March 2003)

I have the honour and pleasure in my capacity as Chairman of the Air Transport Committee, to join the President of the Council in welcoming you to Montreal and this Worldwide Air Transport Conference, which has the theme "Challenges and Opportunities of Liberalization".

This is only the fifth Conference which ICAO has held on air transport regulation. Considerable planning and preparation go into bringing these Conferences into fruition and the present one is no exception. Although the background to this Conference is well documented elsewhere, let me recall just a few of these milestones.

The suggestion for a Conference on liberalization was initially conceived in the Air Transport Committee late in 2000 in response to significant developments in the air transport industry and regulatory policy since the fourth such Conference in 1994. At the time, the Committee noted, in particular, the trends towards liberalization, developments in the trade in services field and the call by the 32nd Session of the Assembly in 1998 for a more proactive leadership role by ICAO on air transport regulatory matters. The Council subsequently endorsed the Committee's proposal for a Conference on liberalization and directed that planning and preparations begin. States were consulted about potential topics for an agenda during 2001. In December 2001 the Council adopted the draft agenda that is before you. The letter of invitation to States and Organizations was sent out by the Secretary General that same month. In the intervening 15 months, ICAO has been preparing intensively for this event.

As you can see, from inception to implementation, this Conference has taken more than two years. And as you could well imagine, a meeting of this magnitude and complexity entails an enormous amount of detailed planning, logistical arrangements and thorough, in-depth documentation. This latter task has been undertaken not only by the Secretariat but also with the assistance of an expert Panel of the Air Transport Committee, the Air Transport Regulation Panel, which includes members from 25 States and 4 international organizations. The Panel has been carrying out work by correspondence almost continually over the past year and met in Montreal for a week last May. Through this whole process, the Air Transport Committee has monitored and maintained a close interest in the preparations.

But such preparations have not been by ICAO alone. You, the Contracting States, have been consulted on the draft agenda and you have been fully informed by ICAO of the Conference objectives, arrangements and preparations. Considerable efforts have also been made to ensure that States are well briefed and informed as regards the issues and proposals being put forward to the Conference. One of the means ICAO has used to help States prepare for the Conference was the convening late last year of a series of informal seminars in the regions, in many cases with the coordination and cooperation of relevant regional civil aviation bodies. These informational and promotional efforts will hopefully have smoothed your path and provided a solid foundation to your deliberations this week.

I would also like to pay tribute to the cooperative efforts of the many international organizations here today who have also contributed to the preparations for this vital event for our industry.

Let me turn briefly now to your task. Your agenda is in four parts. The first item, called Preview, will be the opportunity to note the liberalization experiences tabled by States and regions and to decide how we may benefit from it, as well as a chance to consider how safety and security considerations fit into the liberalization picture. The second agenda item, an examination of key regulatory issues in liberalization, is the most substantive item of the conference and will occupy the bulk of your time and effort over the next five and a half days. Almost three and a half days have been set aside in your tentative timetable to consider each of the seven key issues listed under this item. Given that this averages out at only a few hours per issue you will need a concerted effort to complete your consideration of these items in the time allotted.

Under the third agenda item you are being asked to review two Template Air Services Agreements (the TASAs, one for the bilateral and the other for the regional or plurilateral situations), but primarily to comment on this TASA concept as well as its future usage. It should be noted from the outset that these are not draft agreements for adoption or endorsement as such but rather guidance material, consisting of draft language and policy options to help States in the liberalization process and in their negotiations with one another.

Under the fourth and final agenda item you will consider the future role of ICAO on economic regulation in the context of liberalization in this sector, and in relation to other organizations involved or interested in air transport regulation. Also under this final item will be one of the principal outcomes of the Conference, a Declaration of global principles for international air transport, a draft of which has been prepared by the Secretariat in consultation with the Air Transport Regulation Panel. A particular procedure for handling this sensitive item is being presented to you so as to maximize your opportunity for providing input to the draft, thereby enabling a discussion, when it comes up later in the week, on what should be a relatively mature draft Declaration. As presented to you in the Secretariat documentation, the draft Declaration is one of broad principles, and I would commend to you to maintain this approach in order to accommodate all regulatory perspectives. In this way, you will be able to maintain a cohesiveness, clarity and balance to the Declaration, which this Conference can then present to the outside world as a framework within which liberalization can continue to evolve.

Given your extremely tight schedule, you will need to maintain a clear focus in your debates and a willingness to reach accord on each issue in order that you can complete your agenda and bring this important meeting to a successful conclusion.

Ladies and gentlemen, you have before you a comprehensive agenda, extensive documentation, thorough preparations and arrangements. Among the air transport community there is great interest in this Conference, and in the results you will reach. I wish you every success and the Air Transport Committee looks forward with anticipation to reviewing in the first instance the Conference outcome in its next Session.

— — — — — — — —

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Y. Yousfi	Chief Delegate
M. Benchemam	Alternate Chief Delegate
N. Aimeur	Delegate

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M. Queiroz	Delegate
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J. Park	Delegate
B.H. Won	Delegate
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J. Jung	Adviser
N. Kim	Adviser
Y. Lee	Adviser
S. Lee	Adviser
J. Lee	Chief Observer
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J. Kim	Observer
S. Park	Observer
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T. Jasudasen	Delegate
S. Kaur	Delegate
A. Lam	Delegate
A.B. Lee	Delegate
W. Leo	Delegate
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B. Lim	Delegate
B. Lim	Delegate
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S.H. Tan	Delegate
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N. Mlonzi	Delegate
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J. Twijuke	Delegate

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ATConf/5-WP	Agenda Item	Title	Presented by
1	-	Agenda	Secretariat
2	1	Conference origins and organizational arrangements	Secretariat
3	-	Tentative timetable	Secretariat
4	1	Background and overview of Conference task	Secretariat
5	1.1	Case studies on liberalization	Secretariat
6	1.2	Safety and security aspects of liberalization	Secretariat
7	2.1	Liberalizing air carrier ownership and control	Secretariat
8	2.2	Liberalization of market access	Secretariat
9	2.2	Aircraft leasing in international air transport	Secretariat
10	2.2	Liberalizing air cargo services	Secretariat
11	2.3	Safeguards to ensure fair competition	Secretariat
12	2.3	Sustainability and participation	Secretariat
13	2.4	Consumer interests	Secretariat
14	2.5	Product distribution, including Computer Reservation Systems and the Internet	Secretariat
15	2.6	Improving dispute settlement in a liberalized environment	Secretariat
16	2.7	Transparency in international air transport regulation	Secretariat
17, Att.A	3.1	Template Air Services Agreements for bilateral, regional or plurilateral liberalization	Secretariat
Add. to 17, Att.B	3.1	Template Air Services Agreements for bilateral, regional or plurilateral liberalization	Secretariat
18	4.1	Role of ICAO in facilitating liberalization	Secretariat
19	4.2	Declaration of global principles for international air transport	Secretariat
20	1.1	Commercialization and liberalization	Secretariat
21	2.2	Liberalization developments related to market access	Secretariat
22, Att.	2, 4.1	Revision of the manual on the regulation of international air transport (Doc 9626)	Secretariat

ATConf/5-WP	Agenda Item	Title	Presented by
23 (IP) (E)	1.1	Industry situation and airline traffic outlook	Secretariat
24, App.	4.2	Revised draft declaration of global principles	Secretariat
25 (IP) (E,C)	1.1	The development of China's civil aviation	China
26 (E,F,S,A)	2.1	Airline views on liberalizing ownership and control	IATA
27 (E,F,S,A)	2.2	Ensuring an effective and globally compatible slot allocation system	IATA
28, App. (E,F,S,A)	2.3	Maintaining the multilateral interline system	IATA
29 (E,F,S,A)	2.6	Dispute settlement in international air transport	IATA
30 (IP) (E)	1.1	Consensus and cooperation: a tool for the liberalization of air services	APEC
31 Rev. (E,F,S)	1.1	The impact of the restructuring of civil aviation on employment and social practices	ILO
32 (E)	4.1	Liberalization with a human face: the aviation dimension	WTO-OMT
33 (E)	2.1 2.2, 2.4	Air carrier ownership and control; leasing; slots; consumer interests	IACA
34 (IP) (E,F,S)	2.1, 2.2, 3.1, 4.1, 4.2	Issues of labour and social policy to be considered in connection with liberalization of international air transportation	IFALPA
35 (IP) (E,F)	1.1, 4.1	The need for greater liberalization of international air transport	ICC
36 (IP) (E,F)	2.2	Air cargo and the World Trade Organization (WTO)	ICC
37 (IP) (E)	1.1	Singapore's experience in market liberalization at Asia Pacific Economic Cooperation (APEC) Forum and suggestion for a parallel and/or phased approach to multilateral liberalization	Singapore
38	2.2	Liberalization of air freight on a multilateral basis	Singapore
39	2.1	An open and consultative approach to liberalizing air carrier ownership and control	Singapore

ATConf/5-WP	Agenda Item	Title	Presented by
40	2.3	Georgia's view on certain aspects of liberalization (Tariff policy)	Georgia
41	2.4	Georgia's view on certain aspects of liberalization (Passengers' rights)	Georgia
42	2.2, 2.3	Georgia's view on certain aspects of liberalization (The need to provide equal opportunities to air carriers)	Georgia
43	1.1, 4.1	Georgia's view on certain aspects of liberalization (The need for the publication of a comprehensive document on liberalization matters)	Georgia
44	2.2	Georgia's view on certain aspects of liberalization (The term "carriage" and the Sixth, Seventh, Eighth and Ninth Freedoms of the air)	Georgia
45 (IP) (E)	1.1	Fiji's position on multilateral air service agreements: Pacific Islands Air Services Agreement (PIASA)	Fiji
46	2.7	Transparency in international civil aviation regulation	United States
47	2.3	Alternative measures to encourage fair competition	United States
48	2.1	Liberalization of airline ownership and control for developing nations	Barbados
49	2.2	Liberalizing air cargo services	United States
50	2.2	Liberalization of market access	United States
51	2.2	General agreement on trade in services (GATS)	Cuba
52	2.1	Designation and authorization	Cuba
53	2.4	The user as the main objective	Cuba
54 Rev. (IP) (E,S)	1.1	Gradual development of air transport: an experience	Cuba
55Corr. (IP) (E)	4.2	Pakistan's views on declaration of global principles for international air transport	Pakistan
56	2.3	Fair competition and safeguards	Pakistan

ATConf/5-WP	Agenda Item	Title	Presented by
57	2.1, 2.2, 2.4, 2.5, 2.6, 2.7, 3.1, 4.1	Views of Pakistan on Conference agenda items	Pakistan
58 (IP) (E)	1.1	Sub-regional cooperation on air transport among Cambodia, Lao People's Democratic Republic, Myanmar and Viet Nam (CLMV)	CLMV
59 (IP) (E)	2.2	Liberalization of air cargo transport	OECD Secretariat
60 (IP) (E,F)	1.1	Experience in the liberalization of air transport in the Member States of the West African Economic and Monetary Union (WAEMU)	WAEMU
61 (IP) (E,F)	1.1	European experience of air transport liberalization	Members of ECAC & EU
62	2.5	Product distribution	Members of ACAC
63	2.4	Consumer interests	Members of ACAC
64	2.2	Fair and equal opportunities to access the international air transport market and the problem of airports' congestion	Members of ACAC
65	2.1	Substantial ownership and effective control	Members of ACAC
66 (IP) (E,F,S)	1.1	The impact of the restructuring of civil aviation on employment and social practices	ILO
67 (IP) (E)	1.1	U.S. liberalization experiences	United States
68 (IP) (E,F)	1.2	Safety aspects of liberalization	Members of ECAC & EU
69 (IP) (E,F)	2.4	European airports and airlines passenger rights commitments	Members of ECAC & EU
70	2.3	Fair Competition and safeguards	Members of ACAC
71 (IP) (E,S)	2.1, 2.2, 2.3, 2.5, 2.6	Review of key points of liberalization rules	ALADA

ATConf/5-WP	Agenda Item	Title	Presented by
72 (IP) (E)	1.1	The Pacific Islands Air Services Agreement (PIASA) – Phased development of a single aviation market in the Pacific	Pacific Islands Forum
73 (E,F,S)	2.2	Aircraft leasing in international air transport and jurisdictional issues associated with the nationality of aircraft registration	ITF
74 (E,F,S)	2.2	Liberalization of market access	ITF
75 (E,F,S)	2.1	Liberalizing air carrier ownership and control	ITF
76	1.2	Implications of liberalization on aviation safety and security	African States
77	2.5	Product distribution, including computer reservation systems and the Internet	African States
78	2.6	Instituting mechanisms for dispute resolution	African States
79	2.2	Market access	African States
80	2.1	Liberalizing air carrier ownership and control	African States
81 (IP) (E,F) (Rev. F only)	1.1	Background to experiences of liberalization in Africa	African States
82	2.3	Preferential measures for developing countries	African States
83 (E,F,S)	2.2	The case for all-cargo liberalization	TIACA
84 (Corr. E only)	2.1	Liberalizing air carrier ownership and control	Greece on behalf of EC & ECAC Members
85	2.2	Slot and noise issues	India
86	1.1, 2.2	Liberalizing air cargo and tourist charter operations	India
87	2.3	Instituting mechanisms for fair competition	African States
88	1.1	Effects of liberalization of air transport with regard to airport congestion and environmental nuisances	France
89 (IP) (E)	1.1	Liberalization of air transport services within the Caribbean Community	CARICOM

ATConf/5-WP	Agenda Item	Title	Presented by
90 Corr. (IP) Atts. A, B, C (E, partial F,S)	1.1, 2.2, 3.1	New bilateral and regional/plurilateral air services agreements	United States
91 (E,F,S)	2.2	Traffic rights, airport capacity and airport slots: The airport operator's view	ACI
92 (E,F,S)	2.2	Airport capacity expansion: Alleviating the financial constraints	ACI
93 (E,F,S)	2.2	Airport Capacity expansion: Alleviating the environmental constraints	ACI
94 (E,F,S)	2.2	Air cargo liberalization	ACI
95 (E,F,S)	2.4	Providing facilitation and quality service to passengers: The airports' concerns	ACI
96	1.2, 2.1, 2.2	Safeguarding safety and security oversight through the course of economic liberalization	United States
97 (IP) (E)	1.1	Model Air Commerce Act	United States
98 (IP) (E,S)	1.1	Background of liberalization and experiences in the Latin American Region	Members of LACAC
99 (E,S)	2.1, 2.2, 2.3, 2.4, 2.5, 2.6	Review of key regulatory aspects of liberalization	Members of LACAC
100	2.2	Liberalization of air cargo services	Republic of Korea
101	2.1	Liberalizing airline ownership and control	Republic of Korea
102	-	Draft Report on Introduction	Secretariat
103	1.2	Draft Report on Agenda Item 1.2	Secretariat
104	1, 1.1	Draft Report on Agenda Items 1 and 1.1	Secretariat
105	2, 2.1	Draft Report on Agenda Items 2 and 2.1	Secretariat
106	2.2	Draft Report on Agenda Item 2.2	Secretariat
107	2.5	Code of conduct on computer reservation systems	Members of ACAC

ATConf/5-WP	Agenda Item	Title	Presented by
108	2.3	Draft Report on Agenda Item 2.3	Secretariat
109	4.1	Role of ICAO in facilitating liberalization	Uruguay
110	2.6	Draft Report on Agenda Item 2.6	Secretariat
111	2.4	Draft Report on Agenda Item 2.4	Secretariat
112	2.5	Draft Report on Agenda Item 2.5	Secretariat
113	2.7	Draft Report on Agenda Item 2.7	Secretariat
114	2.1	Proposal related to WP/105 (Draft Report on Agenda Item 2.1)	New Zealand
115	3.1	Draft Report on Agenda Item 3.1	Secretariat
116	4.1	Draft Report on Agenda Item 4.1	Secretariat

- END -

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The following summary gives the status and also describes in general terms the contents of the various series of publications in the air transport field issued by the International Civil Aviation Organization:

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