



WORKING PAPER

WORLDWIDE AIR TRANSPORT CONFERENCE (ATCONF)

SIXTH MEETING

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Agenda Item 2: Examination of key issues and related regulatory framework

Agenda Item 2.8: Implementation of ICAO policies and guidance

**ELECTRONIC ARBITRATION AS A MEANS OF DISPUTE SETTLEMENT IN A FULLY
LIBERALIZED ENVIRONMENT**

(Presented by Morocco on behalf of a group of Arab States²)

EXECUTIVE SUMMARY

This paper addresses the importance of establishing an additional mechanism for dispute settlement between States, in the light of more liberalized policies addressed by the Conference, such as liberalization of market access, protectionism and fair competition, in order to provide States with an accelerated dispute settlement mechanism, namely electronic arbitration.

Action: The Conference is invited to agree to the recommendations presented in paragraph 5.

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

1. INTRODUCTION

1.1 In the light of policies and trends promoting further liberalization of market access and sustainable development of the air transport industry, the necessity of implementing a new mechanism, namely electronic arbitration, which is already used in the field of international commerce, has emerged because of the remarkable evolution in the field of information and communication technology (ICT). This evolution has facilitated the completion of transactions or the resolution of conflicts in a very short period. It has made it possible to replace lengthy consultations and negotiations between two or more parties through telecommunications networks, eliminating the need to move physically or have all concerned parties present at the same place.

¹ Arabic version provided by Morocco.

² Algeria, Bahrain, Egypt, Iraq, Jordan, Lebanon, Libya, Mauritania, Morocco, Kingdom of Saudi Arabia, Sudan, Oman, Palestine, Qatar, Tunisia, United Arab Emirates, Yemen.

1.2 It is well known that during past decades, States historically required in their bilateral and multilateral air transport agreements that an arbitration tribunal be established for dispute settlement, according to the relevant procedures determined among the parties, or through mediation and reconciliation methods under the liberalized approach.

1.3 The dispute settlement mechanism in airline agreements is principally based on consultations and arbitration, but it is not always fair or efficient. However, in the context of a liberalized environment, it is necessary that confidence-building arrangements for dispute settlement be fast enough to promote and maintain such an environment. Hence, this paper promotes the idea of establishing an electronic arbitration and mediation system as a means for accelerating the resolution of conflicts that may arise between the parties of an agreement.

2. DIFFERENCES BETWEEN TRADITIONAL AND ELECTRONIC ARBITRATION SYSTEM

2.1 Electronic and traditional arbitration are two methods of dispute settlement that are in essence similar to each other, though with some differences.

2.2 Arbitration in general is principally based upon the free will of the parties engaged in the conflict, whether conducted electronically or in the traditional way, as the parties must agree on the method of dispute settlement as well as on the arbitrator's jurisdiction to decide on the matter, according to their agreement and with the mandate they determine.

2.3 While this general concept captures the essence of traditional and electronic arbitration, electronic arbitration is distinguished by the tools it utilizes, i.e. modern ICT technologies such as the internet, which is largely used in law and commerce fields, and has created a new type of legal and electronic transactions, commonly known as e-commerce. Such transactions are not essentially different from traditional legal transactions except for the method of negotiation, agreement and implementation.

2.4 It has become clear that traditional dispute settlement means are no longer a suitable way to settle differences in a highly liberalized air transport environment.

3. ADVANTAGES OF ELECTRONIC ARBITRATION

3.1 **Cost saving.** Electronic arbitration is based on the internet, hence there are cost savings in terms of physical movement and meetings of the parties for arbitration purposes, as all sessions are conducted electronically through the internet and this naturally leads to significantly more efficient activities. On the other hand, the evolution of ICT, and the resulting widespread use of these technologies, will further reduce these cost elements.

3.2 **Time saving.** Electronic arbitration is also a significant time saver, since most websites function 24 hours a day throughout the year, which means that the tribunal and the parties to the conflict could work from their own computers anywhere, without the need to travel long or even short distances to attend sessions or present documentation before the tribunal. The initiation of the arbitration process on the internet, including the transfer and sharing of documentation, memos and exchanges, accelerates the process and leads to the completion of the procedures and the resolution of the dispute in the shortest delays.

3.3 **Expertise in electronic transactions.** It is necessary that the members of the electronic arbitration mechanism have both the legal expertise and technological knowledge required to gain the confidence of the parties to the dispute and promote the recourse to such systems to settle their differences.

3.4 **Convenience:** Overall, the electronic arbitration system preserves the confidential nature of the disputes, maintains the relations between States and protects the confidentiality of documentation exchanged electronically between the parties to the dispute and the tribunal through secured connections and websites.

4. **CONCLUSIONS**

4.1 Unlike traditional arbitration, electronic arbitration saves time and cost, as well as accelerates the arbitration process.

4.2 The key features of the electronic arbitration mechanism are:

- a) ease of communication through ICT technologies;
- b) transparency through seamless and immediate access to the documentation and information presented by the parties;
- c) independence and impartiality, since the arbitration tribunal is not related to the nationality of either party;
- d) efficiency through technical and legal expertise;
- e) free will of concerned parties to resort to electronic arbitration; and
- f) access to justice, as demonstrated in the equality between the parties to the dispute and the preservation of the right to defend one's position.

5. **RECOMMENDATIONS**

5.1 The Conference is invited to:

- a) request States to include an electronic arbitration mechanism for dispute settlement in national legislation as well as in bilateral and multilateral agreements;
- b) request ICAO to create a database of arbitrators who have expertise in modern technologies to assist in dispute settlement efforts in the field of civil aviation; and
- c) encourage regional organizations to hold workshops on the advantages and relevance of electronic arbitration.