



International Civil Aviation Organization

**WORKING PAPER**

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**ASSEMBLY — 37TH SESSION**

**ECONOMIC COMMISSION**

**Agenda Item 49: Liberalization of international air transport services**

**NEED FOR STIMULUS**

(Presented by the World Tourism Organization)

**EXECUTIVE SUMMARY**

The pace of air transport liberalization has slowed over the past few years, with a detriment to tourism as well as to more general economic and social development. The regulatory framework for international air transport, and particularly the transborder restrictions on ownership and control of air carriers, remain a unique incongruity in a globalized world, placing severe financial and market access constraints on carriers, generating unnecessary complexity, and limiting sustainable growth. This paper addresses the growing need to revise this framework and discusses an approach by ICAO to provide the necessary stimulus.

**Action:** The Assembly is invited to agree that steps should be taken by States and ICAO to foster more intensively the liberalization of international air transport services and particularly of air carrier designation beyond national or regional ownership and control.

<i>Strategic Objectives:</i>	This working paper relates to Strategic Objective D — Efficiency.
<i>Financial implications:</i>	Not applicable
<i>References:</i>	A37-WP/5 A36-WP/102 ( <a href="http://www.icao.int/icao/en/assembl/a36/wp/wp102_en.pdf">http://www.icao.int/icao/en/assembl/a36/wp/wp102_en.pdf</a> )

## 1. INTRODUCTION

1.1 UNWTO supports and fosters the liberalization of travel and tourism regulation in a responsible way because experience continues to demonstrate that this contributes significantly to economic and social development. “Responsible” in this context may be equated with achieving a balance among environmental, economic and socio-cultural aspects of sustainable tourism development. The disjunct arising from an open tourism market and the arcane approach to the regulation of international air transport, unique to the sector, is a constraint to both development and balance.

1.2 The ongoing constraints on air transport are magnified when they are translated to tourism (which includes both business and leisure visitors), with major economic ramifications. For many of the world’s poorest countries, tourism is – or has the potential to be – their major export, and offers the one common competitive advantage these countries share in the services-dominated global marketplace. But without attractive air services, the benefits of tourism for these countries are limited at best.

1.3 In the context of the close symbiosis between aviation and tourism, UNWTO continues to support ICAO’s work on air transport economics, particularly in regard to liberalization of international air transport and associated safeguards, including essential service and tourism development routes.

## 2. CURRENT SITUATION

2.1 Since the previous Session of the Assembly, the pace of liberalization, already slow, has been further affected by the global economic recession, which has led to a reversion towards trade protectionism in many countries. Air transport has not escaped this setback, even though in practice liberalization could be a stimulus to recovery, as demonstrably seized upon very effectively by a few States in Asia/Pacific, Middle East and South America, which have seen air transport as an essential ingredient in economic recovery programmes.

2.2 While there has been a sprinkling of additional “open skies” bilateral air services agreements (mostly for very small markets) there has also been retrenchment, including by some major aviation nations, towards limiting traffic rights to third and fourth freedom operations and protecting “national” carriers, with resistance to service by “foreign” carriers in the absence of reciprocity, despite studies demonstrating the net overall national economic benefits of such service.

2.3 The European Commission continues to negotiate comprehensive air services agreements with neighbouring countries, notably in eastern Europe and the Mediterranean region, thereby extending the existing Common Aviation Area, which includes community rather than national designation of air carrier ownership and control. However, such patently positive intra-regional liberalization, while under consideration elsewhere, has not achieved maturity in other regions. Also of considerable significance is that the second stage of the EU-United States air services agreement this year failed to reach a concluding accord on the fundamental issue of air carrier ownership and control.

2.4 With limited headway being made by Governments and resource-constrained support by ICAO, the air transport industry, led by IATA, has become more active in the government policy-making process. Through IATA’s “Agenda for Freedom” initiative, eleven countries<sup>1</sup> so far have signed a

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<sup>1</sup> Bahrain, Chile, Kuwait, Lebanon, Malaysia, Panama, Qatar, Singapore, Switzerland, United Arab Emirates, United States. The United States has also developed a draft “Multilateral Convention on Foreign Investment in Airlines”, which would take the

multilateral “Statement of Policy Principles regarding the Implementation of Bilateral Air Services Agreements”, which has also been endorsed by the European Commission. The primary focus is on lifting national air carrier ownership and control provisions out of air services agreements and agreeing on acceptance of ownership and control provisions based on “principal place of business” in one or more of the participating States. As stated by the IATA Director General at IATA’s Annual General Meeting in Berlin this year, the key challenge is “bilateral restrictions which are holding us back”.

2.5 UNWTO endorses this view. There is an increasing need in an era of globalization for the evolution of economic regulatory regimes for air transport, nationally, regionally and globally, which go beyond narrow sectoral interests and provide the optimum overall benefits for the economy, protection of consumer interests and enhancement of competition.

2.6 In this regard, UNWTO has consistently propounded a studied and positive approach to liberalization within the framework of the World Trade Organization and its General Agreement in Trade in Services. However, larger issues have effectively stymied the development of revised trading agreements by the WTO for a number of years and, while some progress on the “Doha Round” is currently being reported, return to substantive address of the GATS Annex on Air Transport Services is not envisioned for at least some time. While this is disappointing, it means that, unless there is a sudden resurgence of related activity in the WTO, ICAO for the time being will no longer have to devote significant resources to monitoring and supporting WTO activities; it also provides an opportunity for the Organization to develop its own construct on liberalization.

### 3. ICAO’S ROLE AND ACTIVITY

3.1 The Air Transport Conference in March 2003 and follow-up work by ICAO have consolidated a range of guidance material by the Organization on how to liberalize international air transport, including:

- a) a comprehensive *Declaration of Global Principles for the Liberalization of International Air Transport* (adopted by the Conference);
- b) a summary of *Policy and Guidance Material on the Economic Regulation of International Air Transport*;
- c) a *database of the World’s Air Services Agreements*;
- d) a *manual on the Regulation of International Air Transport*;
- e) a study on *Safety and Security Aspects of Liberalization*;
- f) guidance on *Preferential Measures for Developing Countries*;
- g) a study jointly with UNWTO on *Essential Service and Tourism Development Routes*<sup>2</sup>; and
- h) a comprehensive set of *Template Air Services Agreements*.

Thus there is no shortage of guidance. What is needed is a pro-active focus on, and stimulus to, implementation.

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ownership and control process forward in a similar way by invocation of the waiver in bilateral air services agreements to requiring designation of carriers by each party limited to those owned and controlled by interests from their territories.

<sup>2</sup> This important liberalization safeguard takes existing concepts such as Essential Air Services in the United States, Remote Air Services in Australia and Public Services in the European Union, and applies them to routes to and from Least Developed Countries. The study showed that the concept was viable and provides guidance as to its implementation.

3.2 Increasing resource constraints for economic work have more and more limited implementation support activity by ICAO over the past few triennia. The most prominent activity is the now annual (and self-financing) *ICAO Air Service Negotiation Conferences* (ICAN), which provide a central meeting place for States to conduct their air service negotiations. By enabling each participating State to conduct meetings with several bilateral partners at the same location, the conferences greatly improve the efficiency of the negotiation process. This is clearly a welcome activity, but there is potential for enhanced utilization of this facility. As “multilateralism in commercial rights to the greatest possible extent continues to be an objective of the Organization” (Assembly Resolution A36-15), the ICAN facility might be used not just for facilitating bilateral negotiations but also for exploring approaches which are broader in scope. ICAO could consider taking a more pro-active role in helping States to move forward with liberalization, for example by fostering a complementary but more innovative and less restrictive concept at the conferences through analysis and promotion of “plurilateralism”, whereby an agreement amongst two or more parties is extended automatically to another party upon its own adherence to the agreement<sup>3</sup>.

3.3 The ICAO Council indicates in A37-WP/5 that it could consider the convening of a worldwide air transport conference, subject to the availability of funds, at an appropriate time during the forthcoming triennium. As indicated in paragraph 3.1 above, UNWTO feels that previous conferences and panels have resulted in comprehensive guidance on liberalization and that the further evolution of such guidance through another such conference would be of limited value.

3.4 On the other hand, UNWTO feels that there could be substantial value in a conference focused on implementation and in particular on lifting air carrier ownership and control restrictions. Multilateral provisions on air carrier ownership and control (rather than their being vested in the citizens of a single State or group of States) could reduce the need for indirect means of obtaining market access (such as code-sharing), improve safety and security regulation, limit uncertainty regarding liability, produce substantial economic benefits for air transport, tourism and the economy at large, and substantially reduce the inhibitions of developing countries regarding liberalization. The conference might consider air carrier ownership and control in the context of development of a plurilateral framework which could be extended at some point to embrace other economic regulatory issues, the basic premise being that adherence by two parties to the plurilateral would over-ride the relevant provisions in an existing bilateral agreement between them. Such an approach could provide the necessary impetus for a long-overdue breakthrough in a regulatory framework stemming from 1946.....and enable ICAO to reassert a leadership role in the sustainable development of international air transport.

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<sup>3</sup> An example of the plurilateral approach is the *Multilateral Agreement on Liberalization of International Air Transportation* (“MALIAT” or “Kona” agreement) amongst the APEC States of Brunei Darussalam, Chile, New Zealand, Samoa, Singapore, Tonga and the United States.