

**WORLDWIDE AIR TRANSPORT CONFERENCE: CHALLENGES AND
OPPORTUNITIES OF LIBERALIZATION**

Montreal, 24 to 29 March 2003

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

SAFETY AND SECURITY ASPECTS OF LIBERALIZATION

(Presented by the Secretariat)

SUMMARY

This paper discusses the relationship between economic liberalization and aviation safety and security regulation, and examines specific issues and policy options in liberalization.

Action by the Conference is in paragraph 4.1.

1. INTRODUCTION

1.1 The present regulatory system in respect of aviation safety and security is based on the Chicago Convention, which through Article 37 imposes upon Contracting States the responsibility for compliance with standards, practices and procedures adopted by ICAO, unless differences are notified. Under this system, a clear linkage is established between an operator and the State in which it has its principal place of business (through Annex 6 - Operation of Aircraft), and clear lines of responsibility may be identified between the parties involved for the regulatory oversight of international air transport. This mechanism has been working well over the past fifty years and more, and has contributed to the safe and orderly growth of civil aviation.

1.2 However, economic liberalization and globalization in the last two decades have not only brought about fundamental changes in the structure and operating environment of the air transport industry, but also new issues in the existing regulatory framework (see WPs/5, 8, 20 and 21). Some developments such as airline privatization, consolidation and alliances, outsourcing and leasing, commercialization of airports and air navigation service providers, also have implications for aviation safety and security. Therefore, how to capture the benefits of economic liberalization without compromising safety and security is a major challenge States must address when considering wider liberalization.

1.3 The issue of the potential impact of liberalization on safety and security and their interrelationship is not new. For example, the issue was also a subject of discussion at the 1994 World-wide Air Transport Conference which explored the future direction of international air transport regulation. In agreeing that liberalization is a general goal, the Conference in its single Recommendation also recognized the paramount importance of safety and the need to continuously update and implement safety standards and practices. As liberalization spreads, there continues to be a need to address existing as well as potential concerns over its implications on safety and security.

1.4 This paper addresses the issues related to the safety and security aspects of liberalization and discusses policy options and regulatory responses. The principles covered have been carried through to the Secretariat papers on specific subjects under subsequent agenda items. This paper also underlines the importance of safety and security, and the additional emphasis and attention required when liberalizing. Economic liberalization, which is already under way, need not be precluded by safety and security considerations but should be complemented by them.

2. DISCUSSION

2.1 From a regulatory perspective, the importance of safety and security in the operation and development of civil aviation cannot be overstated. It should be given particular attention during the liberalization process because some of the resulting policy changes and commercial arrangements have safety and security implications and raise issues with the essentially national-based safety regulatory system. Therefore, States must address two basic issues in relation to safety and security when considering economic liberalization: a) what implications such liberalization will have; and, b) how to ensure that safety and security are not compromised in liberalized arrangements.

2.2 Among the trends and developments in economic liberalization which have safety and security implications are: the gradual lifting of restrictions regarding designation of airlines and on national ownership and control provisions; the burgeoning of airline alliances, code-sharing and franchising; the outsourcing of such activities as aircraft repair and maintenance, flight operations and crew administration, and ground handling; the expansion of aircraft leasing; and the commercialization of airports and air navigation service providers. These developments have often led to transnational commercial arrangements which could make the regulatory oversight of safety and security more complex. Following are examples illustrating some of the issues.

2.3 Along with the trend of privatization, many States have in recent years relaxed restrictions on foreign investment in their national air carriers. In air services agreements, States have also increasingly accepted designation of airlines with broadened ownership and control criteria. While *liberalization of air carrier ownership and control* may bring certain benefits, it has also raised some concerns. These concerns relate to such risks as the potential emergence of “flags of convenience” in the absence of effective regulatory measures to prevent them, and potential deterioration of safety and security standards when there is increasing emphasis on commercial outcomes. The latter is exemplified by cost-cutting pressures in the airline industry, particularly in the case of airlines facing financial difficulty. Therefore, relaxation of national ownership and control provisions needs to be accompanied by appropriate measures to prevent the emergence of “flags of convenience” and to ensure that safety and security are not compromised (for example, regarding identification of the link between an air carrier and the State which is responsible for regulatory oversight of the carrier, including on safety and security). In this regard, the guidance developed by ICAO and its current work on exploring alternative criteria for airline designation and authorization have emphasized the safety and security aspect (see the proposal presented to this Conference by the Secretariat in WP/7).

2.4 **Codesharing** has been the most prevalent element in transnational airline alliance arrangements. It has been used by many airlines to extend their scope of market access and has proved very effective in developing synergies and increasing revenues of the airlines concerned. While codesharing allows airline partners to offer ‘seamless’ through carriage, as if only a single airline were being used, the practice has led to concerns of governments as to the safety standards of foreign airlines with which their national airlines have codesharing arrangements. Another concern relates to the security implications caused by the potential transfer of a security threat, which may exist against one airline and be spread to its partner or partners in a codesharing arrangement, and any subsequent additional security measures imposed by the appropriate authorities. In this regard, ICAO has produced a comprehensive study on the implications of codesharing which concluded, *inter alia*, that clear lines of accountability and responsibility are essential for the safety and security aspects of such arrangements, since technical and operational regulations may vary considerably from one airline partner to the other (see Circular 269, *Implications of Airline Codesharing*).

2.5 The outsourcing issue may be illustrated by **ground handling**. Many States have introduced liberal ground handling provisions in their bilateral air services agreements and ground handling is now frequently outsourced to specialized companies. Unlike air carriers, ground handling companies are not constrained by national ownership restrictions and they have been undergoing a process of globalization and consolidation. This has given rise to some concern that the outsourcing of ground handling would have an adverse impact on safety, on the premise that private companies without previous experience of a safety culture are becoming involved. To address this concern, ICAO recently conducted a study on the safety aspects of ground handling, which led to a review of, and amendments to, the existing standards and recommended practices (SARPs) in Annex 6 and other guidance material. These amendments were designed to ensure that States give adequate consideration to the safety aspects of ground handling arrangements in the certification and surveillance of aircraft and airport operators and ground handling companies. In addition, the Secretariat also proposed an amendment to the existing ICAO model clause on ground handling to take account of the requirement for compliance with applicable safety and security provisions (now included in Attachment A to WP/17 on the Template Air Services Agreement for bilateral liberalization).

2.6 The practice of **leasing** can raise potential safety and economic issues in a situation where the leased aircraft is registered in a State other than that of the operator using it in international commercial services. Consequently there has been increasing attention given by States to the regulatory treatment of leased aircraft, particularly for wet leases in the context of the use of market access, from both a safety and an economic perspective. Among the regulatory responses to the use of leased aircraft are measures to ensure clear responsibility for compliance with ICAO 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 in Circular 295, *Guidance on the Implementation of Article 83 bis of the Convention on International Civil Aviation*, may be used (see also WP/9 on Aircraft leasing in international air transport).

2.7 With regard to the **commercialization or privatization of airports and air navigation service providers**, the main concern comes from the resulting change in ownership and control of these formerly state-owned entities, or the transfer of operations by governments to autonomous entities (sometimes with limited financial support) or to the private sector. In response to such concern, ICAO has developed policy guidance for use by States when considering the commercialization or privatization of airports and air navigation services providers. ICAO has recommended that where an autonomous body or entity is established, the State should condition its approval of the new body by requiring that it observe all relevant obligations of the State specified in the Chicago Convention and its Annexes. States should also bear in mind that irrespective of the change in ownership or management of these entities, the State is ultimately

responsible for the safety, security and the economic oversight of their operations (see Doc 9082, *ICAO's Policies on Charges for Airports and Air Navigation Services*).

2.8 As noted in WP/4, the events of 11 September 2001 in the United States have had a profound impact on international aviation. In addition to the immediate negative effects on air carriers (including on war risk insurance, traffic, routes and services, employment, equipment planning and consumer confidence), these events have had a more pervasive and long term impact on the entire industry, its structures, business practices and strategies. Of particular significance is the fact that **aviation security** has now taken on the highest importance with consequences for facilitation of passengers, costs of providing increased security measures and, in differing degrees around the world, public confidence. Although the threats of terrorism against civil aviation have a greater impact than just on liberalization, the increased security costs to counter such threats and the public's fear of flying could have a potential negative impact on the recovery of the industry's financial health and consumer confidence, which in turn could affect the pace of liberalization.

2.9 One of the concerns relates to the outsourcing of aviation security activity, such as screening at the airport, to private entities. In this regard, the High-level, Ministerial Conference on Aviation Security held in February 2002 stated that aviation security is a responsibility of States and recommended that where outsourcing of aviation security programmes occur, the States should ensure that adequate governmental control and supervision are in place.

2.10 Another concern arising from increased security at airports is in the area of **facilitation**. While the intent of the security measures is beyond question, some of the ensuing effects, for example, the added check-in time, long waiting lines, and the invasive nature of some security checks, may run counter to the objective of facilitation and could discourage flying. Conscious of this, the 2002 High-level, Ministerial Conference on Aviation Security also called on States, *inter alia*, to ensure that security measures do not disrupt or impede the flow of passengers, freight, mail or aircraft, and to take positive measures to restore public confidence in air travel and revitalize the air transport industry. In this regard, close coordination amongst air transport regulators, law-enforcement authorities, airlines and airports should help bring about complementary facilitation and security programmes that could reduce the negative effects and achieve maximum efficiency in border clearance operations and high quality security and law enforcement.

2.11 The above examples reflect the interrelationship between economic liberalization and safety and security regulation. Liberalization helps create an operating environment to bring about efficient and competitive air services which could translate into more services and choices for consumers, while safety and security regulation ensures the safe and secure operation of air services, which in turn improves consumer confidence in air travel. They should therefore complement each other at the policy-making and regulatory implementation levels. Past experience has proved that enhanced safety regulation and oversight helps the smooth evolution of liberalization (e.g. in the European Union). Regulatory responses to address the above safety-related issues and concerns should be made at all levels, national, bilateral, regional and global, as may be required, and should involve all concerned parties, governments, industry and other stakeholders in civil aviation. For example, States should, at the national level, take actions to improve or strengthen their safety and security oversight and audit functions (for example, over the commercialization of airports). For new entrants in a liberalized environment, States should ensure the application and enforcement of appropriate financial fitness criteria so that safety and security requirements may be met. At the bilateral level, States should, where they have not already done so, introduce new or reinforced safety and security provisions in their air services agreements (including on leasing and ground handling) or, in the case of leasing, conclude bilateral agreements on implementing Article 83 *bis* of the Chicago Convention.

2.12 At the global level, ICAO has played an active role not only pursuant to its safety and security mandate but also in facilitating economic liberalization. In order to enhance aviation safety, and in

response to new threats against civil aviation, ICAO has developed a Global Aviation Safety Plan (GASP) aimed at reducing aviation accidents and an Aviation Security Plan of Action for strengthening aviation security worldwide. ICAO's role in this area has been further strengthened when it was tasked to carry out mandatory safety oversight and security audits of all its member States under the Universal Safety Oversight Audit Programme (USOAP) and the Universal Security Audit Programme (USAP) respectively. Currently ICAO is working on improving the global strategy in order to build an effective global quality assurance regime for safety and security. At the same time ICAO is also working with the various regional bodies concerned, as well as with individual governments in coordinating and implementing these initiatives.

2.13 Substantial steps have also been taken on a regional basis to strengthen safety regulation against the backdrop of liberalization. For example, the programme of the European Civil Aviation Conference (ECAC) includes safety assessments not only of aircraft of its Member States but also of other air carriers operating into Europe. The European Union is developing a European Aviation Safety Agency. There are nascent initiatives for similar approaches to safety coordination in other regions including Central America and Africa. And at the airline level, the International Air Transport Association (IATA) carries out audits on its new and rejoining member airlines. There is, however, the possibility that one body's assessment of compliance may differ from that of another. For all these exercises it will be fundamental: (i) to define exactly what functions are delegated by States to the 'supra' national body or to the airlines (and what functions remain with the State); and (ii) to ensure that such bodies maintain consistency in approach and a seamless interface, especially where third parties are involved.

2.14 As the operational and commercial world of aviation has become increasingly multinational, it will be increasingly at odds with the existing single State safety regulatory system. Consequently, there is a need for States and the aviation community to consider developing new regulatory devices which are capable of adapting to the changing environment, as well as addressing the related issues including financial and organizational ones. Pending such new regulatory arrangements, measures must be taken in the interim to ensure that the existing safety and security regulatory systems continue to function effectively, and that no loopholes remain, in order that liberalization proceeds in a safe, secure and orderly manner. Meeting such challenge requires leadership by ICAO, but also concerted efforts of all States, regional bodies and the industry.

3. CONCLUSIONS

3.1 From the above discussion, the following conclusions may be drawn:

- 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 for compliance with standards and practices related to safety and security on Contracting States. 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 also should 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.
- 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 as well as all other stakeholders in civil aviation.

4. **ACTION BY THE CONFERENCE**

4.1 The Conference is invited to:

- a) note the issues and policy options discussed in paragraph 2; and
- b) review and adopt the conclusions in paragraph 3.

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