

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

**Montreal, 24 to 29 March 2003**

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

### **ROLE OF ICAO IN FACILITATING LIBERALIZATION**

(Presented by the Secretariat)

#### **SUMMARY**

This paper addresses the role of ICAO in facilitating liberalization and proposes a particular focus for the future. It also addresses ICAO's relations with other organizations involved in regulatory issues, and in particular the World Trade Organization (WTO-OMC), identifying some potential areas for concern and emphasising certain matters to be brought to the attention of that Organization.

Action by the Conference is in paragraph 6.1.

#### **1. INTRODUCTION**

1.1 ICAO's mandate in the air transport field is set out in the Chicago Convention in general terms. The broad nature of this mandate has enabled the Assembly and the Council over the years to take on a range of tasks as agreed by States, bearing in mind the objectives of ICAO in Article 44 of the Convention.

1.2 ICAO has also been active in a wide variety of economic regulatory matters and this activity has intensified in recent years as Contracting States have turned to ICAO for the development of policy guidance and advice, harmonization and cooperation on regulatory policy matters, and as the global forum and focal point for the aviation community on economic regulatory matters. The role of ICAO and the tasks and wishes of States are now summarized in a single source, Assembly Resolution A33-19, Consolidated statement of continuing ICAO policies in the air transport field, Introduction and Appendix A, Economic regulation (Doc 9790). Contracting States, through the Assembly, have recognised "the particular characteristics of international air transport" and "the primary role of ICAO in developing policy guidance on the regulation of international air transport". Furthermore, one of the strategic objectives of the Organization's Strategic Action Plan is "to ensure that guidance on the economic regulation of international air transport, is current and effective".

1.3 The changing air transport environment and the safe and orderly liberalization of this sector call for an assessment of the manner in which the role of the Organization should evolve in the years to come

as a facilitator for this transition and the process of regulatory change. The sovereignty of States in air transport matters is not in question. However the degree and nature of ICAO's role requires further definition, particularly as regards the process of liberalization and of how it might best serve the present and future needs of its Contracting States. This paper addresses ICAO's role in facilitating liberalization, including its relations with other organizations which have incorporated air transport in their mandates or have assumed an interest and involvement in the economic regulation of international air transport.

## 2. FACILITATING LIBERALIZATION

2.1 The papers prepared by the Secretariat for the consideration of this Conference contain a number of proposed conclusions together with several recommendations. Some of those recommendations build on the earlier work of the Organization, particularly that by the fourth Worldwide Air Transport Conference in 1994 and subsequently the Air Transport Regulation Panel.

2.2 With regard to the outcome of this Conference, continuing work by ICAO is envisaged by the Secretariat in connection with: a) the further development of the Template Air Services Agreements (TASAs) and additional material as to their application, and their use as tools for liberalization (WP/17); b) the further development and dissemination of case studies on liberalization (WP/5); c) the study, monitoring and promotion of guidance as well as assistance to States on the liberalization of air carrier ownership and control criteria (WP/7); and d) in monitoring tasks with regard to consumer interest developments (WP/13), product distribution (WP/14) and the furtherance of transparency (WP/16).

2.3 Although ICAO has a history of involvement in economic regulation and has played an increasingly active role on regulatory matters in recent times it is recognised that States have differing views on the appropriate level as well as the nature of that role. However, air transport faces a new and unprecedented era of regulatory change and reform and it will be essential to ensure that the principles of the Chicago Convention and the objectives of the Organization are sustained on a global level. The liberalization process will become asymmetric and fragmented, as well as restricted in its benefits unless there is a global move towards its implementation and harmonization. Thus far the adoption of liberalization, as a matter of general policy, has been embraced by a number of States. But many States have applied liberalization only on a limited and *ad hoc* basis. For a large number of States liberalization is a process which, while acceptable in principle, is also one that raises important concerns as to their effective and continued participation in international air transport, access to air services, uncertainty about practical implementation, and in the need for confidence in its benefits.

2.4 This Conference provides a unique opportunity for the Organization to address this problem and fulfill the primary role which States have expected of it through the Assembly and which ICAO affirms to the world beyond the aviation community. There are two roles which may be envisaged for ICAO's future work on economic regulation. Both involve refocussing its present work on economic regulation specifically towards liberalization.

2.5 The first role would be to focus the Organization's economic regulation work on the development of policy and guidance for liberalization. Since policy development is the work of ICAO's policy making bodies, any such future work would be done as agreed and directed by the governing bodies. As regards the development of guidance material the Secretariat would concentrate on that which facilitates the liberalization process.

2.6 The second and associated role would be to emphasise in its work on liberalization the facilitation, promotion and provision of assistance to States in harnessing liberalization for their broader benefit. This could be done using such means as seminars and workshops and tools such as the TASAs and the guidance developed by this Conference. By defining the future role of ICAO in terms of focussing on the

facilitation and implementation of liberalization, the Organization will not only be asserting its leading role while meeting the needs of all its membership, but will be instrumental in bringing the whole aviation community forward on a path of reform and regulatory modernisation.

2.7 In the longer term an added and redefined role could evolve for ICAO in pursuit of the multilateralism that has been its stated objective since the 1940's. ICAO has not been used since 1947 as a forum for the negotiation of a multilateral accord on commercial rights, and the view is expressed in the paper on market access (WP/8), and reiterated in the covering paper for the Template Air Services Agreements (WP/17), that conditions are not ripe for a global multilateral agreement. Nonetheless ICAO is a universal forum with long experience in being a clearing house and disseminator of information, in addition to being the source for policy and guidance suitable for widespread use.

2.8 The grant of market access and the economic regulation of commercial services continue to be dealt with between States bilaterally and increasingly among groups of States, whether on a regional or plurilateral basis. These are the mechanisms with which States are familiar and generally consider to be in their national interests. However, as the regulatory environment undergoes significant change in response to a globalized marketplace there could be in the future other usage of ICAO besides the development of policy guidance and assistance and as an information source. One possibility might be the use of ICAO as a global regulatory marketplace where States may meet for the exchange of market access at various levels. The use of ICAO by States as a forum, using ICAO facilities where States could discuss with other potential partner States market access and associated regulatory issues at bilateral or plurilateral level. This would address one of the perceived weaknesses of the current bilateral system of individual but separate negotiations, that it is a costly, time consuming, and not a particularly efficient process for dealing with market access.

2.9 ICAO's role, therefore, could be that of a facilitator and a meeting forum in the same way that IATA's Schedule's Conferences are used for coordination of airport slots and the WTO-OMC is a forum for the bilateral and plurilateral offer and request system of trade negotiations. That States now accept the need to adjust in regulatory terms to the new realities of the market is a first step towards, eventually, a more harmonized approach to economic regulation as well as to the multilateral objective. ICAO, used as a forum in this way, might promote this harmonization and the objective. The Conference may wish to consider whether the Organization should begin to explore this concept further as a long term possibility and as the liberalization process unfolds.

### **3. RELATIONS WITH OTHER ORGANIZATIONS**

3.1 ICAO is a universal organization where 188 Contracting States, together with Observer organizations from the rest of the aviation community, can meet to examine the problems and address the needs of this sector. Under ICAO civil aviation is an integrated and interrelated sector where safety, security, environmental and other issues, including economic regulation, can all be dealt with. The inclusive nature of the ICAO process allows for the input not only of bodies with an aspect of aviation as their principal purpose but also those with an interest but not a primary mandate in aviation. More than 50 organizations have been invited by the Council to attend this Conference. The Conference has generated widespread interest both within and beyond the aviation community. Any consideration of the future role of ICAO in facilitating liberalization must take into account its relations with as well as the involvement by other, particularly non-aviation, organizations, in the economic regulation of international air transport. Given this broad involvement, it will be important to avoid duplication of effort at the global level.

3.2 ICAO has had long standing relations with the International Air Transport Association (IATA) and the Airports Council International (ACI), and its predecessors. ICAO also has close ties with regional aviation bodies, all of which have a particular interest in regulatory issues within their individual mandates. These include the African Aviation Commission (AFCAC), the European Civil Aviation Conference (ECAC), the Latin American Civil Aviation Commission (LACAC) and the Arab Civil Aviation

Commission (ACAC). These longstanding relations are generally very cooperative and mutually beneficial. In addition, there are a number of sub-regional bodies particularly active in air transport liberalization. The Caribbean Community (CARICOM), the Common Market for Eastern and Southern Africa (COMESA) and the Pacific Forum are a few examples. ICAO should cooperate and support the efforts of such bodies in their work on liberalization.

3.3 But a number of other international non-aviation organizations have taken up an interest in regulatory matters. At the Secretariat working level relations between ICAO and such bodies has invariably been constructive and cooperative. For example the International Chamber of Commerce (ICC) through its Committee on Air Transport has maintained a long standing interest in regulatory issues and has issued various policy positions over the years. ICAO has usually attended meetings of the Committee. The Organization for Economic Cooperation and Development (OECD), an organization of developed States, has taken up several aspects of air transport liberalization in the past decade including a study on the future of international air transport policy (1997) and the liberalization of air cargo transport (2002). Again, ICAO was consulted in the development of these studies and attended certain meetings involved with their development and adoption. The United Nations Conference on Trade and Development (UNCTAD) has also addressed air transport regulation on an ad hoc basis with studies and associated meetings with which ICAO has been involved. Thus a number of bodies are now taking an interest in global regulatory matters and it remains within their sovereign right to do so. However it will be important for ICAO and Contracting States that are members of such bodies to ensure that the broader perspective of the aviation community continues to be taken into consideration by those bodies. Furthermore, cooperation and coordination should also continue to work both ways in ICAO's relations with other organizations involved in regulatory issues.

3.4 Perhaps the most significant involvement, in terms of its potential, of an international organization in air transport matters has been that of the World Trade Organization (WTO-OMC) established on 1 January 1995 with a broad mandate to liberalize and expand all service sectors through the General Agreement on Trade in Services (GATS). The WTO-OMC has 145 members as of 5 February 2003. ICAO has monitored and played an active role in trade in services developments since the issue first arose in the 1980s. ICAO's policy on trade in services is set out in Assembly Resolution A33-19, Appendix A, Section IV, paragraph 4 d). That policy draws attention, *inter alia*, to "the close linkage between economic, environmental, safety and security aspects on international air transport." Since the establishment of the WTO-OMC and the operation of the GATS ICAO has enjoyed constructive and cooperative relations with the WTO-OMC Secretariat and has attended meetings of the GATS oversight body, the Council for Trade in Services (CTS) when matters of interest to this sector are discussed. The WTO-OMC Secretariat has relied to a large extent on ICAO Secretariat assistance with regard to information and developments in the aviation sector, particularly for the current review of the GATS Annex on Air Transport Services.

3.5 The GATS, including its Annex on Air Transport Services, has been under mandatory review (a process which must take place every 5 years) since 2000 and this process includes the consideration of whether to expand the coverage of the GATS beyond the three air transport services presently encompassed by the Annex, namely aircraft repair and maintenance, computer reservation systems and marketing and selling of air transport. Progress has been slow on the issue of whether and how far to expand the GATS coverage of air transport matters.

3.6 The main areas of potential concern for ICAO's relations with the WTO-OMC arise not in the working relations at the Secretariat level, but could arise with respect to the future of air transport regulation. The WTO-OMC has a mandate and a trade imperative to extend its coverage with a view to liberalization of air transport by the GATS. The GATS is an open-ended regime in that it is subject to regular negotiations for its coverage and the expansion of liberalization commitments by States across all service sectors. There is therefore no clear definition of where this process is headed as far as air transport is concerned nor at what speed. Some Contracting States view as a matter of policy the suitability of bringing air transport regulation under the GATS, although it is not clear how the GATS principles of most favoured

nation treatment and national treatment through national commitments would apply to market access in particular, a matter that is still governed primarily by bilateral exchange and reciprocity. Most States would appear not to support this view. This Conference is not asked by the Council to discuss the merits of the GATS as a liberalizing mechanism or an alternative to the present arrangements, but rather ICAO's relations in the context of the Organization's role in facilitating future air transport liberalization. The future development and direction of the GATS in its coverage of international air transport is therefore a related issue but only insofar as it affects the relationship and ICAO's role.

3.7 ICAO's involvement in the GATS remains on an *ad hoc* basis only, a decision of the CTS in 1998. In 2001 ICAO approached the WTO-OMC with a view to regularizing its relations with that Organization. The basis for ICAO's proposal for a memorandum of understanding was that it would be in the interest of both organizations and their memberships to define the respective roles of the two Organizations to ensure that there is no undue duplication of effort. However, the matter is still unresolved and further progress is pending a decision by the Members of the WTO-OMC.

3.8 In its attendance at meetings of the CTS ICAO has stressed the integrated and interrelated nature of air transport matters and therefore the desirability of keeping all regulatory aspects of aviation, safety, security and economics, under the responsibility of a single forum, ICAO. Liberalization is proceeding in this sector and this Conference is in a position to direct its future development through ICAO. Therefore, the potential long term application to international air transport of an additional and untested mechanism for market access, such as through the GATS, could result in conflicting regulatory regimes and possible duplication, without any assurance of greater liberalization, or that all States would necessarily benefit from it. These are matters which both the trade and the aviation communities will need to address. In the meantime and as a paramount objective, ICAO will need to ensure that safety and security are not compromised and that regulatory reform is pursued in a safe and orderly manner for the benefit of all ICAO Contracting States and the world community at large.

#### 4. CONCLUSIONS

- 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 refocused 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.
- 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.

**5. RECOMMENDATION**

5.1 The Conference is invited to recommend that:

- a) ICAO's future role on economic regulation should focus on the development of policy guidance for economic liberalization and the facilitation, promotion and provision of assistance to States in harnessing liberalization for their broader benefit;
- 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.

**6. ACTION BY THE CONFERENCE**

6.1 The Conference is invited to:

- a) review and adopt the conclusions in paragraph 4; and
- b) adopt the recommendation in paragraph 5.

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