

WORLDWIDE AIR TRANSPORT CONFERENCE: CHALLENGES AND OPPORTUNITIES OF LIBERALIZATION

Montreal, 24 to 29 March 2003

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ISSUES OF LABOUR AND SOCIAL POLICY TO BE CONSIDERED IN CONNECTION WITH LIBERALIZATION OF INTERNATIONAL AIR TRANSPORTATION

(Presented by International Federation of Airline Pilots Association)

INFORMATION PAPER

1. INTRODUCTION

1.1 International Federation of Airline Pilots Associations (IFALPA) is an international federation comprised of 92 separate national associations of commercial airline pilots. In the aggregate, IFALPA represents the pilots employed by most of the major airlines around the world. IFALPA has had recognized observer status at ICAO since 1948 and permanent observer status to the Air Navigation Commission since 1960. In this capacity the Federation has participated in the development of virtually all ICAO technical rules and standards and has played an integral role in the creation of the safest transportation system in the world. It is essential that any regulatory changes proposed at this Conference not have the effect of reducing the level of safety of the system.

1.2 IFALPA's principal purpose in presenting this paper is to call attention to the needs and interests of an important group of stakeholders in the international air transportation industry whose interests

¹ French and Spanish versions provided by International Federation of Air Line Pilots' Associations (IFALPA).

are too often forgotten or ignored when issues of regulatory reform or liberalization are considered -- namely, airline workers. The Recommendations of the 1994 World-wide Air Transport Conference (Paragraph 1.g.7.) recognized that "any change in approach to international air transport regulation should have due regard to the interests of **all** stakeholders in international air transport, including air carriers, users, airports, distribution intermediaries and **labour**." (Emphasis added.) This objective is echoed in Paragraph 4 of the Report of the Air Transport Regulation Panel – Tenth Meeting (ATRP/10). Yet neither the ATRP Report nor any of the working papers prepared for the 2003 Worldwide Air Transport Conference address the interests of airline employees or analyze the impact on those interests of any of the regulatory changes proposed. It is imperative that more attention be paid to these matters, and that any recommendations and continuing work coming out of this Conference affirmatively recognize and fully address the potential impact of any proposed changes to the air transport regulatory structure on airline labour.

1.3 Every industrialized country in the world has domestic laws and regulations that protect and promote labour rights and labour welfare. Even though such laws and regulations often make competition more difficult or business operations more expensive, governments have long recognized the importance of striking a balance between business freedom and efficiency on the one hand and labour welfare on the other. It would be anomalous indeed if the same countries that recognize the need for such balance domestically were to ignore it totally when considering international regulatory reform.

1.4 The remainder of this Working Paper will identify the labour and social policy implications of certain specific items on the agenda of this Conference, and explore how various proposed liberalization measures might affect the needs and interests of airline workers.

2. **AGENDA ITEM 2: EXAMINATION OF KEY REGULATORY ISSUES IN LIBERALIZATION**

2.1 **Air carrier ownership and control.** The traditional requirement that a country's designated airlines must be "substantially owned and effectively controlled" by that country's government or nationals is under increasing attack by advocates of liberalization. ATRP/10 notes that the proponents of eliminating these requirements perceive them to be "the major barrier to broader liberalization as well as a constraint for access to international financing." The Report adopts the recommendation of the Secretariat that the ownership and control requirement be replaced by a requirement that the designated airline have its "principal place of business" in the territory of the designating country and that the country have "effective regulatory control" of the airline.

2.1.1 The decision by the European Court of Justice in November 2002 that the nationality clauses in the bilateral agreements concluded between a number of European states and the United States were contrary to European Community law could be taken as a decision opposing "ownership and control provisions" in principle. However, what the European Court actually decided is merely that air transport service agreements signed between Member States and Third countries should respect Community rules applicable in the Single European Aviation Market. The liberalization process that has occurred within the European Union should not be considered a template for changing the broader international aviation regulatory framework. The liberalization process initiated in the European Union in 1993 was part of a wider integration process among the EU Member States, including an extensive harmonization process, to level the playing field for all EU industry stakeholders. Although divergences still exist in the European Single Aviation Market that have negative consequences for the market, the objective of convergence and equivalency should be given priority in any proposed liberalization process.

2.1.2 Neither ATRP/10 nor the Secretariat's working paper that preceded it (ATRP/10-WP/5) addressed the labour and social implications of eliminating the ownership and control requirement. Because labour and social legislation is national in scope, the legal rights, protections, and benefits that airline workers enjoy are those provided by the laws of the country under which their airline is established. Elimination of the ownership and control requirement would give airline owners the ability to choose the country in which

to establish their airline, to establish subsidiary airlines in different countries, or even to migrate from one country to another. They would be able to make those decisions based on which country's labour and social laws offer the least benefits and protections to workers, limited only by restrictions on their route rights. The effect would be to place at an increasing competitive disadvantage the airlines of those states with the most enlightened labour and social legislation. In addition, the living standards and careers of the employees of those airlines would be in jeopardy of being undermined through loss of their airlines' market share, migration of their airlines (in whole or in part) to other countries, or changes in their own country's labour and social laws brought about as a result of competitive pressures from other countries. Finally, the ability of airlines to establish foreign subsidiaries could lead to the significant downsizing or disappearance of home-based airlines, with the attendant tax, employment and other economic losses.

2.1.3 Elimination of the ownership and control requirement would also allow airlines to establish multinational airline holding companies with affiliated airlines in multiple countries. This would make it possible for the holding company to allocate flying to one affiliated airline or another based on which country's labour and social laws are most favourable, or which airline's employees are most willing to accede to management's needs and demands. The ability of airline management to pit one employee group against another in this manner could well weaken or destroy the ability of employees of any single affiliate to engage in effective collective bargaining. Moreover, as long as the laws governing labour relations are national in scope, there would be no effective way for the employees of affiliated airlines in different countries to band together as a single collective-bargaining group.

2.1.4 Because of these concerns, the ownership and control requirements should not be eliminated unless a legal framework is established to provide standard social and labour protection with enforceable rights. The existence of these requirements does not preclude the negotiation of specific exceptions on a case-by-case basis where such action is found to serve the legitimate economic interests of the parties and there is no adverse affect on labour interests. But the general rule that a designated airline must be substantially owned and effectively controlled by the government or nationals of the designating country should be preserved as an essential safeguard against the use of "flags of convenience" to undermine labour and social standards.

2.2 **Market access.** Proposals to liberalize rules relating to market access also raise labour and social concerns because of the variations that exist in labour and social laws and policies from one country to another. For example, the existence of such differences is one important reason why cabotage should not be permitted. A foreign carrier should never be allowed to compete in the domestic market of another country, because it is not subject to the domestic laws of that country -- including its labour and social laws. For much the same reason, we believe carriers should not be granted "Seventh Freedom" rights to provide service between two countries neither of whose labour and social laws it is bound by. Seventh Freedom operations are, in effect, equivalent to a "flag of convenience," in that the carrier providing the service is able to compete as if it was registered in one of two states being served, but without having to comply with the domestic laws of either of those states. Here again, flexibility can be provided by granting Seventh Freedom rights on a case by case basis, where such action is economically justified and labour and social interests are not injured.

2.2.1 Another issue under the heading of "Market Access" which implicates labour and social concerns is that of wet leasing. Under a wet-lease arrangement, a lessee carrier uses the aircraft and crew of the lessor carrier to provide air transport services which the lessee carrier would otherwise provide with its own aircraft and crew. This arrangement can obviously work to the detriment of the 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 lessor's home country. In situations where the wages and working conditions of airline employees are largely established by collective bargaining, a carrier's ability to provide services via a wet-lease arrangement can also interfere with the bargaining process. Because of these concerns, as well as the safety issues that wet-leasing raises but which are beyond the scope of this paper, it is entirely appropriate for each government to regulate the extent to which its own carriers can enter into wet-leasing arrangements.

Most international air service agreements preserve this authority to each signatory party, and we believe they should continue to do so.

3. **AGENDA ITEM 3: REVIEW OF TEMPLATE AIR SERVICES AGREEMENT**

3.1 The template air services agreement should be revised to reflect the principles outlined above with respect to ownership and control, Seventh Freedom operations, and wet-leasing.

4. **AGENDA ITEM 4: CONSIDERATION OF GLOBAL FRAMEWORK FOR ONGOING LIBERALIZATION**

4.1 **Mechanisms to facilitate further liberalization.** Airline employees, particularly those who work aboard aircraft that operate on international routes, are stakeholders whose interests would be affected by changes in international air transport regulation.

4.1.1 The International Labour Organization (ILO) is the specialized agency of the United Nations which seeks the promotion and development of international labour rights. The ILO has formulated international labour standards and provides technical assistance and advisory services on labour law, industrial relations, and working conditions.

4.1.2 In January 2002, the ILO held a tripartite meeting to discuss the social and safety consequences of the events of September 11, 2001. In the final report of that meeting, the ILO issued a number of recommendations as to further action it should take. Among the recommended actions were to participate in this Conference and to undertake, jointly with ICAO, a study of the impact on employment practices on employment and safety practices due to restructuring in the aviation industry. The Conference also highlighted the highly cyclical nature of the aviation industry and agreed that long-term stability of the sector is very important both from a regulatory and an economic standpoint. For this reason, governments should have the means and resources to ensure effective oversight of all components of an increasingly global yet uneven industry.

4.1.3 In any future work program developed by the Conference, there should be explicit recognition that airline workers are one of the stakeholders whose interests must be considered in evaluating any proposed regulatory changes. To ensure proper identification and consideration of such interests, the mechanism for any such future work program should provide for the participation of both IFALPA and the International Labour Organization.

4.2 **Declaration of global principles for international air transport.** It can not be disputed that airline workers' contributions have resulted in the safest, most efficient transportation system ever devised and implemented. Consequently, any changes to a system that has served its intended purpose so admirably must be implemented only after there has been an assurance that a degradation of the current high standards will not occur as a result of a major alteration to the social and economic rights of airline workers. Any declaration of global principles emerging from the Conference should include a statement recognizing the contribution provided by airline workers to the worldwide air transportation system, and the need to ensure that the legitimate needs and interests of those workers are fully taken into account in developing and administering the rules governing international air transport.