

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

Montreal, 24 to 29 March 2003

DRAFT REPORT ON AGENDA ITEM 2.6

Agenda Item 2: Examination of key regulatory issues in liberalization
2.6: Dispute resolution

2.6.1 Documentation

Secretariat (WP/15) addressed the need for an efficient and expeditious dispute settlement mechanism that can deal with different kinds of disputes arising, in a liberalized environment, at the bilateral and regional levels. It proposed as an option, a model clause for a mediation mechanism, additional to the traditional consultation and arbitration processes which builds on ICAO's previous work and which does not affect the right of the parties to have access to other dispute mechanisms within the air services agreement framework, including competition laws.

Pakistan (WP/57) pointed out the dispute mechanism requires further development and expressed the need for a fool-proof mechanism that addresses the concerns of developing States and which includes specific criteria for the selection of the dispute panel of experts.

53 African States (WP/78) highlighted the dispute mechanisms being developed in Africa to allow mediation and an expeditious settlement of conflicts. It also pointed out to the need for a global approach to resolving disputes arising from increased competition and suggested the adoption of the proposed model clause on dispute resolution as presented in WP/15.

IATA (WP/29) recognized that the liberalization of air transport has consequences for the type of disputes and parties involved and the traditional consultation and arbitration processes may not be suitable. It proposed an expedited process using a mediator or dispute settlement panel working to a fixed timetable, with the parties agreeing on clear criteria to implement decisions of a mediator/panel and to accept the possibility of proportional counter-measures in the event of non-implementation of a panel finding.

ALADA (WP/71 - information paper) indicated the need to study alternative dispute resolution mechanisms within Aeronautical Law as they are essential for the regional integration of all countries.

2.6.2 Discussion

2.6.2.1 There was broad support for the model clause on a dispute settlement mechanism, as proposed by the Secretariat in WP/15. The clause was seen as an option for States to resolve disputes in a more efficient and expeditious manner. Such an intermediate mechanism between lengthy consultations and expensive arbitration would benefit States moving towards liberalization of their air services and would instill confidence in the process. The mechanism should be broad enough to include the full range of disputes that might arise from a liberalized environment.

2.6.2.2 A view was expressed that parties should make an effort to implement the decision of the mediator or panel and that one should not over-estimate the benefits nor ignore possible negative aspects of the mechanism. However, the Conference felt that parties to a dispute under this mechanism need to be bound by the decision of the mediator or the panel so as to encourage their commitment to implement the decision of the mediator.

2.6.2.3 Some concern was expressed regarding the timeframes indicated in the proposed mechanism which may seem inappropriate to resolve some kind of disputes, such as situations involving safety and security matters, in a timely manner. It was also recognized that the setting of time limits on the implementation of the decision may avoid potential abuses.

2.6.3 Conclusions

2.6.3.1 From the documentation and ensuing discussion under Agenda Item 2.6 - Dispute resolution, the Conference concluded that:

- a) in a liberalized environment, different kinds of disputes may arise as a result of increased competition and new market forces and, therefore, there is a need for States to resolve such disputes in a more efficient and expeditious manner; and
- b) States and the air transport industry need a dispute mechanism that:
 - i) instills trust and is supportive of safeguarded liberalization and participation by developing States;
 - ii) is customized to the particular circumstances of international air transport operations and competitive activity;
 - iii) ensures that the interests of third parties directly affected by a dispute can be taken into account; and
 - iv) as regards interested parties directly affected by the dispute, is transparent and provides access to relevant information in a timely and efficient manner.

2.6.3.2 The Conference agreed that States should give due consideration to the following model clause as an option for use at their discretion in air services agreements.

“Dispute settlement”

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x. Any dispute which cannot be resolved by consultations, may at the request of either [any] Party to the agreement be submitted to a mediator or a dispute settlement panel. Such a mediator or panel may be used for mediation, determination of the substance of the dispute or to recommend a remedy or resolution of the dispute.

x. The Parties shall agree in advance on the terms of reference of the mediator or of the panel, the guiding principles or criteria and the terms of access to the mediator or the panel. They shall also consider, if necessary, providing for an interim relief and the possibility for the participation of any Party that may be directly affected by the dispute, bearing in mind the objective and need for a simple, responsive and expeditious process.

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- x. *A mediator or the members of a panel may be appointed from a roster of suitably qualified aviation experts maintained by ICAO. The selection of the expert or experts shall be completed within fifteen (15) days of receipt of the request for submission to a mediator or to a panel. If the Parties fail to agree on the selection of an expert or experts, the selection may be referred to the President of the Council of ICAO. Any expert used for this mechanism should be adequately qualified in the general subject matter of the dispute.*
- x. *A mediation should be completed within sixty (60) days of engagement of the mediator or the panel and any determination including, if applicable, any recommendations, should be rendered within sixty (60) days of engagement of the expert or experts. The Parties may agree in advance that the mediator or the panel may grant interim relief to the complainant, if requested, in which case a determination shall be made initially.*
- x. *The Parties shall cooperate in good faith to advance the mediation and be bound by any decision or determination of the mediator or the panel, unless they otherwise agree in advance to be bound by decision or determination. If the Parties agree in advance to request only a determination of the facts, they shall use those facts for resolution of the dispute.*
- x. *The costs of this mechanism shall be estimated upon initiation and apportioned equally, but with the possibility of re-apportionment under the final decision.*
- x. *The mechanism is without prejudice to the continuing use of the consultation process, the subsequent use of arbitration, or Termination under Article _."*

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