

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

Montreal, 24 to 29 March 2003

DRAFT REPORT ON AGENDA ITEM 2.7

Agenda Item 2: Examination of key regulatory issues in liberalization**2.7: Transparency****2.7.1 Documentation**

Secretariat (WP/16) emphasized the importance of transparency in international air transport, particularly in a liberalized environment; noted that transparency is a fundamental principle of the Convention whereby Article 83 establishes the obligation for States to register “forthwith” with the Council their aeronautical agreements and arrangements and explained several problems with respect thereto. As a means to improve the registration of agreements with the Organization, a model clause specifying which State was responsible for registration and that it be accomplished upon signature was proposed.

Pakistan (WP/57) considered that the nature of the confidential Memoranda of Understanding (MOUs) did not enhance transparency and expressed doubts about progress in this area.

United States (WP/46) believed that transparency in national and regional regulatory procedures dealing with international civil aviation was an essential element in the liberalization process and promoted a fair and equal opportunity to compete. States should adopt and apply transparency principles such as those in the APEC Transparency Standards which aim to ensure that States regulations, procedures and administrative rulings are publicly and widely disseminated and that interested parties are informed and have the opportunity to participate in administrative proceedings affecting their interests.

LACAC (WP/99) believed States should fully apply Article 83 of the Convention and explained that , within the framework of LACAC, the collection and dissemination of information on agreements was an on-going task which facilitated a constant review of the instruments related to the status of international air transport.

2.7.2 Discussion

2.7.2.1 The Conference recognized the importance of promoting and enhancing transparency in a liberalized environment and the obligation of States to register their air services agreements under Article 83 of the Convention. With regard to the proposed model clause in WP/16, the Conference recognized the need to identify the party responsible for registration. However, the formula in the proposed model clause for registration at the time of signature may not be consistent with some States’ constitutional requirements for the ratification and entry into force of agreements. This prevented them from registering agreements until that process had been completed.

2.7.2.2 It was recognized that making the texts of registered agreements available via the ICAO website would improve transparency but it would be a time-consuming undertaking. It was also considered useful if ICAO could inform Contracting States of official national websites containing air services agreements and other related information.

2.7.3 Conclusions

2.7.3.1 From the documentation and ensuing discussion under Agenda Item 2.7 - Transparency, the Conference concluded that:

- a) transparency should be regarded as an objective to be pursued within the regulatory framework and as an essential element in the liberalization process. States and interested parties in the regulatory system benefit from improved transparency;
- b) in view of the ongoing liberalization in international air transport and the need to enable ICAO to fulfill its primary role in developing policy guidance, a number of approaches involving States can be used to render the regulatory regime more transparent, including the following:
 - i) States should register with ICAO any unregistered air services agreement in accordance with their obligation under Article 83 of the Convention;
 - ii) States should, as a matter of priority, review their internal procedures and, pursuant to their obligations under Article 83, should develop practical means to improve their registration process. States may consider attributing the responsibility of registering the agreements with ICAO to an official or department where this has not already been done;
 - iii) States should consider making better use of electronic means of disseminating information, such as government web sites for publicly available information on the status of their air transport liberalization as well as for posting information or the texts of relevant air services arrangements; and
- c) ICAO should further encourage States to comply with their obligation to register all agreements and arrangements, ensure the effectiveness of the system of registration and make the database of registered agreements more accessible and useful for States and the public.
- d) transparency should also be regarded as an objective to be pursued within national and regional regulatory frameworks and as an essential element in the liberalization process, and that States and interested parties in the regulatory system benefit from improved transparency. Contracting States should be invited to adopt and apply transparency principles, such as those laid out in the APEC Transparency Standards, for national and regional regulatory actions relating to international civil aviation

2.7.3.2 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:

"Article X: Registration with the International Civil Aviation Organization

This Agreement and any amendment thereto shall be registered upon its entry into force with the International Civil Aviation Organization by [name of the registering Party]."