

Doc 9587



Policy and Guidance Material on the Economic Regulation of International Air Transport

Approved by the Secretary General
and published under his authority

Third Edition — 2008

International Civil Aviation Organization

Doc 9587



Policy and Guidance Material on the Economic Regulation of International Air Transport

**Approved by the Secretary General
and published under his authority**

Third Edition — 2008

International Civil Aviation Organization

Published in separate English, Arabic, Chinese, French, Russian and Spanish editions by the
INTERNATIONAL CIVIL AVIATION ORGANIZATION
999 University Street, Montréal, Quebec, Canada H3C 5H7

For ordering information and for a complete listing of sales agents
and booksellers, please go to the ICAO website at www.icao.int

Third edition 2008

**ICAO Doc 9587, *Policy and Guidance Material on the Economic Regulation of
International Air Transport***

Order Number: 9587
ISBN 978-92-9231-200-8

© ICAO 2008

All rights reserved. No part of this publication may be reproduced, stored in a
retrieval system or transmitted in any form or by any means, without prior
permission in writing from the International Civil Aviation Organization.

FOREWORD

1. This is the third edition of Doc 9587, a compendium of the conclusions, decisions and guidance material developed by ICAO for its Contracting States concerning the economic regulation of international air transport. The origin of this compilation is Doc 9440 prepared pursuant to Assembly Resolution A23-17 and published in 1984, which was replaced by the first edition of Doc 9587 issued in 1992. The present document updates the second edition issued in 1999 and incorporates new policy guidance developed by the Organization since then.

Content and structure

2. The conclusions, decisions and guidance material included in the main text are those dealing with economic aspects of international air transport regulation which have received the endorsement of either the Assembly or the Council. In light of the changing regulatory scene, efforts have been made to provide in this single document a comprehensive coverage of all the relevant ICAO policies and guidance material. To improve user-friendliness and for ease of reference, the main body of the present edition has been structured into eight parts, each under a broad regulatory topic. It has incorporated some new policy guidance on emerging issues such as aviation safety and security, and environmental protection, which also bear on the economic regulation of air transport.

3. In addition, this document includes six appendices to provide additional guidance material, mostly developed by a panel of experts or the Secretariat, and approved by the Secretary General. The first three appendices remain the same as in the previous edition, namely: Appendix 1 — Guidelines for non-scheduled air services, Appendix 2 — Guidance material on the avoidance or resolution of conflicts over the application of competition laws to international air transport, and Appendix 3 — Preferential measures for developing countries in the economic regulation of international air transport. The three new appendices are: Appendix 4, which presents the conclusions, model clauses and recommendations of the fifth Worldwide Air Transport Conference (ATConf/5); Appendix 5, which contains the ICAO Template Air Services Agreements (TASAs); and Appendix 6, which reproduces Assembly Resolution A36-15, Consolidated statement of continuing ICAO policies in the air transport field.

Sources and related publications

4. As reflected in this document, ICAO's policies in the air transport field stem from certain Articles of the *Convention on International Civil Aviation* (Chicago Convention), the International Air Services Transit Agreement, the International Air Transport Agreement, and relevant Assembly resolutions. In October 1998, the Assembly adopted Resolution A32-17 to consolidate all earlier Assembly resolutions relating to air transport into a single one, which constitutes a consolidated statement of continuing ICAO policies in the air transport field. This consolidated statement has since been updated regularly by subsequent Assembly resolutions, the most recent one being Resolution A36-15.

5. In addition to the above, the present document also includes: relevant text from other Assembly resolutions (e.g. on environmental protection) and Council resolutions, statements and decisions; declarations of relevant ICAO conferences; recommendations adopted by five worldwide Air Transport Conferences (1977, 1980, 1985, 1994 and 2003) that have been approved by the Council; and relevant recommendations developed by the Panel of Experts on the Machinery for the Establishment of International Fares and Rates and by the Air Transport Regulation Panel (formerly the Panel of Experts on the Regulation of Air Transport Services) that have been endorsed by the Council.

6. The following publications provide background for the conclusions and decisions in the present document, along with additional guidance material:

Convention on International Civil Aviation (Doc 7300)
Assembly Resolutions in Force (as of 28 September 2007) (Doc 9902)
Report of the Special Air Transport Conference (Doc 9199)
Report of the Second Air Transport Conference (Doc 9297)
Report of the Third Air Transport Conference (Doc 9470)
Report of the Worldwide Air Transport Conference (ATConf/4 – 1994) (Doc 9644)
Report of the Worldwide Air Transport Conference (ATConf/5 – 2003) (Doc 9819)

7. Of particular relevance is the *Manual on the Regulation of International Air Transport* (Doc 9626), prepared by the Secretariat at the request of the Council, which is a basic reference document on the economic regulation of international air transport and which complements and supplements the present document. It contains descriptive and analytical material on existing regulatory process and structure at the national, bilateral and multilateral levels, as well as regulatory content and key issues.

8. Guidance material concerning other specific areas of international air transport regulation not included in this document can be found in the following publications:

Airport and air navigation services economics and management

ICAO's Policies on Charges for Airports and Air Navigation Services (Doc 9082)
Manual on Air Navigation Services Economics (Doc 9161)
Airport Economics Manual (Doc 9562)
Manual of Airport and Air Navigation Facility Tariffs (Doc 7100)
Report on Financial and Related Organizational and Managerial Aspects of Global Navigation Satellite Systems (GNSS) Provision and Operation (Doc 9660)
Report of the Conference on the Economics of Airports and Air Navigation Services (ANSCConf 2000) (Doc 9764)

Facilitation

Annex 9 — *Facilitation*
Dynamic Flight-related Public Information Displays (Doc 9249)
Machine Readable Travel Documents (Doc 9303)
International Signs to Provide Guidance to Persons at Airports and Marine Terminals (Doc 9636)
Access to Air Transport by Persons with Disabilities (ICAO Circular 274)
Guidelines on Passenger Name Record (PNR) Data (ICAO Circular 309)

Taxation

ICAO's Policies on Taxation in the Field of International Air Transport (Doc 8632)

Environmental protection

Guidance on Aircraft Emissions Charges Related to Local Air Quality (Doc 9884)
Guidance on the Use of Emissions Trading for Aviation (Doc 9885)

Future revision

9. The present edition incorporates conclusions and decisions adopted by the Assembly and the Council which are in effect as of 8 October 2004. Pursuant to Assembly Resolution A36-15, which, *inter alia*, directs the Council to keep the guidance contained in this document current and responsive to the requirements of the Contracting States, the compilation will be updated or revised from time to time in light of future decisions of the Assembly and the Council.

TABLE OF CONTENTS

	<i>Page</i>
Part 1. Regulatory Agreements and Arrangements.....	1-1
A. Chicago Convention	1-1
B. International Air Services Transit Agreement.....	1-2
C. International Air Transport Agreement.....	1-7
D. Definition of a Scheduled International Air Service	1-11
E. General Policy on Economic Regulation.....	1-16
F. Participation and Safeguards.....	1-18
G. Aviation Safety and Security	1-30
Part 2. Airline Ownership and Joint Operations	2-1
A. Airline Ownership and Control	2-1
B. Joint Operating Organizations and Pooled Services.....	2-3
C. Aircraft Operated by International Operating Agencies.....	2-4
Part 3. Regulation of Airline Capacity.....	3-1
A. Model Clause for Predetermination Method.....	3-1
B. Model Clause for Bermuda I Type Method	3-4
C. Model Clause for Free-determination Method.....	3-8
D. Capacity and Resources.....	3-11
Part 4. International Fares and Rates	4-1
A. Assembly Resolution on Fares and Rates	4-1
B. Bilateral Tariff Clauses.....	4-2
C. Multilateral Mechanisms for the Establishment of Fares and Rates	4-19
D. Practices and Procedures concerning the Establishment of Fares and Rates.....	4-21
E. Rules and Conditions Associated with Scheduled Passenger Fares.....	4-23
Part 5. Computer Reservation Systems	5-1
A. Assembly Resolution on Computer Reservation Systems	5-1
B. Council Resolution on ICAO CRS Code of Conduct.....	5-2
C. Code of Conduct for the Regulation and Operation of Computer Reservation Systems.....	5-2
D. Notes on the Application of the Code of Conduct	5-9
E. Model Clauses for Computer Reservation Systems	5-27
Part 6. Airline Commercial Matters	6-1
A. Ground Handling.....	6-1
B. Currency Conversion and Remittance of Earnings	6-2
C. Payment of Local Expenses	6-3

D.	Non-national Personnel and Access to Local Services.....	6-3
E.	Sale and Marketing of Air Service Products	6-4
Part 7.	Broader Regulatory Environment	7-1
A.	Trade in Services	7-1
B.	Competition Laws	7-2
C.	Environmental Protection.....	7-4
D.	Taxation.....	7-28
Part 8.	Other Regulatory Issues	8-1
A.	Registration of Agreements and Arrangements.....	8-1
B.	Lease, Charter and Interchange of Aircraft.....	8-2
C.	Airport and Air Navigation Services Charges.....	8-3
D.	State Aids and Subsidies	8-6
E.	International Air Mail	8-7
F.	Aviation Fuel.....	8-7
Appendix 1.	Guidelines for Non-scheduled Air Services.....	A1-1
Appendix 2.	Guidance Material on the Avoidance or Resolution of Conflicts over the Application of Competition Laws to International Air Transport	A2-1
Appendix 3.	Preferential Measures for Developing Countries in the Economic Regulation of International Air Transport	A3-1
Appendix 4.	Conclusions, Model Clauses and Recommendations of the Fifth Worldwide Air Transport Conference	A4-1
Appendix 5.	ICAO Template Air Services Agreements	A5-1
Appendix 6.	ICAO Policies in the Air Transport Field	A6-1

Part 1

REGULATORY AGREEMENTS AND ARRANGEMENTS

A. CHICAGO CONVENTION

1.1 Certain Articles of the *Convention on International Civil Aviation* (Chicago Convention) address fundamental issues concerning the exchange of rights between States in international air transport regulation. These Articles dealing with sovereignty, right of non-scheduled flights, scheduled air services, cabotage and the definition of “air service” are reproduced below. Articles 5, 6 and 96 a) of the Chicago Convention were reviewed by the Council in 1982, pursuant to Recommendation 3 of the Special Air Transport Conference (SATC, 1977). The Council concluded that amendment of these Articles was neither necessary nor appropriate. Articles of the Chicago Convention which bear on certain other aspects of economic regulation are to be found elsewhere in this document under their specific topics.

Article 1

Sovereignty

The Contracting States recognize that every State has complete and exclusive sovereignty over the airspace above its territory.

...

Article 5

Right of non-scheduled flight

Each Contracting State agrees that all aircraft of the other Contracting States, being aircraft not engaged in scheduled international air services shall have the right, subject to the observance of the terms of this Convention, to make flights into or in transit non-stop across its territory and to make stops for non-traffic purposes without the necessity of obtaining prior permission, and subject to the right of the State flown over to require landing. Each Contracting State nevertheless reserves the right, for reasons of safety of flight, to require aircraft desiring to proceed over regions which are inaccessible or without adequate air navigation facilities to follow prescribed routes, or to obtain special permission for such flights.

Such aircraft, if engaged in the carriage of passengers, cargo, or mail for remuneration or hire on other than scheduled international air services, shall also, subject to the provisions of Article 7, have the privilege of taking on or discharging passengers, cargo, or mail, subject to the right of any State where such embarkation or discharge takes place to impose such regulations, conditions or limitations as it may consider desirable.

Article 6*Scheduled air services*

No scheduled international air service may be operated over or into the territory of a Contracting State, except with the special permission or other authorization of that State, and in accordance with the terms of such permission or authorization.

Article 7*Cabotage*

Each Contracting State shall have the right to refuse permission to the aircraft of other Contracting States to take on in its territory passengers, mail and cargo carried for remuneration or hire and destined for another point within its territory. Each Contracting State undertakes not to enter into any arrangements which specifically grant any such privilege on an exclusive basis to any other State or an airline of any other State, and not to obtain any such exclusive privilege from any other State.

...

Article 96

For the purpose of this Convention, the expression:

- a) "Air service" means any scheduled air service performed by aircraft for the public transport of passengers, mail or cargo.

...

B. INTERNATIONAL AIR SERVICES TRANSIT AGREEMENT

1.2 The Final Act of the International Civil Aviation Conference (Chicago, 1944) includes, *inter alia*, the International Air Services Transit Agreement by which non-traffic rights for scheduled services are exchanged multilaterally. The full text of the Agreement is reproduced below. As at 1 May 2007, 123 Contracting States are parties to this Agreement.

The States which sign and accept this International Air Services Transit Agreement, being members of the International Civil Aviation Organization, declare as follows:

Article I*Section 1*

Each Contracting State grants to the other Contracting States the following Freedoms of the air in respect of scheduled international air services:

- 1) the privilege to fly across its territory without landing;
- 2) the privilege to land for non-traffic purposes.

The privileges of this section shall not be applicable with respect to airports utilized for military purposes to the exclusion of any scheduled international air services. In areas of active hostilities or of military occupation, and in time of war along the supply routes leading to such areas, the exercise of such privileges shall be subject to the approval of the competent military authorities.

Section 2

The exercise of the foregoing privileges shall be in accordance with the provisions of the Interim Agreement on International Civil Aviation and, when it comes into force, with the provisions of the *Convention on International Civil Aviation*, both drawn up at Chicago on December 7, 1944.

Section 3

A Contracting State granting to the airlines of another Contracting State the privilege to stop for non-traffic purposes may require such airlines to offer reasonable commercial service at the points at which such stops are made.

Such requirement shall not involve any discrimination between airlines operating on the same route, shall take into account the capacity of the aircraft, and shall be exercised in such a manner as not to prejudice the normal operations of the international air services concerned or the rights and obligations of a Contracting State.

Section 4

Each Contracting State may, subject to the provisions of this Agreement,

- 1) designate the route to be followed within its territory by any international air service and the airports which any such service may use;
- 2) impose or permit to be imposed on any such service just and reasonable charges for the use of such airports and other facilities; these charges shall not be higher than would be paid for the use of such airports and facilities by its national aircraft engaged in similar international services: provided that, upon representation by an interested Contracting State, the charges imposed for the use of airports and other facilities shall be subject to review by the Council of the International Civil Aviation Organization established under the above-mentioned Convention, which shall report and make recommendations thereon for the consideration of the State or States concerned.

Section 5

Each Contracting State reserves the right to withhold or revoke a certificate or permit to an air transport enterprise of another State in any case where it is not satisfied that substantial ownership and effective control are vested in nationals of a Contracting State, or in case of failure of such air transport enterprise to comply with the laws of the State over which it operates, or to perform its obligations under this Agreement.

Article II

Section 1

A Contracting State which deems that action by another Contracting State under this Agreement is causing injustice or hardship to it, may request the Council to examine the situation. The Council shall thereupon inquire into the matter, and shall call the States concerned into consultation. Should such consultation fail to resolve the difficulty, the Council may make appropriate findings and recommendations to the Contracting States concerned. If thereafter a Contracting State concerned shall in the opinion of the Council unreasonably fail to take suitable corrective action, the Council may recommend to the Assembly of the above-mentioned Organization that such Contracting State be suspended from its rights and privileges under this Agreement until such action has been taken. The Assembly by a two-thirds vote may so suspend such Contracting State for such period of time as it may deem proper or until the Council shall find that corrective action has been taken by such State.

Section 2

If any disagreement between two or more Contracting States relating to the interpretation or application of this Agreement cannot be settled by negotiation, the provisions of Chapter XVIII of the above-mentioned Convention shall be applicable in the same manner as provided therein with reference to any disagreement relating to the interpretation or application of the above-mentioned Convention.

Article III

This Agreement shall remain in force as long as the above-mentioned Convention; provided, however, that any Contracting State, a party to the present Agreement, may denounce it on one year's notice given by it to the Government of the United States of America, which shall at once inform all other Contracting States of such notice and withdrawal.

Article IV

Pending the coming into force of the above-mentioned Convention, all references to it herein, other than those contained in Article II, Section 2, and Article V, shall be deemed to be references to the Interim Agreement on International Civil Aviation drawn up at Chicago on December 7, 1944; and references to the International Civil Aviation Organization, the Assembly, and the Council shall be deemed to be references to the Provisional International Civil Aviation Organization, the Interim Assembly, and Interim Council respectively.

Article V

For the purposes of this Agreement, "territory" shall be defined as in Article 2 of the above-mentioned Convention.

Article VI

The undersigned delegates to the International Civil Aviation Conference, convened in Chicago on November 1, 1944, have affixed their signatures to this Agreement with the understanding that the Government of the United States of America shall be informed at the earliest possible date by each of the governments on whose behalf the Agreement has been signed whether signature on its behalf shall constitute an acceptance of the Agreement by that government and an obligation binding upon it.

Any State a member of the International Civil Aviation Organization may accept the present Agreement as an obligation binding upon it by notification of its acceptance to the Government of the United States, and such acceptance shall become effective upon the date of the receipt of such notification by that Government.

This Agreement shall come into force as between Contracting States upon its acceptance by each of them. Thereafter it shall become binding as to each other State indicating its acceptance to the Government of the United States on the date of the receipt of the acceptance by that Government. The Government of the United States shall inform all signatory and accepting States of the date of all acceptances of the Agreement, and of the date on which it comes into force for each accepting State.

IN WITNESS WHEREOF, the undersigned, having been duly authorized, sign this Agreement on behalf of their respective governments on the dates appearing opposite their respective signatures.

DONE at Chicago the seventh day of December, 1944, in the English language. A text drawn up in the English, French and Spanish languages, each of which shall be of equal authenticity, shall be opened for signature at Washington, D.C. Both texts shall be deposited in the archives of the Government of the United States of America, and certified copies shall be transmitted by that Government to the governments of all the States which may sign or accept this Agreement.

1.3 The Assembly has urged States to ratify the Transit Agreement on a number of occasions, and now does so as a continuing policy in Resolution A36-15. The 1994 fourth Worldwide Air Transport Conference (ATConf/4) and the 2003 fifth Worldwide Air Transport Conference (ATConf/5) also called for universal adherence to and implementation of the Agreement.

Assembly Resolution

A36-15: Appendix A, Section I (excerpts)

...

Whereas one of the objectives of the Convention is that international air transport services may be operated soundly and economically and in that regard the International Air Services Transit Agreement (IASTA) facilitates the achievement of that objective for the Contracting States who are already parties to it;

...

The Assembly:

...

2. *Urges* Contracting States that have not yet become parties to the International Air Services Transit Agreement (IASTA) to give urgent consideration to so doing;

...

10. *Requests* the President of the Council and the Secretary General to promote universal adherence to and implementation of the International Air Services Transit Agreement (IASTA) and to ask Contracting States to inform the Secretariat of their intentions with respect to adherence to the agreement.

AT Conf/4 Recommendation
(excerpts)

The Conference:

1. Recognizes,

...

m) that the International Air Services Transit Agreement has made an important contribution to the development of civil aviation in the last 50 years.

...

3. Recommends,

...

a) that States pursue, and ICAO promote, universal adherence to and implementation of the International Air Services Transit Agreement;

...

1.4 The Third Air Transport Conference (AT Conf/3, 1985) adopted two recommendations concerning overflight, one relating to the International Air Services Transit Agreement and the other relating to impediments to overflight by civil aircraft to and from land-locked countries.

AT Conf/3 Recommendation 7

RECOMMENDS that Contracting States ensure that overflight of their territories be permitted on a non-discriminatory basis consistent with obligations assumed by adherence to the Chicago Convention and the International Air Services Transit Agreement.

AT Conf/3 Recommendation 8

1. RECOMMENDS that the Council study appropriate measures for resolving special problems brought to the Council's attention regarding impediments to overflight by civil aircraft to and from land-locked countries.

2. RECOMMENDS that Contracting States not impose unnecessary impediments to overflight of their territories by civil aircraft en route to or from land-locked countries, considering the special hardships faced by such countries.

C. INTERNATIONAL AIR TRANSPORT AGREEMENT

1.5 The Final Act of the International Civil Aviation Conference (Chicago, 1944) also included the International Air Transport Agreement. This agreement for the multilateral exchange of rights came into force in 1945 for 19 States, 8 of which subsequently denounced it. As at 1 May 2007, there are 11 parties to the Agreement. The text was drawn up in the English language and no translation has been formally adopted. The French, Spanish and Russian versions have been translated by the ICAO Secretariat.

In 1946 and 1947, ICAO's provisional body (PICAO) attempted to develop a multilateral agreement intended to exchange traffic rights and to address the regulation of capacity, tariffs and unfair practices. Such an agreement would have supplemented the International Air Transport Agreement. These efforts were, however, unsuccessful. Since then, international air transport has been regulated mostly through bilateral agreements between pairs of States, although multilateralism in commercial rights continues to be an objective of the Organization. (More description of multilateral regulation can be found in Part 3 of Doc 9626 — *Manual on the Regulation of International Air Transport*.)

The States which sign and accept this International Air Transport Agreement, being members of the International Civil Aviation Organization, declare as follows:

Article I

Section 1

Each Contracting State grants to the other Contracting States the following Freedoms of the air in respect of scheduled international air services:

- 1) The privilege to fly across its territory without landing;
- 2) The privilege to land for non-traffic purposes;
- 3) The privilege to put down passengers, mail and cargo taken on in the territory of the State whose nationality the aircraft possesses;
- 4) The privilege to take on passengers, mail and cargo destined for the territory of the State whose nationality the aircraft possesses;
- 5) The privilege to take on passengers, mail and cargo destined for the territory of any other Contracting State and the privilege to put down passengers, mail and cargo coming from any such territory.

With respect to the privileges specified under paragraphs (3), (4), and (5) of this section, the undertaking of each Contracting State relates only to through services on a route constituting a reasonably, direct line out from and back to the homeland of the State whose nationality the aircraft possesses.

The privileges of this section shall not be applicable with respect to airports utilized for military purposes to the exclusion of any scheduled international air services. In areas of active hostilities or of military occupation, and in time of war along the supply routes leading to such areas, the exercise of such privileges shall be subject to the approval of the competent military authorities.

Section 2

The exercise of the foregoing privileges shall be in accordance with the provisions of the Interim Agreement on International Civil Aviation and, when it comes into force, with the provisions of the *Convention on International Civil Aviation*, both drawn up at Chicago on December 7, 1944.

Section 3

A Contracting State granting to the airlines of another Contracting State the privilege to stop for non-traffic purposes may require such airlines to offer reasonable commercial service at the points at which such stops are made.

Such requirement shall not involve any discrimination between airlines operating on the same route, shall take into account the capacity of the aircraft, and shall be exercised in such a manner as not to prejudice the normal operations of the international air services concerned or the rights and obligations of any Contracting State.

Section 4

Each Contracting State shall have the right to refuse permission to the aircraft of other Contracting States to take on in its territory passengers, mail and cargo carried for remuneration or hire and destined for another point within its territory. Each Contracting State undertakes not to enter into any arrangements which specifically grant any such privilege on an exclusive basis to any other State or an airline of any other State, and not to obtain any such exclusive privilege from any other State.

Section 5

Each Contracting State may, subject to the provisions of this Agreement,

- 1) Designate the route to be followed within its territory by any international air service and the airports which any such service may use;
- 2) Impose or permit to be imposed on any such service just and reasonable charges for the use of such airports and other facilities; these charges shall not be higher than would be paid for the use of such airports and facilities by its national aircraft engaged in similar international services: provided that, upon representation by an interested Contracting State, the charges imposed for the use of airports and other facilities shall be subject to review by the Council of the International Civil Aviation Organization established under the above-mentioned Convention, which shall report and make recommendations thereon for the consideration of the State or States concerned.

Section 6

Each Contracting State reserves the right to withhold or revoke a certificate or permit to an air transport enterprise of another State in any case where it is not satisfied that substantial ownership and effective control are vested in nationals of a Contracting State, or in case of failure of such air transport enterprise to comply with the laws of the State over which it operates, or to perform its obligations under this Agreement.

Article II

Section 1

The Contracting States accept this Agreement as abrogating all obligations and understandings between them which are inconsistent with its terms, and undertake not to enter into any such obligations and understandings. A Contracting State which has undertaken any other obligations inconsistent with this Agreement shall take immediate steps to procure its release from the obligations. If an airline of any Contracting State has entered into any such inconsistent obligations, the State of which it is a national shall use its best efforts to secure their termination forthwith and shall in any event cause them to be terminated as soon as such action can lawfully be taken after the coming into force of this Agreement.

Section 2

Subject to the provisions of the preceding section, any Contracting State may make arrangements concerning international air services not inconsistent with this Agreement. Any such arrangement shall be forthwith registered with the Council, which shall make it public as soon as possible.

Article III

Each Contracting State undertakes that in the establishment and operation of through services due consideration shall be given to the interests of the other Contracting States so as not to interfere unduly with their regional services or to hamper the development of their through services.

Article IV

Section 1

Any Contracting State may by reservation attached to this Agreement at the time of signature or acceptance elect not to grant and receive the rights and obligations of Article 1, Section 1, paragraph (5), and may at any time after acceptance, on six months' notice given by it to the Council, withdraw itself from such rights and obligations. Such Contracting State may on six months' notice to the Council assume or resume, as the case may be, such rights and obligations. No Contracting State shall be obliged to grant any rights under the said paragraph to any Contracting State not bound thereby.

Section 2

A Contracting State which deems that action by another Contracting State under this Agreement is causing injustice or hardship to it, may request the Council to examine the situation. The Council shall thereupon inquire into the matter, and shall call the States concerned into consultation. Should such consultation fail to resolve the difficulty, the Council may make appropriate findings and recommendations to the Contracting States concerned. If thereafter a Contracting State concerned shall, in the opinion of the Council, unreasonably fail to take suitable corrective action, the Council may recommend to the Assembly of the above-mentioned Organization that such Contracting State be suspended from its rights and privileges under this Agreement until such action has been taken. The Assembly by a two-thirds vote may so suspend such Contracting State for such period of time as it may deem proper or until the Council shall find that corrective action has been taken by such State.

Section 3

If any disagreement between two or more Contracting States relating to the interpretation or application of this Agreement cannot be settled by negotiation, the provisions of Chapter XVIII of the above-mentioned Convention shall be applicable in the same manner as provided therein with reference to any disagreement relating to the interpretation or application of the above-mentioned Convention.

Article V

This Agreement shall remain in force as long as the above-mentioned Convention; provided, however, that any Contracting State, a party to the present Agreement, may denounce it on one year's notice given by it to the Government of the United States of America, which shall at once inform all other Contracting States of such notice and withdrawal.

Article VI

Pending the coming into force of the above-mentioned Convention, all references to it herein other than those contained in Article IV, Section 3, and Article VII shall be deemed to be references to the Interim Agreement on International Civil Aviation drawn up at Chicago on December 7, 1944; and references to the International Civil Aviation Organization, the Assembly, and the Council shall be deemed to be references to the Provisional International Civil Aviation Organization, the Interim Assembly, and the Interim Council, respectively.

Article VII

For the purposes of this Agreement, "territory" shall be defined as in Article 2 of the above-mentioned Convention.

Article VIII*Signatures and Acceptances of Agreement*

The undersigned Delegates to the International Civil Aviation Conference, convened in Chicago on November 1, 1944, have affixed their signatures to this Agreement with the understanding that the Government of the United States of America shall be informed at the earliest possible date of each of the governments on whose behalf the Agreement has been signed whether signature on its behalf shall constitute an acceptance of the Agreement by that government and an obligation binding upon it.

Any State a member of the International Civil Aviation Organization may accept the present Agreement as an obligation binding upon it by notification of its acceptance to the Government of the United States, and such acceptance shall become effective upon the date of the receipt of such notification by that Government.

This Agreement shall come into force as between Contracting States upon its acceptance by each of them. Thereafter it shall become binding as to each other State indicating its acceptance to the Government of the United States on the date of the receipt of the acceptance by that Government. The Government of the United States shall inform all signatory and accepting States of the date of all acceptances of the Agreement, and of the date on which it comes into force for each accepting State.

D. DEFINITION OF A SCHEDULED INTERNATIONAL AIR SERVICE

1.6 In 1952 the Council adopted a definition of the term “scheduled international air service” for the guidance of States in interpretation or application of Articles 5 and 6 of the Convention. The Definition also included some Notes on the Application of the Definition and an Analysis of the Rights Conferred by Article 5 of the Convention. Recommendation 3 of the Special Air Transport Conference (1977) proposed that the Council examine the feasibility of revising the Definition. The matter was taken up by the Panel on Regulation of Air Transport Services which concluded that the Definition did not require revision. Nevertheless, to emphasize the flexibility of the Definition the Panel proposed that the Notes on the Application of the Definition be modified. The Second Air Transport Conference accepted the Panel’s conclusions and the Conference Recommendation on this was later endorsed by the Council. The Definition, revised Notes and Analysis of Rights are reproduced below.

With the evolution of the airline industry and the introduction of liberal air policies in some States and regions, the distinction between scheduled and non-scheduled air services has become increasingly blurred. In the case of operations between States within the European Union, the “third package” of air transport liberalization measures, approved in 1992, has effectively eliminated the regulatory distinction between the two (by allowing non-scheduled air carriers to operate scheduled service and sell their product directly to the public).

Definition of a Scheduled International Air Service

A scheduled international air service is a series of flights that possesses all the following characteristics:

- a) it passes through the airspace over the territory of more than one State;
- b) it is performed by aircraft for the transport of passengers, mail or cargo for remuneration, in such a manner that each flight is open to use by members of the public;
- c) it is operated, so as to serve traffic between the same two or more points, either
 - i) according to a published timetable, or
 - ii) with flights so regular or frequent that they constitute a recognizably systematic series.

Notes on the Application of the Definition

General

1. This Definition typically encompasses a service:
 - a) which is part of an international network of services, operating according to a published timetable;
 - b) where the on-demand passenger has a reasonable chance of securing accommodation;
 - c) which normally operates irrespective of short-term fluctuations in payload;
 - d) where stopover and interlining facilities are offered to the user with the appropriate ticket or air waybill, subject to the relevant international agreement, if any.

2. Because of the operational characteristics expressed by the Definition and subject to the considerations in Note 6 below, States may, at their discretion classify as scheduled a service which operates, for example:

- a) pursuant to a charter contract with one or more charterers with the intention of covering the entire capacity of the aircraft; and
- b) frequently and with regularity.

Cumulative nature of the elements of the Definition

3. It is emphasized that the main elements of the Definition are cumulative in their effect. If, for a series of flights, any one of the characteristics a), b) or c) is missing, the series cannot be classified as a scheduled international air service, subject to the provisions of Note 6 below.

The meaning of a "series" of flights

4. A scheduled international air service must in the first place consist of a series of flights. A single flight by itself could thus not constitute a scheduled international air service, although it might form part of such a service. The Definition does not state how many flights are necessary as a minimum to constitute a "series" in this sense. For the purpose of considering whether any series of flights constitutes a scheduled international air service, any flight or flights fulfilling the conditions specified in the Definition can be included and any flight or flights not fulfilling those conditions can be excluded.

5. Where the existence of a scheduled international service, as defined, has been established, all extra flights associated with that particular service and open to use by members of the public are part of the same service. The "non-revenue" flights of commercial operators are, however, classified by the Definition as non-scheduled even if operated in close association with a scheduled international air service.

6. The Definition does not state that all the flights of a series constituting a scheduled international air service must be operated by a single operator, since it is possible for more than one operator to participate in the operation of such a service. In sub-paragraph c), however, the Definition states that a scheduled international air service is a series of flights that "is operated" in a certain way so that a number of unrelated flights, not operated as a series, cannot be classified as a scheduled international air service.

The concept of being a "transport" service

7. A series of flights must be performed by aircraft "for the transport of passengers, cargo or mail" in order to constitute a scheduled international air service according to the Definition. Thus, a series of flights performed for other purposes, such for example as training or crop spraying, could not be regarded as a scheduled international air service, even if it fulfilled the other elements of the Definition.

Each flight "open to use by members of the public"

8. In order to constitute a scheduled international air service according to the Definition, a series of flights must be performed in such a manner that "each flight" is open to use by members of the public. This does not mean that all the flights of a series can be classified as non-scheduled if one of them is not open to the public, since that one could be excluded from consideration and the remainder might then form a series that could be classified as scheduled (see Note 2). A service may be regarded as open to the public, notwithstanding certain restrictions, which relate, for example,

to the time of reservation, the minimum length of stay, or the obligation to deal with an intermediary. It will be incumbent on each Contracting State, in respect of each air service having such characteristics, to assess the scope of these restrictions and decide whether the restrictions are so substantial that the service should be considered as non-scheduled (see "General" note above).

9. The refusal on the part of the operator of an air service to carry special and limited categories of traffic would not of itself prevent that service from being considered open to use by members of the public in the sense intended in this element of the Definition. Restrictions placed by governments on the classes of traffic permitted to be carried by international air services would also not of themselves prevent such services from being so considered.

Analysis of the Rights Conferred by Article 5 of The Convention

Grantors of right in first paragraph

1. "Each Contracting State"

Analysis: Each Contracting State acts here on behalf of all its territory as defined in Article 2.

Recipients of right in first paragraph

2. "all aircraft of the other Contracting States, being aircraft not engaged in scheduled international air services"

Analysis:

- a) Article 3 excludes State aircraft from this category.
- b) The expression "aircraft of the other Contracting States" refers to aircraft registered in and therefore, pursuant to Article 17, having the nationality of other Contracting States. The responsibility of States under the Convention with respect to aircraft registered in their territory (e.g. the responsibility for enforcing compliance with Article 12) remains the same regardless of the nationality of the owner or operator of the aircraft. In the case of aircraft engaged in commercial air transport operations, certain powers of limitation rest, by virtue of the last paragraph of Article 5, with the State within whose territory traffic is picked up or discharged, and these powers can, if a State desires, be applied so as to lay down conditions concerning the nationality of the owner or operator of the aircraft in question.
- c) The phrase "not engaged" means "not engaged at the time the right is to be exercised". This means that aircraft used at times for scheduled services can claim any rights conferred by Article 5 if they are not engaged on scheduled services at the moment.
- d) The definition of the expression "scheduled international air service" adopted by Council and set forth in this Report indicates under what circumstances an aircraft should in the opinion of Council be regarded as being "not engaged in scheduled international air services" and therefore entitled to the right here described.

Substance of right

3. "the right ... to make flights into or in transit non-stop across its territory and to make stops for non-traffic purposes ..."

Analysis:

- a) Three types of flight are included in this right:
 - i) entry into and flight over a State's territory without a stop;
 - ii) entry into and flight over a State's territory with a stop for non-traffic purposes;
 - iii) entry into a State's territory and final stop there for non-traffic purposes.
- b) The term "stop for non-traffic purposes" should be taken to include stops where passengers, or goods not carried for remuneration or hire are embarked or disembarked. The term "stop for non-traffic purposes" as defined in Article 96 is "a landing for any purpose other than taking on or discharging passengers, cargo or mail" without distinguishing between those passengers, cargo or mail carried for remuneration and those not so carried. From the internal evidence in the Article itself, however, it appears that the intention was that the taking on or discharging of passengers or goods not carried for remuneration should be covered by the expression "flights into" in the first paragraph, since the only exception from the generality of the provisions of the Article in this respect is related to the taking on or discharging of passengers, cargo or mail carried for remuneration or hire in the second paragraph.
- c) A stop for non-traffic purposes should not be regarded as a traffic stop by reason of the temporary unloading of passengers, mail or goods in transit, if the stop is made for reasons of technical necessity or convenience of operation of the flight.

Permission

4. "... without the necessity of obtaining prior permission ..."

Analysis:

- a) This provision means that generally aircraft are entitled to operate on flights of the type described under Item 3) a) without applying for a permit that may be granted or refused at the election of the State to be entered. Indeed, no instrument designated a "permit" should normally be required, even if it were automatically forthcoming upon application. Advance notice of intended arrival for traffic control, public health and similar purposes could, however, be required.
- b) A general requirement for prior negotiation over the use of routes or landing places would be in contravention of this clause. The only general right to designate routes and airports conferred by the Convention relates to scheduled services (Article 68). The absence of any such general reservation under Article 5, coupled with the special reservation relating to the case of flights over regions that are inaccessible or without adequate air navigation facilities, is therefore significant.

Qualifications of the right to enter, fly over and make non-traffic stops

5. "... subject to the observance of the terms of this Convention ..."

Analysis:

- a) This qualification refers to observance of the terms of the Convention by the aircraft whose rights are under consideration on the flights when they desire to exercise those rights. A failure to observe some provision

of the Convention by these aircraft at other times, or by other aircraft of the same nationality, or by the governments of these aircraft, would not bring this qualification into effect.

b) Important relevant parts of the Convention appear to be:

- Article 4 — Misuse of civil aviation
- Article 8 — Pilotless aircraft
- Article 10 — Landing at customs airport
- Article 11 — Applicability of air regulations (last clause referring to compliance of aircraft)
- Article 12 — Rules of the air
- Article 13 — Entry and clearance regulations
- Article 16 — Search of aircraft
- Article 18 — Dual registration
- Article 20 — Display or marks
- Chapter V in general — Conditions to be filled with respect to aircraft
- Chapter VI in general — International standards and recommended practices.

6. “... subject to the right of the State flown over to require landing ...”

Analysis. This qualification retains for each Contracting State the specific right to require landing of any non-scheduled aircraft flying across any part of its territory. The right is unqualified, but is one to be held in reserve with understanding that it will not be exercised in such a general way as to amount to a cancellation of the right granted to non-scheduled aircraft of other Contracting States to make flights non-stop across the territory of a Contracting State.

7. “Each Contracting State nevertheless reserves the right, for reasons of safety of flight, to require aircraft desiring to proceed over regions which are inaccessible or without adequate air navigation facilities to follow prescribed routes, or to obtain special permission for such flights.”

Analysis. Each Government should decide which regions in its territory are “inaccessible or without adequate air navigation facilities”. Such regions should be publicly described, as in the case of prohibited areas under Article 9, and the nature of the restrictions to be imposed should be stated. Thus, the description should be explicit as to whether the requirement is i) merely that a particular route be followed, or ii) that permission be required, or iii) both, since the requirements thereby seem to be cumulative, notwithstanding the use of the disjunctive “or”.

Recipients of additional privilege in paragraph 2

8. “Such aircraft, if engaged in the carriage of passengers, cargo or mail for remuneration or hire on other than scheduled international air services ...”

Analysis. The expression “remuneration or hire” means any kind of remuneration, whether monetary or other, which the operator receives from someone else for the act of transportation.

Substance of additional privilege in paragraph 2

9. “... shall also ... have the privilege of taking on or discharging passengers, cargo or mail ...”

Analysis. The word “also” indicates that these aircraft should have the right given by the first paragraph of Article 5 as well as the privilege given by this paragraph. That is to say, they have first the right to enter, fly over

and stop for non-traffic purposes without the necessity of obtaining prior permission and not subject to the “regulations, conditions or limitations” mentioned in the second paragraph. Then, in addition, with certain qualifications they have the privilege of taking on or discharging passengers, cargo or mail at a stop. Here again, the expression “passengers, cargo or mail” is clearly intended to refer to passengers, cargo or mail carried for remuneration.

Qualification of the privilege of taking on or discharging passengers, cargo or mail

10. “subject to the provisions of Article 7”

Analysis. This qualification means that there is no intention in Article 5 to interfere with the rules concerning cabotage in Article 7.

11. “subject to the right of any State where such embarkation or discharge takes place to impose such regulations, conditions or limitations as it may consider desirable”

Analysis

- a) “Regulations, conditions or limitations” may be such as are promulgated and constitute standing requirements, or they may be such as are formulated in relation to the circumstances of each case.
- b) The right of the State includes the right to require its special permission for the operation of taking on or discharging passengers, cargo or mail in its territory or for any specified category of such operations.
- c) The right of the State to impose regulations, conditions and limitations on the taking on or discharging of passengers, cargo or mail by non-scheduled commercial air transport, is unqualified. It should be understood, however, that the right would not be exercised in such a way as to render the operation of this important form of air transport impossible or non-effective.

E. GENERAL POLICY ON ECONOMIC REGULATION

1.7 Article 44 of the Chicago Convention sets out the aims and objectives of the Organization, parts of which are also relevant to the economic regulation of international air transport. In addition, the Assembly has adopted Resolution A36-15 which constitutes a consolidated statement of continuing ICAO policies in the air transport field; parts of the resolution (Introduction and excerpts from Appendix A) which cover policies of a general nature are given below while other parts of the resolution (Appendices A, E, F and H) which deal with specific subject matters of economic regulation are to be found elsewhere in the present document under their respective topics. The full text of Resolution A36-15 may be found in Doc 9902 — *Assembly Resolutions in Force*, which is also reproduced in Appendix 6 of this document for ease of reference.

Article 44

Objectives

The aims and objectives of the Organization are to develop the principles and techniques of international air navigation and to foster the planning and development of international air transport so as to:

- a) Insure the safe and orderly growth of international civil aviation throughout the world;
- b) Encourage the arts of aircraft design and operation for peaceful purposes;
- c) Encourage the development of airways, airports, and air navigation facilities for international civil aviation;
- d) Meet the needs of the peoples of the world for safe, regular, efficient and economical air transport;
- e) Prevent economic waste caused by unreasonable competition;
- f) Insure that the rights of contracting States are fully respected and that every contracting State has a fair opportunity to operate international airlines;
- g) Avoid discrimination between contracting States;
- h) Promote safety of flights in international air navigation;
- i) Promote generally the development of all aspects of international civil aeronautics.

Assembly Resolution

A36-15: Consolidated statement of continuing ICAO policies in the air transport field (excerpts)

Introduction

Whereas the *Convention on International Civil Aviation* establishes the basic principles to be followed by governments to ensure that international air transport services may be developed in an orderly, regular, efficient, economical and harmonious manner and it is therefore one of the purposes of ICAO to support principles and arrangements in order that international air transport services may be established on the basis of equality of opportunity, sound and economic operation, mutual respect of the rights of States and taking into account the general interest;

Whereas air transport is a major factor in promoting and fostering sustained economic development at national as well as international levels;

Whereas it is becoming increasingly difficult, particularly for developing countries, to secure the necessary resources required to optimize the opportunities and meet the challenges inherent in the development of air transport, and to keep pace with the challenges posed by demands on air transport;

Whereas the Organization prepares guidance, studies and statistics on the development of air transport for Contracting States on a continuing basis and these should be kept current, focused and relevant and should be disseminated to Contracting States through the most effective means;

Whereas Contracting States are required to provide accurate and factual statistical data and other information in order that the Organization may prepare this guidance;

Whereas the Organization is moving toward management by objective with more focus on implementation over standard setting;

Whereas guidance developed by the Organization, and action taken by the Organization in implementing its Strategic Objectives, should assist Contracting States in developing policies and practices that facilitate the globalization, commercialization and liberalization of international air transport; and

Whereas it is important for Contracting States to participate in the work of the Organization in the air transport field;

The Assembly:

1. Resolves that the Appendices attached to this resolution and listed below constitute the consolidated statement of continuing ICAO policies in the air transport field, as these policies exist at the close of the 36th Session of the Assembly:

- Appendix A — Economic regulation of international air transport
- Appendix B — Statistics
- Appendix C — Forecasting and economic planning
- Appendix D — Facilitation
- Appendix E — Taxation
- Appendix F — Airports and air navigation services
- Appendix G — Air carrier economics
- Appendix H — Air mail

2. Urges Contracting States to have regard to these policies and their continuing elaboration by the Council in documents identified in this consolidated statement and by the Secretary General in manuals and circulars;

3. Urges Contracting States to make every effort to fulfil their obligations, arising out of the Convention and Assembly resolutions, to support the work of the Organization in the air transport field, and, in particular, to provide as completely and promptly as possible the statistical and other information asked for by the Organization for its air transport studies;

4. Requests the Council to attach particular importance to the problem of financing the development of the human and technical resources necessary to ensure the best possible contribution of air transport to the economic and social well-being of developing countries;

5. Requests the Council, when it considers that it would be of benefit in assisting its work on any air transport question, to seek the consultation of expert representatives from Contracting States by the most appropriate means, including the establishment of panels of qualified experts reporting to the Air Transport Committee or of Secretariat study groups, and work by correspondence or by meetings;

6. Requests the Council to convene Conferences or Divisional meetings, in which all Contracting States may participate, as the principal means of progressing the resolution of issues of worldwide importance in the air transport field, when such meetings are justified by the number and importance of the issues to be dealt with and where there is the likelihood of constructive action upon them;

7. Requests the Council to provide for workshops, seminars and other such meetings as may be required to disseminate ICAO's air transport policies and associated guidance to and amongst Contracting States;

8. Requests the Council to keep the consolidated statement of ICAO's air transport policies under review and advise the Assembly as appropriate when changes are needed to the statement; and

9. Declares that this resolution supersedes Resolution A35-18.

Appendix A. Economic regulation of international air transport

Section I. Agreements and arrangements

Whereas the basic principles of sovereignty, fair and equal opportunity, non-discrimination, interdependence, harmonization and cooperation set out in the Convention have served international air transport well and continue to provide the basis for its future development;

Whereas multilateralism in commercial rights to the greatest possible extent continues to be an objective of the Organization;

Whereas within the framework of the Convention, Contracting States have many differing regulatory goals and policies but share a fundamental objective of participation through reliable and sustained involvement in the international air transport system;

Whereas one of the objectives of the Convention is that international air transport services may be operated soundly and economically and in that regard the International Air Services Transit Agreement (IASTA) facilitates the achievement of that objective for the Contracting States who are already parties to it;

Whereas the Assembly has repeatedly stressed the obligation of each Contracting State to comply with Article 83 of the Convention by registering with the Council as soon as possible all arrangements relating to international civil aviation, in accordance with the *Rules for Registration with ICAO of Aeronautical Agreements and Arrangements*;

Whereas undue delays and non-compliance relating to the registration of aeronautical agreements and arrangements are not desirable for the accuracy and completeness of regulatory information and for enhancing transparency;

Whereas the establishment of international air transport fares and rates should be fair, transparent and designed to promote the satisfactory development of air services; and

Whereas there is a need to adapt to the changing regulatory and operating environment in the air transport field and the Organization has developed policy guidance for the regulation of international air transport, including model clauses and template air services agreements, for optional use by States in bilateral or regional agreements;

The Assembly:

1. *Reaffirms* the primary role of ICAO in developing policy guidance on the regulation of international air transport and in facilitating liberalization;
2. *Urges* Contracting States that have not yet become parties to the International Air Services Transit Agreement (IASTA) to give urgent consideration to so doing;
3. *Urges* all Contracting States to register cooperative agreements and arrangements relating to international civil aviation with ICAO in accordance with Article 83 of the Convention and the *Rules for Registration with ICAO of Aeronautical Agreements and Arrangements*;
4. *Urges* Contracting States to keep the Council fully informed of important problems arising from the application of air services agreements or arrangements and of any developments achieved or contemplated which tend toward the objective of multilateralism in the exchange of commercial rights;
5. *Requests* the Council to continue to cooperate with regional and subregional bodies in their examination and development of measures of cooperation, including liberalized arrangements, and the results of these measures, in order to see whether similar or other measures should at the appropriate time be recommended to Contracting States for application on a wider basis;

6. *Requests* the Council to continue the comparative and analytical study of the policies and practices of Contracting States and airlines concerning commercial rights and the provisions of air services agreements and to inform all Contracting States of any new developments in international cooperation, including liberalized arrangements, with respect to commercial rights;
7. *Requests* the Council to keep under review the machinery for establishing the Organization's policy guidance on the regulation of international air transport, and to revise or update it as required;
8. *Requests* the Council to review periodically the rules for registration of aeronautical agreements and arrangements with a view to simplifying the process of registration;
9. *Requests* the Secretary General to remind Contracting States of the importance of registration without undue delay of aeronautical agreements and arrangements and to provide such assistance to Contracting States as they may require in registering their aeronautical agreements and arrangements with the Council; and
10. *Requests* the President of the Council and the Secretary General to promote universal adherence to and implementation of the International Air Services Transit Agreement (IASTA) and to urge Contracting States to inform the Secretariat of their intentions with respect to adherence to the agreement.

...

Section V. Elaboration of policy guidance

Whereas governments have international obligations and responsibilities in the economic regulation of international air transport;

Whereas economic liberalization and the evolution of air transport industry will continue to bring about opportunities, challenges and issues with respect to the regulation of international air transport; and

Whereas the Organization has addressed many of the regulatory issues and compiled related policies and guidance material;

The Assembly:

1. *Urges* Contracting States in their regulatory functions to have regard to the policies and guidance material developed by ICAO on economic regulation of international air transport, such as those contained in Doc 9587, *Policy and Guidance Material on the Economic Regulation of International Air Transport*; and
2. *Requests* the Council to ensure that these policies and guidance material are current and responsive to the requirements of Contracting States, and to develop guidance on emerging issues of general interest where required.

1.8 In 1994, the Worldwide Air Transport Conference (AT Conf/4) on "International Air Transport Regulation: Present and Future" considered and reached conclusions on a range of proposed regulatory arrangements prepared by the ICAO Secretariat with the assistance of a special Study Group of Experts on Future Regulatory Arrangements (GEFRA). The Conference adopted the following single, comprehensive Recommendation which was subsequently approved by the Council in March 1995. Excerpts from this Recommendation dealing with specific subject matters are also to be found elsewhere in the present document.

Recommendation of the 1994 Worldwide Air Transport Conference

The Conference:

1. *Recognizes*

- a) that, 50 years after the signing of the *Convention on International Civil Aviation* (the Convention), international air transport is going through a period of dynamic change as a consequence of increasing competition, transnationalization of business, globalization of the world economy and the emergence of regional economic groupings, privatization and liberalization of service industries, and the introduction of new global trading arrangements for service sectors;
- b) that the principles of sovereignty, non-discrimination, interdependence, harmonization and cooperation at the global level, espoused in the Convention, have served international air transport well for 50 years;
- c) that these principles provide the basis for the evolution of new approaches to regulatory arrangements between and amongst contracting States to respond to the internal and external changes affecting international air transport;
- d) that safety is and must always be of paramount importance in the operation and development of air transport and there is a need to continuously update and implement safety standards and practices;
- e) that, irrespective of any future arrangements for the economic regulation of international air transport, the Convention imposes responsibility for compliance with standards and practices related to safety and security on contracting States;
- f) that within the framework of the Convention contracting States have many differing regulatory goals and policies but share a fundamental objective of participation through reliable and sustained involvement in the international air transport system;
- g) that any change in approach to international air transport regulation should have due regard to the objective of participation and to:
 - 1) continued safe, secure and economical air carrier and airport operations;
 - 2) efficient and economical trade and communication links amongst States;
 - 3) the broader economic and social benefits of air transport;
 - 4) the restraints of airport infrastructure, airspace capacity and environmental considerations;
 - 5) the disparate levels of economic development amongst States;
 - 6) the need for appropriate training; and
 - 7) the interests of all stakeholders in international air transport, including air carriers, users, airports, distribution intermediaries and labour;
- h) that the interests and needs of developing countries require special consideration in any future arrangement for international air transport regulation, including access to financial resources and technology;

- i) that pursuant to the principle of sovereignty each State will determine its own path and own pace of change in international air transport regulation, on the basis of equality of opportunity and using bilateral, sub-regional, regional and/or global avenues according to circumstances;
 - j) that liberalized arrangements at the sub-regional or regional level provide valuable experience as regards the content, process and structure of regulatory change, and this experience should be disseminated to States for their information;
 - k) that bilateralism and multilateralism can and do co-exist, and can each accommodate different approaches to international air transport regulation;
 - l) that in view of the disparities in economic and competitive situations there is no prospect in the near future for a global multilateral agreement for the exchange of traffic rights; and
 - m) that the International Air Services Transit Agreement has made an important contribution to the development of civil aviation during the past 50 years.
2. *Further recognizes*
- a) that within the above framework and against the above maxims, in particular in sub-paragraphs b) and f) above, a general goal is the gradual, progressive, orderly and safeguarded change towards market access in international air transport regulation;
 - b) that an integral part of the general process of liberalization would be adequate safeguard mechanisms, using as a starting point the code of conduct and the associated dispute resolution mechanism considered by the Conference, but including preventative measures and designed to protect the interests of all States in ensuring their effective and sustained participation in international air transport; and
 - c) that existing rights should be respected in the evolution of future regulatory arrangements, although this "primacy principle" does not preclude re-negotiation and, if necessary, "re-balancing" of air services agreements where the parties so agree.
3. *Recommends*
- a) that States pursue, and ICAO promote, universal adherence to and implementation of the International Air Services Transit Agreement;
 - b) that States give due consideration in their economic regulatory responsibilities and international air transport relationships to the conclusions reached by the Conference on the following topics:
 - 1) air carrier ownership and control;
 - 2) State aids/subsidies;
 - 3) competition laws;
 - 4) environmental protection;
 - 5) taxation;
 - 6) ground handling;
 - 7) currency conversion and remittance of earnings;

- 8) employment of non-national personnel;
 - 9) sale and marketing of air service products; and
 - 10) computer reservation systems;
- c) that ICAO, in accordance with the aims and objectives of Article 44 of the Convention and in line with its global responsibilities, take, and be seen to take, effective action to exert a leadership role in the development of economic regulation of international civil aviation;
 - d) that ICAO develop effective communication and cooperation with the new World Trade Organization, as well as with other intergovernmental and non-governmental organizations involved in trade matters impinging on international air transport, to ensure that the special needs of international air transport are adequately safeguarded;
 - e) that ICAO continue to attach high priority to addressing environmental issues related to international civil aviation;
 - f) that ICAO continue to promote appropriate training in the regulation of international air transport, notably in the fields of aviation law, economics and management;
 - g) that ICAO continue to play its role in facilitating the evolution of future regulatory arrangements for international air transport on a bilateral, regional and global basis, taking into account at all times the interests of all stakeholders and the importance to States of effective participation in international air transport, and proceed with studies and develop recommendations on a number of important issues, including:
 - 1) development and refinement of the safeguard mechanism and “safety net” arrangement presented to the Conference, along with appropriate preventative measures to ensure safe and orderly development of international air transport and fair and effective competition;
 - 2) review of the traditional air carrier ownership and control criteria with a view to their broadening;
 - 3) the implications of air carrier code-sharing arrangements for international air transport regulation;
 - 4) review of the ICAO Code of Conduct on the Regulation and Operation of Computer Reservation Systems (CRSs) and development of a model CRS clause for use in bilateral air services agreements or multilateral arrangements, to ensure fair and non-discriminatory access to these systems including their supply and fair, transparent and non-discriminatory distribution of air carrier products;
 - 5) development, whether on a bilateral or multilateral basis, of some regulatory arrangements on “doing business” matters into more formalized structures;
 - 6) possible development into more formalized structures of some regulatory arrangements on “hard” rights of international air transport on a bilateral or multilateral basis;
 - 7) an analytical model for evaluating net national benefits of international air transport and, to the extent possible, of associated regulatory approaches; and
 - 8) preferential measures in the economic regulation of international air transport to ensure the effective participation of developing countries in such transport, a progress report on which should be presented to the next ordinary Session of the Assembly; and
 - h) that States provide assistance to ICAO in the undertaking of these studies.

1.9 The fifth Worldwide Air Transport Conference (ATConf/5), held in Montreal from 24 to 28 March 2003, on the theme of “Challenges and Opportunities of Liberalization” considered a range of regulatory issues in the liberalization process. The outcome of the Conference includes a package of Conclusions, Model Clauses, Recommendations (presented in Appendix 4 of this document) and a Declaration of Global Principles for the Liberalization of International Air Transport, which is reproduced below. These results provide a broad policy framework and practical guidance for safeguarded economic liberalization, which States may use at their discretion and in a flexible manner. The Council reviewed the results of the ATConf/5 in June 2003 and decided that they be disseminated to States for guidance.

ATConf/5 Declaration of Global Principles for the Liberalization of International Air Transport

The Worldwide Air Transport Conference on Challenges and Opportunities of Liberalization, convened by the International Civil Aviation Organization (ICAO) at its Headquarters in Montreal from 24 to 28 March 2003 and attended by 145 States and 26 organizations:

Recalling the noble goals in the *Preamble* to the *Convention on International Civil Aviation* (the Chicago Convention);

Conscious of the important role of international air transport and its contribution to national development and the world economy;

Emphasizing the critical importance of safety and security in international air transport;

Noting the changes since the fourth Worldwide Air Transport Conference in 1994 in the regulatory and operating environment of international air transport brought about by economic development, globalization, liberalization and privatization; and the desirability for ongoing regulatory evolution to facilitate commercial change in the air transport industry while ensuring the continued safe, secure and orderly growth of civil aviation worldwide;

Reaffirming that the basic principles of sovereignty, fair and equal opportunity, non-discrimination, interdependence, harmonization and cooperation set out in the Chicago Convention have served international air transport well and continue to provide the basis for future development of international civil aviation;

DECLARES that:

1. Overall principles

1.1 ICAO and its Contracting States, together with the air transport industry and other stakeholders in civil aviation, will work to ensure that international air transport continues to develop in a way that:

- a) ensures high and improving levels of safety and security;
- b) promotes the effective and sustainable participation in and benefit from international air transport by all States, respecting national sovereignty and equality of opportunity;
- c) takes into consideration the differing levels of economic development amongst States through maintenance of the principle of “community of interest” and the fostering of preferential measures for developing countries;
- d) provides adequate supporting infrastructure at reasonable cost;

- e) facilitates the provision of resources, particularly for developing countries;
- f) allows for growth on a basis that is economically sustainable, supported by adaptation of the regulatory and operating environment;
- g) strives to limit its environmental impact;
- h) meets reasonable expectations of customers and public service needs, particularly for low traffic or otherwise uneconomical routes;
- i) promotes efficiency and minimizes market distortions;
- j) safeguards fair competition adequately and effectively;
- k) promotes cooperation and harmonization at the sub-regional, regional and global levels; and
- l) has due regard for the interests of all stakeholders, including air carriers and other operators, users, airports, communities, labour, and tourism and travel services providers;

with the ultimate purpose of giving international air transport as much economic freedom as possible while respecting its specific characteristics and in particular the need to ensure high standards of safety, security and environmental protection.

2. Safety and security

2.1 Safety and security must remain of paramount importance in the operation and development of international air transport and States must accept their primary responsibility for ensuring regulatory oversight of safety and security, irrespective of any change in economic regulatory arrangements.

2.2 States should work in cooperation to ensure safety and security oversight worldwide consistent with their obligations under the Chicago Convention.

2.3 States should consider the safety and security implications of transborder operations involving aircraft leasing, airline codesharing and similar arrangements.

2.4 Safety and security measures should be implemented in a cost-effective way in order to avoid imposing an undue burden on civil aviation.

2.5 Security measures should to the extent possible not disrupt or impede the flow of passengers, freight, mail or aircraft.

2.6 Further economic liberalization must be implemented in a way so as to ensure that there is a clear point of responsibility for each of safety and security in a clearly identified State or other regulatory authority designated by that State for any given aircraft operation.

3. Participation and sustainability

3.1 All States share a fundamental objective of effective and sustained participation in and benefit from international air transportation, respecting national sovereignty and equality of opportunity.

3.2 States should develop and maintain safeguards to ensure safety, security, economic stability and fair competition.

3.3 States should ensure that the necessary infrastructure of airports and air navigation services is provided worldwide at reasonable cost and on a non-discriminatory basis.

3.4 Airport and air navigation services charges should only be applied towards defraying the costs of providing facilities and services for civil aviation.

3.5 The interests and needs of developing countries should receive special consideration, and preferential measures and financial support may be granted.

3.6 The global aviation community should continue to work to promote the development of air transport in an environmentally responsible way, limiting the impact of air transport so as to achieve maximum compatibility between safe and orderly development of civil aviation and the quality of the environment.

4. Liberalization

4.1 The objective of ongoing regulatory evolution is to create an environment in which international air transport may develop and flourish in a stable, efficient and economical manner without compromising safety and security and while respecting social and labour standards.

4.2 States which have not yet become parties to the International Air Services Transit Agreement (IATA) should give urgent consideration to so doing.

4.3 Liberalization should be underpinned by the worldwide application of a modern uniform air carrier liability regime, namely the Montreal Convention of 1999.

4.4 Each State will determine its own path and own pace of change in international air transport regulation, in a flexible way and using bilateral, sub-regional, regional, plurilateral or global avenues according to circumstances.

4.5 States should to the extent feasible liberalize international air transport market access, air carrier access to international capital and air carrier freedom to conduct commercial activities.

4.6 States should give consideration to accommodating other States in their efforts to move towards expanded transborder ownership and control of air carriers, and/or towards designation of air carriers based on principal place of business, provided that clear responsibility and control of regulatory safety and security oversight is maintained.

4.7 States should give consideration to liberalizing the regulatory treatment of international air cargo services on an accelerated basis, provided that clear responsibility and control of regulatory safety and security oversight is maintained.

4.8 Transparency is an important element in promoting economic growth, competitiveness and financial stability at the domestic, regional and international levels, and enhances the benefits of liberalization.

4.9 The air transport industry should continue to be encouraged to improve services to passenger and freight customers, and to develop and implement appropriate measures to protect consumer interests.

5. Competition and cooperation

5.1 The establishment and application of competition law represents an important safeguard of fair competition as States progress towards a liberalized marketplace.

5.2 Cooperation between and among States facilitates liberalization and avoids conflicts, especially in dealing with competition law/policy issues and labour conditions involving international air transport.

5.3 States should avoid adopting unilateral measures which may affect the orderly and harmonious development of international air transport and should ensure that domestic policies and legislation are not applied to international air transport without taking due account of its special characteristics.

5.4 Where State aids provided for the air transport sector are justified, States should take transparent and effective measures to ensure that such aids do not adversely impact on competition in the marketplace or lead to unsustainable outcomes, and that they are to the extent possible temporary.

5.5 Subject to compliance with applicable competition law, States should continue to accept the availability of multilateral interline systems that enable States, air carriers, passengers and shippers to access the global air transport network on a non-discriminatory basis.

6. Role of ICAO

6.1 ICAO should continue to exert the global leadership role in facilitating and coordinating the process of economic liberalization and ensuring the safety, security and environmental protection of international air transport.

6.2 ICAO should continue to promote effective communication and cooperation with other intergovernmental and non-governmental organizations with an interest in international air transport, to harmonize and avoid duplication of effort at the global level.

6.3 States should consider using the regulatory options provided through ICAO for the liberalization of international air transport.

6.4 States should continue to keep ICAO informed of developments in international air transport, including liberalized arrangements introduced at various levels; and to promote, in other fora, a full understanding of the mandate and role of ICAO.

1.10 The Third Air Transport Conference (AT Conf/3) adopted the following recommendation which calls upon the Council to compile, publish and periodically update an itemized digest of the policies of regional civil aviation bodies concerning regulation of air transport.

AT Conf/3 Recommendation 2

RECOMMENDS:

- a) that the Council compile, publish and periodically update an itemized digest of the policies adopted by the regional civil aviation governmental bodies concerning regulation of air transport;
- b) that the Council monitor trends in regional policies in order to update the relevant ICAO guidelines, where necessary; and,
- c) that regional civil aviation governmental bodies, as well as States, cooperate and coordinate so that the development of air transport on a worldwide basis is not hampered by their policies.

1.11 In response to the above recommendation, a digest of policies of three regional civil aviation bodies, namely AFCAC, ECAC and LACAC, was compiled and published as an appendix to the previous editions of this document. In recent years, there has been an increase of regional bodies, whose policies and activities touch on air transport. In light of the availability of information via the Internet, the present edition lists below, in lieu of the digest, the official websites of the relevant regional bodies where current policies of the respective bodies may be found.

Arab Civil Aviation Commission (ACAC): www.acac.org.ma

African Civil Aviation Commission (AFCAC): www.afcac-cafac.sn/site_anglais/afcac_english.htm

European Civil Aviation Conference (ECAC): www.ecac-ceac.org/

Latin American Civil Aviation Commission (LACAC): <http://clacseclima.icao.int>

European Commission: http://ec.europa.eu/transport/air_portal/

F. PARTICIPATION AND SAFEGUARDS

1.12 In response to the Recommendation of the 1994 Worldwide Air Transport Conference, the Council assigned some of the tasks which required further work by the Organization, including the development and refinement of the safeguard mechanism and “safety net” arrangement, to a reactivated and enlarged Air Transport Regulation Panel. Taking into account the basic objective of participation by all States in international air transport, and the general goal of gradual, progressive, orderly and safeguarded change towards market access in its regulation, the Panel at its Ninth Meeting in February 1997 developed the following three recommendations dealing respectively with safeguards (ATRP/9-1), dispute settlement (ATRP/9-2) and participation measures (ATRP/9-3). These recommendations were approved by the Council in May 1997 and disseminated to States for their guidance.

Recommendation ATRP/9-1: Safeguard Mechanism for Fair Competition

THE PANEL RECOMMENDS:

that States wishing to move towards liberalization of air services in their bilateral and multilateral relationships might consider mutually agreeing on the kinds of competitive practices by a carrier or carriers which would be regarded as unfair, including using some or all of the following as signals of possible unfair competitive behaviour meriting closer examination:

- a) charging fares and rates on routes at levels which are, in the aggregate, insufficient to cover the costs of providing the services to which they relate;
- b) the addition of excessive capacity or frequency of service;
- c) the practices in question are sustained rather than temporary;
- d) the practices in question have a serious economic effect on, or cause significant economic damage to, another carrier;

- e) the practices in question reflect an apparent intent or have the probable effect, of crippling, excluding or driving another carrier from the market; and
- f) behaviour indicating an abuse of dominant position on a route.

Recommendation ATRP/9-2: Dispute Settlement

THE PANEL RECOMMENDS:

- 1) that States wishing to move towards liberalization of air services in their bilateral or regional relationships include in their arrangements, at their discretion, in order to mediate or resolve disputes arising from allegedly unfair competitive practices or abuse of a dominant position, a provision for a dispute settlement mechanism:
 - a) a “High-level” meeting, up to Ministerial level, which parties could use when consultations were unable to resolve a dispute concerning allegedly unfair competitive practices;
 - b) a Mediator or dispute settlement panel, to be constituted from a roster of suitably qualified aviation experts maintained by ICAO. A dispute settlement panel’s determination on the substance of a dispute should preferably be binding on the parties but its decision on the remedy might be recommendatory. Furthermore, a dispute settlement panel should be able to give interim relief along the lines of that contained in the dispute settlement mechanism presented to the Worldwide Air Transport Conference, viz the panel could be “asked by an involved party to rule first on the need for and continuance of any freeze or reversion to the *status quo ante*; damages could be awarded against the complainant when any such freeze or reversion is found to be unjustified”. The parties would, however, need to agree in advance, *inter alia*, on:
 - i) the terms of reference, procedures, guiding principles or criteria and terms of access to the dispute settlement panel (including whether the parties only or whether private interests such as airlines would have access), bearing in mind the objective and need for a simple, responsive and expeditious process; and
 - ii) how a decision of the dispute settlement panel and any remedy it might develop would be implemented”;
- 2) that ICAO develop and keep up to date, for the purpose of the foregoing mechanism, a list of air transport experts to be available as mediators or members of dispute settlement panels.

Recommendation ATRP/9-3: Participation Measures

THE PANEL RECOMMENDS:

- 1) that States which are moving toward the liberalization of international air services should consider using measures to ensure effective and sustained participation in international air transport; the following being an indicative list of potential measures:
 - a) *capacity* — sharing capacity in terms of equal opportunity, to include matching a greater capacity of a competing airline or airlines; progressively allowing the traditional 50/50 exercise of capacity shares up to, for example, 70/30, in stages; allowing mutually agreed incremental capacity increases; using load factor or other general market criteria to trigger automatic increases in capacity; applying a system

- whereby an airline offering greater capacity may only increase this capacity by the same amount as an airline offering lesser capacity; allowing all-cargo capacity to be operated on the basis of forecasts of demand; setting seasonal capacity according to market forecasts and reassessing the appropriateness of the capacity so established after the fact based on the experience of the air carriers; allowing airlines to shift capacity between passenger and cargo operations; providing for exceptions to agreed capacity limits for new aircraft introduction and for seasonal service; treating codesharing differently than own-aircraft flights for purposes of capacity;
- b) *tariffs* — implementing flexible tariff systems to enhance fair and effective competition by allowing air carriers to respond to air transport markets; allowing tariff flexibility within pricing zones (recognizing that implementation is complicated); moving in stages from dual approval, to country of origin, to dual disapproval concepts; not regulating certain tariffs, such as cargo rates, non-scheduled (charter), premium and certain discount fares; allowing a fixed variation in fare levels;
 - c) *market access* — increasing the number of airlines designated; moving from single to multiple designation; granting of multilateral Third, Fourth and Fifth Freedom traffic rights in a regional arrangement; using forms of market access such as codesharing, alliances, wet-leasing of aircraft; providing a “head start” with respect to certain critical traffic points when market access restrictions are removed; having a protected start-up period for new entry; applying aircraft size restrictions only to regional services; allowing unilateral operation of airlines of foreign countries without any operation by national air carrier(s); removing restrictions on regional services; excluding cargo rights from all restrictions;
 - d) *other* — facilitating non-scheduled flights for inbound tourists (subject to the national regulations of the receiving State); permitting non-reciprocal, extra-bilateral service (including cabotage and Fifth Freedom) to underserved cities or on underserved routes; phasing in more flexible regulation in key commercial areas in a coordinated fashion; assessing the economic results of bilateral agreements on a quantitative basis in view of market circumstances to enhance cooperation such as alliances between and among airlines serving the territory; and waiving the usual bilateral ownership and control provisions; and
- 2) that ICAO should, drawing on the experience of States, keep the list of participation measures current and analyse, where possible, examples of their use by States.

G. AVIATION SAFETY AND SECURITY

1.13 There is a close linkage between economic and safety and security regulation of international air transport. The 1994 and 2003 Worldwide Air Transport Conferences recognized that irrespective of any change in regulatory arrangements, safety and security must remain of paramount importance in the development of international civil aviation. In this respect, ICAO has developed model clauses on safety and security for possible inclusion in States’ bilateral air transport agreements. These model clauses are presented below together with the associated Council resolutions which adopted them.

In order to address emerging issues and global strategies for the 21st century, ICAO convened a High-level, Ministerial Conference on Aviation Security in February 2002 and a Directors General of Civil Aviation Conference on a Global Strategy for Aviation Safety in March 2006. The Declarations of the two conferences are reproduced below respectively.

SAFETY

**RESOLUTION ADOPTED BY THE ICAO COUNCIL ON 13 JUNE 2001
RELATING TO A MODEL CLAUSE ON AVIATION SAFETY**

Whereas the primary objective of the Organization continues to be that of ensuring the safety of international civil aviation worldwide,

Whereas Article 37 of the Convention requires each Contracting State to collaborate in securing the highest practicable degree of uniformity in regulations and practices in all matters in which such uniformity will facilitate and improve air navigation,

Considering that the rights and obligations of States under the Chicago Convention and under the Standards and Recommended Practices adopted by the Council of ICAO on aviation safety could be complemented and reinforced in cooperation between States,

Considering that the agreements on air services represent the main legal basis for international carriage of passengers, baggage, cargo and mail,

Considering that provisions on aviation safety should form an integral part of the agreements on air services,

Noting that nothing prevents States who incorporate the ICAO model safety clause into their aviation agreements from including any additional, or more restrictive criteria, which the parties agree are necessary for assessing the safety of an aircraft operation.

The Council:

Urges all Contracting States to insert into their agreements on air services a clause on aviation safety, and

Recommends that Contracting States take into account the model safety clause attached to this resolution.

**Attachment to Council Resolution of 13 June 2001
ICAO MODEL CLAUSE ON AVIATION SAFETY**

1. Each Party may request consultations at any time concerning the safety standards maintained by the other Party in areas relating to aeronautical facilities, flight crew, aircraft and the operation of aircraft. Such consultations shall take place within thirty days of that request.

2. If, following such consultations, one Party finds that the other Party does not effectively maintain and administer safety standards in the areas referred to in paragraph 1 that meet the Standards established at that time pursuant to the *Convention on International Civil Aviation* (Doc 7300), the other Party shall be informed of such findings and of the steps considered necessary to conform with the ICAO Standards. The other Party shall then take appropriate corrective action within an agreed time period.

3. Pursuant to Article 16 of the Convention, it is further agreed that, any aircraft operated by, or on behalf of an airline of one Party, on service to or from the territory of another Party, may, while within the territory of the other Party be the subject of a search by the authorized representatives of the other Party, provided this does not cause unreasonable delay in the operation of the aircraft. Notwithstanding the obligations mentioned in Article 33 of the

Chicago Convention, the purpose of this search is to verify the validity of the relevant aircraft documentation, the licensing of its crew, and that the aircraft equipment and the condition of the aircraft conform to the Standards established at that time pursuant to the Convention.

4. When urgent action is essential to ensure the safety of an airline operation, each Party reserves the right to immediately suspend or vary the operating authorization of an airline or airlines of the other Party.

5. Any action by one Party in accordance with paragraph 4 above shall be discontinued once the basis for the taking of that action ceases to exist.

6. With reference to paragraph 2 above, if it is determined that one Party remains in non-compliance with ICAO Standards when the agreed time period has lapsed, the Secretary General of ICAO should be advised thereof. The latter should also be advised of the subsequent satisfactory resolution of the situation.

**DECLARATION OF DIRECTORS GENERAL OF CIVIL AVIATION CONFERENCE
ON A GLOBAL STRATEGY FOR AVIATION SAFETY
(Montreal, 20 to 22 March 2006)**

The Directors General of Civil Aviation Conference on a Global Strategy for Aviation Safety, convened by the International Civil Aviation Organization (ICAO) at its Headquarters in Montreal from 20 to 22 March 2006:

Whereas the *Convention on International Civil Aviation* and its Annexes provide the essential framework required to meet the safety needs of a global aviation system;

Whereas the Directors General of Civil Aviation have a collective responsibility for international civil aviation safety;

Recognizing that the safety framework must be fully utilized by all stakeholders and continuously evolve to ensure its sustained effectiveness and efficiency in the changing regulatory, economic and technical environment of the 21st century;

Recalling that transparency and sharing of safety information are fundamental tenets of a safe air transportation system;

Recalling that recognition as valid of certificates and licences of other States is governed by Article 33 of the Convention and applicable Standards;

Recalling the role of ICAO in the settlement of disputes;

Recognizing that mutual trust between States as well as public confidence in the safety of air transportation is contingent upon access to adequate safety information;

Recognizing that safety is a shared responsibility, and advancements in global safety can only be possible through the leadership of ICAO, and a cooperative, collaborative and coordinated effort among all stakeholders; and

Recognizing that further improvements in aviation safety within and among States require a cooperative and proactive approach in which safety risks are identified and managed;

The Directors General of Civil Aviation:

1. *Commit* to reinforce the global aviation safety framework by:

- a) sharing as soon as possible appropriate safety-related information among States, all other aviation stakeholders and the public, including the disclosure of information on the results of their safety oversight audit as soon as possible and, in any case, not later than 23 March 2008;

- b) exercising safety oversight of their operators in full compliance with applicable SARPs, assuring themselves that foreign operators flying in their territory receive adequate oversight from their own State and taking appropriate action when necessary to preserve safety;
- c) expeditiously implementing safety management systems across the aviation industry to complement the existing regulatory framework;
- d) developing sustainable safety solutions, including the formation or strengthening of regional and sub-regional safety oversight organizations and initiatives; and e) promoting a just culture;

The Conference:

2. *Calls upon* States to base the recognition as valid of certificates and licences of other States exclusively on safety considerations and not for the purpose of gaining economic advantage;
3. *Calls upon* States, ICAO, industry, and donor organizations to direct resources towards the establishment of sustainable safety oversight solutions;
4. *Calls upon* States, ICAO and industry to support the coordinated implementation of safety management systems;
5. *Calls upon* ICAO to:
 - a) develop and actively support information exchange mechanisms that allow for an unrestricted flow of safety information between all aviation stakeholders;
 - b) develop by June 2006 a strategy to communicate safety information effectively to the public;
 - c) develop a mechanism under Article 21 of the Convention to make available aircraft registration and operator information;
 - d) develop guidelines and procedures to verify the conditions for recognition as valid of certificates and licences, in keeping with Article 33 of the Convention; and
 - e) study the development of a new Annex on safety oversight, safety assessment and safety management;
6. *Calls upon* States to demonstrate the political will to address aviation safety shortcomings, this includes the establishment, where necessary, of an autonomous Civil Aviation Authority which is empowered and adequately funded to provide effective safety oversight; and
7. *Calls upon* States and industry to closely coordinate with ICAO their safety initiatives to ensure optimum benefits to global aviation safety and to reduce duplication in effort.

SECURITY

RESOLUTION ADOPTED BY THE ICAO COUNCIL ON 25 JUNE 1986 RELATING TO AVIATION SECURITY FOR BILATERAL AIR AGREEMENTS

THE COUNCIL OF ICAO

CONSIDERING that the continuing threat of acts of unlawful interference with international civil aviation requires urgent and continuing attention by the Organization and the full cooperation of all contracting States in order to promote the safety of international civil aviation,

CONSIDERING that the rights and obligations of States under the international conventions on aviation security and under the Standards and Recommended Practices adopted by the Council of ICAO on aviation security could be complemented and reinforced in bilateral cooperation between States,

CONSIDERING that the bilateral agreements on air services represent the main legal basis for international carriage of passengers, baggage, cargo and mail,

CONSIDERING that provisions on aviation security should form an integral part of bilateral agreements on air services,

CONSIDERING that Annex 17 to the *Convention on International Civil Aviation* contains a recommendation that each contracting State should include in its bilateral agreements on air transport a clause related to aviation security,

URGES all contracting States to insert into their bilateral agreements on air services a clause on aviation security, and

RECOMMENDS that contracting States take into account the model clause attached to this resolution.

Attachment to Council Resolution of 25 June 1986
MODEL CLAUSE ON AVIATION SECURITY

Note.— this model clause has been drafted for possible insertion into bilateral agreements on air services; it is intended only for guidance of States, is not compulsory and in no way limits the contractual freedom of States to expand or limit its scope or to use a different approach.

ARTICLE "X"

- a) Consistent with their rights and obligations under international law, the contracting Parties reaffirm that their obligation to each other to protect the security of civil aviation against acts of unlawful interference forms an integral part of this Agreement. Without limiting the generality of their rights and obligations under international law, the contracting Parties shall in particular act in conformity with the provisions of the *Convention on Offences and Certain Other Acts Committed on Board Aircraft*, signed at Tokyo on 14 September 1963, the *Convention for the Suppression of Unlawful Seizure of Aircraft*, signed at The Hague on 16 December 1970 and the *Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation*, signed at Montreal on 23 September 1971.

Note.— The provision of the second sentence would be applicable only if the States concerned are parties to those Conventions.

- (b) The contracting Parties shall provide upon request all necessary assistance to each other to prevent acts of unlawful seizure of civil aircraft and other unlawful acts against the safety of such aircraft, their passengers and crew, airports and air navigation facilities, and any other threat to the security of civil aviation.
- (c) The Parties shall, in their mutual relations, act in conformity with the aviation security provisions established by the International Civil Aviation Organization and designated as Annexes to the *Convention on International Civil Aviation* to the extent that such security provisions are applicable to the Parties; they shall require that operators of aircraft of their registry or operators of aircraft who have their principal place of business or permanent residence in their territory and the operators of airports in their territory act in conformity with such aviation security provisions.

- (d) Each contracting Party agrees that such operators of aircraft may be required to observe the aviation security provisions referred to in paragraph (c) above required by the other contracting Party for entry into, departure from, or while within, the territory of that other contracting Party. Each contracting Party shall ensure that adequate measures are effectively applied within its territory to protect the aircraft and to inspect passengers, crew, carry-on items, baggage, cargo and aircraft stores prior to and during boarding or loading. Each contracting Party shall also give sympathetic consideration to any request from the other contracting Party for reasonable special security measures to meet a particular threat.
- (e) When an incident or threat of an incident of unlawful seizure of civil aircraft or other unlawful acts against the safety of such aircraft, their passengers and crew, airports or air navigation facilities occurs, the contracting Parties shall assist each other by facilitating communications and other appropriate measures intended to terminate rapidly and safely such incident or threat thereof.

**DECLARATION OF THE HIGH-LEVEL, MINISTERIAL CONFERENCE
ON AVIATION SECURITY
(Montreal, 19 to 20 February 2002)**

The High-level, Ministerial Conference on Aviation Security, convened by the International Civil Aviation Organization (ICAO) at its Headquarters in Montreal on 19 and 20 February 2002 and attended by Ministers and other high-level officials representing 154 States and 24 international organizations:

Reaffirming condemnation of the use of civil aircraft as weapons of destruction as well as of other acts of unlawful interference with civil aviation wherever and by whomsoever and for whatever reason they are perpetrated;

Mindful of the need for strengthening measures to prevent all acts of unlawful interference with civil aviation;

Emphasizing the vital role which civil aviation plays in economic development;

Stressing the preeminence of safety and security as underlying fundamentals in civil aviation which need global address;

Reaffirming the responsibility of States for the security and the safety of civil aviation, irrespective of whether the air transport and related services concerned are provided by Government, autonomous or private entities;

Noting the significant improvements in aviation security recently initiated in a large number of States;

Recognizing that a uniform approach in a global system is essential to ensure aviation security throughout the world and that deficiencies in any part of the system constitute a threat to the entire global system;

Affirming that a global aviation security system imposes a collective responsibility on all States;

Noting that the additional resources which will be required to meet enhanced aviation security measures may create an undue financial burden on the already limited resources of developing countries;

DECLARES its commitment to:

- achieve full implementation of the multilateral conventions on aviation security and the ICAO Standards and Recommended Practices (SARPs) and Procedures for Air Navigation Services (PANS) as well as ICAO Assembly Resolutions and Council Decisions relating to aviation security and safety;
- apply within national territories appropriate additional aviation security measures to meet the level of threat;

- foster international cooperation in the field of aviation security and harmonize the implementation of security measures;
- ensure that security measures are implemented in a most cost effective way in order to avoid undue burden on civil aviation;
- ensure to the extent possible that security measures do not disrupt or impede the flow of passengers, freight, mail or aircraft;
- ensure that security measures are implemented in a manner which is objective and non-discriminatory on the basis of gender, race, religion or nationality;
- enhance the quality of human resource functioning within aviation security, including application of sustained education and training; and
- restore public confidence in air travel and revitalize the air transport industry;

ENDORSES the establishment of a comprehensive ICAO *Aviation Security Plan of Action* for strengthening aviation security worldwide, including:

- identification, analysis and development of an effective global response to new and emerging threats, integrating timely measures to be taken in specific fields including airports, aircraft and air traffic control systems;
- strengthening of the security-related provisions in the Annexes to the *Convention on International Civil Aviation*, using expedited procedures where warranted and subject to overall safety considerations, notably in the first instance to provide for protection of the flight deck;
- regular, mandatory, systematic and harmonized aviation security audits to evaluate security in place in all Contracting States at national level and, on a sample basis, at airport level for each State, under the ICAO Aviation Security Mechanism;
- close coordination and coherence with audit programmes at the regional and sub-regional level;
- processing of the results by ICAO in a way which reconciles confidentiality and transparency; and
- a follow-up programme for assistance, with rectification of identified deficiencies;

CALLS ON the Council of ICAO to develop this *Plan of Action* for adoption not later than 14 June 2002 (the closing date of the 166th Session of the Council) and implementation commencing immediately thereafter;

CALLS ON the full and active participation of all ICAO Member States and, where applicable, of relevant international organizations, in implementation of the *Plan of Action* in order to achieve concrete results at the earliest possible date; and

CALLS ON States, international organizations and civil aviation industry to provide, on a voluntary basis, adequate funding and/or assistance in kind for implementation of the *Plan of Action*, both for ICAO activities and to enable all States worldwide to meet the requirements of enhanced security measures on a sustainable basis.

Part 2

AIRLINE OWNERSHIP AND JOINT OPERATIONS

A. AIRLINE OWNERSHIP AND CONTROL

2.1 Joint ownership and operation of international air services was considered by the 16th Session of the Assembly which adopted Resolution A16-33 on the subject. In order to ease the problem faced by certain developing countries arising from the strict application by other States of the traditional airline ownership and control criterion, the 24th Session of the Assembly adopted Resolution A24-12 which introduced the concept of “community of interest” in respect of airline designation. These two resolutions have been incorporated into the consolidated statement of continuing ICAO policies in the air transport field, contained firstly in Resolution A32-17 which was subsequently superseded by Resolutions A33-19, A35-18 and A36-15. Relevant excerpts are given below.

Assembly Resolution

A36-15: Section II, Appendix A (excerpts)

...

Whereas the provision of regular and reliable air transport services is of fundamental importance to the development of the economies of many developing States, including those dependent on tourism;

Whereas the strict application of the criterion of substantial ownership and effective control for the authorization of an airline to exercise route and other air transport rights could deny to many States a fair and equal opportunity to operate international air services and to optimize the benefits to be derived therefrom;

Whereas air carrier designation and authorization for market access should be liberalized at each State's pace and discretion progressively, flexibly and with effective regulatory control in particular regarding safety and security;

Whereas the broadening or the flexible application of the criteria for airline designation and authorization could help create an operating environment in which international air transport may develop and flourish in a stable, efficient and economical manner, and contribute to the participation objectives of States in the liberalization process, without prejudice to States' obligations for aviation safety and security;

Whereas the realization of developmental objectives among such States is increasingly being promoted by cooperative arrangements in the form of regional economic groupings and functional cooperation symbolic of the affinity and community of interest which are particularly shared among developing States belonging to such regional economic integration movements; and

Whereas the exercise of route and other air transport rights of a developing State having such community of interest by an airline substantially owned and effectively controlled by another developing State or States or its or their nationals sharing the same community of interests will serve to promote the foregoing interests of developing States;

The Assembly:

...

2. *Urges* Contracting States to accept such designations and allow such airlines to exercise the route rights and other air transport rights of a State or States, in particular developing States, within the same grouping, under mutually acceptable terms and conditions including air transport agreements negotiated or to be negotiated by the parties concerned;
3. *Urges* Contracting States to recognize the concept of community of interest within regional or subregional economic groupings as a valid basis for the designation by one developing State or States of an airline of another developing State or States within the same regional economic grouping where such airline is substantially owned and effectively controlled by such other developing State or States or its or their nationals;
4. *Urges* Contracting States to give consideration to the use of alternative criteria for airline designation and authorization, including those developed by ICAO, and to adopt a flexible and positive approach to accommodate other States in their efforts to liberalize air carrier ownership and control without compromising safety and security;
5. *Invites* Contracting States with experience in various forms of joint operation of international air services to submit to the Council, on a continuing basis, full information concerning their experience, so that the Organization may have in this particular field all information that might be of assistance to Contracting States;
6. *Requests* the Council, when approached, to render all feasible assistance to Contracting States wishing to enter regional or subregional economic groupings with respect to the operation of international air services; and
7. *Requests* the Council to give assistance, when approached, to Contracting States that take the initiative in developing cooperative arrangements for the joint ownership and operation of international air services, directly among themselves or whose airlines develop such arrangements, and to promptly circulate to States information concerning such cooperative arrangements.

2.2 The 1994 Worldwide Air Transport Conference (AT Conf/4) reached conclusions on 10 proposed regulatory arrangements and recommended that States give due consideration to these arrangements in their economic regulatory responsibilities and international air transport relationships. Given below is the recommended arrangement dealing with air carrier ownership and control. Texts of other arrangements are placed under their respective topics in this document.

The recommended arrangements are designed to be capable of being applied in a bilateral or a multilateral context (or between a group of States and one or more other States as "parties" to an arrangement). Relevant information on the context for these arrangements can be found in the Report of the Conference (Doc 9644).

AT Conf/4 Recommended Regulatory Arrangement

The broadened criteria provide that each party to an air transport agreement could expect that any air carrier it designates would be permitted to use the market access granted to it by a second party, and that second party would so commit itself, provided that the air carrier:

- a) is and remains substantially owned and effectively controlled by nationals of any one or more States that are parties to an agreement or by any one or more of the parties themselves; or

- b) is and remains substantially owned and effectively controlled by nationals of one or more States that are not necessarily party to the agreement concerned but are within a predefined group with a “community of interest”.

Each air carrier which meets the new criterion in a) or b) above would, of course, also be required (as is the case now with air carriers meeting the criterion of national ownership and effective control) to comply with the laws and regulations normally applied to international air transport by the party receiving the designation.

2.3 Building on the work of the Conference on this issue and particularly taking into account the relevant safety and economic considerations, the Air Transport Regulation Panel at its Ninth Meeting in February 1997 developed the following recommendation (ATRP/9-4) on further broadening the traditional airline ownership and control criteria. The Recommendation was approved by the Council in May 1997 and sent to States for their guidance.

The 2003 fifth Worldwide Air Transport Conference (ATConf/5) also addressed the issue of liberalizing airline ownership and control. The Conference considered and adopted a model clause based on the alternative criteria of principal place of business and effective regulatory control for optional use by States in their air services agreements. The model clause, which complements other options already developed by ICAO, is contained in Appendix 4 of this document.

Recommendation ATRP/9-4

THE PANEL RECOMMENDS:

that States wishing to accept broadened criteria for air carrier use of market access in their bilateral and multilateral air services agreements agree to authorize market access for a designated air carrier which:

- a) has its principal place of business and permanent residence in the territory of the designating State, and
- b) has and maintains a strong link to the designating State.

In judging the existence of a strong link, States should take into account elements such as the designated air carrier establishing itself, and having a substantial amount of its operations and capital investment in physical facilities in the designating State, paying income tax and registering its aircraft there, and employing a significant number of nationals in managerial, technical and operational positions.

Where a State believes it requires conditions or exceptions concerning the use of the principal place of business and permanent residence criterion based on national security, strategic, economic or commercial reasons this should be the subject of bilateral or multilateral negotiations or consultations, as appropriate.

B. JOINT OPERATING ORGANIZATIONS AND POOLED SERVICES

2.4 Three Articles of the Chicago Convention deal with joint operating organizations and pooled services.

Article 77*Joint operating organizations permitted*

Nothing in this Convention shall prevent two or more Contracting States from constituting joint air transport operating organizations or international operating agencies and from pooling their air services on any routes or in any regions, but such organizations or agencies and such pooled services shall be subject to all the provisions of this Convention, including those relating to the registration of agreements with the Council. The Council shall determine in what manner the provisions of this Convention relating to nationality of aircraft shall apply to aircraft operated by international operating agencies.

Article 78*Function of Council*

The Council may suggest to Contracting States concerned that they form joint organizations to operate air services on any routes or in any regions.

Article 79*Participation in operating organizations*

A State may participate in joint operating organizations or in pooling arrangements, either through its government or through an airline company or companies designated by its government. The companies may, at the sole discretion of the State concerned, be state-owned or partly state-owned or privately owned.

C. AIRCRAFT OPERATED BY INTERNATIONAL OPERATING AGENCIES

2.5 In 1967 the Council adopted a resolution (with three appendices) prescribing the manner in which the provisions of the Chicago Convention shall apply to aircraft operated by international operating agencies.

**Resolution adopted by the Council on nationality and registration
of aircraft operated by international operating agencies**

THE COUNCIL

CONSIDERING the provisions of Article 77 of the *Convention on International Civil Aviation*, the last sentence of which reads: "The Council shall determine in what manner the provisions of this Convention relating to nationality of aircraft shall apply to aircraft operated by international operating agencies;"

CONSIDERING the Report on this subject of the Legal Committee, Doc 8704-LC/155, 22/9/67, Annex C;

CONSIDERING the conclusions of the Legal Committee as expressed in the said Report;

AGREEING that, without any amendment to the *Convention on International Civil Aviation*, the provisions of the Convention can be made applicable, by a determination of the Council under said Article 77, to aircraft which are not registered on a national basis, such as aircraft "jointly registered" or "internationally registered" (which concepts are defined in Appendix 1 hereto) subject, however, to fulfilment of certain basic criteria, which have been established by the Council;

HOLDING that a determination by the Council pursuant to, and within the scope of, said Article 77 of the Convention, and made in accordance with the procedures indicated below, will be binding on all Contracting States and that, accordingly, in the case of aircraft which are jointly registered or internationally registered and in respect of which the basic criteria which have been established by the Council are fulfilled, the rights and obligations under the said Convention would be applicable as in the case of nationally registered aircraft of a Contracting State;

RESOLVES that the process of determination contemplated in said Article 77 shall include the application of the basic criteria which have been established by the Council to each particular plan for joint or international registration which might be brought before it, with appropriate and definite information relating to and describing such plan, by States constituting the international operating agency concerned;

DECIDES, with regard to the establishment of the basic criteria referred to in the three preceding paragraphs, as follows:

- a) In cases of joint registration, to adopt the basic criteria specified in Part I of Appendix 2 hereto;
- b) In cases of international registration, to be guided by Part II of Appendix 2 hereto.

NOTES, in connection with the foregoing process of determination, that, while the Council has discretion to arrive at such determination as it deems appropriate, in the case of joint registration described in Appendix 3 hereto, there should be little problem in regard to the fulfilment of the basic criteria specified in Part I of Appendix 2 hereto and, therefore, a determination by the Council in such or similar cases should merely be formal and could automatically be given;

NOTES also that other cases of joint registration and all cases of international registration may well require different approaches;

DECIDES that, upon completion of the process of determination as specified above for a particular plan which in the opinion of the Council would satisfy the basic criteria specified in Appendix 2 hereto, the manner of application of the provisions of the Convention relating to nationality of aircraft be as follows:

1. In the case of joint or international registration, all the aircraft of a given international operating agency shall have a common mark, and not the nationality mark of any particular State, and the provisions of the Convention which refer to nationality marks (Articles 12 and 20 of the Convention) and Annex 7 to the Convention shall be applied *mutatis mutandis*;
2. Without prejudice to the rights of other Contracting States as provided for in C of Appendix 2 hereto and in Note 2 therein, each such aircraft shall, for the purposes of the Convention, be deemed to have the nationality of each of the States constituting the international operating agency;
3. For the application of Articles 25 and 26 of the Convention, the State which maintains the joint register or the relevant part of the joint register pertaining to a particular aircraft shall be considered to be the State in which the aircraft is registered; and

DECLARES that:

1. This Resolution applies only when all the States constituting the international operating agency are and remain parties to the Chicago Convention.

2. This Resolution does not apply to the case of an aircraft which, although operated by an international operating agency, is registered on a national basis.

Appendix 1

For the purpose of this Resolution

- the expression “Joint registration” indicates that system of registration of aircraft according to which the States constituting an international operating agency would establish a register other than the national register for the joint registration of aircraft to be operated by the agency, and
- the expression “international registration” denotes the cases where the aircraft to be operated by an international operating agency would be registered not on a national basis but with an international organization having legal personality, whether or not such international organization is composed of the same States as have constituted the international operating agency.

Appendix 2

Basic criteria

Part I — In the case of *joint registration*:

- A. The States constituting the international operating agency shall be jointly and severally bound to assume the obligations which, under the Chicago Convention, attach to a State of registry.
- B. The States constituting the international operating agency shall identify for each aircraft an appropriate State from among themselves which shall be entrusted with the duty of receiving and replying to representations which might be made by other Contracting States of the Chicago Convention concerning that aircraft. This identification shall be only for practical purposes and without prejudice to the joint and several responsibility of the States participating in the agency, and the duties assumed by the State so identified shall be exercised on its own behalf and on behalf of all the other participating States. (See also Note 1 below.)
- C. The operation of the aircraft concerned shall not give rise to any discrimination against aircraft registered in other Contracting States with respect to the provisions of the Chicago Convention. (See also Note 2 below.)
- D. The States constituting the international operating agency shall ensure that their laws, regulations and procedures as they relate to the aircraft and personnel of the international operating agency when engaged in international air navigation shall meet in a uniform manner the obligations under the Chicago Convention and the Annexes thereto.

Part II — In the case of *international registration*:

The Council, in arriving at its determination, shall be satisfied that any system of international registration devised by the States constituting the international operating agency gives the other Member States of ICAO sufficient guarantees that the provisions of the Chicago Convention are complied with. In this connection the criteria mentioned in A, C and D above shall, in any event, be applicable, it being understood that additional criteria may be adopted by the Council.

Note 1.— In connection with B above, in the case of joint registration the functions of a State of registration under the Convention (in particular, the issue of certificates of registration and the issue and validation of certificates of

airworthiness and of licences for the operating crew) shall be performed by the State which maintains the joint register or the relevant part of the joint register pertaining to a particular aircraft. In any case, the exercise of such functions shall be done on behalf of all the States jointly.

Note 2.— In connection with C above, and with reference to the undermentioned Articles of the Chicago Convention, it is noted as follows:

- Article 7 (Cabotage): The mere fact of joint or international registration under Article 77 would not operate to constitute the geographical area of the multinational group as a cabotage area.
- Article 9 (Prohibited Areas) and Article 15 (Airport and Similar Charges): The mere fact of joint or international registration under Article 77 will not affect the application of these Articles.
- Article 27 (Patent Claims): The requirement of this Article being that a given State should be not only a party to the Chicago Convention but also a party to the International Convention for the Protection of Industrial Property, it might be that, in a particular case, one or other of the States constituting an international operating agency was not a party to the latter Convention. In such case the interests of that State are not protected by the terms of Article 27.

Appendix 3

In connection with the present Resolution, the Council had before it the following scheme of joint registration, noting, at the same time, that other schemes might also be possible:

- a) The States constituting the international operating agency will establish a joint register for registration of aircraft to be operated by the agency. This will be separate and distinct from any national register, which any of those States may maintain in the usual way.
- b) The joint register may be undivided or consist of several parts. In the former case, the register will be maintained by one of the States constituting the international operating agency and, in the latter case, each part will be maintained by one or other of these States.
- c) An aircraft can be registered only once, namely, in the joint register or, in the case where there are different parts, in that part of the joint register which is maintained by a given State.
- d) All aircraft registered in the joint register or in any part thereof shall have one common marking, in lieu of a national mark.
- e) The functions of a State of registration under the Chicago Convention (for example, the issuance of the certificate of registration, certificate of airworthiness or licences of crew) shall be performed by the State which maintains the joint register or by the State which maintains the relevant part of that register. In any case, the exercise of such functions shall be done on behalf of all the States jointly.
- f) Notwithstanding e) above, the responsibilities of a State of registration with respect to the various provisions of the Chicago Convention shall be the joint and several responsibility of all the States which constitute the international operating agency. Any complaint by other Contracting States will be accepted by each or all of the States mentioned.

Part 3

REGULATION OF AIRLINE CAPACITY

3.1 Following Recommendation 4 of the Special Air Transport Conference (SATC 1977), which recommended that the Council undertake certain studies on the regulation of capacity in international air transport, the Panel on Regulation of Air Transport Services developed for the guidance of States model clauses, criteria, objectives and guidelines covering the “predetermination”, “Bermuda I” and “free-determination” methods of capacity regulation. This guidance material was communicated by the Council to States in 1981 for their consideration. These model clauses are also included in the ICAO Template Air Services Agreements (TASAs) for optional use by States (see Appendix 5 of this document). More detailed description of capacity regulation can be found in Part 4, Chapter 2 of Doc 9626 — *Manual on the Regulation of International Air Transport*.

A. MODEL CLAUSE FOR PREDETERMINATION METHOD

1. The total capacity to be provided on the agreed services by the designated airlines of the Contracting Parties shall be agreed between, or approved by, the aeronautical authorities of the Contracting Parties before the commencement of the operations, and thereafter according to anticipated traffic requirements.
2. The agreed services to be operated by the designated airlines of the Contracting Parties shall have as their primary objective the provision at reasonable load factors of capacity adequate to meet the traffic requirements between the territories of the two Contracting Parties.
3. Each Contracting Party shall allow fair and equal opportunity for the designated airlines of both Contracting Parties to operate the agreed services between their respective territories so as to achieve equality and mutual benefit, in principle by equal sharing of the total capacity between the Contracting Parties.
4. Each Contracting Party and its designated airline(s) shall take into consideration the interests of the other Contracting Party and its designated airline(s) so as not to affect unduly the services which the latter provides.
5. If, on review, the Contracting Parties fail to agree on the capacity to be provided on the agreed services, the capacity that may be provided by the designated airlines of the Contracting Parties shall not exceed the total capacity (including seasonal variations) previously agreed to be provided.

Criteria and guidelines for the Predetermination method of capacity regulation

Criterion A: The need to relate capacity closely to demand in a flexible manner.

Guidelines

1. Determination of capacity is made by specifying types of aircraft, frequency of services, and in some cases number of seats and/or cargo capacity by volume or weight that may be made available.

2. Determination of demand (traffic requirements) is usually made empirically, based on statistics for existing traffic and on reasonable estimates for future traffic, taking into account the economic environment, including tariffs and other relevant factors.
3. Relating capacity closely to demand requires the provision of capacity at a level to achieve a reasonable load factor, that is, a load factor that will:
 - a) provide on-demand passengers with a reasonable chance of obtaining accommodation, and
 - b) assure reasonable economic return to the airlines.
4. Flexibility in the provision of capacity may be achieved by such means as:
 - a) closely monitoring load factors to detect changes in demand,
 - b) arranging for periodical and *ad hoc* consultations, and
 - c) facilitating the provision of extra flights, or extra sections, or of temporary capacity by one airline on behalf of the other participating airline to meet short-term fluctuation of demand.
5. Flexibility may also be gained by providing objective criteria within which limited capacity increases shall be approved, for example, increases up to an agreed limit provided that relevant load factors during the same period of the previous year reached an agreed level.

Criterion B: The need that the capacity to be provided should primarily be governed by the demand for traffic between the territories of the two Contracting Parties.

Guidelines

1. Traffic other than the traffic between the territories of the two Contracting Parties is usually regarded as complementary only, but, in some cases it may be of considerable importance for the consumers and the airlines concerned.
2. With regard to the provision of supplementary capacity for such traffic the following should be taken into account depending on the circumstances:
 - a) the overall balance to be achieved by any bilateral agreement,
 - b) basic differences which may exist between “beyond” and “intermediate” traffic needs,
 - c) the requirements of through airline operations and the traffic requirements of the area through which the service passes, taking account of the needs of local and regional services.
3. In many cases the provision of supplementary capacity for such traffic may not be justified as the capacity provided for the traffic between the territories of the two Contracting Parties may suffice to cover other traffic needs as well.

Criterion C: The need to provide effectively for equality and mutual benefit for the carriers of both countries concerned.

Guidelines

1. Equality and mutual benefit will usually be related to the overall balance of the bilateral agreement and their effective achievement may be arrived at by measures such as those in 4) of Criterion A above.

2. The regulation of capacity to produce equality and mutual benefit will take into account such factors as:
 - a) types of aircraft and frequency of operation by the carriers, and
 - b) the characteristics of the routes, subject of the agreement, operated by the carriers.

Criterion D: The need to encourage the development and expansion of air transport on a sound economic basis and in the public interest.

Guidelines

1. This criterion which is general and fundamental is normally reflected in the preamble to an agreement rather than in individual clauses.
2. The “public interest” is composed of three principal interest factors: the airline industry, users of air transport, and other national interests.
3. Capacity should be offered at a level which:
 - a) provides the on-demand passenger with a reasonable chance of obtaining accommodation,
 - b) assures a reasonable economic return to the carriers,
 - c) avoids the “dumping” of capacity, and
 - d) is scheduled to meet the convenience of the public to the greatest extent possible.

Criterion E: The need to match traffic with airport and airway capacity; to make efficient use of human and material resources (particularly fuel), and to protect the environment from air and noise pollution.

Guidelines

These criteria are of great and increasing importance and may be best reflected in the preamble to an agreement. However, capacity may need to be scheduled so as to achieve efficient use of airport and airway facilities, to economize the use of resources through optimization of load factors, and to minimize environmental nuisance. These requirements may sometimes require reconciliation with those related to criterion A above.

Criterion F: The need to harmonize the provision of non-scheduled and scheduled capacity in relation to total demand.

Guidelines

1. When certain services particularly so-called “programmed” or “scheduled” charters, are classified as scheduled by both Contracting Parties special measures may be necessary to designate the carriers and routes involved so that the capacity they offer may be regulated together with other scheduled capacity.
2. In order to have the necessary information for harmonizing capacity States may agree to exchange any data that may be useful on the level of capacity offered by non-scheduled services.

B. MODEL CLAUSE FOR BERMUDA I TYPE METHOD

1. The air transport facilities available to the travelling public should bear a close relationship to the requirements of the public for such transport.
2. The designated airline or airlines of each Contracting Party shall have a fair and equal opportunity to (compete) (operate) on any agreed route between the territories of the two Contracting Parties.
3. Each Contracting Party shall take into consideration the interests of the airlines of the other Contracting Party so as not to affect unduly their opportunity to offer the services covered by this Agreement.
4. Services provided by a designated airline under this Agreement shall retain as their primary objective the provision of capacity adequate to the traffic demands between the country of which such airline is a national and the country of ultimate destination of the traffic. The right to embark or disembark on such services international traffic destined for and coming from third countries at a point or points on the routes specified in this Agreement shall be exercised in accordance with the general principles of orderly development of international air transport to which both Contracting Parties subscribe and shall be subject to the general principle that capacity should be related to:
 - a) the traffic requirements between the country of origin and the countries of ultimate destination of the traffic;
 - b) the requirements of through airline operations; and
 - c) the traffic requirements of the area through which the airline passes, after taking account of local and regional services.
5. Consultations between the Contracting Parties shall be arranged whenever a Party requests that the capacity provided under the Agreement be reviewed to ensure the application of the principles in the Agreement governing the conduct of the services.

Introductory observations to analysis of Bermuda I method

1. In the Bermuda I type method of regulation of capacity, governments set out the capacity principles for airlines to follow but allow each airline the freedom to determine, in conformity with these principles, its own capacity based upon airline analysis of market requirements.
2. Capacity operated on agreed routes is subject to *ex post facto* review by governments through their consultations. Consultations between governments which are usual also in other types of agreements, are in their *ex post facto* aspect an integral part of the Bermuda I type method and may become essential for meeting the criteria and objectives for regulation of capacity as may be determined by governments.
3. Governments may decide to adopt measures to ensure effective functioning of the *ex post facto* review mechanism in the event that its use becomes necessary. Such measures may include the following:
 - a) setting up an exchange system of relevant statistical data;
 - b) establishing, if possible, a common understanding of the basic factors relating to the application of the capacity regulation principles of the agreement and the evaluation of the actual provision of capacity;
 - c) exchanging information about factors affecting the competitive position of airlines, including access to facilities and government rules and practices concerning airline operations and commercial activities.

4. Action taken by governments as a result of the *ex post facto* review and affecting the provision of capacity, will most likely be applied only to the extent necessary to correct deficiencies perceived by governments, unless they decide otherwise.

5. In the event one Contracting Party continues to perceive a deficiency in the capacity/demand relationship, and the Parties are unable to agree on measures to correct this, the following options, among others, are available to a dissatisfied Party:

- a) acceptance of the resulting *de facto* situation;
- b) acceptance of pre-agreed methods of capacity regulation, if any, applicable in case of disagreement;
- c) arbitration or other methods for settlement of disputes, if applicable; or
- d) giving notice of termination of the bilateral agreement.

Criteria, objectives and guidelines for the Bermuda I type method of capacity regulation

Criterion A: The need to relate capacity closely to demand in a flexible manner

RELATED OBJECTIVES: the avoidance of excess air transport capacity with the consequent waste of human and material resources including fossil fuel; the prevention of capacity “dumping”.

Guidelines

1. Determination of capacity is made by the airlines which are required to conform to capacity regulation principles agreed between the two governments.
2. Determination of demand (traffic requirements) is usually made by the airlines empirically, based on statistics for existing traffic and on reasonable estimates for future traffic, taking into account the economic environment, including tariffs and other relevant factors.
3. Relating capacity closely to demand requires the provision of capacity at a level to achieve a reasonable load factor, that is, a load factor that will:
 - a) provide on-demand passengers with a reasonable chance of obtaining accommodation, and
 - b) assure reasonable economic return to the airlines.
4. Flexibility in the provision of capacity may be achieved by the airlines by such means as:
 - a) closely monitoring load factors to detect changes in demand,
 - b) adjusting schedules (including aircraft types and itineraries over agreed routes) on short notice, in conformity with agreed capacity principles, and
 - c) providing extra flights or extra sections as may be required, in conformity with agreed capacity principles.

Criterion B: The need that the capacity to be provided should primarily be governed by the demand for traffic between the territories of the two Contracting Parties

RELATED OBJECTIVES: the assurance of fair and equal opportunity to compete; protection of the interests of the national carriers.

Guidelines

1. The original Bermuda I capacity clause establishes as the primary objective of the services each designated air carrier offers “the provision of capacity adequate to the traffic demands between the country of which such a carrier is a national and the country of ultimate destination of the traffic”, which includes but is not limited to the demand of traffic between the territories of the two Contracting Parties.
2. This difference loses its practical importance in situations where routes do not involve third countries. In other cases, if it is desired to reflect fully Criterion B, preference could be given to formulas developed in Bermuda I type agreements concluded by several countries in the period after 1946 whereby the words “between territories of Contracting Parties” replaced the original language of the Bermuda agreement.
3. Under Bermuda I type capacity articles in general, the embarkation and disembarkation of third country traffic at a point or points specified in the route agreements is complementary and subject to “the general principles of orderly development of international air transport” and “the general principle that capacity should be related to:
 - a) the traffic requirements between the country of origin and the countries of ultimate destination of the traffic;
 - b) the requirements of through airline operations; and
 - c) the traffic requirements of the area through which the airline passes, after taking account of local and regional services.”

Criterion C: The need to provide effectively for equality and mutual benefit for the carriers of both countries concerned

RELATED OBJECTIVES: the assurance of fair and equal opportunity to compete; protection of the interests of the national carrier; an equitable sharing of traffic to be carried.

Guidelines

1. Bermuda I type capacity articles provide that the designated airline or airlines of each Contracting Party shall have a fair and equal opportunity to operate on any agreed route between the territories of the two Contracting Parties and each Contracting Party shall take into consideration the interests of the airlines of the other Contracting Party so as not to affect unduly their opportunity to offer the services covered by the Agreement.
2. Equality and mutual benefit will usually be related to the overall balance of the bilateral agreement and their effective achievement will be dependent, *inter alia*, on:
 - a) aircraft types, frequency, routing, and marketing of services as decided by airlines themselves;
 - b) the characteristics of the governmentally agreed routes;
 - c) the relative competitive position of the airlines; and
 - d) such factors affecting competition as rules and practices of the two Contracting Parties on such matters as access to airports, aeronautical facilities and services, fuel, national rules governing commercial activities of airlines, transfer of funds, and in general, fair competitive and operating practices.

Criterion D: The need to encourage the development and expansion of air transport on a sound economic basis and in the public interest

RELATED OBJECTIVES: the provision of good service at reasonable prices to the consumer; the possibility of a reasonable economic return to the carriers; protection of the interests of the national carrier.

Guidelines

1. This criterion which is general and fundamental is normally reflected in the preamble to an agreement rather than in individual clauses.
2. The “public interest” is composed of three principal interest factors: the airline industry, users of air transport, and other national interests.
3. Capacity should be offered at a level which:
 - a) provides the on-demand passenger with a reasonable chance of obtaining accommodation;
 - b) assures a reasonable economic return to the carriers;
 - c) avoids the “dumping” of capacity; and
 - d) is scheduled to meet the convenience of the public to the greatest extent possible.

Criteria E, F, G: The need to match traffic with airport and airway capacity; to make efficient use of human and material resources (particularly fuel); and to protect the environment from air and noise pollution

RELATED OBJECTIVES: the avoidance of excess air transport capacity with the consequent waste of human and material resources including fossil fuel; the protection of the environment.

Guidelines

These criteria are of great and increasing importance and may be best reflected in the preamble to an agreement. To this effect, capacity may need to be managed so as to achieve efficient use of airport and airway facilities, to economize the use of resources through optimization of load factors, and to minimize environmental nuisance. These requirements may sometimes require reconciliation with those related to Criterion A above.

Criterion H: The need to harmonize the provision of non-scheduled and scheduled capacity in relation to total demand

RELATED OBJECTIVE: the harmonization of regulation of scheduled and non-scheduled operations in the same market.

Guidelines

1. Harmonization of non-scheduled and scheduled capacity was not a perceived need when Bermuda I type agreements were first negotiated. However, such harmonization may be attempted either unilaterally by measures taken pursuant to Article 5 of the Chicago Convention or, if the Contracting Parties so desire, under Bermuda I type agreements by application of the capacity clauses to non-scheduled services, or the addition of separate provisions on non-scheduled capacity, and the exchange of relevant information including capacity and traffic data on these two categories of service.
2. Should both Contracting Parties decide to classify certain services, particularly so-called “programmed” or “schemulized” charters as scheduled services, their agreements may or may not require modification, for example in the capacity article, to achieve harmonization in treatment of the capacity offered by each category of service.

C. MODEL CLAUSE FOR FREE-DETERMINATION METHOD

1. Each Party shall allow a fair and equal opportunity for the designated airlines of both Parties to compete in the international air transportation covered by this Agreement.
2. Each Party shall take all appropriate action within its jurisdiction to eliminate all forms of discrimination or unfair competitive practices adversely affecting the competitive position of the airlines of the other Party.
3. Neither Party shall unilaterally limit the volume of traffic, frequency, or regularity of service, or the aircraft type or types operated by the designated airlines of the other Party, except as may be required for customs, technical, operational, or environmental reasons under uniform conditions consistent with Article 15 of the Convention.
4. Neither Party shall impose on the other Party's designated airlines a first refusal requirement, uplift ratio, no-objection fee, or any other requirement with respect to the capacity, frequency or traffic which would be inconsistent with the purposes of this Agreement.
5. Neither Party shall require the filing of schedules, programmes for charter flights, or operational plans by airlines of the other Party for approval, except as may be required on a non-discriminatory basis to enforce uniform conditions as foreseen by paragraph 3) of this Article or as may be specifically authorized in an Annex to this Agreement. If a Party requires filings for information purposes, it shall minimize the administrative burdens of filing requirements and procedures on air transportation intermediaries and on designated airlines of the other Party.

Introductory observations to analysis of free-determination method

1. In the free-determination method governments agree to abrogate their direct control of capacity, and explicitly to prohibit unilateral limitation of capacity, frequency or aircraft type, except as may be required for customs, technical, operational or environmental reasons under uniform conditions consistent with Article 15 of the Convention.
2. No specific provision on the relationship between capacity and demand is contained in free-determination agreements, the competitive pricing and scheduling responses of individual airlines to market forces being relied upon to bring about necessary adjustment. This mechanism may work less effectively where the free play of market forces is impaired or inhibited.
3. Governments may indirectly influence airline decisions affecting the relationship between capacity and demand by ensuring that the free operation of competitive market forces is not inhibited or impaired.
4. Governments may also indirectly influence the airlines' determination of capacity through provisions in other Articles such as those on Designation, Pricing, Charters, and Consultation.
5. Free-determination agreements normally proscribe all forms of discrimination or unfair competitive practice, including predatory pricing, such practices being the cause for possible consultation and remedy.
6. The free play of market forces assumed as a necessary environment for the free-determination method allows the airlines, within broad limits, to set their own fares and rates. In this situation scheduling ceases to be the only major competitive technique available to the airlines.
7. It is assumed by the Contracting Parties in such agreements that the free play of market forces will assure the development and expansion of air transport on a sound economic basis and in their public interest. The public interest is likely to involve less emphasis on the continued viability of their airlines in a given market in this method than in other methods.

8. Since the free-determination method implies no direct intervention by governments in the field of capacity, the following guidelines cannot be considered as describing such intervention, but are rather a description of the factors over which the Contracting Parties must exercise supervision in conformity with their general responsibility with respect to the public interest.

Criteria, objectives and guidelines for the free-determination method of capacity regulation

Criterion A: The need to relate capacity closely demand in a flexible manner

RELATED OBJECTIVES: the avoidance of excess air transport capacity with the consequent waste of human and material resources including fossil fuel; the prevention of capacity “dumping”.

Guidelines

1. Determination of capacity is made solely by the airlines. Governments encourage competitive forces (other airlines, charter flights, flexible pricing) to stimulate frequent re-examination of airline decisions, particularly on capacity.
2. Determination of demand (traffic requirements) is usually made by the airlines empirically, based on statistics for existing traffic and on reasonable estimates for future traffic, taking into account the economic environment, including tariffs and other relevant factors.
3. Relating capacity closely to demand requires the provision of capacity by the airlines at a level that will:
 - a) provide on-demand passengers with a reasonable chance of obtaining accommodation, and
 - b) assure reasonable economic return to the airlines.
4. Flexibility in the provision of capacity may be achieved by the airlines by such means as:
 - a) closely monitoring load factors to detect changes in demand,
 - b) adjusting schedules (including aircraft types and itineraries over agreed routes) on short notice, and
 - c) providing extra flights or extra sections as may be required.
5. To ensure that capacity is closely related to demand in a flexible manner under the free-determination method, the operations in question are likely to be monitored by each Contracting Party and consultations are likely to be held to ensure that the free play of market forces is not inhibited.

Criterion B: The need that the capacity to be provided should primarily be governed by the demand for traffic between the territories of the two Contracting Parties

RELATED OBJECTIVES: the assurance of fair and equal opportunity to compete; protection of the interests of the national carrier.

Guidelines

1. The provision of capacity, as with the signing of an agreement in general, is intended to meet demands of traffic between the territories of the two Contracting Parties, but may also meet other traffic demands depending upon the nature of the agreed routes (i.e. with or without third country stops), consumer preferences, and marketing and operational decisions of the airlines involved.

2. In this type of agreement, in general, no specific distinction is made between traffic between the territories of two Contracting Parties and third country traffic. Third country traffic rights may not be agreed, but if such rights are agreed, the same capacity regime would apply to all traffic, subject to Guideline 3 below.

3. The capacity made available for traffic moving other than between the territories of the two Parties will depend also upon the willingness of third country governments to authorize such capacity.

Criterion C: The need to provide effectively for equality and mutual benefit for the carriers of both countries concerned

RELATED OBJECTIVES: the assurance of fair and equal opportunity to compete; protection of the interests of the national carrier; an equitable sharing of traffic to be carried.

Guidelines

1. Most free-determination agreements call for “fair and equal opportunity to compete” and many stipulate elimination of “all forms of discrimination or unfair competitive practices”. Equality of opportunity is provided for by agreement of the Contracting Parties to identical freedom for airlines of each to provide capacity and to price their services so as to effectively utilize such capacity, as well as by the overall exchange of rights in the bilateral agreement, including a fair exchange of routes.

2. Benefits are available to the carriers of both countries in proportion to the efforts and resources each airline applies.

Criterion D: The need to encourage the development and expansion of air transport on a sound economic basis and in the public interest

RELATED OBJECTIVES: the provision of good service at reasonable prices to the consumer; the possibility of a reasonable economic return to the carriers; protection of the interests of the national carrier.

Guidelines

1. This criterion which is general and fundamental is normally reflected in the preamble to an agreement rather than in individual clauses.

2. The “public interest” is composed of three principal interest factors: the airline industry, users of air transport, and other national interests.

3. Contracting Parties expect that market forces will result in capacity offerings at a level which would:

- a) provide the on-demand passenger with a reasonable chance of obtaining accommodation;
- b) assure a reasonable economic return to the carriers;
- c) avoid the “dumping” of capacity; and
- d) be scheduled to meet the convenience of the public to the greatest extent possible.

Criteria E, F, G: The need to match traffic with airport and airway capacity; to make efficient use of human and material resources (particularly fuel); and to protect the environment from air and noise pollution

RELATED OBJECTIVES: the avoidance of excess air transport capacity with the consequent waste of human and material resources including fossil fuel; the protection of the environment.

Guidelines

These criteria are of great and increasing importance and may be best reflected either in the preamble to an agreement or in specific provisions in the agreement. To this effect, capacity may need to be managed so as to achieve efficient use of airport and airway facilities, to economize the use of resources through optimization of load factors, and to minimize environmental nuisance. These requirements may sometimes require reconciliation with those related to Criterion A above.

Criterion H: The need to harmonize the provision of non-scheduled and scheduled capacity in relation to total demand

RELATED OBJECTIVES: the harmonization of regulation of scheduled and non-scheduled operations in the same market.

Guidelines

Harmonization of non-scheduled and scheduled services, including regulation of capacity in relation to total demand, is expected by the Contracting Parties to be brought about by the action of market forces and by normally including both services under the same agreement, particularly under the same capacity article, with freedom of opportunity limited only by distinctions, legal and marketing, between the two.

D. CAPACITY AND RESOURCES

3.2 The Second Air Transport Conference (AT Conf/2, 1980) adopted the following Recommendation which deals with the harmonization of capacity with resources and the environment.

AT Conf/2 Recommendation 4

RECOMMENDS that Contracting States in formulating and implementing their aviation policy, *inter alia* in regulating capacity, shall take into consideration the need to harmonize traffic requirements with the availability of airport, airway, human and material resources and the need to protect the environment.

Part 4

INTERNATIONAL FARES AND RATES

4.1 The Chicago Convention does not contain any provisions concerning the establishment or regulation of international fares and rates. Consequently, along with the exchange of routes and rights, and the regulation of capacity, this is a matter for agreement between States. Traditionally most States, through their bilateral agreements, leave the initial responsibility for the development of tariffs to the airlines, which often use the multilateral tariff development mechanism provided by the International Air Transport Association (IATA) for the negotiation of tariffs for scheduled services. In most cases, tariffs, whether agreed by airlines through IATA or developed by other means, are subject to approval by concerned governments, which may be tacit or express.

As one of the three major elements in the regulation of international air transport (the other two being market access and capacity), ICAO did extensive work on tariffs in the 1970s and 1980s. The guidance in this Part of Doc 9587 was initially developed and approved by the Council during the period 1977 to 1989 on the basis of recommendations adopted by the Fares and Rates Panel of Experts, by three Air Transport Conferences (SATC, 1977; AT Conf/2, 1980; and AT Conf/3, 1985) and in some instances, by Assembly resolutions. The Council reviewed this Part in 1997 with the assistance of the Air Transport Regulation Panel and approved changes designed to update the material.

Since the 1990s, the regulatory importance of tariffs has gradually decreased along with the general trend of air transport liberalization. Many States have relaxed tariff regulation and some have removed all airline pricing restrictions. A more detailed description of international fares and rates and their regulation can be found in Part 4, Chapter 3 of Doc 9626 — *Manual on the Regulation of International Air Transport*.

A. ASSEMBLY RESOLUTION ON FARES AND RATES

A36-15: Appendix A, Section I (excerpts)

...

Whereas the establishment of international air transport fares and rates should be fair, transparent and designed to promote the satisfactory development of air services; and

Whereas there is a need to adapt to the changing regulatory and operating environment in the air transport field and the Organization has developed policy guidance for the regulation of international air transport, including model clauses and template air services agreements, for optional use by States in bilateral or regional agreements;

The Assembly:

...

7. *Requests* the Council to keep under review the machinery for establishing the Organization's policy guidance on the regulation of international air transport, and to revise or update it as required;

...

B. BILATERAL TARIFF CLAUSES

4.2 In the course of a review of Resolutions and Recommendations of the Organization in the fares and rates field pursuant to Recommendation 12 of the Third Air Transport Conference, the Council in 1987 identified a fundamental need to revise the Standard Bilateral Tariff Clause in the light of the major changes which had taken place since the Clause was approved by the Council in 1978. After an extensive revision which included alternative approaches to the bilateral regulation of tariffs, the Council approved the texts of three model bilateral tariff clauses and accompanying notes on their application in 1989. The Council reviewed the model clauses and notes in 1997 and made changes to update them. These model clauses are also incorporated in the ICAO Template Air Services Agreements (TASAs) (see Appendix 5 of this document).

MODELS OF BILATERAL TARIFF CLAUSES

Note 1.— Paragraphs 1 through 4 are common to the three alternative regulatory approaches of “double approval”, “country of origin” and “dual disapproval”.

Note 2.— Supplementary options are shown in square brackets []. Comments or clarifications are included in curved brackets ().

*Double approval approach**Country of origin approach**Dual disapproval approach***1. DEFINITION OF THE TERM “TARIFF”**

In the following paragraphs the term “tariff” means the price to be charged for the international carriage of passengers, baggage or cargo (excluding mail) and comprises:

- a) any through tariff or amount to be charged for international carriage, marketed and sold as such, including through tariffs constructed using other tariffs or add-ons for carriage over international sectors or domestic sectors forming part of the international sector;
- b) the commission to be paid on the sales of tickets for the carriage of passengers and their baggage, or on the corresponding transactions for the carriage of cargo; and
- c) the conditions that govern the applicability of the tariff or the price for carriage, or the payment of commission.

In the following paragraphs the term “tariff” means the price to be charged for the international carriage of passengers, baggage or cargo (excluding mail) and comprises:

- a) any through tariff or amount to be charged for international carriage, marketed and sold as such, including through tariffs constructed using other tariffs or add-ons for carriage over international sectors or domestic sectors forming part of the international sector;
- b) the commission to be paid on the sales of tickets for the carriage of passengers and their baggage, or on the corresponding transactions for the carriage of cargo; and
- c) the conditions that govern the applicability of the tariff or the price for carriage, or the payment of commission.

In the following paragraphs the term “tariff” means the price to be charged for the international carriage of passengers, baggage or cargo (excluding mail) and comprises:

- a) any through tariff or amount to be charged for international carriage, marketed and sold as such, including through tariffs constructed using other tariffs or add-ons for carriage over international sectors or domestic sectors forming part of the international sector;
- b) the commission to be paid on the sales of tickets for the carriage of passengers and their baggage, or on the corresponding transactions for the carriage of cargo; and
- c) the conditions that govern the applicability of the tariff or the price for carriage, or the payment of commission.

<i>Double approval approach</i>	<i>Country of origin approach</i>	<i>Dual disapproval approach</i>
It also includes:	It also includes:	It also includes:
d) any significant benefits provided in association with the carriage;	d) any significant benefits provided in association with the carriage;	d) any significant benefits provided in association with the carriage;
e) any tariff for carriage on a domestic sector which is only sold as an adjunct to international carriage, which is not available for purely domestic travel and which is not made available on equal terms to all international carriers and users of their services.	e) any tariff for carriage on a domestic sector which is only sold as an adjunct to international carriage, which is not available for purely domestic travel and which is not made available on equal terms to all international carriers and users of their services.	e) any tariff for carriage on a domestic sector which is only sold as an adjunct to international carriage, which is not available for purely domestic travel and which is not made available on equal terms to all international carriers and users of their services.

2. FACTORS IN DETERMINING TARIFFS

2.1 *Factors to be applied*

The tariffs to be applied by the designated airline or airlines of a Contracting Party for services covered by this Agreement shall be established at reasonable levels, due regard being paid to all relevant factors, including interests of users, cost of operation, characteristics of service, commission rates, reasonable profit, tariffs of other airlines and other commercial considerations in the marketplace.

The tariffs to be applied by the designated airline or airlines of a Contracting Party for services covered by this Agreement shall be established at reasonable levels, due regard being paid to all relevant factors, including interests of users, cost of operation, characteristics of service, commission rates, reasonable profit, tariffs of other airlines, and other commercial considerations in the marketplace.

The tariffs to be applied by the designated airline or airlines of a Contracting Party for services covered by this Agreement shall be established at reasonable levels, due regard being paid to all relevant factors, including interests of users, cost of operation, characteristics of service, commission rates, reasonable profit, tariffs of other airlines, and other commercial considerations in the marketplace.

2.2 *Objectionable factors*

The Contracting Parties agree to give particular attention to tariffs which may be objectionable because they appear unreasonably discriminatory, unduly high or restrictive because of the abuse of a dominant position, artificially low because of direct or indirect subsidy or support, or "predatory".

The Contracting Parties agree to give particular attention to tariffs which may be objectionable because they appear unreasonably discriminatory, unduly high or restrictive because of the abuse of a dominant position, artificially low because of direct or indirect subsidy or support, or "predatory".

The Contracting Parties agree to give particular attention to tariffs which may be objectionable because they appear unreasonably discriminatory, unduly high or restrictive because of the abuse of a dominant position, artificially low because of direct or indirect subsidy or support, or "predatory".

3. MECHANISMS FOR DEVELOPING TARIFFS (three options)

The tariffs shall, wherever possible, be agreed by the designated airlines concerned of both Contracting Parties, after discussion as required with their respective governments and, if applicable, consultation with other airlines. Such agreement shall, wherever possible, be reached by the use of the appropriate international tariff coordination mechanism. Failing any multilateral or bilateral agreement, each designated airline may develop tariffs individually.

The tariffs shall, wherever possible, be agreed by the designated airlines concerned of both Contracting Parties, after discussion as required with their respective governments and, if applicable, consultation with other airlines. Such agreement shall, wherever possible, be reached by the use of the appropriate international tariff coordination mechanism. Failing any multilateral or bilateral agreement, each designated airline may develop tariffs individually.

The tariffs shall, wherever possible, be agreed by the designated airlines concerned of both Contracting Parties, after discussion as required with their respective governments and, if applicable, consultation with other airlines. Such agreement shall, wherever possible, be reached by the use of the appropriate international tariff coordination mechanism. Failing any multilateral or bilateral agreement, each designated airline may develop tariffs individually.

<i>Double approval approach</i>	<i>Country of origin approach</i>	<i>Dual disapproval approach</i>
<p>(OR)</p> <p>The tariffs may be agreed by the designated airlines concerned of both Contracting Parties, after consultation, if applicable, with other airlines. Such agreement may be reached by the use of the appropriate international tariff coordination mechanism. However, neither Party shall make participation in multilateral carrier tariff coordination a condition for approval of any tariff nor shall either Party prevent or require participation by the designated airline(s) of either Party in such multilateral tariff coordination. Each designated airline may at its option develop tariffs individually.</p>	<p>(OR)</p> <p>The tariffs may be agreed by the designated airlines concerned of both Contracting Parties, after consultation, if applicable, with other airlines. Such agreement may be reached by the use of the appropriate international tariff coordination mechanism. However, neither Party shall make participation in multilateral carrier tariff coordination a condition for approval of any tariff nor shall either Party prevent or require participation by the designated airline(s) of either Party in such multilateral tariff coordination. Each designated airline may at its option develop tariffs individually.</p>	<p>(OR)</p> <p>The tariffs may be agreed by the designated airlines concerned of both Contracting Parties, after consultation, if applicable, with other airlines. Such agreement may be reached by the use of the appropriate international tariff coordination mechanism. However, neither Party shall make participation in multilateral carrier tariff coordination a condition for approval of any tariff nor shall either Party prevent or require participation by the designated airline(s) of either Party in such multilateral tariff coordination. Each designated airline may at its option develop tariffs individually.</p>
<p>(OR)</p> <p>The tariffs shall, wherever possible, be established by the designated airlines individually. However, tariffs may be agreed by the designated airlines of the Contracting Parties if both Parties permit designated airlines to participate in the activities of the appropriate international tariff coordination mechanism(s). Any tariff agreement resulting from such activities shall be subject to the approval of each Party, and may be disapproved at any time whether or not previously approved. [The submission of such agreements is not the filing of a tariff for the purposes of Paragraph 4 of this Clause.]</p>	<p>(OR)</p> <p>The tariffs shall, wherever possible, be established by the designated airlines individually. However, tariffs may be agreed by the designated airlines of the Contracting Parties if both Parties permit designated airlines to participate in the activities of the appropriate international tariff coordination mechanism(s). Any tariff agreement resulting from such activities shall be subject to the approval of each Party, and may be disapproved at any time whether or not previously approved. [The submission of such agreements is not the filing of a tariff for the purposes of Paragraph 4 of this Clause.]</p>	<p>(OR)</p> <p>The tariffs shall, wherever possible, be established by the designated airlines individually. However, tariffs may be agreed by the designated airlines of the Contracting Parties if both Parties permit designated airlines to participate in the activities of the appropriate international tariff coordination mechanism(s). Any tariff agreement resulting from such activities shall be subject to the approval of each Party, and may be disapproved at any time whether or not previously approved. [The submission of such agreements is not the filing of a tariff for the purposes of Paragraph 4 of this Clause.]</p>
4. FILING OF TARIFFS		
4.1 Requirement for filing (two options)		
<p>Each Contracting Party may require notification or filing of tariffs proposed by the designated airline(s) [of the other Party] [of both Contracting Parties]</p> <p>for carriage to or from its territory.</p>	<p>Each Contracting Party may require notification or filing of tariffs proposed by the designated airline(s) [of the other Party] [of both Contracting Parties]</p> <p>for carriage to or from its territory.</p>	<p>Each Contracting Party may require notification or filing of tariffs proposed by the designated airline(s) [of the other Party] [of both Contracting Parties]</p> <p>for carriage to or from its territory.</p>
<p>(OR)</p> <p>for carriage to or from its territory and, in exceptional circumstances, for carriage via its territory where a stopover is permitted in its territory.</p>	<p>(OR)</p> <p>for carriage to or from its territory and, in exceptional circumstances, for carriage via its territory where a stopover is permitted in its territory.</p>	<p>(OR)</p> <p>for carriage to or from its territory and, in exceptional circumstances, for carriage via its territory where a stopover is permitted in its territory.</p>

*Double approval approach**Country of origin approach**Dual disapproval approach***4.2 Period for filing**

Such notification or filing may be required not more than ___ days before the proposed date of introduction. In individual cases this maximum period may be reduced.

Such notification or filing may be required not more than ___ days before the proposed date of introduction. In individual cases this maximum period may be reduced.

Such notification or filing may be required not more than ___ days before the proposed date of introduction. In individual cases this maximum period may be reduced.

5. APPROVAL OF TARIFFS**5.1 Scope of approval for carriage between territories of both Contracting Parties**

The tariffs to be charged by the designated airlines of the Contracting Parties for carriage between their territories shall be subject to the approval of both Parties.

Each Contracting Party shall have the right to approve or disapprove tariffs for one-way or round-trip carriage between the territories of the two Parties which commences in its own territory. Neither Party shall take unilateral action to prevent the inauguration of proposed tariffs or the continuation of effective tariffs for one-way or round-trip carriage between the territories of the two Parties commencing in the territory of the other Party.

Neither Contracting Party shall take unilateral action to prevent the inauguration of a proposed tariff or the continuation of an effective tariff of a designated airline of either Party [or on the basis of reciprocity of the airline(s) of a third State] for carriage between the territories of the Parties.

5.2 Scope of approval for carriage between the territory of one Contracting Party and that of a third State

[The tariffs to be charged by a designated airline of one Contracting Party for carriage between the territory of the other Party and that of a third State on services covered by this agreement shall be subject to the approval requirements of the other Party.]

[The tariffs to be charged by a designated airline of one Contracting Party for carriage between the territory of the other Party and that of a third State on services covered by this agreement shall be subject to the approval requirements of the other Party.]

[Neither Contracting Party shall take unilateral action to prevent the inauguration of a proposed tariff or the continuation of an effective tariff of a designated airline of one Party for transportation between the territory of the other Party and that of a third State.]

5.3 Approval of matching tariffs for carriage between the territories of both Contracting Parties

For carriage between the territories of the Contracting Parties, each Party shall permit the airline(s) of the other Party [, and on the basis of a reciprocity the airline(s) of a third State,] to match any tariff [including those established by a combination of compatible tariffs] currently authorized for application by an airline of either Party or of a third State [for comparable service between the same points].

For carriage between the territories of the Contracting Parties, each Party shall permit the airline(s) of the other Party [, and on the basis of a reciprocity the airline(s) of a third State,] to match any tariff [including those established by a combination of compatible tariffs] currently authorized for application by an airline of either Party or of a third State [for comparable service between the same points].

For carriage between the territories of the Contracting Parties, each Party shall permit the airline(s) of the other Party [, and on the basis of a reciprocity the airline(s) of a third State,] to match any tariff [including those established by a combination of compatible tariffs] currently authorized for application by an airline of either Party or of a third State [for comparable service between the same points].

*Double approval approach**Country of origin approach**Dual disapproval approach***5.4 Approval of matching tariffs for carriage between the territory of one Contracting Party and that of a third State**

[For carriage between the territory of one Contracting Party and that of a third State on services covered by this agreement, that Party shall permit the airline(s) of the other Party to match any tariff [including those established by a combination of compatible tariffs] currently authorized for application by an airline of either Party or of a third State [for comparable service between the same points].]

[For carriage between the territory of one Contracting Party and that of a third State [on services covered by this agreement], that Party shall permit the airline(s) of the other Party to match any tariff [including those established by a combination of compatible tariffs] currently authorized for application by an airline of either Party or of a third State [for comparable service between the same points].]

[For carriage between the territory of one Contracting Party and that of a third State, that Party shall permit the airline(s) of the other Party to match any tariff [including those established by a combination of compatible tariffs] currently authorized for application by an airline of either Party or of a third State [for comparable service between the same points].]

5.5 Effectiveness of approval

Approval of tariffs consequent upon the provisions of Paragraphs 5.1 and 5.3 [and 5.2 and 5.4] above may be given expressly by either Contracting Party to the airline(s) filing the tariffs. However, if a Party has not given in writing to the other Party [and [or] the airline(s) concerned] notice of disapproval of such tariffs of the airline(s) of the other Party within ___ days from the date of submission, the tariffs concerned shall be considered approved. In the event of the period of submission being reduced in accordance with Paragraph 4.2 of this Clause, the Parties may agree that the period within which any disapproval shall be given be reduced accordingly. No tariff shall come into force if either Contracting Party has given notice of disapproval [except as provided in Paragraph 6 below].

Approval of tariffs consequent upon the provisions of Paragraphs 5.1 and 5.3 [and 5.2 and 5.4] above may be given expressly by either Contracting Party to the airline(s) filing the tariffs. However, if the Party concerned has not given in writing to the other Party [and [or] the airline(s) concerned] notice of disapproval of such tariffs of the airline(s) of the other Party within ___ days from the date of submission, the tariffs concerned shall be considered approved. In the event of the period of submission being reduced in accordance with Paragraph 4.2 of this Clause, the Parties may agree that the period within which any disapproval shall be given be reduced accordingly. Where either Contracting Party believes that a tariff for carriage to its territory falls within the categories described in Paragraph 2.2 above, such Party shall give notice of dissatisfaction to the other Party [as soon as possible and at least] within ___ days of the date of notification or filing of the tariff, and may avail itself of the consultation procedures set out in Paragraph 6 below.

[Approval of tariffs consequent upon the provisions of Paragraphs 5.1 and 5.3 [and 5.2 and 5.4] above may be given expressly by either Contracting Party to the airline(s) filing the tariffs.] Where either Contracting Party believes that a tariff falls within the categories described in Paragraph 2.2 above, such Party shall give notice of dissatisfaction to the other Party [as soon as possible and at least] within ___ days of the date of notification or filing of the tariff, and may avail itself of the consultation procedures set out in Paragraph 6 below. However, unless both Parties have agreed in writing to disapprove the tariffs concerned under those procedures, the tariffs shall be considered approved.

5.6 Sales of tariffs subject to approval

[Pending decisions by the Contracting Parties airlines may undertake marketing, advertising and sales at the proposed tariffs for carriage to be commenced on or after the proposed date of effectiveness, provided that they are qualified as being "subject to government approval". Under no circumstances are advertising or sales to be undertaken prior to filing the proposed tariffs with both Parties.]

[Pending a decision by the Contracting Party concerned airlines may undertake marketing, advertising and sales at the proposed tariffs for carriage to be commenced on or after the proposed date of effectiveness, provided that they are qualified as being "subject to government approval". Under no circumstances are advertising or sales to be undertaken prior to filing the proposed tariffs with both Parties.]

[Advertising and sales at the proposed tariffs may only be undertaken after the tariffs concerned have been filed with both Contracting Parties.]

*Double approval approach**Country of origin approach**Dual disapproval approach***6. PROCEDURES FOR CONSULTATION AND RESOLUTION OF DISPUTES****6.1 Consultation process**

Each Contracting Party may request consultation regarding any tariff of an airline of either Party for services covered by this Agreement, including where the tariff concerned has been subject to a notice of disapproval. Such consultations shall be held not later than __ days after receipt of the request. The Parties shall cooperate in securing information necessary for reasoned resolution of the issues. If the Parties reach agreement, each Party shall use its best efforts to put that agreement into effect. If no agreement is reached any decision to disapprove a tariff shall prevail [except as provided for in Paragraph 6.2].

Each Contracting Party may request consultation regarding any tariff of an airline of either Party for services covered by this Agreement, including where the tariff concerned has been subject to a notice of disapproval or dissatisfaction. Such consultations shall be held not later than __ days after receipt of the request. The Parties shall cooperate in securing information necessary for reasoned resolution of the issues. If the Parties reach agreement, each Party shall use its best efforts to put that agreement into effect. If no agreement is reached, the decision of the Party in whose territory the carriage originates shall prevail.

Each Contracting Party may request consultation regarding any tariff of an airline of either Party for services covered by this Agreement, including where the tariff concerned has been subject to a notice of dissatisfaction. Such consultations shall be held not later than __ days after receipt of the request. The Parties shall cooperate in securing information necessary for reasoned resolution of the issues. If the Parties reach agreement with respect to a tariff for which notice of dissatisfaction has been given, each Party shall use its best efforts to put that agreement into effect but if no agreement is reached the tariff in question shall go into or continue in effect.

6.2 Settlement of disputes

[If the Contracting Parties cannot resolve an issue with respect to the tariffs mentioned in Paragraphs 5.1 and 5.3, the dispute shall be settled in accordance with the provisions of Article __ of this Agreement.]

(Not applicable for this approach.)

(Not applicable for this approach.)

6.3 Disapproval of other tariffs

[If a Contracting Party disapproves a tariff of an airline of the other Party which is not covered by Paragraph 5 it shall so advise that other Party.]

[If a Contracting Party disapproves a tariff of an airline of the other Party which is not covered by Paragraph 5 it shall so advise that other Party.]

[If a Contracting Party disapproves a tariff of an airline of the other Party which is not covered by Paragraph 5 it shall so advise that other Party.]

7. DURATION OF ESTABLISHED TARIFFS

A tariff established in accordance with the provisions of this clause shall remain in force, unless withdrawn by the airline(s) concerned [with the approval of the Contracting Parties concerned.] until the due expiry date, if any, or until a new tariff has been approved. The tariff concerned may be extended beyond the original expiry date with the approval of the Contracting Parties concerned. [However a tariff shall not be prolonged for more than twelve months after the date on which it otherwise would have expired unless approved by the Parties.] Where a tariff has been approved without an expiry

[A tariff established in accordance with the provisions of this clause shall remain in force unless withdrawn by the airline(s) concerned [with the approval of the Contracting Parties concerned] until the due expiry date, if any, or until new tariffs have been approved. The tariff concerned may be extended beyond the original expiry date with the approval of the Contracting Parties concerned. [However a tariff shall not be prolonged for more than twelve months after the date on which it otherwise would have expired unless approved by the Party concerned.] Where a tariff has been approved without an

[A tariff established in accordance with the provisions of this clause shall remain in force, unless withdrawn by the airline(s) concerned, until the due expiry date, if any, or until new tariffs have been approved. The original expiry date may be extended unless both Contracting Parties agree that the tariff should be discontinued. Where a tariff has been approved without an expiry date and where no new tariff has been filed and approved, that tariff shall remain in force until withdrawn by the airline(s) concerned or both Contracting Parties agree that the tariff should be discontinued.]

<i>Double approval approach</i>	<i>Country of origin approach</i>	<i>Dual disapproval approach</i>
date and where no new tariff has been filed and approved, that tariff shall remain in force until either of the Parties gives notice terminating its approval on its own initiative or at the request of the airline(s) concerned. Such termination shall not take place with less than ___ days notice.	expiry date and where no new tariff has been filed and approved, that tariff shall remain in force until the Party concerned gives notice terminating its approval on its own initiative or at the request of the airline(s) concerned. Such termination shall not take place with less than ___ days notice.	
8. ENFORCEMENT OF TARIFFS		
[The Contracting Parties shall endeavour to ensure that active and effective machinery exists within their jurisdictions to investigate violations by any airline, passenger or freight agent, tour organizer, or freight forwarder, of tariffs established in accordance with this Clause. They shall furthermore ensure that the violation of such tariffs is punishable by deterrent measures on a consistent and non-discriminatory basis.]	[The Contracting Parties shall endeavour to ensure that active and effective machinery exists within their jurisdictions to investigate violations by any airline, passenger or freight agent, tour organizer, or freight forwarder, of tariffs established in accordance with this Clause. They shall furthermore ensure that the violation of such tariffs is punishable by deterrent measures on a consistent and non-discriminatory basis.]	(Not applicable for this approach.)

NOTES ON THE APPLICATION OF THE MODELS OF BILATERAL TARIFF CLAUSES

General

These model clauses are intended to apply to international scheduled tariffs. There are usually substantial differences in the way non-scheduled tariffs are developed and regulated and the texts would therefore require substantial modification if States wished to apply them to non-scheduled tariffs.

For simplicity, the model clauses refer to “Contracting Parties” throughout although some bilateral air transport agreements refer to “aeronautical authorities of the Contracting Parties”. These latter agreements often provide, as a matter of convenience, for the aeronautical authorities to administer some of the provisions of the agreement.

The model clauses make a distinction between the “designated” airlines on the one hand and “airlines” on the other, the latter term being used, where appropriate, to refer to all airlines serving or marketing their services in the country or countries concerned not just the national carriers designated to serve the routes covered by the particular agreement.

Paragraph 1 — Definition of the Term “Tariff”

This definition was approved by the Council in December 1987 with the aim of including all relevant elements and removing all areas of uncertainty as to what is encompassed by the term “tariff”. The opening text and sub-paragraphs a) through c) embrace traditionally recognized aspects of the international scheduled tariff, while sub-paragraphs d) and e) define additional aspects which are also integral to such a tariff. If the definition is intended to apply in addition, or instead, to non-scheduled tariffs, there may be a need for substantial modifications to the text.

In addition to airport-to-airport cargo service, some airlines offer door-to-door courier service and/or express service identified by the expedited delivery offered. The definition would cover prices charged by a scheduled airline for such courier and express services offered in the airline's own name.

In addition, non-airline entities such as couriers, international air express operators and freight forwarders offer their own services utilizing, in part, the airline tariffs. For example, these non-airline entities charge their own overall prices to the public, and such prices are not included in the definition. However, when they utilize scheduled services the air carriage component of their overall prices would be regulated in the form of the baggage or cargo tariffs of the airline performing the international carriage. Whether their all-inclusive door-to-door prices are regulated would depend on the States' regulations with respect to ground transport and whether or not such non-airline entities are regulated in the countries concerned; they would not ordinarily be regulated by a bilateral air transport agreement.

As noted above, the definition of a tariff does not apply with respect to non-scheduled services. However, States should note that the method and degree of regulation in the case of courier or air express shipments moving on dedicated cargo charter services, would depend on the policy of the States concerned with respect to charter operations. The definition would require substantial modification if States wished to bring prices for such operations within the ambit of a bilateral air transport agreement.

Any through tariff or amount to be charged for international carriage
[sub-paragraph (a)]

States normally wish to monitor or regulate tariffs for international carriage to or from all points in their territories. The text here ensures that the definition encompasses through tariffs which are constructed by means of a combination of two (or more) international tariffs or by a combination of an international tariff with any add-on and/or domestic tariff. Add-ons are amounts established (usually through an IATA Tariff Coordinating Conference) specifically for combination with international tariffs in order to determine fares or rates for additional city-pairs, most commonly those to and from interior points of a State through an international gateway; these amounts cannot be used for solely domestic carriage. The words "marketed and sold as such" are added to ensure that the definition encompasses only tariffs that are actually used or proposed to be used and not the (very many) theoretically possible combinations.

Commission [sub-paragraph (b)]

Although commission is one of the cost elements encompassed by a tariff and although the primary interest of governments is the retail price to the user, many governments perceive a need to regulate commission in order to ensure fair marketing practices. However, some States do not see the need to regulate commission (for example, commissions are typically unregulated in dual disapproval regimes) and/or perceive difficulties in regulating commission outside their own territories; these States may wish to exclude commission from the definition of a tariff in their air services agreement on the grounds that its inclusion might imply the regulation concerned. Some States may prefer to refer to commission in their air services agreements as one of the relevant factors to be considered in establishing tariff levels (along with other costs of operation), to treat it separately, or to exclude it from the agreements entirely.

Conditions that govern the applicability
[sub-paragraph (c)]

The text here is intended to encompass all the general and specific rules relating to the fares, rates and commission concerned.

The general rules include, but are not limited to: those which govern the amount paid by the user, such as fare and rate construction rules and currency conversion rules; those which govern the type and value of service provided for the amount

paid, such as conditions of service (for example, seat pitch and number abreast for each class of service), baggage allowances and excess baggage charges; those which govern the airline/agent relationship in respect of commission and how it is to be shared; and other general rules governing such matters as children's, infants', tour conductors' and agents' discounts, reservation and payment conditions, ticket validity, cancellation, rerouting and refunds.

The specific rules are those which are associated with a specific fare or rate (for example seasonality or minimum/maximum stay provisions) or which override the general rules for a specific fare or rate (as in advance purchase requirements which overrule the general reservations, payment and ticketing procedures).

In Canada, both the general and specific rules referred to above and, in addition, the "conditions of carriage" form part of the tariff. Elsewhere the conditions of carriage do not form part of the tariff but States will wish to ensure that all conditions relating to tariffs are consistent whether they appear in such conditions of carriage or in the tariff rules (general or specific) and that customers are made aware of them.

Any significant benefits

[sub-paragraph (d)]

The word "benefits" is intended to encompass goods or services which are additional or ancillary to the transportation by air and the words "provided in association with the carriage" allow the definition to encompass any kind of tied incentive or promotional offer (for example those linked to the purchase of airline tickets as well as discounts on fares linked to the purchase of other commodities as part of joint promotions with other commercial enterprises).

The incentives concerned include, but are not limited to: frequent flyer programmes, free hotel accommodation and free car rental. Promotions linked to the purchase of airline tickets include, but are not limited to, special offers such as the provision of a coupon entitling the passenger to a subsequent free flight. The joint promotions concerned relate to discounts on airline tickets which are available to purchasers of goods or services such as cameras, groceries, credit card or banking services, rental cars or hotel accommodation. These joint promotions may involve an element of true barter, for example the value of the advertising received by the airline in such promotions may equate to the value of the fare or rate discounts provided.

The adjective "significant" applied to "benefits", although a subjective term involving a value judgement has been included in order to permit States to exercise pragmatism and flexibility in the detail of regulation they wish to pursue: for example, States do not generally wish to regulate the minutiae regarding the provision of airline souvenirs such as toiletries or features of lounge accommodation at airports. Should States feel that use of the word "significant" could lead to problems of interpretation, or if States wish to retain the right to regulate every aspect of the benefits, the word "significant" could be omitted. Whether the word "significant" is included or not, States may wish to consider excluding from their regulatory ambit benefits which are not directly linked to the carriage by limiting the definition to those benefits "provided in direct association with the carriage".

Carriage on a domestic sector as an adjunct to international carriage

[sub-paragraph (e)]

Parties to a bilateral air services agreement may wish to scrutinize certain domestic tariffs which are ticketed separately but which are in fact only sold as an adjunct to international carriage and are therefore international tariffs. Where these so-called "domestic" tariffs are only offered abroad or to non-residents of the country concerned they have no purely domestic function; if in these circumstances their availability is limited to certain carriers or users of their services, if their level differs according to the international carrier utilized or the user concerned, or if their levels are lower than the prorated requirement of the domestic carrier concerned so as to prevent a competing carrier from effectively matching them, then issues of fair and equal opportunity to compete could arise. As a result the tariffs concerned have the character of international tariffs.

Paragraph 2 — Factors in Determining Tariffs

2.1 Factors to be applied

Parties to a bilateral agreement may wish to decide between them whether the paragraph should contain a list of factors and if so which factors should be included and/or emphasized and which excluded. For example some States may consider that the factors listed other than the “interests of users” are all embraced by the term “commercial considerations”. States should in any event note that the factors listed in the model text are not in any particular order of preference or importance.

2.2 Objectionable factors

This list of factors serves to delineate the type of tariffs which States might find objectionable. The terms used are all subjective in nature and States may wish to reach an understanding on the meanings to be assigned in the particular circumstances of the bilateral agreement concerned. For example, the term “discriminatory” is broad in scope, encompassing discrimination against other airlines or against users. States may decide that the word “unreasonably” should be included to modify “discriminatory” in order to permit them to be pragmatic and flexible in regulating tariffs: they may conclude that some “discrimination” is inevitable in any market where every passenger does not pay exactly the same fare, but variations in fares according to travel conditions have proven to be in the best interests of airlines, consumers and governments, and have been permitted by States virtually universally.

The term “subsidy” usually refers to financial support from central government or local administrations but could also apply to such support from other organizations or institutions. However, no fully comprehensive definition of subsidy is universally accepted and States may need to decide between them what will constitute a subsidy in the context of the particular bilateral agreement.

“Predatory” tariffs are particularly difficult to define with any degree of certainty. However, they are commonly understood to include tariffs at levels which are insufficient to cover the applicable cost of service and which are intended to eliminate or significantly reduce competition.

States may find it advantageous to identify in advance the particular characteristics and circumstances that would predicate the existence of such tariffs. As with Paragraph 2.1, Parties to a bilateral agreement may wish to decide between them whether the agreement should contain a specific list, and if so, which factors should be included.

Paragraph 3 — Mechanisms for Developing Tariffs

The substance of the traditional requirement for tariffs to be agreed wherever possible by use of the “appropriate international rate fixing mechanism” (for example, within IATA or a regional organization such as the African Airlines Association or the Asociación Internacional de Transporte Aéreo Latinoamericano) has been included as one option with a new provision allowing for single carrier filings in default of agreement. The draft models also include two other options which would place progressively less emphasis on the need for multilateral or bilateral airline agreement, the second option presenting a middle course which may be acceptable to a greater number of States than the third option which actively promotes single carrier filings. The supplementary optional wording shown in brackets at the end of the third option covers the particular situation of a few countries where there is a two-step procedure to be followed before tariffs agreed among airlines may become effective: first, the specific IATA agreement must be filed and approved under the relevant competition or other law; subsequently, individual airlines file as their own tariff those of the agreed tariffs which relate to their own operations.

States selecting the first option should bear in mind that not all carriers are IATA members or participate in tariff coordination and States may experience difficulties if the words “wherever possible” are interpreted too literally.

Paragraph 4 — Filing of Tariffs

4.1 Requirement for filing

The words “filing” and “notification” are virtually interchangeable. However the text of Paragraph 4.1 refers to both since some States make a distinction between a formal filing which has to conform to a State’s regulations as to form and content and a notification which is provided to a State which has no such formal filing requirements. In these notes the term “filing” encompasses both the formal filing and the notification.

States can establish the scope of their filing requirements by selecting one of the two options. The first requires the filing of all tariffs for travel originating in or destined for their territory including not only those for Third and Fourth Freedom carriage, but also those for Fifth Freedom carriage, and those for so-called “Sixth Freedom” carriage between the territory of the Party requiring the filing and a third country via the territory of the other Party. The second option covers all those tariffs but in addition encompasses tariffs for carriage between the territory of the other Party and a third country via the territory of the Party requiring the filing, where a stopover is permitted in that territory. The text makes it clear that this latter is not to be a routine requirement but only for “exceptional circumstances” such as when tariffs to certain points, passing through the country concerned, undercut tariffs originating in that country for travel to those same points. The State concerned may feel that, in the case of passengers using such “Sixth Freedom” tariffs and re-embarking after a stopover, its own approved tariffs are being under mined. States may wish to come to some understanding between themselves as to the types of circumstances which they will consider as “exceptional” and thus invoke this filing requirement.

As indicated in Paragraph 1 of the model clauses the definition of a tariff encompasses through tariffs which are constructed by means of a combination of two or more tariffs or by a combination of an international tariff with any add-on and/or domestic tariffs. As the notes associated with Paragraph 1 make clear there is no suggestion that States should require the filing of all possible combinations but only those which are actually marketed as through fares. In establishing their specific filing requirements States may also wish to make a distinction between the occasional sale of such combinations and active marketing of the through fares concerned.

It should be noted that the inclusion of a particular filing requirement in a bilateral agreement does not necessarily imply regulatory authority over the tariffs concerned. This authority would normally be defined in the part of the bilateral agreement dealing with approval requirements (Paragraph 5 in the model clauses). The filing requirements in Paragraph 4.1 are consistent with any of the regulatory approaches of Paragraph 5. Requiring the filing of tariffs not regulated by the bilateral agreement concerned enables a State to keep abreast of the situation in its own market.

The model clauses do not specify by whom the notification or filing is to be done since different States have different legal requirements. States may wish to specify that a tariff should be filed by the designated airline(s) seeking to introduce it; in the case of “joint” tariffs for interline carriage, the usual practice is filing by a designated airline actually performing the carriage on the sector(s) between the territories of the Parties. Where national legislation permits, States may wish to add that in the case of tariff agreements, the tariffs concerned may be filed by a single airline on behalf of all the airlines concerned.

The optional words “of the other Party” in Paragraph 4.1 would be included where the Parties have, and wish to retain, regulatory powers over their own airlines and the bilateral agreement is mainly concerned with regulating the relationship between each Party and the airline(s) of the other Party. In such a case, under the double approval approach for example, each Party’s airline(s) would file tariffs for travel between the two countries concerned as follows: under the terms of the bilateral agreement with the other Party for its approval and under national legislation with its own authorities for their approval, both Parties’ approval being required for the tariffs to come into effect. The alternative

words “of both Contracting Parties” would be used where the Parties desire to establish, as part of the agreement, the same tariff filing procedures for the designated airlines of both Parties (for example the time period set forth in Paragraph 4.2); the provisions of Paragraph 5 define which of those tariffs are subject to approval and by whom. The latter alternative would also be useful where a Party’s national legislation bearing on its own airline(s) is deficient, and it wishes to assert a tariff filing requirement on them.

The model clauses make no reference to the submission of a justification in support of a filing. There are legal and practical difficulties in obtaining economic justification from foreign airlines and States may need to reach agreement on the extent to which this can be provided and the format of any such submission, if such a requirement is to be included in this paragraph.

While it is each State’s prerogative to designate the format it requires for tariff filings, there are many benefits for both States and airlines in adopting a standard format. ICAO has issued guidance material regarding formats for filing of airline passenger tariffs, including supporting justification, which may be helpful in this regard. (See Appendix 2, Formats for Tariff Filings, in ICAO Doc 9626 — *Manual on the Regulation of International Air Transport*.) In addition, States using electronic tariff filing systems may wish to permit continued manual filing of tariffs where necessary and endeavour to provide for compatibility between the tariff filing system they are using, the tariff filing systems developed by other States, and the computer reservations systems used by airlines. In doing this, States will wish to consult with other States, airlines and tariff publishers as appropriate.

In some recent bilateral agreements with dual disapproval tariff clauses the bilateral partners have agreed to dispense with formal tariff filing altogether for designated airlines on Third and Fourth Freedom routes. This should become feasible in additional bilateral relationships, depending on the spread of efficient industry tariff-information systems.

4.2 *Period for filing*

In recognition of the need to streamline filing procedures, the model clauses express the period for filing as a maximum, with the number of days left blank to be settled by States according to the circumstance prevailing for the bilateral in question. Many States have traditionally required a filing period of at least 60 days in advance of proposed implementation, together with a 30-day subsequent approval period and some have required 90/30-day periods. Recognizing the growing need in more recent times for quick competitive responses by the airlines, some States have specified a filing period of 30 days in advance of proposed implementation with either a 30- or 15-day subsequent approval period. The combination of a relatively short filing period expressed as a maximum along with a tacit approval procedure would facilitate the processing of tariffs in markets where short notice filings of 21 days or less are common practice.

Paragraph 5 — Approval of Tariffs

5.1 *Scope of approval for carriage between territories of both Contracting Parties*

Unlike the filing requirements, which can be far reaching, the scope of approval falls primarily on tariffs for third and Fourth Freedom services which are completely within the regulatory ambit of the two Parties. Through tariffs to interior points as described in the notes on Paragraph 1 above would also be encompassed. While retaining in one approach the traditional requirement that such tariffs be approved by both parties, the models also include two alternative approaches which place progressively less emphasis on regulating tariffs. The country of origin approach, which regulates only those tariffs for carriage originating in the territory of the Party concerned, forms a middle ground between double approval approach, which is still the most widely adopted method of regulating tariffs, and the dual disapproval approach, where the States concerned have no unilateral powers of intervention in tariffs.

Many States prefer to limit price leadership to Third and Fourth Freedom operators but it should be noted that the optional wording in brackets under the dual disapproval approach is included to enable States who wish to stimulate competition, for instance in mature markets, to allow price leadership by airlines other than the Third and Fourth Freedom operators, although the regulation of such airlines' tariffs on the route(s) in question would also depend on the terms of any bilateral agreements in effect with those airlines' States. If these optional words are included there would be no necessity to include the optional wording under Paragraph 5.3 which permits price matching by such airlines. The remaining wording under Paragraph 5.3 will still be applicable, however, since it provides for the non-designated airline(s) of either Party (who may operate on part of a route between the territories of the Parties and may wish to participate in tariffs on an interline basis) to have at least as favourable a matching facility as the airline(s) of a third country.

In addition to the three approaches presented in the model clauses, there are other approaches to the bilateral regulation of international tariffs which States may wish to consider. For example, some multilateral agreements rely on a "tariff zones" scheme and some bilateral agreements follow a similar approach. Typically, zonal schemes rely on tariff bands for various tariff classes (first, business, economy, discount and deep discount fares, for example). Each band is defined by a certain range of percentages relating to certain "reference levels", and, in the case of discount and deep discount fares, have certain types of tariff conditions, and all of these must be established by negotiation between the Parties concerned. So-called "zones of flexibility" are thereby created which are carefully tailored to fit the particular markets concerned. Under this approach the bilateral air transport agreement would specify that any tariff filed by the airline(s) of either Contracting Party for carriage between the territories of the parties which meets the requirements of the zonal scheme thus developed would be automatically approved. If the filed tariff falls outside the zones of flexibility specified in the scheme or the requirements of the scheme as to tariff conditions are not met, then the tariffs would usually be dealt with under one of the approaches already covered in the models. This tariff zone approach is generally used in conjunction with an emphasis on single carrier filings or where such filings are permitted as an alternative to multilateral coordination. A schematic representation of a hypothetical version of such a zonal scheme is shown on the following page¹. States should note that the structure depicted is only one possibility and could be tailored to individual needs. For example, other schemes provide for downward flexibility only, others have one band relating to economy class fares or promotional fares only and others may have different tariff class zones.

The tariff zones approach could also be modified and used in conjunction with an emphasis on multilateral coordination. In this case the airlines could reach agreement (usually in a multilateral forum) on the tariffs to be applied on the routes covered by the zonal scheme. These tariffs would receive automatic approval by the governments concerned if they fell within the appropriate tariff zones.

Another possible approach is the regulation of tariffs by country of designation. In this approach each Party regulates only the tariffs of its own designated airlines for all travel, whether commencing in its own or the territory of the other Party. It should be noted that this approach would give each Party the power to exert a downward pressure on tariffs by disapproving proposed increases by its own airline(s) in both its own market and that of its bilateral partner.

The tariff regime established by the European Union in 1992 accords community airlines of Member States the freedom to set their own tariffs but allows a Member State or the European Commission to prevent the continuation or introduction of fares meeting pre-defined criteria, a system which, like a zone fare arrangement, does not fit any of the three basic tariff models. Regulation EEC No. 2409/92 establishes detailed criteria to be applied in two circumstances:

- 1) to withdraw a basic fare (the lowest fully flexible fare) because it is excessively high;
- 2) to prevent, in a non-discriminatory way, further fare decreases in a market in which there are widespread losses among all air carriers concerned.

States should also note that there are an increasing number of hybrid approaches with, for example, one regulatory approach being chosen for normal fares and another for promotional; the model clauses are capable of being used in a

1. The schematic representation produced in 1989 is not reproduced in this edition.

similarly flexible manner, with appropriate elements being selected from each approach as required. In addition, there are instances of a bilateral approval process being used in a regional multilateral context, such as the country of origin pricing provisions in 1) the Andean Community “open skies” air services regime and 2) the Sub-regional Air Services Agreement by six States in South America (the Forteleza Agreement).

5.2 Scope of approval for carriage between the territory of one Contracting Party and that of a third State

States’ national legislation or regulations often include a broad requirement for the filing and approval of tariffs for all transportation to and from their territories. Some States would therefore wish to reflect this to the extent possible in a bilateral agreement by recording each Party’s jurisdiction over tariffs between its territory and a third country. In the context of an individual bilateral agreement this would involve tariffs to and from any intermediate and beyond points on Fifth Freedom services authorized by the agreement concerned. The wording under the double approval and country of origin approaches would accomplish this. However, the actual form of regulation of the tariffs concerned could also depend on the bilateral agreement in effect between that other Contracting Party and the third State concerned. Under the dual disapproval approach the addition of this text is an expression of the Parties’ intent to limit their intervention in respect of tariffs for Fifth and “Sixth” Freedom services. For these tariffs to be fully deregulated, however, there would need to be a similar dual disapproval type of bilateral agreement in effect between the third State and the Contracting Party concerned.

5.3 Approval of matching tariffs for carriage between the territories of both Contracting Parties

The approval of matching tariffs often gives rise to controversy between States. Bilateral partners may therefore need to tailor this paragraph to their particular requirements. For example, some States may wish to include a definition of matching, along the lines below, in the bilateral agreement itself. For others it may be sufficient to reach agreement on a definition on a more informal basis.

Definition of matching: The term “match” means the right to establish at any time, using such expedited procedures as may be necessary, an identical, or substantially similar, tariff for carriage between the same points. Differences may be allowed in conditions relating to routing, airports, intralining, inter-lining, scheduling, connections, aircraft type, aircraft configuration, change of aircraft, or distance (although States may wish to limit the right to match if the matching tariff allows a deviation of more than a specified percentage from the shortest operated mileage between the origin and destination points concerned).

With respect to differences in routing and distance, industry fare construction rules have traditionally permitted deviations of up to 20 per cent, but there have been numerous exceptions to the general 20 per cent figure. If the carrier offering the tariff to be matched has been permitted to exceed the permitted deviation then any matching carrier should also be permitted this facility.

It is important to note, however, that many definitions other than the one above are possible and States may wish to develop their own to suit the circumstances in their own markets. For example, bilateral partners may wish to extend the definition of matching to include the matching of charter prices and/or the matching of tariffs in neighbouring markets (cross-border matching). In such circumstances States would not include wording to limit matching to comparable services “between the same points” and might also find it helpful to include in the bilateral agreement a requirement for the requesting airline to supply satisfactory evidence of the price or tariff to be matched, in the form of advertisements or brochures etc., since these prices or tariffs may not necessarily have been filed with the government concerned.

If a definition of matching similar to the one above is adopted and a reference to “comparable services” is included in the bilateral agreement, States would need to be judicious in their interpretation of the term in view of the fact that the definition allows for differences in many features of the airline product. For the same reason, States may wish to consider whether to use the words “substantially similar” instead of “identical” in order to convey the sense that the proposed matching tariff is the same as the one to be matched, except that some slight variations of conditions could be allowed provided that the overall effect of these variations does not produce a set of conditions which are less restrictive than those of the tariff being matched.

Optional words are included in the text which would emphasize that the tariff to be matched may be one which results from a combination of tariffs. This would be consistent with and reinforce the provisions of the definition of a tariff in Paragraph 1 which brings such combinations within the definition when they are marketed and sold as through tariffs.

5.4 Approval of matching tariffs for carriage between the territory of one Contracting Party and that of a third State

If the optional text under Paragraph 5.2 is included then the optional text under this paragraph would normally also be included to provide the requisite matching facility. As worded under the double approval and country of origin approaches the matching would be limited to tariffs for Fifth Freedom services. If States wished to broaden the facility to encompass “Sixth Freedom” services then they could omit the words “on services covered by this agreement”. The wording under the dual disapproval approach is already sufficiently broad to encompass such tariffs.

5.5 Effectiveness of approval

With regard to the alternative procedures of express and tacit approval, the model clauses recognize the need for streamlining the handling of tariff submissions and emphasize the latter approach. Nevertheless, some governments may wish to retain a requirement for explicit approval to be given. (Although States may have given up the right to unilaterally disapprove tariffs under the dual disapproval approach some States may wish to retain the option of expediting procedures by providing for express approval of proposed tariffs and optional wording to this effect is included under the dual disapproval approach.)

To be consistent States which choose to include the optional Paragraphs 5.2 and 5.4 would normally bring such Fifth Freedom and matching tariffs within the ambit of this paragraph thus providing for notices of disapproval, and notices of dissatisfaction where appropriate, in respect of these tariffs.

The model clauses maintain a distinction between notices of disapproval which apply to those tariffs over which the Parties have authority and notices of dissatisfaction which apply to tariffs over which regulatory authority has been surrendered (as in the tariffs for inbound carriage under the country of origin approach and tariffs for both inbound and outbound carriage under the dual disapproval approach). There is optional wording to encourage speedy action with respect to the giving of such notices of dissatisfaction.

Notices of disapproval are usually required to be given to the other Party, it being assumed that the other Party will inform the airlines concerned. However, in practice this is not always the case, and in some regions it has been found more efficient to give notices to the airline(s) rather than the other Party concerned. The optional words “and [or] the airline(s) concerned” have been included to enable the Parties to make use of whatever procedure is considered the most suitable. As with the filing period, the period within which any disapproval must be notified has been left blank to be settled by States according to the circumstances prevailing for the bilateral agreement in question. See also the notes associated with Paragraph 4.2 above.

5.6 *Sales at tariffs subject to government approval*

This optional text is provided to clarify the situation with respect to the sale of proposed tariffs although it is possible to permit such sales without necessarily including such a provision in the bilateral agreement. Some States do not permit any sales at tariffs until they have been approved, and some States may consider restricting the sales of some tariffs until they have been approved in order to preclude undue public pressure for the tariffs concerned which might prejudice their subsequent evaluation. However, many States routinely allow airlines to sell at tariffs which have yet to receive the necessary government approval. The main justification has been perceived to be the legitimate need of the airlines for sufficient time to market a new tariff. In addition, in the case of requested increases, airlines would be able to benefit more quickly from the increased revenue. In the case of reduced tariffs, the procedure allows the public to enjoy the benefits of lower prices more quickly and the airlines the possibility of increasing traffic.

Problems arise when the new proposed tariff is subsequently disapproved or there is a delay in the intended effective date due to a delay in government action. In these circumstances, there will usually be a need to issue refunds or collect additional payment from those who have been charged the proposed tariff. States will, therefore, wish to require airlines to provide wherever it is practical or feasible clear indication in advertising or other forms of offer to the public, and in any tickets, air waybills or receipts, that tariffs are “subject to government approval”. They will wish to either require or encourage the airlines to provide oral and written advice to purchasers about the tariffs’ unapproved status and, to the extent possible, the potential consequences of governmental disapproval (for example, possible non-applicability, possible surcharge, right to refund). States should note that the adoption of the tacit approval procedure as presented in Paragraph 5.5 would normally eliminate the problems arising from delayed government action.

The last sentence in Paragraph 5.6 is intended to emphasize that airlines have no right to sell prior to filing since this could, in the case of new low fares for instance, pressure the governments concerned to approve such tariffs even if they are found to be unjustified or, at least, to offer dispensations to allow travel purchased at proposed low fares which they subsequently reject.

States may also wish to include text to deal with the situation where multilaterally agreed tariff increases may have been approved by the bilateral partners but, because of lack of one or more government approvals, the increases may not be in effect for neighbouring or competing routes covered by the agreement. In such a case they may wish to consider that such tariffs should only go into effect when necessary government approvals have been received and the relevant parts of the agreement itself come into effect (“relevant parts” being a reference to that part of the agreement covering geographically related routes, often an identifiable IATA sub-area).

Paragraph 6 — Procedures for Consultation and Resolution of Disputes

6.1 *Consultation process*

The model clauses provide for a consultative process to be invoked under all three approaches to the bilateral regulation of tariffs without limiting the circumstances under which it applies. However, it is assumed that States would normally wish to request consultation upon receiving a notice of disapproval and, as the text of Paragraph 5.5 suggests, when expressing dissatisfaction with a tariff. States may wish to agree that the consultation concerned could take place by written or electronic means.

Under the double approval approach either Party can disapprove Third and Fourth Freedom tariffs and, optionally, Fifth Freedom tariffs subject to their authority, and either Party may request consultations which must also be resolved by agreement of both Parties or submitted to arbitration.

Under the country of origin approach each Party can only disapprove tariffs for carriage originating in its own territory but either Party can request consultations. However, in the event of continued disagreement, the decision of that first Party

prevails with no recourse to arbitration. Although a Party may have surrendered its regulatory power over tariffs originating in the territory of the other Party, it may, nevertheless, express dissatisfaction with these if the tariffs appear to meet the description of objectionable tariffs in Paragraph 2.2, and may request consultations. However, in the event of continued disagreement, the regulatory authority rests with the other Party and in the case of Fifth Freedom tariffs, depending on the bilateral agreement in effect for that route, with the third State concerned.

Under the dual disapproval approach, neither Party can disapprove a third and fourth and, optionally, Fifth Freedom tariff unilaterally but either Party can express dissatisfaction if the tariffs appear to it to meet the description of objectionable tariffs in Paragraph 2.2 and can request consultations. However, in the event of disagreement between the parties, the Third and Fourth Freedom tariffs prevail with no recourse to arbitration. The Fifth Freedom tariffs would also prevail unless disapproved under the provisions of the bilateral agreement in effect for the route concerned.

In each case, the time scale for holding such consultations is left blank to be settled by the Parties according to their particular circumstances. The text includes a commitment to provide “information necessary for reasoned resolution of the issues”. The exact nature of this information and its provenance would have to be agreed between the Parties but would normally encompass sufficient airline economic data to enable the tariff proposals to be properly evaluated by the Parties. See also discussion of justification in the notes associated with Paragraph 4.1 above.

6.2 *Settlement of disputes*

This optional text for the double approval approach presents the traditional arbitration procedure. However, bilateral partners may wish instead to develop a more accelerated dispute resolution procedure specifically related to tariffs such as the one recommended by the Air Transport Regulation Panel (ATRP) and approved by the Council (Recommendation ATRP/9-2), in cases where a tariff is alleged to constitute an unfair competitive action rather than using the arbitration provision provided for general purposes under the bilateral, or to omit arbitration of tariff disputes entirely because of the time-sensitive nature of tariffs. If the ATRP procedure is used, the Parties will have to agree as to the characteristics and circumstances in which, for example, an excessively low tariff would constitute unfair competition.

6.3 *Disapproval of other tariffs*

Paragraph 4.1 provides for the filing of tariffs other than, for Third, Fourth and Fifth Freedom carriage. In Paragraph 6.3 there is optional text which in effect provides for the notification of any disapproval of the tariffs concerned by one Party to be given to the other Party as a courtesy. Parties may wish to agree that such advice be provided through notification to the airline(s) concerned. States should note that indirect control of such tariffs can sometimes be exercised through a State’s right to approve or disapprove fare construction rules which would in the case of multi-sector journeys often determine the level of the tariffs concerned.

Paragraph 7 — Duration of Established Tariffs

The text covers such circumstances as a withdrawal of the tariffs by the airline(s) concerned, or a disapproval (of a previously approved tariff) by one or both of the Parties (in the double approval approach), by the Party in whose territory the carriage originates (in the country of origin approach) or by both Parties (in the dual disapproval approach). The text does not indicate the address of any notice terminating an approval and bilateral partners may wish to specify that it should be given to the other Party.

Subjecting a withdrawal of a tariff to the approval of the appropriate Parties has been left optional since some States may prefer to allow the airline(s) concerned to exercise their commercial judgement while others may prefer to retain the power to ensure the continuation of any tariff they perceive to be desirable. States which wish to permit a tariff to be prolonged for more than twelve months would omit the optional wording in the text.

Paragraph 8 — Enforcement of Tariffs

The traditional provisions for tariff enforcement have been included in the models on an optional basis with respect to the double approval and country of origin approaches. States may prefer to develop articles to suit the circumstances of the particular bilateral agreement in question. Through such articles States could (a) aim at ensuring that all carriers operating to and/or from their territories take appropriate measures to ensure application of the tariffs which they have filed and which have not been disapproved, and (b) ensure that each airline is fully responsible for the violations by its agents of approved tariffs, except for those areas which fall, under the exclusive responsibility of the agents.

In any tariff enforcement provisions States may find it appropriate to adopt one or more of the following measures:

- a) cooperating with each other to encourage their designated airlines to comply with tariffs approved in accordance with the bilateral agreement concerned;
- b) promoting consultation and exchange of information amongst governments and with all sectors of the industry: airlines, intermediaries, and the consumer wherever practicable, as well as any local or regional groups of airlines engaged in tariff monitoring and/or yield improvement activity;
- c) supporting or taking into account any local or regional programmes the airlines have established, aimed at maintaining tariff integrity, in establishing their national criteria and methods for supervising compliance with tariffs;
- d) deploying concerted efforts to remove the underlying causes of tariff violations.

C. MULTILATERAL MECHANISMS FOR THE ESTABLISHMENT OF FARES AND RATES

4.3 A number of Recommendations on this general subject were adopted by the Fares and Rates Panel of Experts and by three Air Transport Conferences (SATC, 1977; AT Conf/2, 1980; AT Conf/3, 1985) and subsequently endorsed by the Council and, in some instances, the Assembly.

GENERAL

4.4 Meetings of international scheduled carriers and between scheduled and non-scheduled carriers for discussion of tariff matters are encouraged by the following Recommendation.

SATC Recommendation 7

ICAO should urge States to encourage their national carriers to meet on a regional basis to ensure that, in the establishment of international fares and rates, the views of *all* carriers operating on the routes concerned are taken into account.

4.5 Equal opportunity for airlines to participate in the carriage of all traffic on the routes covered by tariff agreements is urged by the following Special Air Transport Conference Recommendation.

SATC Recommendation 17

1. Within the IATA Traffic Conferences or outside the IATA fare making machinery, airlines should strictly follow the principle that, in adopting tariff agreements, each airline operating on a route or parts thereof should be given equal opportunity to participate in the carriage of the traffic;
2. Governments in approving tariffs are requested to check that strict adherence of the above principle is followed by airlines.

4.6 To enhance the role of the multilateral machinery for the establishment of tariffs the Second Air Transport Conference adopted its Recommendation 9. The 27th Session of the Assembly in 1989 reaffirmed the validity of Recommendation 9 and consequently the Organization's endorsement of the role of multilateralism in the development of international air carrier tariffs.

AT Conf/2 Recommendation 9

1. RECOMMENDS that the examination of any system for the multilateral establishment of international tariffs should involve the participation of the entire international aviation community;
2. RECOMMENDS that unilateral action by governments which may have a negative effect on carriers' efforts towards reaching agreement should be avoided;
3. RECOMMENDS that international tariffs should be established multilaterally, and when established at regional level the worldwide multilateral system should be taken into consideration; and
4. RECOMMENDS that the worldwide multilateral machinery for the IATA Traffic Conferences shall, wherever applicable, be adopted as a first choice when establishing international fares and rates to be submitted for the approval of the States concerned, and that carriers should not be discouraged from participation in the machinery.

4.7 The following Fares and Rates Panel Recommendation promotes tariffs which are comprehensible and simple while recognizing the value of a broad range of options.

Recommendation FRP/11-4

STATES should encourage airlines to develop tariffs which are readily comprehensible and simple in structure, while bearing in mind the benefits which may flow from a diversity of tariffs.

4.8 The Fares and Rates Panel adopted three Recommendations on government intervention in the multilateral mechanism for scheduled service tariffs which were subsequently endorsed by Council. The first two Recommendations, which concern government reservations/modifications and government orders respectively, may be considered as complementary to AT Conf/2 Recommendation 9 (shown above). The third Panel Recommendation deals with the duration of government orders.

Recommendation FRP/2-1

STATES, bearing in mind that the issuance of a government reservation on, or modification to, multilaterally agreed tariffs structures (in whole or in part) can have a disruptive effect on such structures, should to the greatest possible degree refrain from any action which would have an adverse influence on the existing structures.

Recommendation FRP/2-2

STATES, bearing in mind that the issuance of certain government orders can undermine and hinder the development of an integrated multilaterally agreed tariffs structures, should take into account the views of other States concerned and seek to avoid to the greatest possible degree the issuance of any government order which:

- a) discriminates in favour of specific users or carriers, and/or
- b) has an effect over a large geographical area, and/or
- c) differs to a large extent from the structure in effect at that time.

Recommendation FRP/2-3

STATES, bearing in mind that the multilaterally agreed tariffs structures undergo continual modification and that consequently the circumstances under which a government feels impelled to issue a particular government order may in time cease to exist, should endeavour to review each government order after a relevant period of time, to establish whether its continued existence is desirable, and each government order should, in any event, include an expiry date beyond which further action would be necessary to prolong the life of any tariff concerned.

D. PRACTICES AND PROCEDURES CONCERNING THE ESTABLISHMENT OF FARES AND RATES

4.9 Recommendations on this general subject were adopted by three Air Transport Conferences and, in some instances, updated or further developed by the Fares and Rates Panel and the Air Transport Regulation Panel. The current recommendations are listed below under the headings "General" and "Freight and non-scheduled services".

GENERAL

4.10 The Fares and Rates Panel developed specific requirements regarding the electronic filing of tariffs and timely submission by airlines of information concerning tariffs. These are contained in Recommendations FRP/9-2 and FRP/11-1.

Recommendation 10 of the Second Air Transport Conference urges States to make tariff filings available to all interested parties, while Recommendation 16 of the Third Air Transport Conference includes incentives as part of international fares.

The Fares and Rates Panel recommended that States consider add-ons, certain domestic fares, and domestic fares which are combined with international fares as parts of international tariffs (Recommendation FRP/9-1).

Recommendation FRP/9-2

STATES, when developing electronic tariff filing systems, should:

- a) permit continued manual filing of tariffs by airlines where necessary;
- b) endeavour to provide for compatibility between the tariff filing system they develop, the tariff-filing systems developed by the administrations of other States, the computer reservations systems used by airlines; and
- c) consult other States, airlines and tariff publishers as appropriate.

Recommendation FRP/11-1

STATES, in order to expedite the decisions of aeronautical authorities and thus make innovative passenger fares or freight rates available to users promptly and in order also to promote new traffic, should encourage air carriers to supply the aeronautical authorities in good time with accurate and adequate information as and when requested on both scheduled and non-scheduled services.

AT Conf/2 Recommendation 10

RECOMMENDS that States, when receiving tariff filings from scheduled and non-scheduled operators, should wherever possible, furnish them upon request (and at the discretion of governments on a remunerative basis) to all parties who have given notice of their interest in such filings.

Recommendation FRP/9-1

STATES should, consistently with their bilateral arrangements, consider as part of international tariffs:

- a) add-ons (i.e. those amounts which are established for carriage over international or domestic sectors solely for the construction of through international tariffs);
- b) domestic tariffs which are: only sold in conjunction with an international tariff, not available for purely domestic travel, and not made available on equal terms to all international carriers and users of their services; and

- c) any through tariff resulting from a combination of domestic and international tariffs which undercuts an approved international tariff.

Accordingly, States may require such add-ons, domestic tariffs and through tariffs to be filed for approval.

FREIGHT AND NON-SCHEDULED SERVICES

4.11 The Fares and Rates Panel recommended (FRP/11-3) that, in certain circumstances, intermediaries involved in the development of non-scheduled passenger prices and freight rates be regulated.

The Second Air Transport Conference adopted Recommendation 22 concerning the practices associated with freight tariffs (and their simplification), and Recommendation 20 concerning the alleviation of administrative problems when States exercise unilateral control of non-scheduled passenger tariffs.

Recommendation FRP/11-3

STATES should, where they are satisfied that the requirement exists to promote user interests and where national legislation permits, subject travel organizers, freight consolidators and freight forwarders, for the State's own originating traffic, to licensing or similar regulatory procedures, which should where applicable include the filing of retail prices and price associated conditions.

AT Conf/2 Recommendation 22

RECOGNIZING that air freight markets are extremely complex and heterogeneous;

1. RECOMMENDS that States encourage carriers to develop a wider range of services with a diversified and flexible pricing system so as to meet in an expeditious manner the divergent and changing needs of different types of users; and
2. RECOMMENDS that, in order to reduce arbitrary interpretation of rate applicability, clearer and more simplified rate presentations be adopted so as to permit the wide dissemination of tariffs which facilitate their use.

E. RULES AND CONDITIONS ASSOCIATED WITH SCHEDULED PASSENGER FARES

4.12 The Second Air Transport Conference adopted one Recommendation concerning fare changes subsequent to ticket purchase and called upon the Council to review the rules and conditions associated with international fares and rates. The Council subsequently approved a number of recommendations formulated by the Fares and Rates Panel (and in some instances, further developed by the Air Transport Regulation Panel) which are presented under the following headings, "Fare Guarantee", "Baggage", "Conditions of Carriage", "Conditions Attached to Different Types of Fares", "Disclosure of Tariff Rules and Conditions", "Refund Procedures", "Denied Boarding", and "Freight".

FARE GUARANTEE

4.13 The Second Air Transport Conference adopted the following Recommendation to provide reasonable consumer protection against fare increases following purchase of tickets.

AT Conf/2 Recommendation 11

NOTES the existence of general rules which provide for passengers to be charged the fare which is applicable on the date on which travel commences;

AGREES

- a) that when fares are increased, such rules could bear unfairly on passengers who in good faith have *fully* committed themselves to travel at a lower fare previously in effect, particularly at times when sharper and more frequent increases are being proposed;
- b) that any change in such rules should take account of the conflicting interests of such passengers, of the other passengers who might under a modified rule have to bear an undue share of the burden of fare increases, and of airlines faced with unavoidable cost increases; and
- c) that the airlines themselves review such rules and propose a modification which would find acceptance.

BAGGAGE

4.14 On the question of baggage allowances and charges the work of the Council has aimed at minimizing the adverse effects of distinctly separate "weight" and "piece" systems of baggage allowance and facilitating the development of a single baggage allowance and excess baggage charges system.

The first conclusion approved by the Council (FRP/5-1) was on the need to ensure that adequate information on baggage allowances and charges is made available to passengers.

A further interim measure approved by the Council (FRP/6-4) urges the application of point of origin rules on baggage allowances and charges for passengers.

Recommendation FRP/5-1

1. NOTING that free baggage allowances and charges for excess baggage vary from route to route and sometimes from carrier to carrier;
2. RECOMMENDS that States encourage airlines and their agents to inform passengers sufficiently in advance of their travel regarding:
 - a) the limits of their free baggage allowance from the point of origin;
 - b) the possibility that a different allowance, on either a weight-based or piece-based system, may apply on different sectors of an interline journey or on the return journey; and, if practicable, detailed information on the scheme(s) that they will encounter throughout their intended journey; and

- c) the fact that an airline may accept excess baggage at charges related to the system being applied and according to its regulations as well as information concerning the level of such charges.

Recommendation FRP/6-4

In the interests of simplification for the user and pending the adoption of a unified system of baggage allowances, States should consider the introduction by the most appropriate means of arrangements which would enable a passenger, if he so opts, to retain throughout his entire journey the baggage allowance applicable from his point of origin.

4.15 To enhance the development of a uniform baggage system through gradual harmonization the Council also approved another Panel Recommendation (FRP/6-3) proposing some elements of commonality around which harmonization of the two basic systems could be established.

A subsequent Recommendation approved by the Council and addressed to States on this issue (FRP/6-5) proposes the harmonization of the “piece” and “weight” excess baggage charging systems in a particular manner.

The most recent Recommendation of the Fares and Rates Panel (FRP/10-2) calls for States to take action towards reducing excess baggage charges under the “weight” system to more cost-related levels, as a step towards the long-term objectives of harmonization of the “piece” and “weight” system.

Recommendation FRP/6-3

In the interests of simplification, and as a move towards the adoption of a unified system of baggage allowances, States, through ICAO, other international organizations or individually, should consider encouraging airlines to take steps towards the harmonization of the existing “piece” and “weight” systems by establishing:

- a) a common total weight limit included in the passenger’s fare; and
- b) a common number of pieces included in the passenger’s fare.

In this process, due consideration should be given i) to the desirability of different provisions according to fare class and, if required for ease of handling, ii) to common maximum weight and dimensions limits for any single bag.

Recommendation FRP/6-5

STATES, through ICAO, other international organizations or individually, should encourage airlines, when reviewing excess baggage charges, to give due consideration to harmonizing such charges by expressing them as a percentage of whichever normal one-way fare is found appropriate for the system in effect.

Recommendation FRP/10-2

STATES in reviewing excess baggage charges filed for carriage to or from their territory should seek to ensure that such charges are related to the cost of carriage. On this basis States should consider whether such charges should be established at a level not exceeding one per cent of the applicable one-way normal economy fare per kilogram of excess baggage.

CONDITIONS OF CARRIAGE

4.16 The various conditions under which airline tickets are purchased are set out partly in the general airline conditions of carriage and partly specified in relation to individual fares. Aiming at ensuring the availability and consistency of those fare-related conditions, the Council approved the following Recommendation.

Recommendation FRP/6-7

1. STATES should ensure, subject to their international commitments and national policies, that all conditions related to fares which are approved by governments are consistent whether they appear in conditions of carriage or in association with filed and approved fares.
2. STATES should encourage airlines to make full details of both conditions of carriage and conditions related to applicable fares readily available to the public on request.

CONDITIONS ATTACHED TO DIFFERENT TYPES OF FARES

4.17 Recommendation FRP/8-1 calls on States to keep to the essential minimum their intervention in fare conditions.

Recommendation FRP/8-1

Bearing in mind the benefits for airlines and users which have resulted from a wide choice of fare types, States should:

- a) keep to the essential minimum their intervention in fare conditions; and
- b) direct any such intervention particularly towards the prevention of fare conditions which discriminate excessively between users, which impose onerous conditions on users, or which are clearly uneconomic.

DISCLOSURE OF TARIFF RULES AND CONDITIONS

4.18 The following Recommendation concerns ensuring full disclosure of conditions associated with fares and rates.

The information concerned, "Guidance Material for Users of Air Transport", was subsequently issued to States under cover of a State Letter (SL 85/68) and is now contained in Appendix 4 of Doc 9626, *Manual on the Regulation of International Air Transport*. The 2003 fifth Worldwide Air Transport Conference (ATConf/5) also addressed the broader issue of consumer interests and reached some conclusions (see Appendix 4 of this document). Additional information on air passenger rights may be found in Chapter 4.9 of Doc 9626.

Recommendation FRP/8-6

ICAO should make available to States possible contents of publications intended to inform air transport users of their rights and obligations.

REFUND PROCEDURES

4.19 The Fares and Rates Panel, after a detailed study of practices concerning refunds for unused travel documents, listed its conclusions in Recommendation FRP/10-4.

Recommendation FRP/10-4

STATES, in reviewing the provisions filed by airlines for refunds against traffic documents, should ensure that the interests of users as well as those of the airlines are fully taken into account and to this end should:

- a) encourage the airlines to apprise passengers of their rights to refunds and of their obligations to present proper traffic documents and other documentation, and to inform passengers of any potential penalties or service charges for alteration, cancellation or loss of tickets, of the advisability of taking out trip cancellation insurance, and of the possible consequences of failure to observe immigration requirements;
- b) consider refunds as involuntary and hence not subject to service charges in substantiated cases of illness or death;
- c) seek to ensure, subject to national currency regulations, that when refunds are made in a currency other than that in which the traffic document was purchased, the appropriate bank exchange rate between the currencies concerned is used; and
- d) encourage the airlines to minimize delays in the issuance of refunds, whenever possible by taking advantage of developments in automation which expedite the processing of refund claims.

DENIED BOARDING

4.20 On the question of compensation to passengers who are denied boarding on flights for which they have confirmed reservations the Council approved a recommendation by the Fares and Rates Panel to encourage the introduction by States of compensation schemes. The Council also approved a set of guidelines developed by the Panel for optional use and adaptation by States for such compensation schemes.

Recommendation FRP/6-1

STATES should consider the possibility of introducing a scheme for denied boarding compensation, by means which each State finds most appropriate according to national circumstances and legislation. This could be through government mandate or by encouraging airlines collectively to introduce such a scheme in consultation with regulatory authorities and consumer representative bodies.

**Guidelines for compensation schemes for denied boarding
(for optional use and adaptation to national laws and particular situations)***Scope of applicability*

International scheduled flights departing from the State concerned and domestic flights in the departure State in direct connection with an international flight.

Definition of a confirmed reservation

Specification of the number, date and time of the flight and the notation of "OK" in the appropriate places on the ticket or by electronic means by the airline or its authorized agent. Where possible, such notation should be supported by a reservation reference number and/or the identification of the airline or agent involved.¹

Specification of compensation provisions

- a) *Out-of-pocket expenses*: As a minimum, the reasonable free provision or cost of:
- i) a telephone call or cable to point of destination;
 - ii) meals and refreshments corresponding to the waiting time until embarkation on the first available alternative flight of the same or another airline² (or other transportation);
 - iii) hotel accommodation where such waiting time exceeds several hours;³
 - iv) ground transportation from and to the airport; and
 - v) additionally, such expenses during a period of delay en route which results from missed flight connections which are covered by the same ticket.

and/or

- b) *Liquidated damages*: Subject to specified minima and/or maxima, to be reviewed periodically, [x] per cent of the value of the flight coupon for flight for which boarding has been denied plus [x] per cent of the flight coupon(s) for the successive flights covered by the same ticket which are missed as a result of the passenger being denied boarding. If the value of the flight coupon(s) is subject to assessment on a prorated, interline or inclusive tour basis, the amount of liquidated damages paid should be equal to [x] per cent of the through fare between the points covered by the applicable flight coupon(s) for carriage (of the same class and subject to the same conditions as the carriage which has been denied) which would have been payable had there been no prorating, interlining or ground content involved.⁴

*Conditions under which compensation for
denied boarding is not payable*

- a) Out-of-pocket expenses are not payable when a passenger seeks an on-the-spot refund of the unused portion of the ticket involved instead of accepting an alternative flight.
- b) Liquidated damages are not payable where travel on an alternative flight (or other transportation) is scheduled to arrive at the passenger's destination less than [y] hours after the flight on which boarding has been denied.⁵

- c) Passenger's failure to comply with an airline's ticketing and check-in requirements.
- d) Passenger's failure to undergo a security check or complete departure formalities.
- e) Passenger's failure to report, after check-in, for boarding.
- f) Carriage entitled to be refused in circumstances set out in applicable national law or the airline's conditions of carriage, such as passenger's behaviour, health, condition or lack of necessary travel documents.
- g) All or part of the capacity on the flight is cancelled by reason of circumstances beyond the airline's control.
- h) Where a higher grade of service than that specified in the ticket is offered on the same flight without additional payment.
- i) Where the passenger is travelling free or at a discount which is neither directly nor indirectly available to the general public through an airline, a travel agent, or a tour operator.

System of priorities for denying boarding or offloading

Airlines should be permitted to apply priority schemes of their own choosing, but should give due consideration to passengers travelling due to death or illness of a family member, to aged or infirmed passengers and to unaccompanied children. Copies of any order or priorities used by the airline should be available on request to any passenger.

System of volunteers for denying boarding or offloading

Airlines should be permitted, before denying boarding to passengers who accept it only involuntarily, to call for volunteers to surrender their confirmed reserved space and to negotiate compensation.

Right of redress

- a) *Where compensation is limited to out-of-pocket expenses:* The application of the provisions of the scheme should be expressly without prejudice and should not imply or constitute a waiver of the passenger's right to seek redress.
- b) *Where compensation includes payment of liquidated damages:* Acceptance of payment should in principle constitute full satisfaction of rights at law.⁶ However, passengers should be free to decline payment and seek redress through litigation. A passenger accepting liquidated damages in respect of denied boarding may be asked to sign a declaration releasing the airline from payment of further compensation. Any such declaration should draw the passenger's attention to the availability of the alternative course of litigation.

Time limitation for claims

A passenger wishing to claim liquidated damages should do so within [z] hours/days, and an airline accepting the claim must make payment within [z] hours/days.⁷

Public disclosure of airline practices

Airlines and travel agents should be obliged to display explanatory notices clearly outlining the denied boarding compensation scheme established or approved by the government concerned, and airlines should include in their

conditions of carriage a reference to the existence of such a scheme. Airlines should also give a prescribed notice to any passenger who is denied boarding.

NOTES:

1. Acceptance of such a definition for purposes of a compensation scheme for denied boarding should not necessarily be taken as evidence for purposes of litigation.
2. The words "at the passenger's choice" to be added if required.
3. Actual number of hours to be specified in individual schemes if required.
4. Actual percentages to be specified in individual schemes. In existing schemes such percentages range from 50 per cent where out-of-pocket expenses are also met, to 100 per cent or 200 per cent where such expenses are not met.
5. Actual number of hours to be specified in individual schemes, distinguishing if necessary between delays for intra-regional flights and delays for interregional flights.
6. Alternatively, payment accepted may be set against any compensation obtained through legal action.
7. Actual time limits to be specified in individual schemes.

FREIGHT

4.21 The following recommendations concern the conditions attached to freight rates. Recommendation FRP/8-3 responds to a problem of a lack of clarity concerning the obligations of a freight forwarder or an airline to deliver a shipment in a timely fashion.

Recommendation FRP/8-4 addresses the availability to shippers of cargo rates structures of freight forwarders and consolidators.

Recommendation FRP/8-5 is aimed at encouraging the public availability of full details of tariffs and related conditions.

In addition to these recommendations, the 2003 fifth Worldwide Air Transport Conference (ATConf/5) addressed the broader issue of air cargo liberalization and adopted a model clause for possible inclusion in States' air service agreements (see Appendix 4 of this document). Additional information on air cargo and its regulation may be found in Chapter 4.5 of Doc 9626.

Recommendation FRP/8-3

In order to avoid misunderstandings and unnecessary disputes States should encourage freight forwarders/consolidators and airlines to provide users all necessary information regarding the date of delivery to the destinations concerned for their consignments, and the wider adoption of guarantee and priority schemes which include arrangements for compensation in the event of non-performance. In encouraging such schemes, States should bear in mind the need to preserve the shipper's rights to redress at law.

Recommendation FRP/8-4

Subject to national legislation, States should require/encourage freight forwarders and consolidators who offer their own cargo rates structures to make them available on conditions which are no less favourable to the shipper than those available directly from the airline concerned.

Recommendation FRP/8-5

States should encourage airlines and freight forwarders/consolidators to make full details of both conditions of carriage and conditions related to applicable freight rates readily available to the public on request.

Part 5

COMPUTER RESERVATION SYSTEMS

5.1 While recognizing that computer reservation systems (CRSs) benefit both airlines and users but also have the potential to be abused, the Third Air Transport Conference, in its Recommendation 20, called for a study of all relevant aspects of CRSs. In 1988, following completion of this study, guidance material (Circular 214) was issued by the Secretariat to assist States in the development of CRS policy and regulations. In 1989 the 27th Session of the Assembly, in Resolution A27-16, requested the Council *inter alia* to carry out studies on a code of conduct regarding CRSs which could be applied worldwide and which might lead to a multilateral agreement. With the assistance of a group of experts drawn from Contracting States and international organizations, the Secretariat subsequently prepared a code of conduct and notes on its application. In December 1991, the Council adopted the Code and a resolution urging States to follow it.

The Council resolution also provided for a review of the Code to be undertaken within three years. In 1994, the Worldwide Air Transport Conference recommended that the review of the ICAO Code proceed with a view to States using the Code as their basis for regulating CRSs. In 1995, the 31st Session of the Assembly adopted Resolution A31-13 requesting the Council to complete its review of the Code in the light of experience of its application and the implications of the General Agreement on Trade in Services and to develop a model clause on CRSs for use by States. The Council subsequently completed its review in June 1996 and adopted a revised Code and two model clauses on CRSs. A statement of continuing ICAO policy on CRSs is contained in Assembly Resolution A36-15, the text of which is given below.

It should be noted that there has been significant changes in airline distribution in recent years, including the fast increase and widespread use of the Internet for marketing and selling airline products, which has implications for its regulation. The 2003 fifth Worldwide Air Transport Conference (ATConf/5) addressed this issue and reached some conclusions (see Appendix 4 of this document).

A. ASSEMBLY RESOLUTION ON COMPUTER RESERVATION SYSTEMS

A36-15: Appendix A, Section III — Computer reservation systems

Whereas the advancement of information and electronic technologies have had a significant impact on the way the airline industry is doing business, particularly on its product distribution; and

Whereas ICAO has developed a Code of Conduct for the Regulation and Operation of Computer Reservation Systems (CRSs) for States to follow, and two related Model Clauses for optional use by States in their air services agreements.

The Assembly:

1. *Requests* the Council to monitor developments in airline product distribution and related regulatory practices, and disseminate information to Contracting States on significant developments; and

2. *Requests* the Council to review whether there is a continued need for the ICAO CRS Code and Model Clauses in light of the industry and regulatory changes.

B. COUNCIL RESOLUTION ON ICAO CRS CODE OF CONDUCT

5.2 In response to its own Resolution adopting the CRS Code of Conduct in December 1991 and to Assembly Resolution A31-13, the Council adopted, on 25 June 1996, a revised Code which replaces in its entirety the previous Code, and a resolution urging States to follow the new Code. As a means of strengthening and complementing this Code, the Council also approved two Model CRS Clauses for use by States at their discretion in their bilateral and multilateral agreements and arrangements.

WHEREAS pursuant to Assembly Resolution A27-16 the Council adopted on 17 December 1991 a Code of Conduct for the Regulation and Operation of Computer Reservation Systems (CRSs), urged States to follow it and undertook to review the Code in the light of experience with its application by Contracting States;

WHEREAS in the light of comments by States and relevant conclusions of the Worldwide Air Transport Conference the review of the Code indicated a need for changes thereto to encourage the principles of transparency, accessibility, and non-discrimination for CRSs to meet the needs of all States, the air transport industry, and air transport users;

WHEREAS, in Resolution A31-13 the Assembly called on the Council to complete the review of the Code as a matter of priority and called on States to give due and urgent consideration to the results of the review; and

WHEREAS, in Resolution A31-13 the Assembly also called on the Council to consider the development of a model clause on computer reservation systems for use in bilateral air services agreements or multilateral arrangements;

THE COUNCIL

1. **ADOPTS** the attached ICAO Code of Conduct for the Regulation and Operation of Computer Reservation Systems, to supersede in its entirety with effect from 1 November 1996 the Code adopted on 17 December 1991;
2. **URGES** all Contracting States to follow this Code and to notify the Secretary General when they decide to do so;
3. **RECOMMENDS** that Contracting States where appropriate utilize the attached Model Clauses on Computer Reservation Systems in air service agreements or arrangements as a means of strengthening and complementing the ICAO Code; and
4. **UNDERTAKES** to review the Code of Conduct when circumstances warrant.

C. CODE OF CONDUCT FOR THE REGULATION AND OPERATION OF COMPUTER RESERVATION SYSTEMS

Introduction

The Council of ICAO recognizes that computer reservation systems (CRSs) provide substantial benefits both to the air transport industry and to air transport users. Such systems, however, can also be used in abusive ways. To promote desirable practices and avoid harmful ones in the distribution of air carrier products through CRSs, the Council, on 17 December 1991, adopted the ICAO CRS Code of Conduct and urged States to follow it.

The Council undertook to review the Code in the light of experience. In the course of that review, the Council has taken into account application of the Code by ICAO Contracting States, the need to strengthen the effectiveness of the Code, the implications of the General Agreement on Trade in Services (GATS) which includes computer reservation systems, the conclusions on CRSs of the Worldwide Air Transport Conference, and a revised resolution on CRSs (A31-13) adopted by the 31st Session of the ICAO Assembly. Concluding that a more formal system with worldwide applicability and use was warranted, the Council on 25 June 1996 adopted this revised Code to replace the existing Code in its entirety, effective 1 November 1996.

The Code necessitates no formal process of ratification, but each Contracting State that decides to follow it is expected to inform ICAO of its decision. The Code does not supplant or obviate individual or collective State regulation of CRS operations, nor does it imply that any particular means of regulation must be employed. A State may choose to employ the Code itself as a regulatory instrument; develop national CRS regulations based upon the Code; modify existing national regulations if necessary for consistency with the Code; employ the provisions of existing trade or competition legislation where relevant; require or encourage self-policing arrangements by CRS vendors, air carriers and subscribers; apply it in its bilateral or multilateral relations with other States through use of the appropriate ICAO Model CRS Clause, or use any combination of these and similar means.

Article 1 of the Code describes its purpose and objectives, Article 2 establishes a relevant terminology, while Article 3 defines the Code's scope of application. These are followed by articles defining certain obligations of States (Article 4), of CRS vendors (Articles 5 through 8), of air carriers (Article 9) and of subscribers to CRS services (Article 10). Article 11 deals with safeguarding the privacy of personal data, while Article 12 concerns application, revisions and exceptions to certain provisions. The Code covers a rapidly changing field, since CRS activities are driven by fast-moving technological, regulatory and commercial developments. Consequently, Article 12 provides for revision of the Code by the Council when circumstances warrant.

The text of the Code is followed by complementary notes on the application of each Article. These notes explain the purpose and intent of the Articles and identify relevant factors to be taken into account when applying the Code.

Article 1 — Purpose

This Code is based on transparency, accessibility and non-discrimination, and aims at enhancing fair competition among airlines and among computer reservation systems (CRSs) and at affording international air transport users access to the widest possible choice of options in order to meet their needs. To this end, the Code takes into account current market practices, the particular interests of developing countries, and the critical need for harmonization of the various national and regional CRS regulations.

Article 2 — Terminology

In this Code:

- a) "Computer reservation system (CRS)" means a computer system that provides displays of schedules, space availability and tariffs of air carriers, and through which reservations on air transport services can be made;
- b) "System vendor" means an entity that operates or markets a CRS;
- c) "Participating carrier" means an air carrier that uses one or more CRSs to distribute its air transport services, either as the system vendor or as a result of an agreement with the system vendor; and
- d) "Subscriber" means an entity such as a travel agent that uses a CRS under contract with a system vendor for the sale of air transport services to the general public.

Article 3 — Scope of Application

- a) This Code shall apply to the distribution of international passenger air service products through CRSs. Where a State determines it is necessary to meet the purpose of the Code in Article 1, it shall also apply to computer information systems that provide displays of schedules, space availability and tariffs of air carriers, without the capability of making reservations.
- b) Where non-scheduled flights are included in principal displays, they shall be identified as such and displayed under the same conditions as scheduled services, and air transport users shall be informed of any special conditions applying.

Article 4 — Obligations of States

A State that follows this Code shall:

- a) ensure compliance with this Code by air carriers, subscribers (where practicable) and system vendors for their CRS activities in its territory;
- b) remove regulatory obstacles, if any, to investment in CRSs domiciled in its territory by air carriers or other entities domiciled in the territory of another State that follows this Code;
- c) allow system vendors that comply with this Code to provide their CRS services in its territory on a non-discriminatory basis and consistent with any bilateral or multilateral agreements or arrangements to which the State is a party;
- d) treat all system vendors impartially regarding their CRS activities in its territory;
- e) permit the free flow across and within its national borders of the information needed to meet the reservation and related requirements of air transport users;
- f) use intergovernmental consultation processes to resolve any dispute involving another State following this Code, regarding the distribution of air transport products through CRSs, that cannot be resolved satisfactorily by the parties immediately concerned; and
- g) not allow or require air carriers or system vendors under its jurisdiction to take actions not in conformity with this Code, except to address, in an appropriate and proportionate manner, a lack of CRS reciprocity or the consequences of a failure of intergovernmental consultation processes to resolve any CRS dispute.

Article 5 — Obligations of System Vendors to Air Carriers

A system vendor shall:

- a) permit participation in its CRS by any carrier prepared to pay the requisite fees and to accept the system vendor's standard conditions;
- b) not require carriers to participate in its CRS exclusively or for a certain proportion of their activities;
- c) not impose any conditions on participation in its CRS that are not directly related to the process of distributing a carrier's air transport products through the CRS;

- d) not discriminate among participating carriers in the CRS services it offers, including timely and non-discriminatory access to service enhancements, subject to technical or other constraints outside the control of the system vendor;
- e) ensure that any fees it charges are:
 - i) non-discriminatory;
 - ii) not structured in such a way that small carriers are unfairly precluded from participation; and
 - iii) reasonably structured and reasonably related to the cost of the service provided and used and shall, in particular, be the same for the same level of service;
- f) provide information on billing for the services of a system in a form (including, if requested, via or on electronic media) and in sufficient detail to allow participating carriers to verify promptly the accuracy of the bills;
- g) include in contracts a provision permitting an air carrier to terminate a contract by giving notice:
 - i) which need not exceed six months, to expire not before the end of the first year; or
 - ii) as prescribed by national law;
- h) load information provided by participating carriers with consistent and non-discriminatory standards of care, accuracy and timeliness, subject to any constraints imposed by the loading method selected by the participating carrier;
- i) not manipulate the information provided by carriers in any way that would lead to information being displayed in an inaccurate or discriminatory manner;
- j) make any information in its CRS that directly concerns a single reservation available on an equal basis to the subscriber concerned and to all the carriers involved in the service covered by the reservation but to no other parties without the written consent of such carriers and the air transport user; and
- k) not discriminate among participating carriers in making available any information, other than financial information relating to the CRS itself, generated by its CRS in an aggregated or anonymous form.

**Article 6 — Obligations of System Vendors to Subscribers
Regarding Commercial Arrangements**

A system vendor shall not:

- a) discriminate among subscribers in the CRS services it offers;
- b) restrict access by subscribers to other CRSs by requiring them to use its CRS exclusively or by any other means;
- c) charge prices conditioned in whole or in part on the identity of carriers whose air transport services are sold by the subscriber;
- d) require subscribers to use its CRS for sales of air transport services provided by any particular carrier;

- e) tie any commercial arrangements regarding the sale of air transport services provided by any particular carrier to the subscriber's selection or use of the system vendor's CRS;
- f) require subscribers to use its terminal equipment or prevent them from using computer hardware or software that enables them to switch from the use of one CRS to another, although it may require technical compatibility with its CRS; and
- g) require subscribers to enter into contracts which:
 - i) exceed five years; or
 - ii) cannot be cancelled by the subscriber at any time after one year, with notice and without prejudice to recovery of actual costs; and
 - iii) contain provisions that undermine contract termination.

Article 7 — Obligations of System Vendors Regarding Displays

A system vendor shall:

- a) make available a principal display or displays of schedules, space availability and tariffs of air carriers which are fair, non-discriminatory, comprehensive, and neutral in terms of:
 - i) not being influenced, directly or indirectly, either by the identity of participating carriers or by airport identity; and
 - ii) the information being ordered in a manner which is consistently applied to all participating carriers and to all city-pair markets;
- b) ensure that any principal display made available is as fully functional and at least as easy to use as any other display it offers;
- c) always provide a principal display except where there is a specific request from an air transport user which requires the use of another display;
- d) base the ordering of services in a principal display and the selection and construction of connecting services on objective criteria (such as departure/arrival times, total elapsed time between initial flight departure at origin and final flight arrival at destination, routing, number of stops, number of connections and fares);
- e) provide to subscribers:
 - i) a principal display of flight options ranked in the order of all non-stop flights by departure time, other direct flights not involving a change of aircraft and all connecting flights by elapsed journey time; or
 - ii) a principal display of flight options ranked in any other order based on objective criteria; or
 - iii) principal displays based on i) and ii);
- f) in the ordering of services in a principal display, take care that no carrier obtains an unfair advantage;
- g) in any principal display of schedule information:

- i) clearly identify non-scheduled flights, scheduled en-route changes of equipment, use of the designator code of one air carrier by another air carrier, the name of the operator of each flight, the number of scheduled en-route stops, and any surface sectors or changes of airport required; and
 - ii) clearly indicate that the information displayed regarding direct services is not comprehensive if information on participating carriers' direct services is incomplete for technical reasons or if any direct services operated by non-participating carriers are known to exist and are omitted;
- h) in the selection and construction of connecting services in a principal display, select as many alternative (single or multiple) connecting points on a non-discriminatory basis as is necessary to ensure a wide range of options;
- i) not intentionally or negligently display inaccurate or misleading information;
- j) in cases where States do not find it practicable to ensure that subscribers comply with Article 10, include appropriate provisions regarding compliance in its contract with each subscriber; and
- k) where participating carriers have joint venture or other contractual arrangements requiring two or more of them to assume separate responsibility for the offer and sale of air transport products on a flight or combination of flights, permit each carrier concerned — up to a maximum of three — to have a separate display using its individual designator code.

Article 8 — Other Obligations of System Vendors

A system vendor shall:

- a) make available in written form and in a timely manner, on the written request of any interested party, information on the services offered by its CRS, the associated fees, the procedures it applies for entering and storing information in its CRS, and the methods it uses for developing, editing and updating information displays provided to subscribers; and
- b) refrain from practices that inhibit or impair competition among system vendors or air carriers.

Article 9 — Obligations of Air Carriers

An air carrier shall:

- a) be responsible for the accuracy of information it provides to a system vendor for inclusion in a CRS;
- b) in providing information on its air transport services to system vendors:
 - i) ensure that it does not misrepresent services; and
 - ii) clearly identify non-scheduled flights, scheduled en-route changes of equipment, use of the designator code of one air carrier by another air carrier, the name of the operator of each flight, the number of scheduled en-route stops, and any surface sectors or changes of airport required;
- c) not refuse, except where legitimate commercial or technical reasons exist, to participate in any CRS used by subscribers in a State where the carrier holds a dominant market position if it is financially linked or otherwise affiliated with any other CRS (other than as a result of a participation agreement with the system vendor);

- d) not refuse, except where permitted by law, to provide information on schedules or tariffs to a system vendor whose CRS is used by subscribers in the carrier's State of domicile if it already provides such information to another system vendor whose CRS is used by subscribers in that State; and
- e) not require subscribers to use a particular CRS for sales of its air transport services, nor tie any commercial arrangements with subscribers regarding the sale of its air transport services to the subscriber's selection or use of a particular CRS where:
 - i) the air carrier has a financial interest in or is otherwise affiliated with that CRS; or
 - ii) this would unfairly favour that CRS.

Article 10 — Obligations of Subscribers

A subscriber shall:

- a) use or provide a principal display meeting the requirements of Article 7 for each transaction, except where a preference indicated by an air transport user requires the use of another display;
- b) not manipulate information supplied by a CRS in a manner that would result in inaccurate or misleading information being given to an air transport user;
- c) be responsible for the accuracy of any information it enters into a CRS;
- d) where non-scheduled flights are included in a CRS, inform an air transport user if a flight is non-scheduled and of any special requirements concerning it;
- e) inform air transport users of all scheduled en-route changes of equipment, use of the designator code of one air carrier by another air carrier, the name of the operator of each flight, the number of scheduled en-route stops, and any surface sectors or changes of airport required in any itinerary provided; and
- f) not make fictitious reservations through a CRS.

Article 11 — Safeguarding the Privacy of Personal Data

- a) States shall take appropriate measures to ensure that all parties involved in CRS operations safeguard the privacy of personal data.
- b) Air carriers, system vendors, subscribers and other parties involved in air transportation are responsible for safeguarding the privacy of personal data included in CRSs to which they have access and may not release such data without the consent of the passenger.

Article 12 — Application, Revision and Exceptions

- a) This Code shall be applicable with effect from 1 November 1996. It may be revised by the Council when it deems that circumstances warrant, and any revised Code shall supersede its predecessor in its entirety.
- b) A State that commits itself to follow the Code shall do so by notifying ICAO. A State that decides to discontinue such commitment shall do so by notifying ICAO.

- c) A State which is recognized by the United Nations as a developing country and which has notified ICAO that it follows the Code may, until 31 December 2000, decline to follow Article 4 c) provided:
 - i) it notifies ICAO of such action; and
 - ii) such action is consistent with any bilateral or multilateral agreement or arrangement to which the State is a party.
- d) Any State which has notified ICAO of its commitment to follow the Code and which allows or requires actions not in conformity with the Code in accordance with Article 4 g) shall notify ICAO of such actions.
- e) The Council will periodically advise all States of notifications made pursuant to clauses b) through d) above.
- f) Multi-access CRSs are exempt from compliance with clauses h) through k) of Article 5 and clauses a) through h) and k) of Article 7.

D. NOTES ON THE APPLICATION OF THE CODE OF CONDUCT

Article 1 — Purpose

This Code provides guidance with worldwide applicability in the form of general principles concerning the operation and regulation of computer reservation systems. The obligations in the Code for States, system vendors, air carriers and subscribers are based on fair competition, accessibility, transparency and non-discrimination, while taking into account current market practices and the particular interests of developing countries. In the interest of the critical need for harmonization of various national and regional CRS regulations, common approaches have been included where they exist. Where regulatory authorities use different means to achieve the same purposes, these alternatives have also been included. A State that chooses to follow the Code is not precluded from expanding the scope of CRS regulation beyond the provisions of the Code, provided that such expansion is not inconsistent with the Code and its purpose.

Article 2 — Terminology

Computer reservation system (CRS) [clause a)]

This term identifies two essential elements which define a CRS for the purposes of this Code, namely the capability to: first, provide displays of the schedules, space availability and tariffs of air carriers; and second, make reservations on air transport services. It is the provision of information on multiple air carriers that distinguishes a CRS subject to the Code from a system which is operated by an individual air carrier in its own name and which is therefore identified with the services of that air carrier. The second essential element, the capability to make reservations on air transport services, differentiates a CRS as defined in the Code from a computer system which only provides information on, for example, the schedules and fares of air carriers such as an electronic version of multi-carrier airline guides (for example, the ABC World Airways Guide and the Official Airline Guide). Modern CRSs offer a wide variety of other facilities related to the marketing and sale of air transport, such as access to individual carrier systems and issuance of tickets which are not required, limited or excluded by this definition.

The term includes so-called “multi-access” CRSs (i.e. those which only provide subscribers with direct access to individual air carrier CRS displays through a common switching centre and/or interface), although such systems are

exempted by Article 12 f) from certain obligations of system vendors which they are technically incapable of meeting. There are currently very few of these systems, and unlike the CRSs with multi-carrier principal displays which function globally, they are national or regional in scope. They are included so that, to the extent possible, both types of CRSs will have the same obligations and operate under the same rules.

Certain States may require an element of air carrier ownership in the CRS as a legal predicate for regulation by air transport authorities. Although this term does not require such ownership, neither does it preclude it, and as pointed out below, CRSs that currently meet the definition in the Code are owned by air carriers. However, States that rely on air carrier ownership as their basis for regulating CRSs should bear in mind that many different entities that are not owned by airlines could fall within the Code's definition of a CRS. In any case, States need to ensure that all CRSs to which the Code applies are regulated in a fair and non-discriminatory manner.

System vendor [clause b)]

When CRSs were in their infancy, they were usually directly owned and operated by individual air carriers. Today major CRSs tend to be owned by groups of carriers and operated as independent businesses. Irrespective of the ultimate ownership or control of a CRS, this clause identifies the system vendor as the entity that operates or markets the CRS concerned, i.e. it is expected to be the entity (or entities) with which a subscriber contracts for CRS services but could include (as necessary) any related entity within the jurisdiction of the regulatory body, such as a carrier that is an owner or a part-owner of the CRS.

Participating carrier [clause c)]

Although participating carriers generally enter into an agreement with the system vendor and pay fees for the various services provided, the term can also include the system vendor itself in those cases where the vendor is an air carrier or air carriers.

Not all carriers whose air transport services are included in a CRS are participating carriers. Some system vendors choose to display information regarding other air carriers (referred to in these Notes as "non-participating carriers"), often with the advice to subscribers that for reservations they should contact the carrier directly.

Subscriber [clause d)]

Users of a CRS are only considered to be "subscribers" if they use the CRS for the sale of air transport services to the general public. This limitation means that in practice most subscribers to CRSs are travel agents.

Article 3 — Scope of Application

Usual application of the Code [clause a)]

In general terms, the Code has been designed to apply to the distribution of international passenger air service products through CRSs. Where States have so determined, it also applies to computer information systems (those which do not have reservation capability).

Although the Code does not apply to domestic passenger air service products, States are free to use the Code to regulate this area of air transport. For consistency and other reasons (such as the increased expense and technical difficulties in providing separate displays for domestic and international services), States are likely to find it desirable to follow the same CRS regulations for both domestic and international services.

The scope of the Code includes, but is not limited to, the distribution of international air service products through CRSs to subscribers. Distribution via other means, such as directly to air transport users through telecommunications networks and personal computers, may fall within the scope of the Code, depending on whether the entities concerned meet the definitions of “system vendors” or “subscribers”. The general principle underlying the scope of the Code is that CRSs which are used to distribute air service products directly or indirectly to air transport users and through which reservations can be made on such services are subject to the same rules and obligations.

Except where States have determined that the Code applies to computer information services, the Code would not apply to information-only systems, such as the electronic database marketed as the OAG, and the various travel networks available on the Internet (where these do not include reservation capability).

It follows from the definitions of a CRS and of a subscriber in Article 2 that the Code would not apply to:

- the non-air transport portions of any systems (for example, those devoted to inclusive or package tours, accommodation and car rentals);
- systems that are used by an air carrier solely in-house or in its own sales offices (on the grounds that anyone contacting a particular carrier would expect to be offered products preferred by that carrier); and
- systems that are not used for the sale of air transportation to the general public, such as corporate travel departments.

Non-scheduled flights [clause b)]

Initially, CRSs were designed for the marketing and sale of scheduled air service products, and national and international regulations and codes reflected this situation. Non-scheduled air service products were and are operated, marketed and sold to the public in a quite different manner. They have been included in the non-air transport portions of CRSs as a component of inclusive or package tours (sometimes referred to as “bundled products”) but as such have not been sold as air transport services *per se* and in such a form are not subject to the Code.

In recent years in some States and regions, however, the distinction between international scheduled and non-scheduled flights has blurred considerably, raising the possibility that non-scheduled flights could be included in the air transport services portion of CRSs (i.e. the principal displays). The Code applies to non-scheduled flights on the basis of the general principle in sub-clause i) that they meet the same conditions which are applied to scheduled air service products, including the obligations of air carriers. As a practical matter, this will require considerable changes in how non-scheduled flights have been traditionally operated and marketed. Where operators of non-scheduled flights are willing to make the necessary changes and assume the necessary obligations, however, they should be permitted to use CRSs to market their air service products in the same manner as operators of scheduled air services.

Three steps are necessary to ensure that subscribers and air transport users can identify non-scheduled flights in principal displays and that prospective passengers are informed of non-scheduled flights and the conditions concerning them. The first step (required by Article 9 b) ii)) is for air carriers, in the information they provide to system vendors, to identify as a non-scheduled flight any service not meeting the following definition adopted by the ICAO Council:

“A scheduled international air service is a series of flights that possesses all the following characteristics:

- a) it passes through the airspace over the territory of more than one State;
- b) it is performed by aircraft for the transport of passengers, mail or cargo for remuneration, in such manner that each flight is open to use by members of the public;

- c) it is operated, so as to serve traffic between the same two or more points, either:
 - i) according to a published timetable, or
 - ii) with flights so regular or frequent that they constitute a recognizably systematic series.”

The second step, to enhance transparency for non-scheduled flights, requires vendors to clearly identify such flights in their principal displays (required by Article 7 g) i)). The third step is for subscribers to inform prospective passengers if a flight is non-scheduled and of any special conditions pertaining to it (Article 10 d)).

Article 4 — Obligations of States

Although in most cases each State would undertake these obligations separately, it is anticipated that any State acting in community with another State (or with other States) to follow the Code would ensure that actions taken collectively fulfil its obligations.

Compliance [clause a)]

Any State following the Code is also required to ensure compliance by system vendors, air carriers and, where practicable, subscribers for their CRS activities in its territory. In addition, States which have determined in accordance with Article 3 a) that the Code should also be applicable to computer information services will also have to determine how to ensure compliance with respect to information-only systems. States will employ their own means of achieving compliance. In usual circumstances, the regulation concerned will be part of the States' system of regulating air transportation. Some regulatory bodies may have limited enforcement capabilities, particularly as regards subscribers, and this is taken into account by the qualification “where practicable”. Some aspects of the Code may be covered in some States by more general legislation (for example, regarding competition, trade and data protection).

Ownership of CRSs [clause b)]

With ownership or control of many CRSs now being exercised by several air carriers (rather than by a single carrier), with major CRSs tending to be operated as separate business entities, and with the influence of government regulation, the air transport advantages that originally accrued to a carrier that owned or controlled a CRS have been substantially reduced. Given the importance of CRSs in the marketing of air service products and the desirability of enhancing their fair, competitive and non-discriminatory operation, it is clearly desirable that ownership or control of CRSs be widened as much as possible, including the increased involvement of air carriers and other entities of developing countries. Consequently, this clause calls on States to remove regulatory obstacles, if any, to investment in CRSs domiciled in their territories, by air carriers or other entities domiciled in other States following the Code. The intent of this condition is to encourage the reciprocal removal of regulatory obstacles to investment in CRSs between and among States following the Code while not requiring it for States not following the Code. The Code does not, however, prevent States from removing such obstacles for States not following the Code if they wish to do so.

Market access [clause c)]

A State following the Code is required to allow system vendors that comply with the Code to provide their CRS services in its territory, subject to two conditions. The first is a requirement for non-discriminatory treatment in view of the objective in Article 44 of the *Convention on International Civil Aviation* (Chicago, 1944) to avoid discrimination between States. The second condition is that the provision of such services be consistent with any obligations that the State has as a result of bilateral or multilateral agreements or arrangements to which it is a party. This includes, for example,

provisions in bilateral agreements dealing specifically with market access for CRSs, or more general clauses such as those concerning a fair and equal opportunity to compete in the air transport market (which a foreign air carrier may associate with the provision of services by a CRS that provides a principal display). Multilateral agreements would include, for example, obligations assumed by States that are parties to the General Agreement on Trade in Services (GATS), thereby helping to avoid any conflict between obligations of States that follow the Code and are also parties to the GATS. Multilateral arrangements would encompass CRS regulations or codes that are applied on a regional basis, such as those of the European Union (EU) and the European Civil Aviation Conference (ECAC).

Impartiality [clause d)]

A State following the Code is required to treat all system vendors, whether national or foreign, impartially. For example, any national requirements that apply to system vendors regarding access to and use of communications facilities, selection and use of technical hardware and software, installation of hardware, or any other aspects of CRS operations or sales should not have the effect of favouring one system vendor over another.

Free flow of CRS information [clause e)]

In order to meet the reservation and related requirements of air transport users, air carriers need to have free flow of the relevant information across and within national borders. However, the counterpart is that there must be safeguards regarding the privacy of personal data, which is covered in Article 11.

Intergovernmental consultation processes [clause f)]

The intent of this provision is to ensure that a State following the Code will employ to the fullest extent practicable the internationally accepted conflict resolution tool of intergovernmental consultations to resolve any CRS dispute involving another State following the Code, rather than allowing or requiring private parties (air carriers and system vendors) to take unilateral actions. A State following the Code may also wish to use such consultations in disputes involving States not following the Code.

Actions not in conformity with the Code [clause g)]

This clause identifies two circumstances in which it would be acceptable for a State following the Code to allow or require air carriers and/or system vendors under its jurisdiction to take action not in conformity with it.

The first is a need to address a lack of CRS reciprocity in a State not following the Code. This is necessary because air carriers of States not following the Code can be expected to benefit from some of the Code's provisions, such as those guaranteeing participation in a CRS (Article 5, clause a)), those requiring principal displays of information concerning participating carriers (Article 7, clauses b) through h)), or those regarding information generated by a CRS (Article 5, clauses j) and k)). If such benefits are not reciprocated in a State not following the Code (for example, if a system vendor in that State were to refuse participation in its CRS to an air carrier of a State following the Code), States following the Code should be free to withhold them. A lack of CRS reciprocity may also result when a developing State invokes the exception in Article 12 c).

The second circumstance covers those cases where intergovernmental consultation processes with another State following the Code (as foreseen in clause f) of this Article) or with a State not following the Code fail to resolve a CRS dispute.

In both sets of circumstances, air carriers and/or system vendors should only be allowed or required to take actions that are appropriate and proportionate to the particular situation concerned. In addition, in allowing or requiring air carriers

and/or system vendors to take actions not in conformity with this Code, States should of course take into account both the impact this might have on the quality of information made available to air transport users and any possible implications this might have for other interested parties and, notably, for those following the Code.

Article 5 — Obligations of System Vendors to Air Carriers

Participation open to all carriers [clause a)]

The underlying principle contained in this clause is that an air carrier should have the opportunity to participate in any CRS and that therefore a system vendor should not be able to refuse participation. A separate provision (Article 8, clause a)) ensures that the system vendor make available to air carriers information that would help them decide whether or not they wish to participate in its CRS.

Since system vendors need to recover the substantial costs involved in establishing and operating CRSs, air carriers are guaranteed participation only if they are prepared to pay the requisite fees and to accept the system vendor's standard conditions.

Implementation of this clause might oblige some system vendors to expand the capacity of their CRSs in order to meet air carriers' requests to participate. Should such expansion pose problems, the matter should be referred to the appropriate regulatory authorities.

Exclusive use of a CRS [clause b)]

The intent of this clause is to ensure that an air carrier's freedom to participate in any CRS is not compromised by a system vendor requiring participation in its CRS exclusively or for a certain proportion of the carrier's activities, such as reservations or sales. This clause is not intended to prevent air carriers that own a CRS from entering into agreements among themselves regarding their participation in that CRS.

Extraneous conditions [clause c)]

The intent of this clause is to ensure that an air carrier's freedom to participate in a CRS is not compromised by a system vendor imposing conditions on such participation that are not reasonably and directly related to the process of distributing a carrier's air transport products through the CRS, such as a required purchase or sale of any other goods or services, or obligatory participation in codesharing, interlining or frequent flyer programmes. This clause is not intended to prevent a vendor from including other provisions of a general nature which are commonly found in commercial contracts, such as payment provisions.

No discrimination among participating carriers [clause d)]

This clause obliges a system vendor to treat all carriers that have chosen to participate in its CRS in a non-discriminatory manner, in particular with respect to offering them enhancements in the form of both new services and improvements to existing ones. The term "timely" means that an enhancement should be offered to all participating air carriers at approximately the same time. The qualification recognizes that there may be technical constraints which prevent this (in terms, for example, of situations in which air carriers may not acquire the capability of using a new programme or function at the same time, or may have different capacities for processing data). The non-discriminatory requirement also means that a carrier with an ownership interest in a system should not receive any preferential treatment regarding CRS services.

Fees [clause e)]

This clause establishes three criteria for any fees charged by a system vendor to participating air carriers. First, fees should not be discriminatory. This is a general principle applying to all aspects of a vendor's fees but does not mean that fees cannot vary for different levels of service or types of functionality (a specific non-discriminatory requirement with respect to the same levels of service is contained in sub-clause iii).

Second, fees should be structured in such a way that all carriers wishing to participate can do so at a level and to an extent they find appropriate to their needs. Charges for different levels of participation or particular enhancements may vary, and the cost to participating carriers will consequently vary depending on their level of participation. However, a fee structure based on an initial payment plus charges related to the level of activity (for example, a charge per reservation or per transaction) may preclude participation by small carriers if the initial payment is too high. "Small" is deliberately not defined because it is likely to vary from one market to another. The intent of this provision is to accord fair treatment to small carriers rather than to promote discrimination in their favour or cross-subsidization between categories of participating carriers.

Third, fees should be reasonably structured/related to the cost of the service provided and used and should be the same for the same level of service. This criterion provides States with a principle for determining the reasonableness of both the structure and level of fees charged to air carriers by vendors in view of widespread concerns about the costs to air carriers for participation in CRSs. Relating fees to costs affords a degree of protection for air carriers of developing countries which are particularly concerned about the possibility that their carriers could be excluded by large CRS companies charging high fees. States will have to determine how best to implement this criterion, depending on the competitive situation, analytical capability and their particular circumstances.

Billing information [clause f)]

The purpose of this clause is to ensure that air carriers will be able to verify the accuracy of their bills for CRS services. Requiring vendors to offer this information in electronic form provides air carriers with the option of using computer programmes for automated auditing and analysis of their bills. The information on billing should contain, but need not be limited to, the type of CRS reservation and level of functionality, passenger name or names, number of passengers, country, IATA/ARC agency identification code (if available), city code, city-pair or segment, reservation date (transaction date), flight date, flight number, reservation status, class of service, PNR record locator, and reservation/cancellation indicator. Enhancing the ability of an air carrier to quickly verify the source of individual reservations for which it is charged will help to identify types of reservations which the air carrier may not wish to make, such as duplicate reservations.

Contract cancellation [clause g)]

Some States have found that a cancellation provision based on time tends to mitigate some of the undesirable aspects of excessively long contracts. Sub-clause i), for example, reflects that the EU and the ECAC CRS Codes require contracts permitting an air carrier to cancel a contract at any time after one year, with six months' notice. Alternatively, to take into account variations in contract termination practices in other jurisdictions, sub-clause ii) leaves the details of the required notice to national law.

Loading of information regarding participating carriers [clause h)]

Increased competition and the widespread use of CRSs have encouraged air carriers to change schedules and tariffs much more frequently than they did in the past, either on their own initiative or in response to other carriers' changes. Subscribers need to be aware of such changes as quickly as possible, since any delays could have substantial

commercial implications for the carriers concerned. In order to guard against the possibility that a system vendor that is also an air carrier might seek to delay the effective implementation of changes by participating carriers with which it may be competing, this clause requires a system vendor to load information provided by participating carriers with consistent and non-discriminatory standards of care, accuracy and timeliness. This applies (subject to any constraints imposed by the carrier's loading method) whether the information is received directly from a participating carrier or via an intermediary.

The "non-discriminatory" element in this clause also applies to any special data loading capability provided by a system vendor and is intended to ensure that if it is provided to one participating carrier, it should be offered to all participating carriers.

Manipulation of information [clause i)]

Once a system vendor has loaded the information received from carriers, it may need to manipulate this information for technical reasons (for example, to reassemble it in another format). The purpose of this clause is to ensure that any manipulation of this information does not result in information being displayed in an inaccurate or discriminatory manner.

Single reservation information [clause j)]

Since some CRSs process millions of sales transactions involving many different subscribers and participating carriers, they are capable of accessing a wide range of sales-related data that could be of great importance to carriers for marketing purposes (for example, data on the reservation behaviour of passengers or subscribers, or data on the traffic and yields of carriers). In order to guard against the possibility that carriers might seek to gain an unfair commercial advantage by gaining access to sales-related data in a CRS, clauses j) and k) determine the extent to which such data may be made available. (A more general but related obligation appears in Article 11 b), safeguarding the privacy of personal data.) In cases where the information directly concerns a single reservation, clause j) requires a system vendor to make it available on an equal basis to all the carriers involved in the service covered by the reservation, and to the subscriber concerned (the travel agent who made the reservation and who may need access to it, for example, to make a correction or to generate a ticket) but to no other parties without the written consent of such carrier(s) and the air transport user.

In practice, this may be difficult for most States to verify. Although some States have relied on preventive measures requiring changes in the configuration of CRSs and a subsequent audit, others have preferred to deal with failures to comply on a case-by-case basis. Where States have reason to believe there is a problem, an audit can serve to resolve doubts about compliance by limiting access to booking data, but overuse of the audit procedure could result in increased costs without any corresponding benefits.

Aggregated data [clause k)]

In cases where the information is compiled in an aggregated or anonymous form (for example, to provide a marketing database), this clause requires that a system vendor not discriminate among participating carriers in making it available: if it is made available to one participating carrier, it must be made available to all of them. The requirement that such data be in aggregate or anonymous form also recognizes the general obligation of system vendors not to make available to other participating air carriers information which is confidential or proprietary to a participating air carrier. The exception for financial data relating to operations of the CRS itself takes into account that a system vendor's financial results may be regarded as proprietary by the air carrier or carriers that own it.

Article 6 — Obligations of System Vendors to Subscribers Regarding Commercial Arrangements

The underlying principle throughout this Article is that a subscriber should have the opportunity of unrestricted access to as many different CRSs as it wishes and, consequently, that a system vendor should not be permitted to distort the market forces influencing a subscriber's selection or usage of a particular CRS.

Discrimination among subscribers [clause a)]

This clause requires that a system vendor not discriminate among subscribers in the CRS services it offers. In this context, "CRS services" include any enhancements (that is, any improved or additional service) which may become available.

Exclusivity [clause b)]

The purpose of this clause is to prevent a system vendor from restricting access by subscribers to other CRSs. Such restrictions could include a system vendor requiring a subscriber to use its CRS exclusively or for a certain sales volume (for example, at least X reservations per year) or for a certain proportion of its sales activities (for example, at least 75 per cent of reservations). Another example would be a system vendor insisting that a certain number or proportion of the CRS terminals used by a subscriber be linked to the vendor's CRS.

Carrier-linked arrangements [clauses c), d) and e)]

These three clauses are similar in that they all seek to prevent a system vendor from attempting to influence a subscriber's selection or usage of its CRS by introducing considerations related to the identity of the air carriers whose air transport services are sold by the subscriber. In this connection, it is important to bear in mind that many system vendors are themselves air carriers or are affiliated to air carriers.

Clause c) seeks to prevent a system vendor from offering lower prices for its CRS services to subscribers prepared to promote certain carriers than it offers to other subscribers. Clause d) seeks to prevent a system vendor from insisting that a subscriber use its CRS when selling the air transport services of any particular carrier. Clause e) seeks to prevent a system vendor from arranging for any carrier to offer special commercial arrangements (such as higher commission payments) to subscribers selecting or using the vendor's CRS.

Choice of hardware and software [clause f)]

Terminal equipment acts as an interface between a subscriber and a CRS. The simplest terminals consist of a keyboard and a screen, while more sophisticated ones are based on personal computers into which a subscriber can introduce its own software.

Concerns have been expressed about cases where system vendors have insisted that subscribers may only use the terminal equipment which the system vendor provides, thus giving the vendor a captive market for these products. In order to address these concerns, this clause prohibits a system vendor from insisting that subscribers use only its terminal equipment.

There is also communications equipment available which, with appropriate software, can enable a subscriber to link up with more than one CRS, thus providing access to additional information and making the subscriber less reliant on a particular CRS. This clause therefore also prohibits a system vendor from preventing the use of such equipment.

The system vendor retains the right to require that equipment and software used by the subscriber be technically compatible with its CRS. Since “compatibility” may be open to different interpretations, however, States may need to ensure that system vendors do not abuse this requirement.

Form of contract [clause g)]

In order to recoup the substantial costs involved in developing and operating a CRS, it is in a system vendor's interest to ensure that subscribers are tied for as long as possible to using that CRS. In some States, there have been cases where system vendors have included allegedly unreasonable and unfair provisions in their contracts with subscribers in order to achieve this objective. Examples of such provisions include a very long contract duration, so-called “roll-over” provisions that undermine contract termination provisions (such as restarting the contract period when an additional item of hardware or software is provided) and substantial penalties for withdrawal from contracts, including unrealistic provisions for liquidated damages.

Although problems of this kind are unlikely where there is competition between and among CRS vendors and where subscribers own their terminal and related computer equipment, some regulators have found it necessary to introduce specific regulations to address them, either by fixing a maximum length for a contract or by requiring a cancellation clause. The specific limits in the first two elements have been chosen with a view to including existing applicable national regulations and multilateral codes. The use of “contracts” in the plural recognizes that a system vendor may have more than one contract with a subscriber. For example, there could be a participation contract with a cancellation clause and an equipment contract which does not exceed five years. (The longer period of the equipment contract is intended to permit the recovery of the actual costs.)

Article 7 — Obligations of System Vendors Regarding Displays

Information is usually presented on a display terminal, one “screen” at a time. When the amount of information to be presented is too much to fit onto the first screen, as often happens with schedule information, one or more additional screens are provided. A “display” of information typically consists of several screens.

Availability of principal display [clause a)]

The elements in the principal display have been selected with a view to ensuring that air carriers have a fair opportunity to market their services, subscribers have an efficient and effective means of serving their clients, and air transport users have as extensive and unbiased a choice of air transport options as possible. The comprehensive requirement refers to including all relevant information in the principal display concerned (of schedules or tariffs, for example); it does not refer to the extent of coverage of a CRS in terms of the number of air carriers whose information is contained in it.

The two-part test of neutrality is based on two specific criteria and one general rule. The first specific criterion — that the display should not be influenced (directly or indirectly) by the identity of participating carriers — stipulates that the system vendor treat all participating carriers on an equal and non-discriminatory basis. Participation in a CRS is open to all carriers, but the requirement for non-discriminatory treatment does not include non-participating air carriers. If a carrier is not willing to pay the requisite fees to become a participating carrier, a system vendor should not be obliged to include information regarding that carrier in any neutral display (or in any neutral manner in that display). It is nevertheless recognized that some system vendors may choose to include such information. Apart from requiring a system vendor to clearly indicate when principal displays omit certain types of information on non-participating carriers (clause g), sub-clause ii) of Article 7), the Code does not include specific provisions regarding the display of information of non-participating carriers. For example, there are no provisions on whether information on all such carriers in the market must be displayed if information on any one is displayed. This does not, however, preclude States that wish to regulate this matter from doing so.

The second specific criterion is that the display may not be influenced by airport identity. This includes not discriminating on the basis of the airport served when a city is requested as the origin or destination. The IATA description of Metropolitan Urban Areas may be useful in determining which airports are normally associated with a particular city. Other definitions are, however, possible; what is important is that whatever set of airports is chosen for a particular city, that set is used consistently in all principal displays. The requirement for neutrality in terms of airport identity could become increasingly important as competition among airports increases. Moreover, if a principal display of services for a city-pair were allowed to be influenced by a particular airport, this could favour certain participating carriers.

The general rule requiring the consistent application of the ordering of information in a principal display is designed to prevent, for example, the use of different criteria in different markets which could favour the services of some air carriers over others. This requirement for consistency applies within a single principal display. Different principal displays need not use the same non-discriminatory criterion, and given the variation in preferences of air transport users, different criteria should be expected.

Functionality of principal displays [clause b)]

The requirement that principal displays be as easy to use as other displays provided is intended to encourage their use, particularly with respect to clause c), as explained below.

Use of principal displays [clause c)]

This clause seeks to ensure that vendors always provide a principal display unless there is a request by an air transport user which requires the use of a specific display, such as that of a named air carrier's schedules, space availability or tariffs. In this regard, all default displays are to meet the criteria for a principal display. This clause should be read in conjunction with Article 10, clause a) which requires that a subscriber may only use another display in order to meet a non-objective preference (such as a specific air carrier or air carriers or a specific airport) indicated by an air transport user.

Objective criteria [clause d)]

Whereas in a printed timetable publishers are usually able to present on a single page the various service options between any two points, the CRS terminals currently in use permit only a limited number of service options to be shown on the first screen of a display. Where pressures of time and limited resources prevail, subscribers have a tendency to book one of the first service options displayed that meets the passenger's known requirements. As a result, the order in which a system vendor lists service options can influence the probability of reservations being made for each one, with significant commercial consequences for the carriers involved.

Consequently, system vendors have developed various methodologies (sometimes referred to as "algorithms") which attempt to list service options in an order which they believe will most adequately reflect the preferences of air transport users. While some of these methodologies are comparatively simple, others are complex and take many different factors into account. For example, some methodologies are based on a system whereby service options are assigned "penalty points" according to certain criteria, and those service options with the fewest penalty points are listed first. Under such a system, service options attract penalty points if, for example, they do not depart at the requested time, require excessive travel time, involve a connection or stops en route, or involve interlining.

In order to guard against the possibility that a system vendor might use a methodology that systematically gives greater or lesser priority to a particular carrier or group of carriers, this clause requires that the ordering of services in a principal display of schedules/information be based on objective criteria; some examples of such criteria are listed. This requirement also applies to the selection and construction of connecting services.

Displays of flight options [clause e)]

Based on experience and regulatory actions at the national and international level, system vendors have developed methods of ordering travel options (flights or combinations thereof) designed to respond to the different demands of air transport users. The order of ranking in sub-clause i) is that prescribed by the EU and ECAC CRS Codes. It is based on the assumption that air transport users will usually prefer a non-stop flight over a direct one, and both over a connecting service requiring a change of aircraft, and that service patterns of air carriers will tend to reflect this preference. This EU/ECAC display is widely available in CRSs in most areas of the world. Air transport users, however, have other preferences and air carrier service patterns also vary widely. Consequently, sub-clause ii) recognizes that other rankings of flight options that also meet the criteria of this Article may respond to such preferences or to markets with different characteristics and are therefore permissible. Special care must be taken, however, so that flight displays based on Article 7 e) ii) are fair and non-discriminatory. Finally, sub-clause iii) allows (but does not require) system vendors to provide both a principal display based on the EU/ECAC criteria and any other principal display meeting the criteria in Article 7.

The displays of flight options described in this provision are limited to subscribers in recognition of the fact that, because of their extent and complexity, they are unlikely to be useful if provided directly to air transport users. The other provisions of this Article concerning displays, however, would apply to displays provided to air transport users and to third parties other than subscribers. For example, clause c) of Article 7 is relevant in this regard in terms of when principal displays are to be provided and when other displays are to be provided, both to air transport users and to third parties.

Unfair advantage [clause f)]

This clause requires a system vendor to take care that, in the ordering of services in a principal display, no carrier obtains an unfair advantage. In that regard, system vendors need to be aware of two situations. First, where all single aircraft flights (sometimes referred to as direct flights) that do not require a passenger to change from one aircraft to another are displayed before connecting services that do require such a change, some air carriers may seek to obtain the highest screen placement possible for their services by using a single flight number for two separate flights that are scheduled to have a change of aircraft en route (sometimes referred to as “phantom” flights). Such flights are to be considered as connecting flights and displayed as such, not only to avoid any unfair advantage to the air carrier concerned, but also to avoid any misrepresentation to air transport users.

Second, where system vendors use methodologies that differentiate between on-line and interline connections, either by displaying the on-line before the interline connections or by ranking service options on the basis of formulae favouring on-line over interline connections, any on-line preference is to be based on objective factors (such as elapsed journey time) and applied consistently.

Content of principal displays [clause g)]

Any principal display of schedule information must contain the elements listed in the two sub-clauses. Sub-clause i) is designed to provide the air transport user, directly or via a subscriber, with information that is probably of general concern or interest, such as when a change of aircraft is required, if a flight is non-scheduled or which air carrier is the operator where a codeshared flight is involved. (A codeshared flight is one that “shares” the designation code of two or more air carriers, by listing the same flight or combination of flights separately under each air carrier’s code. For example, if air carrier A has an agreement to codeshare with air carrier B on a flight from X city to Y city, that flight could be displayed twice, once as A123 between X and Y and once as B456 between X and Y, even though there is only a single flight operated by one of the two air carriers. The display of codeshared flights is dealt with in Article 7 k).)

In order that air transport users can be aware of a lack of comprehensive information, sub-clause ii) requires that if a principal display omits some direct services, this should be clearly indicated. This requirement does not apply to

connecting services, because system vendors are not expected to include all possible combinations (as explained in the notes on clause h) of this Article). There are two different sets of circumstances where sub-clause ii) is relevant.

First, information on the direct services of participating carriers may be incomplete for technical reasons. Until the situation is rectified, an air transport user needs to be warned that the displayed information is incomplete. Second, an air transport user also needs to be warned when some or all direct services offered by non-participating carriers are known to exist but are not displayed by a system vendor. The expression “are known to exist” recognizes that the Code does not require a system vendor to display, for example, the complete schedules of non-participating air carriers, especially as a vendor may not be aware of the existence of certain services.

The requirement “clearly indicate” with respect to incomplete information is not intended to require a notice on every screen; a notice on the first screen should suffice.

Connecting points [clause h)]

In order to guard against the possibility that a system vendor might deliberately select or omit connecting points that are served by a particular carrier, this clause requires the use of as many alternative (single or multiple) connecting points selected on a non-discriminatory basis as is necessary to ensure a wide range of options. The expression “as is necessary” has been included because the number of alternative connecting points required may vary from one market to another, depending upon such factors as the distance involved and the characteristics of carriers’ route networks. The term “a wide range of options” is not intended to imply a requirement to include impractical alternative routings. In fact, in some short-haul markets with very frequent non-stop service it may not be reasonable, from a passenger perspective, to select any connecting points. Nevertheless, this does not prevent any regulatory body from defining a specific minimum number of alternative connecting points to be used in all cases, if it so wishes. This approach has been adopted in Canada, the United States and the EU and ECAC CRS Codes.

Accuracy of information displayed [clause i)]

Although responsibility for the accuracy of information it provides to a system vendor rests with the air carrier (Article 9 a)), the system vendor is expected to exercise due diligence that the information provided is displayed accurately and without misleading the air transport user. The criterion used for this purpose is that a system vendor not intentionally or negligently display inaccurate or misleading information, for example, by failing to include in displays certain information it has received from participating carriers.

Compliance by subscribers [clause j)]

As explained in the notes on Article 4, clause a), some regulatory bodies may have limited enforcement capabilities, particularly as regards subscribers and their compliance with the Code’s obligations (Article 10). In cases where States do not find it practicable to ensure compliance with Article 10, the present clause calls on the system vendor to include appropriate provisions regarding such compliance in its contract with each subscriber. The intent is to avoid any discrimination with respect to subscribers in different jurisdictions by having all subscribers subject to the same obligations regardless of their location.

Display of codeshared flights [clause k)]

The injunction against displaying the same flight or combination of flights more than a maximum of three times is aimed at codeshared flights. (An explanation of a codeshared flight is contained in the notes to Article 7 g) i)). Displaying codeshared flights more than three times can result in the undesirable practice of “screen padding” (where the excessive

listing of the same travel option pushes other travel options to succeeding screens, requiring additional time and effort on the part of the subscriber or air transport user to view all the travel options for a particular city-pair). Limiting the number of times the same codeshared flight may be displayed means, however, that in some circumstances a carrier participating in a codeshare will not have that service displayed in a CRS under its own designator code, unlike other air carriers involved in the same codeshared service where it appears under their designator codes. Although allowing each air carrier involved in a codesharing arrangement to display the service with its own designator code would eliminate the discriminatory aspect of the limitation, it could also encourage an undesirable level of screen padding.

A maximum of three carriers will accommodate almost all codesharing arrangements. Where screen padding is deemed a particular problem, however, a lower limit can be used. Most codesharing arrangements involve two carriers, and the EU/ECAC Codes of Conduct limit the display of codeshared flights with the same flight or combination of flights to a maximum of two. To accommodate this limit in cases where more than two air carriers participate in a codeshared service, the IATA Travel Option Selection Process may be used.

Article 8 — Other Obligations of System Vendors

Transparency [clause a)]

In the interest of transparency, this clause requires a system vendor to make certain information about its CRS available to any interested party. Although this includes the methods used for developing information displays, a system vendor is not obliged to make available proprietary information such as the actual system software used.

Practices that inhibit or impair competition [clause b)]

This clause requires system vendors not to engage in practices that would reduce competition between and among system vendors or air carriers. It is stated in general terms in view of the fact that such practices would be subject to national competition laws and policies, which vary from State to State. Examples of practices that could inhibit or impair competition include, but are not limited to, collusion among vendors on pricing, and entering into any agreement with other system vendors regarding any aspect of CRS services, the objective or the effect of which would be to partition markets on a geographical or other basis.

Article 9 — Obligations of Air Carriers

Accuracy of information provided to system vendors [clause a)]

This clause makes an air carrier responsible for the accuracy of information it provides to a system vendor for inclusion in a CRS, directly or indirectly (thus including the provision of information via an intermediary, such as another carrier or an independent publishing house, which collects and publishes information regarding carriers' schedules and tariffs). The clause is worded in such a way that a carrier is not responsible for the accuracy of information about its services which it does not make available to a system vendor, such as might be the case for non-participating carriers.

Content of information provided to system vendors [clause b)]

Participating air carriers submit a substantial volume of information in electronic form to one or more system vendors and, as the original source of that information, are in the best position to ensure that it does not misrepresent services.

In terms of a misrepresentation of a service, so-called "phantom" flights (described in the notes to Article 7 f) are to be submitted in a manner that makes clear there is a change in aircraft.

In order that a system vendor can comply with Article 7 g) i) and a subscriber with Article 10 d) and e), sub-clause ii) of this provision requires an air carrier to clearly identify, in the information it provides on its air transport services to system vendors, certain items, such as whether a flight is non-scheduled or which air carrier is the operator where a codeshared flight is involved.

Refusal to participate in certain CRSs [clause c)]

Carriers sometimes choose not to participate in certain CRSs. In some cases, this is because the carrier does not wish to distribute its products through a particular CRS for justifiable commercial reasons (for example, where the costs involved are considered to be too high). However, there have also been some cases where a carrier that is itself a system vendor (or is affiliated to one) has refused to participate in a competing CRS in order to make that CRS less attractive to subscribers. In markets where the carrier plays a major role, action of this kind is likely to have an adverse impact on the CRS options available to subscribers and ultimately on the quality of information made available to passengers.

This clause therefore seeks to prevent a carrier from refusing to participate in any CRS but only applies in a State where the carrier holds a dominant market position and where it is financially linked or otherwise affiliated with any other CRS, such as a marketing agent. An exception is where the linkage or affiliation is the result of a participation agreement with the system vendor. In this context, participation is to be to the same extent and level of functionality as a dominant carrier's participation in its own CRS, including, for example, providing all the information on schedules and booking, and allowing reservations, confirmation and ticketing on an equal, timely basis. This clause makes an exception for cases where legitimate commercial or technical reasons exist for not participating in a particular CRS; it is envisaged that such reasons would exist only in extremely rare and isolated cases.

Refusal to provide information to certain CRSs [clause d)]

Carriers sometimes choose not to provide information on their services to certain CRSs. For example, a non-participating carrier might choose not to provide any information to the CRS concerned because it is a competitor of a CRS with which the carrier has a financial link or affiliation. However, as in the case of refusal to participate in a CRS (see previous clause), this could have an adverse impact on competition between and among CRS vendors in terms of the CRS options available to subscribers and ultimately on the quality of information made available to air transport users. In cases of participating carriers, the information to be provided to system vendors (and, conversely, what may be withheld) will normally be governed by the participation contract between the vendor and the air carrier.

This clause therefore seeks to prevent a carrier from refusing to provide information on schedules or tariffs to a system vendor but only applies in the carrier's State of domicile and only if it already provides such information to another system vendor whose CRS is used by subscribers in that State. The exception "except where permitted by law" is included to take into account legislation that permits such a refusal. Some States may also wish to extend the coverage of this clause to include information on space availability as well as schedules or tariffs.

The obligation in clause d) may place an unwanted burden on some carriers, particularly smaller ones. Nothing in the Code, however, prevents a carrier from charging system vendors in order to recoup any additional costs incurred in providing such information (which should not, however, be exorbitant, since the information is limited to that already provided to another system vendor). Moreover, in many instances system vendors may also be able to obtain schedule information, for example, from public sources.

Relationships with subscribers [clause e)]

The aim of this clause is to ensure that carriers do not attempt to intervene in a subscriber's selection or usage of a CRS and to prevent the two practices described therein from impairing competition between and among system vendors. It closely resembles two of the obligations of system vendors to subscribers (Article 6, clauses d) and e)). Sub-clause i)

applies to air carriers that have a financial interest in or are affiliated with (for example, by acting as an exclusive agent of) a particular CRS; forcing or inducing subscribers to use only that CRS would give that CRS an unfair competitive advantage over other CRSs. To make this requirement non-discriminatory, sub-clause ii) applies to air carriers that do not have a financial interest in nor are otherwise affiliated with a particular CRS, but whose actions could unfairly favour that CRS over other CRSs. Sub-clause ii), however, is not intended to prevent air carriers from requiring the use of a particular CRS for legitimate commercial reasons. For example, air carriers that only participate in one CRS could require or encourage subscribers to use that CRS, and air carriers could favour use of a particular CRS because it offers better prices, services or functionality without unfairly favouring that CRS.

Article 10 — Obligations of Subscribers

Use of principal display and manipulation of information [clauses a) and b)]

Article 7 a) and c) require a system vendor to make available to subscribers a principal display or displays that are as unbiased and neutral as possible and to always provide such a display unless there is a specific request for another type. However, this is insufficient to ensure that subscribers will use such a display in providing information to air transport users. It may not be in a subscriber's interest to provide neutral information to air transport users, particularly if certain carriers are offering special incentives (such as additional commission payments) to persuade subscribers to make reservations on their services. Clause a) therefore obliges a subscriber to use or provide a principal display meeting the applicable clauses of Article 7 for each transaction, except where it is necessary to use another display in order to meet a preference indicated by an air transport user (i.e. a passenger or someone acting on the passenger's behalf). However, since many subscribers may consider it necessary to use alternative displays to meet their clients' or their own needs and there is likely to be a large volume of transactions daily, this will be very difficult to enforce, even when system vendors include this obligation in their contracts with subscribers.

With the help of appropriate software, those subscribers wishing to do so can take the data available from a CRS (or more than one CRS) and reassemble it into a display format that they themselves have designed. While this can benefit passengers, allowing displays to be tailored to their specific needs, there is also a danger that subscribers will reassemble data in order to meet their own commercial objectives. Clause b), while recognizing that subscribers may wish to manipulate information supplied by a CRS, seeks to avoid this being done in any way that produces inaccurate or misleading information for air transport users. It too may be very difficult to enforce in practice.

Accuracy of information [clause c)]

This clause requires a subscriber to be responsible for the accuracy of any information it enters into a CRS, such as data relating to a passenger or a passenger's requirements. However, at least some of this information is likely to have been provided to the subscriber by the passenger, and in these circumstances subscribers would usually be in a position to hold passengers responsible for the information's accuracy.

Informing air transport users [clauses d) and e)]

Where non-scheduled flights are included in a CRS, subscribers are responsible for informing air transport users of this fact and of any special requirements concerning it, such as the purchase of other services, or the fact that matters concerning the air transport arrangements are to be taken up with the appropriate tour operator, for example, rather than the air carrier operating the flight (clause d)). The responsibility of a subscriber to inform passengers and prospective passengers of the information in clause e) has a counterpart in the responsibilities of air carriers and system vendors to clearly identify this information in the information they provide and display. This responsibility is particularly important with respect to codeshared flights. When an itinerary includes a codeshared flight, subscribers are required to inform air transport users of this fact as well as of the name of the operator.

Prohibited reservations [clause f)]

For the purposes of this Code, a fictitious reservation is one that is not made at the request of a consumer, for example, where reservations are made for training purposes using names selected at random. Although fictitious reservations can be made via several channels (directly with the air carrier, by third parties, etc.), this clause prohibits such reservations when they are made through CRSs, because they can cause two problems. First, such reservations can give a false indication of the actual demand for a service, making it difficult to equate capacity with demand for specific flights. Second, because vendors charge air carriers for reservations, they can result in additional costs to the air carrier concerned. The Code does not equate fictitious and duplicate reservations (although the latter can cause similar problems) because of a lack of industry and regulatory consensus with respect to the permissibility of duplicate reservations. However, both fictitious and duplicate reservations which air carriers do not wish to be made can be reduced by: air carrier auditing of bills for reservation fees; developments in computer technology which prevent certain duplicate reservations from being made through the same CRS; the use of software programmes rather than actual CRSs for subscriber training; and tighter controls on incentive programmes requiring subscribers to meet reservation targets (an alleged reason for some fictitious reservations).

Article 11 — Safeguarding the Privacy of Personal Data

The safeguarding of personal data is dealt with in a separate Article in this Code because of its importance and because all those involved — States, air carriers, system vendors, subscribers and other parties involved in international air transportation — share responsibility for ensuring that such data is safeguarded when in their control.

Appropriate measures [clause a)]

There are extensive legal and regulatory measures (both national and international) concerning the safeguarding of personal data. States will draw from these sources in determining what should be applicable to CRS operations in their respective territories. These measures may include, where justification exists, the use of sanctions where the privacy of personal data is not maintained.

One test of what constitutes “personal data” is whether it can be related to an identifiable individual. However, no precise definition of what constitutes “personal data” is provided here for this too may vary among States in terms of national and international law and practices.

In terms of practices in the air transport industry, States may wish to take guidance from IATA’s Recommended Practice 1774 (“Protection of Privacy and Transborder Data Flows of Personal Data used in International Air Transport of Passengers and Cargo”).

Parties involved, consent of passenger [clause b)]

In order to make a reservation through a CRS, a subscriber needs to enter into the CRS some personal data regarding the passenger. This could include age, nationality, religious dietary requirements and other information needed by the carrier concerned, which, in the wrong hands, could endanger the well-being or property of the passenger. Thus, all parties involved must safeguard the privacy of such personal data. “All parties” in this context primarily means system vendors (which have a specific responsibility with respect to single booking information in Article 5 j)), air carriers and subscribers, but it also refers to other parties that may have access to personal data, such as companies which prepare data for entry into CRSs or which process billing information.

The requirement that personal data not be released without the consent of the passenger concerned is a general principle to be applied in a reasonable manner, rather than an inflexible rule. For example, in providing personal data to

a subscriber for the purpose of making a reservation or purchasing a ticket for air transportation, a passenger user may be regarded as implicitly approving the transfer of the data to other parties that require access to it to complete this transaction. Thus, settlement banks do not require the specific consent of passengers to process payments that might contain personal data, nor would a company processing billing information for an individual air carrier. Similarly, parties involved in the air transportation would include, for example, airport authorities who may be requested to provide a wheelchair for a passenger.

States that commit themselves to follow the Code are to notify ICAO of that fact. This unilateral declaration of intention, communicated to and (pursuant to clause e)) disseminated by ICAO, serves to inform other States and all interested parties of this decision. However, any State which has notified ICAO that it follows the Code may end that commitment by informing ICAO, and this decision will also be disseminated by ICAO. States may, of course, commit themselves to follow the Code in other ways, through international agreements and arrangements with other States bilaterally or multilaterally, or through constant and uniform practice in applying it.

Article 12 — Application, Revision and Exceptions

Application, Revision [clause a)]

Taking into account the experience of States with the Code adopted by the Council on 17 December 1991, its acceptance by a substantial number of States, and the need for States to have time to review the revised code prior to informing ICAO of their commitment to follow it, this clause makes the revised Code applicable with effect from 1 November 1996.

The marketing of air transport services through CRSs is a rapidly changing aspect of the air transport industry. Consequently, the Code needs to be revised when circumstances warrant to take account of new developments. For simplicity and so that only one Code will be applicable at any one time, any revised Code adopted by the Council will replace the previous Code in its entirety.

Following the Code [(clause b)]

The term “following the Code” means that a State endeavours to apply the general principles of behaviour in the Code in its regulation of CRSs or follows policies or applies rules which are consistent with the Code, within its territory and in its relations with other States which also follow the Code. How States do this will vary widely in practice. Some may rely directly on the Code; others may have more detailed national or regional regulations on CRS; some may have CRS provisions in bilateral or multilateral agreements which must be taken into account in applying the Code.

Exceptions for developing countries [clause c)]

CRSs originated in certain developed countries, notably the United States and various States in Europe. Although the use of CRSs has now spread throughout the world, some developing countries may wish to delay the entry of CRSs to their territories until, for example, there is an adequate and appropriate regulatory structure or product distribution system in their own national markets. The Code therefore stipulates that such States may decline to follow Article 4 c) until 31 December 2000, provided the conditions explained below are met. It is clear that many developing countries have no interest in or intention of using this exception; however, as there is no effective manner of deciding a priori which developing States may wish to avail themselves of the exception, a procedure based on individual choice is preferable.

The first condition (i) is that a State taking an exception to Article 4 c) notify ICAO accordingly. The second condition (ii) requires that the exclusion of CRSs be consistent with any bilateral or multilateral agreement or arrangement to which

the State taking the exception is a party. This is intended to ensure consistency between a State's obligations under this Code and any other CRS obligations it may have, for example, with respect to bilateral air service agreements and to the General Agreement on Trade in Services (GATS).

Exceptions for lack of reciprocity or dispute [clause d)]

Another exception with respect to a State following the Code can arise in the event of a lack of CRS reciprocity or a failure to resolve an intergovernmental dispute concerning CRS, as provided for in Article 4 g). To ensure full transparency with respect to the application of the Code, a State that allows or requires an action or actions not in conformity with the Code is required to notify ICAO of the action or actions and should include sufficient information concerning the vendors, air carriers, and States involved to indicate the extent and nature of the effects of such actions.

Transparency [clause e)]

In order that all States may be kept informed concerning those States that are not following the Code, in whole or in part, in any of the situations described in clauses b) through d) of this Article, the ICAO Council will issue periodic reports concerning notifications received. It is anticipated that the first such report would be made shortly after the effective date of the Code as States make their initial decision on whether or not they are prepared to follow it. Subsequent reports will be issued when and as required.

Exemptions [clause f)]

As explained in the notes to Article 2 above, by their nature multi-access CRSs cannot comply with certain obligations of a system vendor in the Code and are therefore exempted from the requirements in Article 5 which deal with loading, manipulating, and making available certain information and from the requirements in Article 7 concerning the arrangement and provision of principal displays. Such systems are subject to the other provisions of the Code so that all CRSs, to the extent possible, will be subject to the same obligations and requirements.

By their nature, multi-access systems discriminate in favour of the dominant carrier(s) in the market concerned. This discrimination, however, can be remedied in two ways: first, by using other CRSs that provide objective displays in the same markets served by the multi-access system, and second, by States taking action under the provisions of Article 4 g) to counteract the discriminatory aspect of multi-access systems where these States determine that there is a lack of CRS reciprocity.

E. MODEL CLAUSES FOR COMPUTER RESERVATION SYSTEMS

5.3 These two alternative model clauses are designed to be used by States at their discretion in their bilateral or multilateral agreements to reinforce or supplement the ICAO Code of Conduct for the Regulation and Operation of Computer Reservation Systems as well as to take into account the existence of national and regional CRS regulations which in certain respects may go beyond the Code.

With respect to agreements in which none of the Parties has or expects to have national or regional CRS regulations, Model Clause A applies; with respect to agreements in which one or more of the Parties has or expects to have national or regional CRS regulations, Model Clause B applies. These model clauses have also been incorporated in the ICAO Template Air Services Agreements (TASAs) (see Appendix 5 of this document).

Model CRS Clause A

Each Party shall apply the ICAO Code of Conduct for the Regulation and Operation of Computer Reservation Systems within its territory.

Model CRS Clause B

Each Party shall apply the ICAO Code of Conduct for the Regulation and Operation of Computer Reservation Systems within its territory consistent with other applicable regulations and obligations concerning computer reservation systems.

Part 6

AIRLINE COMMERCIAL MATTERS

6.1 The 1994 Worldwide Air Transport Conference produced four regulatory arrangements on airline commercial activities in the operation of international air services: ground handling, currency conversion and remittance of earnings, employment of non-national personnel, and sale and marketing of air service products. In response to the Conference's recommendation for further work to turn these arrangements into a more formalized structure, the Air Transport Regulation Panel at its Ninth Meeting in February 1997 developed Recommendation ATRP/9-5, which contains model clauses on the four "doing business" matters, plus a new one on payment of local expenses, with related explanatory notes. These model clauses, which supersede the arrangements on the same subjects previously developed by the Conference, were approved by the Council in May 1997 and sent to States for their guidance.

The model clauses, set forth in the following sections, could be used in a bilateral or multilateral agreement. The notes provided for each model clause are an integral part of these regulatory arrangements and are to be used for the purposes of negotiating, interpreting and applying them. These models clauses have also been incorporated in the ICAO Template Air Services Agreements (TASAs) (see Appendix 5 of this document).

Recommendation ATRP/9-5

THE PANEL RECOMMENDS:

that States be encouraged to use, wherever appropriate in their bilateral and multilateral air service agreements, the following model clauses and accompanying notes on commercial matters, which are intended to assist regulatory authorities in removing restrictions and moving to a more competitive environment.

A. GROUND HANDLING

Model Clause

Each Party shall authorize air carrier(s) of the other Party/Parties, at each carrier's choice, to:

- a) perform its own ground handling services;
- b) handle another or other air carrier(s);
- c) join with others in forming a service-providing entity; and/or
- d) select among competing service providers.

NOTES

- i) The options listed above are to be used in accordance with international obligations, the guidance contained in Annex 9 (Facilitation) to the *Convention on International Civil Aviation* as well as the *Statements by the Council to Contracting States on Charges for Airports and Air Navigation Services* (Doc 9082), national laws and regulations, and in consultation with the airport operator.
- ii) An air carrier is to be permitted to choose freely from among the alternatives available and to combine or change its option, except where this is demonstrably impractical and also where constrained by relevant safety and security considerations, and (with the exception of self-handling in a) above) by the scale of airport operations being too small to sustain competitive providers. At certain airports the number of air carriers and limited physical facilities may not permit all air carriers to perform their own airside ground handling; in such cases, carriers allowed to do so should be selected by objective, transparent and non-discriminatory procedures and competitive, alternative suppliers should be available.
- iii) Parties would always be required to take the necessary measures to ensure reasonable cost-based pricing and fair and equal treatment for air carrier(s) of the other Party/Parties.
- iv) Depending on their particular circumstances States should consider the gradual, phased introduction of self-handling and multiple suppliers based, where appropriate, on the size of the airport.

B. CURRENCY CONVERSION AND REMITTANCE OF EARNINGS**Model Clause**

Each Party shall permit air carrier(s) of the other Party/Parties to convert and remit abroad to a carrier's choice of State, on demand, all local revenues from the sale of air transport services and associated activities directly linked to air transport in excess of sums locally disbursed, with conversion and remittance permitted promptly without restrictions, discrimination or taxation in respect thereof at the rate of exchange applicable as of the date of the request for conversion and remittance.

NOTES

- i) This regulatory arrangement is subject to international agreements (such as those involving the International Monetary Fund and the General Agreement on Trade in Services (GATS)) which permit exchange controls in certain situations in relation to safeguarding a State's balance of payments as well as the procedures established by applicable national laws and regulations. States should bear in mind the provision of the GATS which allows a contracting party to consider air transport as essential to its economic or development programme when contemplating exchange controls.
- ii) The term "associated activities directly linked to air transport" includes activities closely related to the provision of air services, such as a bus service between the airport and hotels, and where permitted, the provision of ground handling services to other air carriers. The term would not include activities such as revenue from hotels, car rentals, investments in local real estate or stocks and bonds, which will presumably be subject to a different conversion and remittance regime.
- iii) The term "without taxation" refers to taxation on the conversion and remittance, not to national income tax which is better dealt with on the basis of a double taxation treaty, or some other arrangement in which the income from the sale of air transportation by foreign airlines is exempted from national income tax on a

reciprocal basis. However, in the absence of a double taxation treaty or other arrangement, States could use this clause to exempt reciprocally air carriers from foreign income taxes, but should make their intention clear in this regard.

C. PAYMENT OF LOCAL EXPENSES

Model Clause

Each Party shall permit air carriers of the other Party/Parties to pay for local expenses in its territory, including purchases of fuel, in local currency; or at the option of the air carriers and where authorized, in any freely convertible currency.

NOTES

- i) Consistent with the *Statements by the Council to Contracting States on Charges for Airports and Air Navigation Services*¹ (Doc 9082), this arrangement does not preclude airport authorities from denominating charges for airport services in freely convertible currencies where necessary to provide stability to such charges and to pay for imported equipment and services. Such charges must be non-discriminatory both between foreign air carriers and those having the nationality of the State of the airport and engaged in similar international operations, and between two or more foreign users.
- ii) Under normal circumstances, user charges should be expressed and payable in local currency. However, under special circumstances, for example where economic conditions are not stable, when a State proposes, or allows, denomination of user charges in other than local currency, airlines may apply the same currency of denomination, using the same exchange rate, for their local ticket sales.

D. NON-NATIONAL PERSONNEL AND ACCESS TO LOCAL SERVICES

Model Clause

Each Party shall permit air carriers of the other Party/Parties to:

- a) bring in to its territory and maintain non-national employees who perform managerial, commercial, technical, operational and other specialist duties which are required for the provision of air transport services, consistent with the laws and regulations of the receiving State concerning entry, residence and employment; and
- b) use the services and personnel of any other organization, company or airline operating in its territory and authorized to provide such services.

NOTES

- i) Paragraph a) of this regulatory arrangement is intended to facilitate the stationing abroad of certain air carrier personnel — those who perform managerial, commercial, technical and operational duties. Personnel who perform operational duties do not include flight or cabin crew whose mobility is covered by Annex 9 to the *Convention on International Civil Aviation*. The arrangement is subject to international

1. The current title of this document is *ICAO's Policies on Charges for Airports and Air Navigation Services*.

obligations as well as national laws of the receiving country concerning entry, residence and employment, which in most cases should be flexible enough to accommodate the obligations of a Party under this arrangement.

- ii) The arrangement is based on general reciprocity in terms of the types of personnel which an air carrier can station in a foreign State and is not to be interpreted in a quantitative sense, for example permitting only the same number of these types of personnel which national air carriers station in the State of the foreign air carrier.
- iii) Paragraph b) is intended to respond to the need to accommodate the more frequent use of personnel from third countries by air carriers as a result of the increasing number of alliances and the globalization of airline commercial activities. Consequently, it would include the ability to use personnel and services of an airline partner in an alliance or codeshare arrangement.

E. SALE AND MARKETING OF AIR SERVICE PRODUCTS

Model Clause

Each Party shall accord air carriers of the other Party/Parties the right to sell and market international air services and related products in its territory (directly or through agents or other intermediaries of the carrier's choice), including the right to establish offices, both on-line and off-line.

NOTES

- i) This arrangement provides a simple but fair standard for authorizing air carriers to sell and market their services abroad while taking account of the obligations of those States which have made a specific commitment to national treatment for this service under the General Agreement on Trade in Services (GATS). The model clause is consistent with the GATS national treatment standard in that as a practical matter the treatment accorded foreign air carriers would not normally be less favourable than that accorded to national air carriers. However, in some circumstances the national treatment standard can result in more restrictive conditions on both foreign and national air carriers than those required by the model clause and in these cases the treatment in the model clause will be more liberal.
- ii) This clause does not apply to the sale and marketing of air service products through computer reservation systems (CRSs) for which States can use the ICAO *Code of Conduct for the Regulation and Operation of Computer Reservation Systems* and national or regional regulations, as appropriate.
- iii) The term "on-line office" describes a situation where an office is located in a city or country served by the air carrier directly; an "off-line office" is located in a city/country not directly served by the air carrier.

F. CONSUMER ASPECTS OF CODESHARING

6.2 In the 1990s, codesharing, a practice which involves the use of the flight designator code of one airline on a service performed by a second airline, has become an increasingly popular form of cooperative arrangements between airlines. The 1994 Worldwide Air Transport Conference considered this issue as one of the areas the

implications of which should be considered with respect to future regulatory arrangements on market access. Consequently, the Air Transport Regulation Panel, based on a study done by the Secretariat on the subject (published as Circular 269-AT/110), considered the economic and consumer aspects of codesharing and produced at its Ninth Meeting the following recommendation (ATRP/9-6) dealing with the latter aspects of the issue. This Recommendation was approved by the Council in May 1997 and disseminated to States for their guidance.

In adopting this Recommendation, the Panel agreed that the necessary information provided for consumers should include flights, operators, intermediate stops and changes of aircraft, airlines and airports. In this regard, several elements of international air transport in addition to the air carriers themselves are involved, including travel agents, computer reservation systems, airports and others involved in facilitation.

In March 2003, the fifth Worldwide Air Transport Conference (ATConf/5) also addressed the broader issue of consumer interests in the liberalization process and reached some conclusions, which can be found in Appendix 4 of this document.

Recommendation ATRP/9-6

THE PANEL RECOMMENDS:

that States take the necessary action to ensure that consumers are fully informed and protected with respect to codeshared flights operating to or from their territory and that, as a minimum, passengers be provided with the necessary information in the following ways:

- a) orally and, if possible, in writing at the time of booking;
 - b) in written form, on the ticket itself and/or (if not possible), on the itinerary document accompanying the ticket, or on any other document replacing the ticket, such as a written confirmation, including information on whom to contact in case of a problem and a clear indication of which airline is responsible in case of damage or accident; and
 - c) orally again, by the airline's ground staff at all stages of the journey.
-

Part 7

BROADER REGULATORY ENVIRONMENT

A. TRADE IN SERVICES

7.1 The subject of trade in services was first raised in 1985 at the Third Air Transport Conference and has been on ICAO's agenda ever since. The Organization has followed closely the evolution of this matter, in particular the development of a General Agreement on Trade in Services (GATS) within the Uruguay Round of trade negotiations that was launched in 1986 and resulted, *inter alia*, in the establishment of the World Trade Organization in January 1995, as well as the subsequent review of the GATS Annex on Air Transport Services. ICAO's position on the issue is contained in Assembly Resolution A36-15 given below.

A36-15: Appendix A, Section IV — Trade in services

Whereas on the issue of including aspects of international air transport under the General Agreement on Trade in Services (GATS), ICAO has actively promoted an understanding by all parties concerned of the provisions of the *Convention on International Civil Aviation* and of the particular mandate and role of ICAO in international air transport;

The Assembly:

1. *Reaffirms* the need for ICAO to continue to explore future regulatory arrangements and develop recommendations and proposals to meet the challenges facing international air transport, responding to the internal and external changes affecting it;
2. *Recognizes* that such arrangements should create an environment in which international air transport may develop and continue to flourish in an orderly, efficient and economical manner without compromising safety and security, while ensuring the interests of all Contracting States and their effective and sustained participation in international air transport;
3. *Reaffirms* the primary role of ICAO in developing policy guidance on the regulation of international air transport;
4. *Urges* Contracting States that participate in trade negotiations, agreements and arrangements relating to international air transport to:
 - a) ensure internal coordination in their national administrations and in particular the direct involvement of aeronautical authorities and the aviation industry in the negotiations;
 - b) ensure that their representatives are fully aware of the provisions of the *Convention on International Civil Aviation*, the particular characteristics of international air transport and its regulatory structures, agreements and arrangements;
 - c) take into account their rights and obligations vis-à-vis those ICAO Contracting States which are not members of the World Trade Organization;

- d) examine carefully the implications of any proposed inclusion of an additional air transport service or activity in the GATS bearing in mind, in particular, the close linkage between economic, environmental, safety and security aspects of international air transport;
 - e) promote a full understanding of the role and mandate of ICAO in developing policy guidance on economic regulation, including liberalization of international air transport, and consider using this guidance; and
 - f) file with ICAO under Article 83 of the Convention copies of any exemptions and specific commitments pertaining to international air transport made under the GATS;
5. *Requests* the World Trade Organization, its Member States and Observers to accord due consideration to:
- a) the particular regulatory structures and arrangements of international air transport and the liberalization taking place at the bilateral, subregional and regional levels;
 - b) ICAO's constitutional responsibility for international air transport and, in particular, for its safety and security; and
 - c) ICAO's existing policy and guidance material on the economic regulation of international air transport and its continued work in the field; and
6. *Requests* the Council to:
- a) continue to exert a global leadership role in facilitating and coordinating the process of economic liberalization while ensuring safety, security and environmental protection in international air transport;
 - b) pursue in a proactive manner developments in trade in services that might impinge on international air transport and inform Contracting States accordingly; and
 - c) promote continued effective communication, cooperation and coordination among ICAO, the World Trade Organization, and other intergovernmental and non-governmental organizations dealing with trade in services.

B. COMPETITION LAWS

7.2 This issue was first addressed by the 24th Session of the Assembly, which adopted Resolution A24-14 on unilateral measures which affect international air transport (now consolidated into A36-15), and later at the Third Air Transport Conference, which adopted a recommendation on the implementation of A24-14. In 1994, the Worldwide Air Transport Conference (ATConf/4) also addressed the issue and developed a recommended regulatory arrangement for consideration of States. Detailed guidance material on competition laws was first contained in Circular 215 which is now reproduced in Appendix 2 to this document. In 2003, the fifth Worldwide Air Transport Conference (ATConf/5) considered the broader issue of fair competition and safeguards in the liberalization process. The Conference reached several conclusions and agreed on a model clause on safeguards against anti-competitive practices for optional use by States in their air services agreements (see Appendix 4 of this document). The model clauses on safeguards and competition laws have been incorporated in the ICAO Template Air Services Agreements (TASAs) (see Appendix 5).

Assembly Resolution

A36-15: Appendix A, Section II (excerpts)

Whereas certain economic, financial and operational constraints unilaterally introduced at the national level affect the stability of, and tend to create unfair discriminatory trading practices in, international air transport and might be incompatible with the basic principles of the Convention and the orderly and harmonious development of international air transport;

...

The Assembly:

1. *Urges* Contracting States to avoid adopting unilateral measures that may affect the orderly and harmonious development of international air transport and to ensure that domestic policies and legislation are not applied to international air transport without taking due account of its special characteristics;

...

AT Conf/3 Recommendation 5

1. RECOMMENDS that the Council, in implementing Assembly Resolution A24-14:

- a) develop, as a matter of high priority, appropriate guidance material for avoidance or resolution of conflicts between Contracting States over application of national competition laws to international air transport, especially where bilateral air services agreement provisions are affected and where extra-territorial application is alleged; and
- b) review competition law developments and report on them to the 26th Session of the Assembly.

2. RECOMMENDS that Contracting States, in implementing Assembly Resolution A24-14:

- a) cooperate with each other so as to discourage unilateral measures and ensure the creation and maintenance of services between States so that fair and equal opportunities exist for the sharing of benefits by each State and its air carriers;
- b) ensure that their national competition laws are not applied to international air transport in such a way that there is conflict with their obligations under their air services agreements and/or under the Chicago Convention, nor in such a way that they have extra-territorial application which has not been agreed between the States concerned;
- c) consult with other Contracting States whose air carriers may be affected before taking any action likely to be construed as encompassed by Assembly Resolution A24-14; and,
- d) endeavour to agree bilaterally, in advance of any problems, about methods to ensure harmonious air transport relations between Contracting States whose competition policies are at significant variance with each other.

AT Conf/4 Recommended Regulatory Arrangement

Each party would agree:

- a) to rely on an effective and appropriate safeguards mechanism specifically designed for international air transport as the primary means to prevent and eliminate anti-competitive abuses; and
- b) where such a mechanism is absent or not applicable, to use the ICAO guidelines and/or model clause on the application of competition laws (Circular 215) to avoid or resolve disputes that may arise when applying such laws to international air transport.

C. ENVIRONMENTAL PROTECTION

7.3 Over the years, ICAO has developed policies and guidance material to address general and specific issues of environmental protection, focusing on aircraft noise and engine emissions. Some of these policies are related to economic aspects of regulation of international air transport, which are contained in several documents, namely:

- Assembly Resolution A36-22, *Consolidated statement of continuing ICAO policies and practices related to environmental protection* (Doc 9902);
- Council Resolution on environmental charges and taxes (adopted on 9 December 1996);
- Policy guidance on charges related to aircraft noise (Doc 9082, *ICAO's Policies on Charges for Airports and Air Navigation Services*);
- Policy guidance on charges related to aircraft engine emissions affecting local air quality at and around airports (Doc 9082 and Doc 9884), and guidance on emissions trading (Doc 9885); and
- Regulatory arrangement recommended by AT Conf/4.

Relevant text from the above documents is reproduced in the following sub-sections.

7.4 At its 31st Session, the Assembly adopted Resolution A31-11 which consolidated into a single statement ICAO's continuing policies and practices related to environmental protection. This consolidated statement was thereafter updated by subsequent Assembly resolutions on the subject, the latest being A36-22, the text of which is reproduced below.

**A36-22: Consolidated statement of continuing ICAO policies
and practices related to environmental protection**

Whereas in Resolution A35-5 the Assembly resolved to continue to adopt at each ordinary Session a consolidated statement of continuing ICAO policies and practices related to environmental protection;

Whereas Resolution A35-5 consists of an introductory text and a number of Appendices concerning specific but interrelated subjects;

Considering the need to reflect developments that have taken place since the 35th Session of the Assembly in the field of aircraft noise and engine emissions, including new ICAO guidance material on market-based measures to limit or reduce emissions from aviation; and

Considering the need to define specific appendices to reflect ICAO's policy to address aviation's impact on local air quality (Appendix H) and global climate (Appendices I, J, K and L);

The Assembly:

1. *Resolves* that the Appendices attached to this Resolution and listed below constitute the consolidated statement of continuing ICAO policies and practices related to environmental protection, as these policies exist at the close of the 36th Session of the Assembly:

Appendix A — General

Appendix B — Development of Standards, Recommended Practices and Procedures and/or guidance material relating to the quality of the environment

Appendix C — Policies and programmes based on a “balanced approach” to aircraft noise management

Appendix D — Phase-out of subsonic jet aircraft which exceed the noise levels in Volume I of Annex 16

Appendix E — Local noise-related operating restrictions at airports

Appendix F — Land-use planning and management

Appendix G — Supersonic aircraft — The problem of sonic boom

Appendix H — Aviation impact on local air quality

Appendix I — Aviation impact on global climate — Scientific understanding

Appendix J — Aviation impact on global climate — Cooperation with UN and other bodies

Appendix K — ICAO Programme of Action on international aviation and climate change

Appendix L — Market-based measures, including emissions trading

2. *Requests* the Council to submit at each ordinary session of the Assembly for review a consolidated statement of continuing ICAO policies and practices related to environmental protection; and

3. *Declares* that this resolution supersedes Resolution A35-5.

APPENDIX A

General

Whereas the preamble to the *Convention on International Civil Aviation* states that “the future development of international civil aviation can greatly help to create and preserve friendship and understanding among the nations and peoples of the world . . .” and Article 44 of that Convention states that ICAO should “develop the principles and

techniques of international air navigation and . . . foster the planning and development of international air transport so as to . . . meet the needs of the peoples of the world for safe, regular, efficient and economical air transport”;

Whereas many of the adverse environmental effects of civil aviation activity can be reduced by the application of comprehensive measures embracing technological improvements, more efficient air traffic management and operational procedures and the appropriate use of airport planning, land-use planning and management and market-based measures;

Whereas all ICAO Contracting States agreed to continue to pursue all aviation matters related to the environment and also maintain the initiative in developing policy guidance on these matters, and not leave such initiatives to other organizations;

Whereas other international organizations are emphasising the importance of environmental policies affecting air transport;

Whereas the sustainable growth of aviation is important for future economic growth and development, trade and commerce, cultural exchange and understanding among peoples and nations; therefore prompt action must be taken to ensure that it is compatible with the quality of the environment and develops in ways that alleviate adverse impacts;

Whereas reliable and best available information on the environmental effects of aviation is essential for the development of policy by ICAO and its Contracting States;

Whereas as far as there are recognized interdependencies of the environmental effects from aviation, such as noise and engine emissions, they need to be considered when defining source control and operational mitigation policies;

Whereas airspace management and design can play a role in addressing the impacts of aviation greenhouse gas emissions on the global climate, and the related economic and institutional issues need to be addressed by States, either individually or collectively on a regional basis;

Whereas cooperation with other international organizations is important to progress the understanding of aviation's impacts on the environment and in order to develop the appropriate policies to address these impacts;

Recognizing the importance of research and development in fuel efficiency and alternative fuels for aviation that will enable international air transport operations with a lower environmental impact;

The Assembly:

1. *Declares* that ICAO, as the lead United Nations Agency in matters involving international civil aviation, is conscious of and will continue to address the adverse environmental impacts that may be related to civil aviation activity and acknowledges its responsibility and that of its Contracting States to achieve maximum compatibility between the safe and orderly development of civil aviation and the quality of the environment. In carrying out its responsibilities, ICAO and its Contracting States will strive to:

- a) limit or reduce the number of people affected by significant aircraft noise;
- b) limit or reduce the impact of aviation emissions on local air quality; and
- c) limit or reduce the impact of aviation greenhouse gas emissions on the global climate;

2. *Emphasizes* the importance of ICAO continuing to demonstrate its leadership role on all international civil aviation matters related to the environment and *requests* the Council to maintain the initiative in developing policy guidance on these matters, which recognizes the seriousness of the challenges which the sector faces;

3. *Requests* the Council to assess regularly the present and future impact of aircraft noise and aircraft engine emissions and to continue to develop tools for this purpose;
4. *Requests* the Council to maintain and update knowledge of the interdependencies and trade-offs related to measures to mitigate the impact of aviation on the environment so as to optimize decision-making;
5. *Requests* the Council to establish a set of aviation environmental indicators which States could use to evaluate the performance of aviation operations and the effectiveness of standards, policies and measures to mitigate aviation's impacts on the environment;
6. *Requests* the Council to disseminate information on the present and future impact of aircraft noise and aircraft engine emissions and on ICAO policy and guidance material in the environmental field, in an appropriate manner, such as through regular reporting and workshops;
7. *Invites* States to continue their active support for ICAO's environment-related activities, and urges Contracting States to support activities not foreseen in the budget by providing a reasonable level of voluntary contributions;
8. *Invites* States and international organizations to provide the necessary scientific information to enable ICAO to substantiate its work in this field;
9. *Encourages* the Council to continue to cooperate closely with international organizations and other UN bodies on the understanding of aviation impacts on the environment and on the establishment of policies to address such impacts; and
10. *Urges* States to refrain from environmental measures that would adversely affect the orderly and sustainable development of international civil aviation.

APPENDIX B

Development of Standards, Recommended Practices and Procedures and/or guidance material relating to the quality of the environment

Whereas the problem of aircraft noise in the vicinity of many of the world's airports, which continues to arouse public concern and limit airport infrastructure development, requires appropriate action;

Whereas the Council has adopted Annex 16, Volume I — *Aircraft Noise*, which comprises noise certification standards for subsonic aircraft (except Short Take Off and Landing/Vertical Take Off and Landing) and has notified Contracting States of this action;

Recognizing noise and Local Air Quality-related charges are in use at some airports and ICAO policy guidance exists on this subject (*ICAO's Policies on Charges for Airports and Air Navigation Services*, Doc 9082);

Whereas aircraft engine emissions have an environmental impact at both the local and global levels which, while not fully understood, is a cause of concern;

Whereas the Council has adopted Annex 16, Volume II — *Aircraft Engine Emissions*, which comprises emissions certification standards for new aircraft engines and has notified States of this action;

Whereas the Council has established a Committee on Aviation Environmental Protection (CAEP) for the purpose of assisting in the further development of Standards, Recommended Practices and Procedures and/or guidance material on aircraft noise and aircraft engine emissions; and

Noting Resolution A35-14 (Appendix Q) on drawing the attention of aircraft manufacturers and operators to the need for future generations of aircraft to be designed so that they are capable of being operated efficiently, and with the least possible environmental disturbance, from aerodromes used for the operation of present-day jet aircraft;

The Assembly:

1. *Welcomes* the adoption by the Council in June 2001 of the new, more stringent aircraft noise standard in Annex 16, Volume I, Chapter 4 and the new, more stringent standards for emissions of oxides of nitrogen to be implemented on 1 January 2008;
2. *Requests* the Council, with the assistance and cooperation of other bodies of the Organization and of other international organizations, to continue with vigour the work related to the development of Standards, Recommended Practices and Procedures and/or guidance material dealing with the impact of aviation on the environment;
3. *Welcomes* the adoption by the Council in March 2007 of the medium- and long-term technology goals for Nitrogen Oxides (NO_x);
4. *Requests* the Council, with the assistance and cooperation of other bodies of the Organization and of other international organizations, to establish medium- and long-term technology and operational goals related to noise and fuel burn, in addition to the recent development of NO_x goals;
5. *Requests* the Council to ensure that its Committee on Aviation Environmental Protection (CAEP) pursues its work programme in the noise and emissions fields expeditiously in order that appropriate solutions can be developed as quickly as possible, and that the necessary resources are made available to do so;
6. *Urges* Contracting States from regions of the world that are currently under-represented in CAEP to participate in the Committee's work;
7. *Requests* the Council to provide States and International Organizations information on available measures to reduce the impact of aviation operations on the environment so that action can be taken using the appropriate measures;
8. *Urges* Contracting States to follow, where appropriate, the ICAO provisions developed pursuant to Clause 2 of this Appendix; and
9. *Requests* the Council to continue the work on developing and employing scenarios for assessing the future environmental impact of aviation emissions and to cooperate with the IPCC in this area.

APPENDIX C

Policies and programmes based on a “balanced approach” to aircraft noise management

Whereas a goal of ICAO is to promote the highest practicable degree of consistency in international civil aviation, including environmental regulations;

Whereas the uncoordinated development of national and regional policies and programmes for the alleviation of aircraft noise could hinder the role of civil aviation in economic development;

Whereas the severity of the aircraft noise problem at many airports has given rise to measures which limit aircraft operations and has provoked vigorous opposition to the expansion of existing airports or construction of new airports;

Whereas ICAO has accepted full responsibility for pursuing a course aimed at achieving maximum compatibility between the safe, economically effective and orderly development of civil aviation and the quality of the environment, and is actively pursuing the concept of a “balanced approach” for the reduction of aircraft noise and guidance on how States might apply such an approach;

Whereas the balanced approach to noise management developed by ICAO consists of identifying the noise problem at an airport and then analysing the various measures available to reduce noise through the exploration of four principal elements, namely reduction at source, land-use planning and management, noise abatement operational procedures and operating restrictions, with the goal of addressing the noise problem in the most cost-effective manner;

Whereas the assessment of present and future impact of aviation noise is an essential tool for the development of policy by ICAO and its Contracting States;

Whereas the process for implementation and decisions between elements of the balanced approach is for Contracting States and it is ultimately the responsibility of individual States to develop appropriate solutions to the noise problems at their airports, with due regard to ICAO rules and policies;

Whereas, the ICAO guidance developed to assist States in implementing the balanced approach (*Guidance on the Balanced Approach to Aircraft Noise Management* (Doc 9829)) has been subsequently updated;

Recognizing that solutions to noise problems need to be tailored to the specific characteristics of the airport concerned, which calls for an airport-by-airport approach, and that similar solutions could be applied if similar noise problems are identified at airports;

Recognizing that measures to address noise may have significant cost implications for operators and other stakeholders, particularly those from developing countries;

Recognizing that States have relevant legal obligations, existing agreements, current laws and established policies which may influence their implementation of the ICAO “balanced approach”;

Recognizing that some States may also have wider policies on noise management; and

Considering that the improvements in the noise climate achieved at many airports through the replacement of Chapter 2 compliant aircraft (aircraft which comply with the noise certification standards in Volume I, Chapter 2 of Annex 16 but which exceed the noise levels in Volume I, Chapter 3 of Annex 16) by quieter aircraft should be safeguarded by taking account of the sustainability of future growth and should not be eroded by incompatible urban encroachment around airports;

The Assembly:

1. *Calls upon* all ICAO Contracting States and International Organizations to recognize the leading role of ICAO in dealing with the problems of aircraft noise;

2. *Urges* States to:

a) adopt a balanced approach to noise management, taking full account of ICAO guidance (Doc 9829), relevant legal obligations, existing agreements, current laws and established policies, when addressing noise problems at their international airports;

b) institute or oversee a transparent process when considering measures to alleviate noise, including:

1) assessment of the noise problem at the airport concerned based on objective, measurable criteria and other relevant factors;

- 2) evaluation of the likely costs and benefits of the various measures available and, based on that evaluation, selection of measures with the goal to achieve maximum environmental benefit most cost-effectively; and
 - 3) provision for dissemination of the evaluation results, for consultation with stakeholders and for dispute resolution;
3. *Encourages* States to:
- a) promote and support studies, research and technology programmes aimed at reducing noise at source or by other means;
 - b) apply land-use planning and management policies to limit the encroachment of incompatible development into noise-sensitive areas and mitigation measures for areas affected by noise, consistent with Appendix F to this Resolution;
 - c) apply noise abatement operational procedures, to the extent possible without affecting safety; and
 - d) not apply operating restrictions as a first resort but only after consideration of the benefits to be gained from other elements of the balanced approach and in a manner which is consistent with Appendix E to this Resolution and taking into account the possible impact of such restrictions at other airports;
4. *Requests* States to:
- a) work closely together to ensure the harmonization of programmes, plans and policies to the extent possible;
 - b) ensure that the application of any measures to alleviate noise are consistent with the non-discrimination principle in Article 15 of the Chicago Convention; and
 - c) take into consideration the particular economic conditions of developing countries;
5. *Invites* States to keep the Council informed of their policies and programmes to alleviate the problem of aircraft noise in international civil aviation;
6. *Requests* the Council to:
- a) assess continuously the evolution of the impact of aircraft noise;
 - b) ensure that the guidance on the balanced approach in Doc 9829 is current and responsive to the requirements of States; and
 - c) promote the use of the balanced approach, for example through workshops; and
7. *Calls upon* States to provide appropriate support for this work on ICAO guidance and any additional work on methodologies, and for the assessment of the impact or effectiveness of measures under the balanced approach as necessary.

APPENDIX D**Phase-out of subsonic jet aircraft which exceed
the noise levels in Volume I of Annex 16**

Whereas certification standards for subsonic jet aircraft noise levels are specified in Volume I of Annex 16;

Whereas for the purpose of this Appendix, a phase-out is defined as withdrawal of a noise-based category of aircraft from international operations at all airports in one or more States;

Whereas the Committee on Aviation Environmental Protection has concluded that a general phase-out of Chapter 3 aircraft operations by all the countries which imposed a phase-out on operations of Chapter 2 aircraft is not supported on cost-benefit grounds;

Whereas some States have implemented or initiated phase-outs of aircraft which exceed the noise levels in Volume I, Chapter 3 of Annex 16, or are considering so doing;

Recognizing that the noise standards in Annex 16 are not intended to introduce operating restrictions on aircraft;

Recognizing that operating restrictions on existing aircraft may increase the costs of airlines and could impose a heavy economic burden, particularly on aircraft operators which may not have the financial resources to re-equip their fleets, such as those from developing countries; and

Considering that resolution of problems due to aircraft noise must be based on the mutual recognition of the difficulties encountered by States and a balance among their different concerns;

The Assembly:

1. *Urges* States not to introduce any phase-outs of aircraft which exceed the noise levels in Volume I, Chapter 3 of Annex 16 before considering:

- a) whether the normal attrition of existing fleets of such aircraft will provide the necessary protection of noise climates around their airports;
- b) whether the necessary protection can be achieved by regulations preventing their operators from adding such aircraft to their fleets through either purchase, or lease/charter/interchange, or alternatively by incentives to accelerate fleet modernization;
- c) whether the necessary protection can be achieved through restrictions limited to airports and runways the use of which has been identified and declared by them as generating noise problems and limited to time periods when greater noise disturbance is caused; and
- d) the implications of any restrictions for other States concerned, consulting these States and giving them reasonable notice of intention;

2. *Urges* States which, despite the considerations in Resolving Clause 1 above, decide to phase out aircraft which comply with the noise certification standards in Volume I, Chapter 2 of Annex 16 but which exceed the noise levels in Volume I, Chapter 3 of Annex 16:

- a) to frame any restrictions so that Chapter 2 compliant aircraft of an individual operator which are presently operating to their territories may be withdrawn from these operations gradually over a period of not less than 7 years;

- b) not to restrict before the end of the above period the operations of any aircraft less than 25 years after the date of issue of its first individual certificate of airworthiness;
 - c) not to restrict before the end of the period the operations of any presently existing wide-body aircraft or of any fitted with engines that have a by-pass ratio higher than 2 to 1; and
 - d) to inform ICAO, as well as the other States concerned, of all restrictions imposed;
3. *Strongly encourages* States to continue to cooperate bilaterally, regionally and inter-regionally with a view to:
- a) alleviating the noise burden on communities around airports without imposing severe economic hardship on aircraft operators; and
 - b) taking into account the problems of operators of developing countries with regard to Chapter 2 aircraft presently on their register, where they cannot be replaced before the end of the phase-out period, provided that there is proof of a purchase order or leasing contract placed for a replacement Chapter 3 compliant aircraft and the first date of delivery of the aircraft has been accepted;
4. *Urges* States not to introduce measures to phase out aircraft which comply, through original certification or recertification, with the noise certification standards in Volume I, Chapters 3 or 4 of Annex 16;
5. *Urges* States not to impose any operating restrictions on Chapter 3 compliant aircraft, except as part of the balanced approach to noise management developed by ICAO and in accordance with Appendices C and E to this Resolution; and
6. *Urges* States to assist aircraft operators in their efforts to accelerate fleet modernization and thereby prevent obstacles and permit all States to have access to lease or purchase aircraft compliant with Chapter 3, including the provision of multilateral technical assistance where appropriate.

APPENDIX E

Local noise-related operating restrictions at airports

Whereas certification standards for subsonic jet aircraft noise are specified in Volume I of Annex 16;

Whereas for the purposes of this Appendix an operating restriction is defined as any noise-related action that limits or reduces an aircraft's access to an airport;

Whereas Appendix C to this Resolution calls for States to adopt a balanced approach to noise management when addressing noise problems at their international airports;

Whereas the scope for further reductions in noise at source is limited in that past improvements in noise reduction technology are being gradually assimilated into the fleet but no significant breakthroughs in technology are anticipated in the foreseeable future;

Whereas at many airports, land-use planning and management and noise abatement operational procedures are already being used and other noise mitigation measures are in place, although urban encroachment continues in certain cases;

Whereas implementation of the phase-out of aircraft which comply with the noise certification standards in Volume I, Chapter 2 of Annex 16 but which exceed the noise levels in Volume I, Chapter 3 of Annex 16 (as provided for in

Appendix D to this Resolution) has been completed in some States and, assuming continued growth in aviation activity, without further action the number of people exposed to aircraft noise at some airports in those States may increase;

Whereas there are significant regional differences in the extent to which aircraft noise is expected to be a problem over the next two decades and some States have consequently been considering placing operating restrictions on certain aircraft which comply with the noise certification standards in Volume I, Chapter 3 of Annex 16;

Whereas if operating restrictions on Chapter 3 aircraft are introduced at certain airports, this should be based on the balanced approach and relevant ICAO guidance (Doc 9829) and should be tailored to the specific requirements of the airport concerned;

Whereas these restrictions could have a significant economic impact on fleet investments of aircraft operators from States other than those in which the restrictions are imposed;

Recognizing that these restrictions go beyond the policy established in Appendix D to this Resolution and other relevant policy guidance developed by ICAO;

Recognizing that ICAO places no obligation on States to impose operating restrictions on Chapter 3 aircraft;

Recognizing that the noise standards in Annex 16 were not intended to introduce operating restrictions on aircraft and, specifically, that the new standard contained in Annex 16, Volume I, Chapter 4 is based on the understanding that it is for certification purposes only; and

Recognizing in particular that States have legal obligations, laws, existing arrangements and established policies which may govern the management of noise problems at their airports and could affect the implementation of this Appendix;

The Assembly:

1. *Urges* States to ensure, wherever possible, that any operating restrictions be adopted only where such action is supported by a prior assessment of anticipated benefits and of possible adverse impacts;
2. *Urges* States not to introduce any operating restrictions at any airport on aircraft which comply with Volume I, Chapter 3 of Annex 16 before:
 - a) completing the phase-out of aircraft which exceed the noise levels in Volume I, Chapter 3 of Annex 16, at the airport concerned; and
 - b) fully assessing available measures to address the noise problem at the airport concerned in accordance with the balanced approach described in Appendix C;
3. *Urges* States which, despite the considerations in Resolving Clause 2 above, permit the introduction of restrictions at an airport on the operations of aircraft which comply, either through original certification or recertification, with Volume I, Chapter 3 of Annex 16:
 - a) to base such restrictions on the noise performance of the aircraft, as determined by the certification procedure conducted consistent with Annex 16, Volume I;
 - b) to tailor such restrictions to the noise problem of the airport concerned in accordance with the balanced approach;
 - c) to limit such restrictions to those of a partial nature wherever possible, rather than the complete withdrawal of operations at an airport;

- d) to take into account possible consequences for air transport services for which there are no suitable alternatives (for example, long-haul services);
 - e) to consider the special circumstances of operators from developing countries, in order to avoid undue hardship for such operators, by granting exemptions;
 - f) to introduce such restrictions gradually over time, where possible, in order to take into account the economic impact on operators of the affected aircraft;
 - g) to give operators a reasonable period of advance notice;
 - h) to take account of the economic and environmental impact on civil aviation; and
 - i) to inform ICAO, as well as the other States concerned, of all such restrictions imposed; and
4. *Further urges* States not to permit the introduction of any operating restrictions aimed at the withdrawal of aircraft that comply, through either original certification or recertification, with the noise standards in Volume I, Chapter 4 of Annex 16.

APPENDIX F

Land-use planning and management

Whereas land-use planning and management is one of the four principal elements of the balanced approach to noise management;

Whereas the number of people affected by aircraft noise is dependent on the way in which the use of land surrounding an airport is planned and managed, and in particular the extent to which residential development and other noise-sensitive activities are controlled;

Whereas activity may increase significantly at most airports and there is a risk that future growth may be constrained by inappropriate land use near airports;

Whereas the phase-out of subsonic jet aircraft which comply with the noise certification standards in Volume I, Chapter 2 of Annex 16 but which exceed the noise levels in Volume I, Chapter 3 of Annex 16 has succeeded at many airports in reducing the size of the noise contours depicting the areas where people are exposed to unacceptable noise levels as well as in reducing the total number of people exposed to noise;

Considering it essential that these improvements should be preserved to the greatest extent practicable for the benefit of local communities;

Whereas it is also expected that the new standard contained in Annex 16, Volume I, Chapter 4 will increase the opportunities for operators to replace aircraft in their fleets by quieter aircraft;

Recognizing that while land-use management includes planning activities that may primarily be the responsibility of local authorities, it nevertheless affects airport capacity, which in turn has implications for civil aviation; and

Whereas guidance material on appropriate land-use planning and noise mitigation measures is included in the *Airport Planning Manual* (Doc 9184), Part 2 — *Land Use and Environmental Control*, which has recently been updated;

The Assembly:

1. *Urges* States that have phased out operations of Chapter 2 aircraft at their airports as provided for in Appendix D to this Resolution, whilst preserving the benefits for local communities to the greatest extent practicable, to avoid inappropriate land use or encroachment whenever possible in areas where reductions in noise levels have been achieved;
2. *Urges* States to ensure that the potential reductions in noise levels to be gained from the introduction of quieter aircraft, particularly those complying with the new Chapter 4 standard, are also not avoidably compromised by inappropriate land use or encroachment;
3. *Urges* States, where the opportunity still exists to minimize aircraft noise problems through preventive measures, to:
 - a) locate new airports at an appropriate place, such as away from noise-sensitive areas;
 - b) take the appropriate measures so that land-use planning is taken fully into account at the initial stage of any new airport or of development at an existing airport;
 - c) define zones around airports associated with different noise levels taking into account population levels and growth as well as forecasts of traffic growth and establish criteria for the appropriate use of such land, taking account of ICAO guidance;
 - d) enact legislation, establish guidance or other appropriate means to achieve compliance with those criteria for land use; and
 - e) ensure that reader-friendly information on aircraft operations and their environmental effects is available to communities near airports; and
4. *Requests* the Council to:
 - a) ensure that the guidance on land use in Doc 9184 is current and responsive to the requirements of States; and
 - b) consider what steps might be taken to promote land-use management, particularly in those parts of the world where the opportunity may exist to avoid aircraft noise problems in the future.

APPENDIX G**Supersonic aircraft — The problem of sonic boom**

Whereas since the introduction of supersonic aircraft in commercial service action has been taken to avoid creating unacceptable situations for the public due to sonic boom, such as interference with sleep and injurious effects to persons and property on land and at sea caused by the magnification of the sonic boom; and

Whereas the States involved in the manufacture of such supersonic aircraft, as well as other States, continue to carry out research into the physical, physiological and sociological effects of sonic boom;

The Assembly:

1. *Reaffirms* the importance it attaches to ensuring that no unacceptable situation for the public is created by sonic boom from supersonic aircraft in commercial service;
2. *Instructs* the Council, in the light of the available information and availing itself of the appropriate machinery, to review the Annexes and other relevant documents, so as to ensure that they take due account of the problems which the operation of supersonic aircraft may create for the public and, in particular, as regards sonic boom, to take action to achieve international agreement on measurement of the sonic boom, the definition in quantitative or qualitative terms of the expression “unacceptable situations for the public” and the establishment of the corresponding limits; and
3. *Invites* the States involved in the manufacture of supersonic aircraft to furnish ICAO in due course with proposals on the manner in which any specifications established by ICAO could be met.

APPENDIX H

Environmental impact of civil aviation on local air quality

Whereas there are growing concerns about the impact of aviation on the atmosphere with respect to local air quality and the associated human health and welfare impacts;

Whereas many pollutants affecting local and regional air quality from aircraft engines have declined dramatically over the last few decades;

Whereas the impacts of aviation emissions of NO_x (nitrogen oxides), PM (particulate matter), and other gaseous emissions need to be further assessed and understood;

Whereas the impacts of aviation emissions on local and regional air quality is part of the total emissions in the affected area and should be considered in the broader context of all sources that contribute to the air quality concerns;

Whereas the actual local air quality and health impacts of aviation emissions depend on a series of factors among which are the contribution to the total concentrations and the number of people exposed in the area being considered;

Whereas ICAO has established technical standards and fostered the development of operational procedures that have reduced significantly local air quality pollution from aircraft;

Whereas Article 15 of the *Convention on International Civil Aviation* contains provisions regarding airport and similar charges, including the principle of non-discrimination, and ICAO has developed policy guidance for Contracting States regarding charges (*ICAO's Policies on Charges for Airports and Air Navigation Services*, Doc 9082) including specific guidance on noise-related charges and emissions-related charges for local air quality;

Whereas the ICAO Council had adopted on 9 December 1996 a policy statement of an interim nature on emission-related charges and taxes in the form of a resolution wherein the Council strongly recommends that any such levies be in the form of charges rather than taxes, and that the funds collected should be applied in the first instance to mitigating the environmental impact of aircraft engine emissions;

Whereas such charges should be based on the costs of mitigating the environmental impact of aircraft engine emissions to the extent that such costs can be properly identified and directly attributed to air transport;

Whereas the ICAO Council has adopted policy and guidance material related to the use of emission-related charges to address the impact of aircraft engine emissions at or around airports; and

Noting that the Council has agreed that it would be useful to develop a report that would consider the application of all measures relating to local air quality emissions, using technological, operational and market-based approaches and that ICAO is currently working on this issue;

The Assembly:

1. *Requests* the Council to monitor and develop its knowledge of, in cooperation with other relevant international bodies such as WHO, the effects of aviation emissions of particulate matter, nitrogen oxides and other gases on human welfare and health, and to disseminate information in this regard;
2. *Requests* the Council to continue its work to develop technologically feasible, environmentally beneficial and economically reasonable standards to further reduce the impact of local air pollution from aircraft;
3. *Requests* the Council continue its work to develop long-term technology and operational goals with respect to aviation environmental issues, including nitrogen oxides from aircraft;
4. *Requests* the Council continue to foster operational and air traffic improvements that reduce the impact of local air pollution from aircraft;
5. *Encourages* action by Contracting States, and other parties involved, to limit or reduce international aviation emissions affecting local air quality through voluntary measures and to keep ICAO informed;
6. *Welcomes* the development and promotion of guidance material on issues related to the assessment of airport-related air quality and requests the Council to actively pursue this activity, aiming for the completion of the Airport Air Quality guidance in 2010;
7. *Requests* the Council to work with States and stakeholders in promoting and sharing best practices applied at airports in reducing the adverse effects of aviation emissions on local air quality;
8. *Welcomes* the development of the guidance on emission charges related to local air quality and *requests* the Council to keep up to date such guidance and *urges* Contracting States to share information on the implementation of such charges; and
9. *Urges* Contracting States to ensure the highest practical level of consistency and take due account of ICAO policies and guidance on emissions charges related to local air quality.

APPENDIX I

Market-based measures regarding aircraft engine emissions

Whereas a comprehensive assessment of aviation's impact on the atmosphere is contained in the special report on *Aviation and the Global Atmosphere*, published in 1999, which was prepared at ICAO's request by the Intergovernmental Panel on Climate Change (IPCC) in collaboration with the Scientific Assessment Panel to the Montreal Protocol on Substances that Deplete the Ozone Layer;

Whereas the IPCC special report recognized that the effects of some types of aircraft emissions are well understood, it revealed that the effects of others are not, and identified a number of key areas of scientific uncertainty that limit the ability to project aviation's full impacts on climate and ozone;

Whereas ICAO requested that the IPCC include an update of the main findings of the special report in its Fourth Assessment Report, published in 2007;

The Assembly:

1. *Requests* the Council to:

- a) continue to take initiatives to promote information on scientific understanding of aviation's impact and action undertaken to address aviation emissions and continue to provide the forum to facilitate discussions on solutions to address aviation emissions; and
- b) continue to cooperate closely with the IPCC and other organizations involved in the assessment of aviation's contribution to environmental impacts on the atmosphere.

2. *Urges* States to:

- a) promote scientific research aimed at continuing to address the uncertainties identified in the IPCC special report on Aviation and the Global Atmosphere and in the recently released Fourth Assessment report; and
- b) ensure that future international assessments of climate change undertaken by IPCC and other relevant United Nations bodies include updated information on aircraft-induced effects on the atmosphere;

3. *Encourages* the Council to promote improved understanding of the potential use, and the related emissions impacts, of alternative aviation fuels; and

4. *Encourages* the Council and States to keep up to date and cooperate in the development of predictive analytical models for the assessment of aviation impacts.

APPENDIX J

Aviation impact on global climate — Cooperation with UN and other bodies

Whereas the ultimate objective of the United Nations Framework Convention on Climate Change (UNFCCC) is to achieve stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system;

Acknowledging the principles of non-discrimination and equal and fair opportunities to develop international civil aviation set forth in the Chicago Convention, as well as the principles and provisions on common but differentiated responsibilities and respective capabilities under the UNFCCC and the Kyoto Protocol;

Whereas the Kyoto Protocol, which was adopted by the Conference of the Parties to the UNFCCC in December 1997 and entered into force on 16 February 2005, calls for developed countries (Annex I parties) to pursue limitation or reduction of greenhouse gases from "aviation bunker fuels" (international aviation) working through ICAO (Article 2.2);

Whereas the Kyoto Protocol provides for different flexible instruments (such as the Clean Development Mechanism — CDM) which would benefit projects involving developing States;

Whereas the first commitment period of the Kyoto Protocol expires in 2012 and discussions on the follow up to this instrument are being undertaken and ICAO will need to continue to address its responsibility and demonstrate leadership to limit or reduce GHG emissions from international civil aviation;

Whereas all stakeholders expect ICAO to demonstrate leadership in mitigating the negative effects of greenhouse gas (GHG) emissions by aviation, and to develop a vision to integrate these environmental objectives into ICAO's Business Plan and other ICAO programmes;

Recognizing, the relevance of climate change and economic development in the context of the UN Millennium Development Goals (MDGs) and the role of aviation in helping achieve these goals;

Noting it is important to address aircraft emissions without losing sight of their proper context in assessing overall GHG emissions from aviation, the transportation sector, and general economic activity; and

Noting that different regions of the world are experiencing wide differences in absolute levels of aviation emissions and aviation emissions growth rates both internationally and domestically;

The Assembly:

1. *Requests* the Council to:

- a) ensure that ICAO exercise continuous leadership on environmental issues relating to international civil aviation, including GHG emissions;
- b) continue to study policy options to limit or reduce the environmental impact of aircraft engine emissions and to develop concrete proposals and provide advice as soon as possible to the Conference of the Parties of the UNFCCC, encompassing technical solutions and market-based measures, and taking into account potential implications of such measures for developing as well as developed countries; and
- c) continue to cooperate with organizations involved in policy-making in this field, notably with the Conference of the Parties to the United Nations Framework Convention on Climate Change (UNFCCC) and its Subsidiary Body for Scientific and Technological Advice (SBSTA);

APPENDIX K

ICAO Programme of Action on international aviation and climate change

Whereas ICAO and its Contracting States recognize the critical importance of providing continuous leadership to international civil aviation in limiting or reducing its emissions that contribute to global climate change;

Whereas the rapid growth of civil aviation, has generally increased the aviation industry's contribution to greenhouse gas (GHG) emissions;

Acknowledging the principles of non-discrimination and equal and fair opportunities to develop international civil aviation set forth in the Chicago Convention, as well as the principles and provisions on common but differentiated responsibilities and respective capabilities under the UNFCCC and the Kyoto Protocol;

Whereas the ICAO Council has developed policy options to limit or reduce the environmental impact of aircraft engine emissions from civil aviation and work is in progress on technology and standards, on operational measures and on market-based measures to reduce emissions;

Noting that, to promote sustainable growth of aviation, a comprehensive approach, consisting of work on technology and standards, and on operational and market-based measures to reduce emissions is necessary;

Noting that emphasis should be on those policy options that will reduce aircraft engine emissions without negatively impacting the growth of air transport especially in developing economies;

Acknowledging the significant progress made in the aviation sector, with aircraft produced today being about 70 per cent more fuel efficient per passenger kilometre than 40 years ago, with airlines of some Contracting States achieving net reductions in emissions over the past several years despite a simultaneous increase in operations, and with the commitment of the international airline industry to achieving a further 25 per cent fuel efficiency improvement between 2005 and 2020;

Noting that the next generation of aircraft technology and modernization of air traffic systems are expected to deliver additional improvements in flight and fuel efficiency that can be encouraged by ICAO through its Global Air Navigation Plan;

Recognizing that ICAO Standards and goals for NO_x, although intended to address local air quality, will also help reduce the impact of aviation on the climate;

The Assembly:

1. *Requests* that the Council facilitate action by States by vigorously developing policy options to limit or reduce the environmental impact of aircraft engine emissions, developing concrete proposals and providing advice as soon as possible to the Conference of the Parties of the UNFCCC, encompassing technical solutions and market-based measures, while taking into account potential implications of such measures for developing as well as developed countries;

2. *Requests* the Council to:

a) form a new Group on International Aviation and Climate Change composed of senior government officials representative of all ICAO regions, with the equitable participation of developing and developed countries, with technical support provided by the Committee on Aviation Environmental Protection, for the purpose of developing and recommending to the Council an aggressive Programme of Action on International Aviation and Climate Change, based on consensus, and reflecting the shared vision and strong will of all Contracting States, including:

1) an implementation framework consisting of economically efficient and technologically feasible strategies and measures that Contracting States can use to achieve emissions reductions, encompassing *inter alia*:

- voluntary measures (e.g. offsetting);
- effective dissemination of technological advances both in aircraft and in ground based equipment;
- more efficient operational measures;
- improvements in air traffic management;
- positive economic incentives; and
- market-based measures;

2) identification of means by which progress can be measured;

3) identification of possible global aspirational goals in the form of fuel efficiency for international aviation and possible options for their implementation; and

- 4) reporting progress resulting from the actions implemented by Contracting States and Stakeholders;
 - b) convene at an appropriate time, taking into account the fact that the fifteenth meeting of the Conference of the Parties (COP15) of the UNFCCC will be held in December 2009, a high-level meeting to review the Programme of Action recommended by the Group;
3. *Requests* that the Council, working through the Committee on Aviation Environmental Protection, continue to develop and keep up to date the guidance for Contracting States on the application of measures aimed at reducing or limiting the environmental impact of aircraft engine emissions and to conduct further studies with respect to mitigating the impact of aviation and climate change;
4. *Encourages* Contracting States and the Council, taking into account the interests of all parties concerned, including potential impacts on the developing world, to evaluate or continue evaluating the costs and benefits of the various measures, including existing measures, with the goal of addressing aircraft engine emissions in the most cost-effective manner;
5. *Requests* that the Council provide the necessary guidance and direction to ICAO's Regional Offices to assist Contracting States with studies, evaluations and development of procedures, in collaboration with other States in the region, to limit or reduce GHG emissions on a global basis and work together collaboratively to optimize the environmental benefits that can be achieved through their various programmes;
6. *Requests* States to encourage the industry to establish challenging goals to constantly improve its performance in aviation emissions reduction;
7. *Requests* Contracting States to accelerate investments on research and development to bring to market even more efficient technology by 2020;
8. *Requests* States to elaborate and report on a set of actions and plans to reduce by 2020 airspace congestion that is contributing to delays and unnecessary fuel burn;
9. *Request* States to encourage airport operators to improve efficiency of airside operations and to implement ground side efficiency measures to reduce carbon intensity;
10. *Requests* that the Council, working through the Committee on Aviation Environmental Protection:
- a) report on an annual basis on the progress achieved in average in-service fleet fuel efficiency and the aggregate annual amount of fuel burned in international civil aviation working in close cooperation with the industry;
 - b) forecast the overall potential for aviation emissions reduction in the in-service fleet; and
 - c) evaluate and quantify further reduction opportunities for consideration by the upcoming session of the Assembly;
11. *Requests* the Council to undertake the necessary action in support of the ICAO emissions initiative, including the pursuit of the ICAO objectives to limit or reduce the impact of aircraft emissions, to foster collaboration among its Contracting States, and to monitor and report on progress made in this area. In particular, the Council should:
- a) explore relevant parameters and develop medium- and long-term technology goals for aircraft fuel burn and report back by the next Assembly;

- b) continue to develop the necessary tools to assess the benefits associated with ATM improvements, and to promote the use of the operational measures outlined in ICAO guidance (Cir 303) as a means of limiting or reducing the environmental impact of aircraft engine emissions;
 - c) implement an emphasis on increasing fuel efficiency in all aspects the ICAO's Global Air Navigation Plan;
 - d) foster, as appropriate, regional, inter-regional and global initiatives with Contracting States to enhance air traffic efficiencies to reduce fuel consumption;
 - e) encourage Contracting States to improve air traffic efficiency, which leads to emissions savings and to report on progress in this area;
 - f) request Contracting States to submit an inventory of actions they are taking to reduce aviation emissions in their respective countries; and
 - g) promote the use of new procedures and technologies that have a potential to provide environmental benefits on the operation of aircraft;
12. *Requests* the Council to encourage States and stakeholders in promoting and sharing best practices applied at airports in reducing the adverse effects of GHG emissions of civil aviation;
13. *Requests* the Council to encourage States and stakeholders to develop models of flow control and air traffic management that optimize environmental benefits;
14. *Requests* States to:
- a) encourage the necessary research and development to provide more environmentally efficient engine and aircraft designs;
 - b) accelerate the development and implementation of fuel efficient routings and procedures to reduce aviation emissions;
 - c) accelerate efforts to achieve environmental benefits through the application of satellite-based technologies that improve the efficiency of air navigation and work with ICAO to bring these benefits to all regions and States;
 - d) promote effective coordination between their authorities involved in aviation in designing more environmentally beneficial air routes and improved operational procedures for international civil aviation;
 - e) reduce legal, security, economic and other institutional barriers to enable implementation of the new ATM operating concepts for the environmentally efficient use of airspace; and
 - f) cooperate in the development of a regional measurement and monitoring capability in order to allow for the assessment of the environmental benefits accrued from the measures above;
15. *Encourages* action by Contracting States, and other parties involved, to limit or reduce international aviation emissions through voluntary measures, and to keep ICAO informed, and *requests* the Council to instruct the Secretary General to keep up-to-date guidelines that ICAO has developed for such measures, including a template voluntary agreement, and to make available such experience to all parties concerned.

APPENDIX L**Market-based measures, including emissions trading**

Whereas market-based measures, including the use of emissions trading, are policy tools that are designed to achieve environmental goals at a lower cost and in a more flexible manner than traditional regulatory measures;

Recognizing that Contracting States are responsible for making decisions regarding the goals and most appropriate measures to address aviation's greenhouse gas emissions taking into account ICAO's guidance;

Acknowledging the principles of non-discrimination and equal and fair opportunities to develop international civil aviation set forth in the Chicago Convention, as well as the principles and provisions on common but differentiated responsibilities and respective capabilities under the UNFCCC and the Kyoto Protocol;

Recognizing that the majority of the Contracting States endorses the application of emissions trading for international aviation only on the basis of mutual agreement between States, and that other Contracting States consider that any open emissions trading system should be established in accordance with the principle of non-discrimination;

Recognizing the need to engage constructively to achieve a large degree of harmony on the measures which are being taken and which are planned to provide an appropriate response to the challenge of aviation and climate change while respecting the principles above;

Whereas ICAO policies make a conceptual distinction between a charge and a tax, in that "a charge is a levy that is designed and applied specifically to recover the costs of providing facilities and services for civil aviation, and a tax is a levy that is designed to raise national or local government revenues which are generally not applied to civil aviation in their entirety or on a cost-specific basis";

Whereas ICAO has developed policy guidance to Contracting States on taxation (*ICAO's Policies on Taxation in the Field of International Air Transport*, Doc 8632), which recommends *inter alia* the reciprocal exemption from all taxes levied on fuel taken on board by aircraft in connection with international air services, a policy implemented in practice through bilateral air services agreements, and also calls on Contracting States to the fullest practicable extent to reduce or eliminate taxes related to the sale or use of international air transport;

Whereas the ICAO Council had adopted on 9 December 1996 a policy statement of an interim nature on emission-related charges and taxes in the form of a resolution wherein the Council strongly recommends that any such levies be in the form of charges rather than taxes, and that the funds collected should be applied in the first instance to mitigating the environmental impact of aircraft engine emissions;

Whereas such charges should be based on the costs of mitigating the environmental impact of aircraft engine emissions to the extent that such costs can be properly identified and directly attributed to air transport;

Noting that there remains a number of issues of a legal and policy nature regarding the implementation of GHG charges and the integration of aviation into existing emissions trading systems that have not been resolved;

Noting that ICAO has issued *Draft Guidance on the Use of Emissions Trading for Aviation* (Doc 9885);

Whereas Contracting States have legal obligations, existing agreements, current laws and established policies; and

Whereas the establishment of carbon offset schemes has helped to raise public awareness of climate change, and may contribute to emissions reductions in the short term;

The Assembly:

1. *Encourages* Contracting States and the Council to adopt measures consistent with the framework outlined below:

- a) Emission-related charges and taxes
 - 1) *Affirms* the continuing validity of Council's Resolution of 9 December 1996 regarding emission-related levies;
 - 2) *Recognizes* that existing ICAO guidance is not sufficient at present to implement greenhouse gas emissions charges internationally, although implementation of such charges by mutual agreement of States members of a regional economic integration organization on operators of those States is not precluded; and
 - 3) *Urges* Contracting States to refrain from unilateral implementation of greenhouse gas emissions charges;
- b) Emissions trading
 - 1) *Urges* Contracting States not to implement an emissions trading system on other Contracting State's aircraft operators except on the basis of mutual agreement between those States;
 - 2) *Requests* States to report on new developments, results and experiences in this area; and
 - 3) *Requests* the Council to:
 - a) finalize and keep up to date for use by Contracting States, as appropriate, and consistent with this and subsequent Resolutions, the guidance developed by ICAO for incorporating emissions from international aviation into Contracting States' emissions trading schemes consistent with the UNFCCC process;
 - b) conduct further studies, as appropriate, on various aspects of the implementation of emissions trading systems and evaluate the cost effectiveness of any systems put in place, taking into account the effect on aviation and its growth in developing economies in line with the principles stated above; and
 - c) conduct an economic analysis of the financial impact of including international aviation in existing trading schemes and undertake literature review of cost-benefit analysis of existing trading systems with a special emphasis on how they have been applied to other sectors in order to draw some pertinent lessons learned for the aviation sector;
- c) Carbon offsets
 - 1) *Requests* the Council to examine the potential for carbon offset mechanisms as a further means of mitigating the effect of aviation emissions on local air quality and climate change; and
 - 2) *Requests* the Council to collect and disseminate information on the results of carbon-offset programmes implemented by States and other Organizations regarding aviation emissions;
- d) Clean Development Mechanism (CDM)
 - 1) *Invites* Contracting States to explore the use of the Clean Development Mechanism (CDM) related to international aviation.

7.5 Following is the policy statement, in the form of a resolution, adopted by the Council on 9 December 1996 concerning emission-related charges and taxes as referred to in Appendix L of Assembly Resolution A36-22 above.

Council Resolution on environmental charges and taxes

Whereas aircraft engine emissions are contributing to air pollution and to global atmospheric problems such as climate change and depletion of stratospheric ozone, as indicated by recent international scientific assessments, and the scientific community is working towards a better definition of the extent of aviation's impact;

Whereas in recent years there has been increasing recognition by governments of the need for each economic sector to pay the full cost of the environmental damage it causes;

Whereas the 31st Session of the ICAO Assembly in 1995 requested the Council to consider the application of environmental charges or taxes to aviation and report to the next ordinary Session of the Assembly in 1998;

Recognizing that the subject of environmental charges or taxes on air transport has also been raised in other international policy-making bodies, in the context not only of controlling greenhouse gas emissions but also of mobilizing financial resources for sustainable development, and that it is necessary to make clear ICAO's position on environmental charges and taxes at this time;

Noting that ICAO policies make a distinction between a charge and a tax, in that they regard charges as levies to defray the costs of providing facilities and services for civil aviation, whereas taxes are levies to raise general national and local governmental revenues that are applied for non-aviation purposes;

Considering that once aircraft engine emission-related problems are better defined, developments in technology and new approaches to aircraft operations may offer a means of mitigating these problems in the long term;

Having in mind:

- a) that ICAO has established emission standards for new aircraft engines and the work programme of the Council's Committee on Aviation Environmental Protection (CAEP) is aimed at addressing emission-related problems and identifying appropriate solutions, taking into account technical feasibility, economic reasonableness and environmental effectiveness;
- b) that work on emission-related charges is in progress within CAEP, the results so far indicating that the environmental impact of aircraft emissions needs to be understood and quantified before determining the best method for reducing their impact and that both regulatory measures and charges can provide effective instruments in reducing emission levels, but that it is not possible to make any general conclusion at this time as to which of these is preferable;
- c) that Article 15 of the *Convention on International Civil Aviation* contains provisions regarding airport and similar charges, including the principle of non-discrimination, and that ICAO has developed policy guidance for States regarding charges (*Statements by the Council to Contracting States on Charges for Airports and Air Navigation Services*, Doc 9082/4); and
- d) that ICAO has developed separate policy guidance to States on taxation (*ICAO's Policies on Taxation in the Field of International Air Transport*, Doc 8632), which recommends *inter alia* the reciprocal exemption from all taxes levied on fuel taken on board by aircraft in connection with international air services, a policy

implemented in practice through bilateral air services agreements, and also calls on States to the fullest practicable extent to reduce or eliminate taxes related to the sale or use of international air transport;

The Council

1. *Notes* that the use of levies to reflect the environmental costs associated with air transport is considered desirable by a number of States, while other States do not consider it appropriate in the present circumstances;
2. *Considers* that the development of an internationally agreed environmental charge or tax on air transport that all States would be expected to impose would appear not to be practicable at this time, given the differing views of States and the significant organizational and practical implementation problems that would be likely to arise;
3. *Reaffirms* that ICAO is seeking to identify a rational common basis on which States wishing to introduce environmental levies on air transport could do so;
4. *Strongly recommends* that any environmental levies on air transport which States may introduce should be in the form of charges rather than taxes and that the funds collected should be applied in the first instance to mitigating the environmental impact of aircraft engine emissions, for example to:
 - a) addressing the specific damage caused by these emissions, if that can be identified;
 - b) funding scientific research into their environmental impact; or
 - c) funding research aimed at reducing their environmental impact, through developments in technology and new approaches to aircraft operations;
5. *Urges* States that are considering the introduction of emission-related charges to take into account the non-discrimination principle in Article 15 of the *Convention on International Civil Aviation* and the work in progress within ICAO and, in the meantime, to be guided by the general principles in the *Statements by the Council to Contracting States on Charges for Airports and Air Navigation Services* (Doc 9082/4) and the following principles adapted from those agreed by the 31st Session of the ICAO Assembly:
 - a) there should be no fiscal aims behind the charges;
 - b) the charges should be related to costs; and
 - c) the charges should not discriminate against air transport compared with other modes of transport.

7.6 The Council developed the following policy guidance for States to specifically address the issue of charges related to aircraft noise, which is also contained in Doc 9082, *ICAO's Policies on Charges for Airports and Air Navigation Services*. Supplementary guidance material on the implementation of this policy can be found in Doc 9562, *Airport Economics Manual*.

Noise-related charges

The Council recognizes that although reductions are being achieved in aircraft noise at source, many airports will need to continue the application of noise alleviation or prevention measures. The Council considers that the costs incurred in implementing such measures may, at the discretion of States, be attributed to airports and recovered from the users and that States have the flexibility to decide on the method of cost recovery and charging to be used in the light of local

circumstances. In the event that noise-related charges are to be levied the Council recommends that consultations should take place on any items of expenditure to be recovered from users and that the following principles be applied:

Noise-related charges should be levied only at airports experiencing noise problems and should be designed to recover no more than the costs applied to their alleviation or prevention.

Any noise-related charges should be associated with the landing fee, possibly by means of surcharges or rebates, and should take into account the noise certification provisions of ICAO Annex 16 — *Environmental Protection* to the *Convention on International Civil Aviation* in respect of aircraft noise levels.

Noise-related charges should be non-discriminatory between users and not be established at such levels as to be prohibitively high for the operation of certain aircraft.

7.7 In March 2007 the Council adopted the following policy guidance, recommended by its Committee on Aviation Environmental Protection (CAEP), to specifically address the issue of charges related to aircraft engine emissions affecting local air quality at and around airports, which may also be found in Doc 9082. Additional guidance material on emissions charges is contained in Doc 9884, *Guidance on Aircraft Emissions Charges Related to Local Air Quality*.

In addition, ICAO has developed separate policy guidance on aviation emissions trading, which can be found in Doc 9885, *Guidance on the Use of Emissions Trading for Aviation*.

Emissions-related charges to address local air quality problems at or around airports

The Council recognizes that although reductions in certain pollutants emitted by aircraft engines that affect local air quality (LAQ) are being addressed by a variety of measures of a technical or operational nature, some States may opt to apply emissions charges to address LAQ problems at or around airports. The Council considers that the costs incurred in mitigating or preventing the problem may, at the discretion of States, be attributed to airports and recovered from the users and that States have the flexibility to decide on the method of cost recovery and charging to be used in the light of local circumstances. In the event that LAQ emissions-related charges are to be levied the Council recommends that all the following principles be applied:

- i) LAQ emissions-related charges should be levied only at airports with a defined local air quality problem, either existing or projected, and should be designed to recover no more than the costs of measures applied to the mitigation or prevention of the damage caused by the aircraft.
- ii) The cost basis for charges should be established in a transparent manner and the share directly attributable to aircraft should be properly assessed.
- iii) Consultations with stakeholders should take place before any such charges are imposed on air carriers.
- iv) LAQ emissions-related charges should be designed to address the local air quality problem in a cost-effective way.
- v) LAQ emissions-related charges should be designed to recover the costs of addressing the local air quality problem at airports from the users in a fair and equitable manner, should be non-discriminatory between users and not be established at such levels as to be prohibitively high for the operation of certain aircraft.

- vi) It is recommended that in levying LAQ emissions-related charges special consideration be given to the need to reduce the potential impact on the developing world.
- vii) LAQ emissions-related charges could be associated with the landing fee, possibly by means of surcharges or rebates, or in the form of separate charges but should be subject to the proper identification of costs.
- viii) It is recommended that the aircraft emissions charges scheme be based on data that most accurately reflect the actual operations of aircraft. In the absence of such data, ICAO standardized LTO-cycle times-in-mode should be used (ICAO Annex 16 — *Environmental Protection to the Convention on International Civil Aviation*, Volume II — *Aircraft Engine Emissions*).
- ix) Any State imposing LAQ emissions-related charges on aircraft that are in international operation should annually report the existence of such charging schemes to ICAO. The charging authority should maintain records regarding the fees collected and the use of funds to be made available to all users.

7.8 The 1994 Worldwide Air Transport Conference (AT Conf/4), *inter alia*, addressed the issue of environmental laws and agreed to recommend for consideration of States the following regulatory arrangement.

AT Conf/4 Recommended Regulatory Arrangement

Each party would:

- a) recognize the role of ICAO as the global forum for developing environmental measures for international air transport;
- b) acknowledge the importance of and need for appropriate measures for protection of the environment as it may be affected by international air services;
- c) undertake to give due consideration to any potentially adverse economic effects which relevant environmental protection measures may have on the provision of international air services;
- d) ensure that its environmental protection measures do not discriminate against air carriers of other States; and
- e) seek to ensure that its environmental protection measures do not discriminate against air transport.

D. TAXATION

7.9 Although the Chicago Convention does not have provisions addressing the “taxation” issue *per se*, Article 24 establishes the principle of exemption from certain specified levies for such items as fuel and spare parts used for international air transport. To supplement Article 24, ICAO has developed policy guidance for States, which encourages the exemption from taxation, mostly on a reciprocal basis, of certain aspects of international air transport operations and which is contained in Doc 8632 — *ICAO’s Policies on Taxation in the Field of International Air Transport*. This issue has also been addressed by the Assembly and its position is contained in Appendix E of Resolution A36-15.

ICAO policies make a distinction between charges and taxes: charges are levies used to defray the costs of providing facilities and services for civil aviation, whereas taxes are levies to raise general national or local government revenues which are used for non-aviation purposes. ICAO has developed separate policy guidance to States regarding charges, which is contained in Doc 9082 — *ICAO's Policies on Charges for Airports and Air Navigation Services*. (See also Part 8, Section C of the present document.)

Article 24

Customs duty

- a) Aircraft on a flight to, from, or across the territory of another contracting State shall be admitted temporarily free of duty, subject to the customs regulations of the State. Fuel, lubricating oils, spare parts, regular equipment and aircraft stores on board an aircraft of a contracting State, on arrival in the territory of another contracting State and retained on board on leaving the territory of that State shall be exempt from customs duty, inspection fees or similar national or local duties and charges. This exemption shall not apply to any quantities or articles unloaded, except in accordance with the customs regulations of the State, which may require that they shall be kept under customs supervision.
- b) Spare parts and equipment imported into the territory of a contracting State for incorporation in or use on an aircraft of another contracting State engaged in international air navigation shall be admitted free of customs duty, subject to compliance with the regulations of the State concerned, which may provide that the articles shall be kept under customs supervision and control.

Assembly Resolution

A36-15: Appendix E — Taxation

Whereas international air transport plays a major role in the development and expansion of international trade and travel and the imposition of taxes on aircraft, fuel, and consumable technical supplies used for international air transport, taxes on the income of international air transport enterprises and on aircraft and other movable property associated with the operation of aircraft in international air transport, and taxes on its sale or use, may have an adverse economic and competitive impact on international air transport operations;

Whereas ICAO policies in Doc 8632, *ICAO's Policies on Taxation in the Field of International Air Transport*, make a conceptual distinction between a charge and a tax in that “a charge is a levy that is designed and applied specifically to recover the costs of providing facilities and services for civil aviation, and a tax is a levy that is designed to raise national or local government revenues which are generally not applied to civil aviation in their entirety or on a cost-specific basis”;

Whereas it is a matter of great concern that taxes are increasingly being imposed by some Contracting States in respect of certain aspects of international air transport and that charges on air traffic, several of which can be categorized as taxes on the sale or use of international air transport, are proliferating;

Whereas the matter of aircraft engine emission-related levies is addressed in Assembly Resolution A36-22, *Consolidated statement of continuing ICAO policies and practices related to environmental protection*; and

Whereas the resolution in Doc 8632 supplements Article 24 of the Convention and is designed to recognize the uniqueness of international civil aviation and the need to accord tax exempt status to certain aspects of the operations of international air transport;

The Assembly:

1. *Urges* Contracting States to follow the resolution of the Council as contained in Doc 8632, *ICAO's Policies on Taxation in the Field of International Air Transport*; and
2. *Requests* the Council to ensure that the guidance and advice contained in Doc 8632 are current and responsive to the requirements of Contracting States.

7.10 The 1994 Worldwide Air Transport Conference also addressed the issue of taxation on the sale or use of international air transport and agreed to recommend for States' consideration the following regulatory arrangement.

AT Conf/4 Recommended Regulatory Arrangement

Each party would undertake to reduce to the fullest practicable extent, and make plans to eliminate as soon as its economic conditions permit, all forms of taxation on the sale or use of international transport by air, including taxes:

- a) on gross receipts of operators and taxes levied directly on passengers or shippers;
 - b) represented by charges for functions or services which are not required for international civil aviation; and
 - c) which discriminate against air transport or against any air carriers.
-

Part 8

OTHER REGULATORY ISSUES

A. REGISTRATION OF AGREEMENTS AND ARRANGEMENTS

8.1 Articles 81 and 83 of the Chicago Convention deal with the registration by Contracting States of agreements and arrangements. These Articles are reproduced below, followed by excerpts from Assembly Resolution A36-15 relating to the policy of the Organization on this matter.

Article 81

Registration of existing agreements

All aeronautical agreements which are in existence on the coming into force of this Convention, and which are between a contracting State and any other State or between an airline of a contracting State and any other State or the airline of any other State, shall be forthwith registered with the Council.

Article 83

Registration of new arrangements

Subject to the provisions of the preceding Article, any contracting State may make arrangements not inconsistent with the provisions of this Convention. Any such arrangement shall be forthwith registered with the Council, which shall make it public as soon as possible.

Assembly Resolution

A36-15: Appendix A, Section I (excerpts)

...

Whereas the Assembly has repeatedly stressed the obligation of each Contracting State to comply with Article 83 of the Convention by registering with the Council as soon as possible all arrangements relating to international civil aviation, in accordance with the *Rules for Registration with ICAO of Aeronautical Agreements and Arrangements*;

...

The Assembly:

...

3. *Urges* all Contracting States to register cooperative agreements and arrangements relating to international civil aviation with ICAO in accordance with Article 83 of the Convention and the *Rules for Registration with ICAO of Aeronautical Agreements and Arrangements*;

...

8. *Requests* the Council to review periodically the rules for registration of aeronautical agreements and arrangements with a view to simplifying the process of registration;

9. *Requests* the Secretary General to remind Contracting States of the importance of registration without undue delay of aeronautical agreements and arrangements and to provide such assistance to Contracting States as they may require in registering their aeronautical agreements and arrangements with the Council; and

...

B. LEASE, CHARTER AND INTERCHANGE OF AIRCRAFT

8.2 Article 83 *bis*, an amendment to the Chicago Convention approved by the Assembly in its Resolution A23-2, deals with the transfer of certain responsibilities of States under the Convention in connection with the lease, charter, or interchange of aircraft. Two other Assembly resolutions, A23-3 and A23-13, also deal with the subject, focusing mainly on the ratification of the Article and certain measures to facilitate the transfer of relevant functions. Article 83 *bis* entered into force on 20 June 1997 in respect of those States that have ratified it, and as at 21 July 2008 it had been ratified by 156 States.

In recent years, along with the trend of air transport liberalization, the use of leased aircraft for international operations has been on the rise, which has also attracted increasing regulatory attention. ICAO has addressed this issue and developed some guidance for States, including a model clause on leasing (see Appendix 4 on ATConf/5 Conclusions, Model Clauses and Recommendations, and Appendix 5 on Template Air Services Agreements), as well as guidelines on the implementation of Article 83 *bis* (contained in Cir 295). Additional information on aircraft leasing can be found in Chapter 4.7 of Doc 9626.

Article 83 *bis*

Transfer of certain functions and duties

- a) Notwithstanding the provisions of Articles 12, 30, 31 and 32(a), when an aircraft registered in a Contracting State is operated pursuant to an agreement for the lease, charter or interchange of the aircraft or any similar arrangement by an operator who has his principal place of business or, if he has no such place of business, his permanent residence in another Contracting State, the State of registry may, by agreement with such other State, transfer to it all or part of its functions and duties as State of registry in respect of that aircraft under Articles 12, 30, 31 and 32(a). The State of registry shall be relieved of responsibility in respect of the functions and duties transferred.
- b) The transfer shall not have effect in respect of other Contracting States before either the agreement between States in which it is embodied has been registered with the Council and made public pursuant to

Article 83 or the existence and scope of the agreement have been directly communicated to the authorities of the other Contracting State or States concerned by a State party to the agreement.

- c) The provisions of paragraphs (a) and (b) above shall also be applicable to cases covered by Article 77.

Assembly Resolutions

A23-3: Ratification of Protocol incorporating Article 83 *bis* into the Chicago Convention

The Assembly,

Having adopted Resolution A23-2 amending the Chicago Convention by the addition of a new Article 83 *bis*,

Urges all Contracting States to complete any necessary changes in their national law and to ratify the amendment as soon as possible.

A23-13: Lease, Charter and Interchange of Aircraft in International Operations (excerpts)

...

The Assembly:

...

3. *Urges* that, where arrangements for the lease, charter and interchange of aircraft — particularly aircraft without crew — would be facilitated, the State of Registry of such an aircraft, to the extent considered necessary, delegate to the State of the Operator its functions under Annex 6 to the *Convention on International Civil Aviation*;

4. *Urges* that in such cases, the State of the Operator change, if necessary, its national regulations to the extent required to empower it both to accept such delegation of functions and to oblige the operator to fulfil the obligations imposed by Annex 6;

5. *Invites* all Contracting States, the provisions of whose laws inhibit the lease, charter or interchange of aircraft, to review in due time such provisions with a view to removing those inhibitions and extending their powers in order to better enable them to exercise the new functions and duties which could be placed upon them as State of the Operator; and

...

C. AIRPORT AND AIR NAVIGATION SERVICES CHARGES

8.3 Article 15 of the Chicago Convention sets out basic principles on airport and similar charges. Additional detailed policy guidance developed by the Organization in this area is provided in Doc 9082 — *ICAO's Policies on Charges for Airports and Air Navigation Services*, while supplementary practical guidance can be found in Doc 9562 — *Airport Economics Manual*, and Doc 9161 — *Manual on Air Navigation Services Economics*. Reproduced below is a consolidated statement of continuing ICAO policies on airport and air navigation services charges contained in Appendix F of Assembly Resolution A36-15.

ICAO policies make a distinction between charges and taxes in that charges are levies to defray the costs of providing facilities and services for civil aviation whereas taxes are levies to raise general national or local governmental revenues that are applied for non-aviation purposes. ICAO has also developed separate policy guidance for States on taxation, which can be found in Doc 8632 and which is also dealt with in Part 6, Section D of the present document.

Article 15

Airport and similar charges

Every airport in a contracting State which is open to public use by its national aircraft shall likewise subject to the provisions of Article 68, be open under uniform conditions to the aircraft of all the other contracting States. The like uniform conditions shall apply to the use, by aircraft of every contracting State, of all air navigation facilities, including radio and meteorological services, which may be provided for public use for the safety and expedition of air navigation.

Any charges that may be imposed or permitted to be imposed by a contracting State for the use of such airports and air navigation facilities by the aircraft of any other contracting State shall not be higher,

- a) As to aircraft not engaged in scheduled international air services, than those that would be paid by its national aircraft of the same class engaged in similar operations, and
- b) As to aircraft engaged in scheduled international air services, than those that would be paid by its national aircraft engaged in similar international air services.

All such charges shall be published and communicated to the International Civil aviation Organization: provided that, upon representation by an interested contracting State, the charges imposed for the use of airports and other facilities shall be subject to review by the Council, which shall report and make recommendations thereon for consideration of the State or States concerned. No fees, dues or other charges shall be imposed by any contracting State in respect solely of the right of transit over or entry into or exit from its territory of any aircraft of a contracting State or persons or property thereon.

Assembly Resolution

A36-15: Appendix F — Airports and air navigation services

Section I. Charging policy

Whereas ICAO policies in Doc 9082, *ICAO's Policies on Charges for Airports and Air Navigation Services* make a conceptual distinction between a charge and a tax in that "a charge is a levy that is designed and applied specifically to recover the costs of providing facilities and services for civil aviation, and a tax is a levy that is designed to raise national or local government revenues which are generally not applied to civil aviation in their entirety or on a cost-specific basis";

Whereas the matter of aircraft engine emission-related levies and market-based options is addressed separately in Assembly Resolution A36-22, *Consolidated statement of continuing ICAO policies and practices related to environmental protection*;

Whereas Article 15 of the Convention establishes the basis for the application and disclosure of charges for airports and air navigation services;

Whereas the Council has been directed to formulate recommendations for the guidance of Contracting States with regard to the principles on which providers of airports and air navigation services for international civil aviation may charge to recover the costs of their provision and derive other revenue therefrom, and with regard to the methods that may be employed to that effect; and

Whereas the Council has adopted and revised, as necessary, and published in Doc 9082, *ICAO's Policies on Charges for Airports and Air Navigation Services*;

The Assembly:

1. *Urges* Contracting States to ensure that Article 15 of the Convention is fully respected;
2. *Urges* Contracting States to base the recovery of the costs of the airports and air navigation services they provide or share in providing for international civil aviation on the principles set forth in Article 15 of the Convention and additionally in Doc 9082, *ICAO's Policies on Charges for Airports and Air Navigation Services*, regardless of the organizational structure under which the airports and air navigation services are operated;
3. *Urges* Contracting States to ensure that airport and air navigation services charges only be applied towards defraying the costs of providing facilities and services for civil aviation;
4. *Urges* Contracting States to make every effort pursuant to Article 15 of the Convention to publish and communicate to the Organization any charges that may be imposed or permitted to be imposed by a Contracting State for the use of air navigation facilities and airports by the aircraft of any other Contracting State; and
5. *Requests* the Council to ensure that the guidance and advice contained in Doc 9082 are current and responsive to the requirements of Contracting States.

Section II. Economics and management

Whereas in handling growing volumes of traffic the global costs of providing airports and air navigation services continue to rise;

Whereas Contracting States are placing increased emphasis on improving financial efficiency in the provision of airports and air navigation services;

Whereas a balance should be maintained between the respective financial interests of providers of airports and air navigation services on the one hand and air carriers and other users on the other and which should be based on promoting cooperation between providers and users;

Whereas Contracting States have called on the Organization to provide advice and guidance aimed at promoting equitable recovery of airport and air navigation services costs;

Whereas Contracting States are increasingly assigning the operation of airports and air navigation services to commercialized and privatized entities, which may have less awareness and knowledge of States' obligations specified in the Convention and its Annexes and of ICAO's policies and guidance material in the economic field, and are using multinational facilities and services to meet the commitments they have assumed under Article 28 of the Convention; and

Whereas the Council has adopted provisional policy guidance on the allocation of Global Navigation Satellite System (GNSS) costs to ensure an equitable treatment of all users;

The Assembly:

1. *Reminds* Contracting States that with regard to airports and air navigation services they alone remain responsible for the commitments they have assumed under Article 28 of the Convention regardless of what entity or entities operate the airports or air navigation services concerned;
2. *Urges* Contracting States to cooperate in the recovery of costs of multinational air navigation facilities and services and to consider the use of the provisional Council policy guidance on the allocation of GNSS costs;
3. *Requests* the Council to continue to develop ICAO's policy and guidance material with a view to contributing to increased efficiency and improved cost-effectiveness in the provision and operation of airports and air navigation services, including the foundation for a sound cooperation between providers and users;
4. *Requests* the Council to continue its refinement of its policy guidance on the allocation of GNSS costs and the coordination of technical, legal and economic aspects, including cost-efficient interoperability;
5. *Requests* the Council to promote ICAO's policies on user charges and related guidance material, including organizational and managerial advice, in order to increase the awareness and knowledge of them among States and commercialized and privatized airports and air navigation services entities;
6. *Requests* the Council to keep the economic situation of airports and air navigation services under review and make reports thereon to Contracting States at appropriate intervals; and
7. *Urges* Contracting States to make every effort to provide with the least possible delay the financial data relating to their airports and air navigation services to enable Council to provide such advice and prepare such reports.

D. STATE AIDS AND SUBSIDIES

8.4 This issue was addressed by the 1994 Worldwide Air Transport Conference (ATConf/4) which recommended the following regulatory arrangement for consideration by States. The 2003 fifth Worldwide Air Transport Conference (ATConf/5) also considered this matter in the broader context of sustainability and assurance of service and reached some conclusions (see Appendix 4 of this document).

AT Conf/4 Recommended Regulatory Arrangement

Each party would:

- a) recognize that State aids/subsidies which confer financial benefits on a national carrier or air carriers that are not available to competitors in the same international markets can distort trade in international air services and can constitute or support unfair competitive practices; and
- b) accordingly, agree to take transparent and effective measures to ensure that its State aids/subsidies to certain air carriers do not adversely impact on other competing air carriers.

E. INTERNATIONAL AIR MAIL

8.5 The Organization's policy in the field of international air mail has been consolidated into Appendix H of Assembly Resolution A36-15.

Assembly Resolution

A36-15: Appendix H — Air Mail

Whereas the Assembly has given ongoing directions with regard to ICAO's work in the field of international air mail;

The Assembly:

1. *Urges* Contracting States to take into account the effects on international civil aviation whenever policy is being formulated in the field of international air mail, and particularly at meetings of the Universal Postal Union (UPU); and
2. *Directs* the Secretary General to furnish to the UPU, on request, information of a factual character which may be readily available.

F. AVIATION FUEL

8.6 The Second Air Transport Conference developed the following three Recommendations concerning fuel availability and conservation. The first one concerns the effect of fuel availability and allocation upon capacity; the second involves recognition of the linkage between airline costs, airline viability and technological change; and the third recommendation (AT Conf/2 Recommendation 28), which was updated in 1997 by the Air Transport Regulation Panel, seeks improved consultation among Contracting States on fuel availability and dissemination of information on fuel conservation methods.

AT Conf/2 Recommendation 5

RECOGNIZING that the supply of fuel for international civil aviation could become critical and that methods of rationing amongst users may become necessary; and

RECOGNIZING that allocations received under any system of rationing may restrict the provision of airline capacity in such a way as to bring into question the "fair and equal opportunity" principle:

RECOMMENDS that all Contracting States should, as far as possible, ensure the adequate supply of fuel for approved operations on a fair and non-discriminatory basis, at prices current in their respective national markets.

AT Conf/2 Recommendation 27

1. RECOMMENDS that, in the public interest, Contracting States, when considering applications by airlines for increases in tariffs, including fuel-related increases, take into account the importance of the need for the continued viability of the airline industry, so that *inter alia* consumer benefits resulting from further technological change, such as the development of more efficient equipment, can be sustained; and

2. RECOMMENDS that Contracting States be encouraged further to pursue practices, consistent with safety standards, that have as their objective the economically efficient use by the airlines of fuel resources, particularly as they relate to airport facilities, air traffic control and other technical regulatory procedures which affect airline costs and hence tariffs.

AT Conf/2 Recommendation 28

RECOMMENDS that the Council encourage improved consultation amongst Contracting States in order to:

- a) forecast and if possible alleviate problems concerning the availability of aviation fuel to airlines; and
 - b) ensure the widest possible dissemination of information regarding experience and methods for conserving and reducing the cost of aviation fuel, and on ways of ensuring that such fuel conservation practices are implemented in a way which does not discriminate against aviation compared with other users.
-

Appendix 1

Guidelines for Non-scheduled Air Services

With respect to the regulation of international non-scheduled air services, Article 5 of the Chicago Convention allows a State to impose regulations, conditions or limitations on the taking on or disembarking of passengers, cargo, or mail by such a service in its territory. The Special Air Transport Conference (1977) agreed that the final objective in this field is to arrive at policies aimed at ensuring that international scheduled and non-scheduled operations together satisfy the needs of the public in a manner that permits the efficient and economical operation of both categories of services. Despite substantial effort by the Panel of Experts on Regulation of Air Transport Services, however, agreement on such policies for worldwide application could not be achieved. Consequently, the Panel chose to establish guidelines that would encompass a range of national policies and objectives. The Third Air Transport Conference (1985) recommended that the guidelines for the regulation of non-scheduled services developed by this Panel be included in Doc 9440 in appropriate form. The following 28 guidelines are accordingly reproduced here (the order of presentation does not imply relative importance).

It should be noted, however, that along with the evolution of the air transport industry and regulatory liberalization, particularly since the 1990s, an increasing number of States have adopted a liberal policy on non-scheduled operations; some have effectively eliminated the regulatory distinction between scheduled and non-scheduled services. Additional information on the regulation of non-scheduled air services can be found in Chapter 4.6 of Doc 9626.

1. Regulatory devices applicable to non-scheduled air transport services, if used by States, may serve various national objectives, particularly of ensuring an adequate degree of economic protection for scheduled services and the viability of scheduled carriers operating under a public service obligation. However, States should avoid situations in which overly restrictive regulatory devices may make the operation of non-scheduled (charter) services impossible, inefficient or uneconomic since both types of service together meet the public demand in various ways.
2. Because of their importance to the public and their vulnerability to competitive fares and related conditions on scheduled services the economic viability of charter operations and non-scheduled carriers should be ensured, but without the application of regulatory devices or measures which would prejudice scheduled services so as to secure the safe, fair and orderly development of the market as a whole.
3. The objective of maintaining scheduled and charter operations in an acceptable relationship (taking into account Note No. 6, as amended, of the 1952 Council Definition of a "scheduled international air service") should imply recognition of the concept that when stringent regulatory devices are applied, charter activity may be curtailed. The opposite effect may be achieved by applying less stringent or minimal devices.
4. Where the objective is to allow carriers in the countries of origin and destination of charter flights a reasonable opportunity to share in the available traffic, unilateral imposition of discriminatory regulatory devices by States and unfair market practices such as predatory pricing by airlines should be avoided. States should also prevent any practices that are harmful to the development of air transport such as the requirement of payments to a national carrier (for example, "no objection fees").

5. The differences, if any, between certain regulatory devices for charter operations and the conditions applying to comparable scheduled air service traffic should, where possible and considered necessary, be reduced or eliminated. In particular such differences should be reduced or eliminated during peak periods of operation or in specific areas where there are no scheduled services.

6. At the multilateral level States should endeavour to develop and harmonize acceptable regulatory devices for the various types of charter flights ensuring however that sufficient flexibility exists for States to meet their national priorities and needs. Where harmonized international regulations exist (for example, in regional civil aviation bodies) States should use their best efforts to apply them.

7. Where possible, non-scheduled air transport activities that are not open to the general public should be subject to a minimum of regulatory devices as a matter of economic policy or administrative simplification. Humanitarian or emergency flights, taxi flights and ambulance flights should, where possible, be exempt, on a basis of reciprocity, from any controls other than advance filing of a flight plan.

8. To ensure the effectiveness of regulatory devices for charter flights States should take appropriate measures for the monitoring of compliance and the enforcement of such regulatory devices as well as the updating as necessary of the enforcement mechanism. For example, with respect to enforcement the European Civil Aviation Conference (ECAC) recommends, among other matters, that the following measures be introduced progressively, depending on the gravity and/or repetition of violations:

- a) diligent investigation into the causes of the violations;
- b) rejection of request for authorization;
- c) suspension of authorization;
- d) imposition of a fine;
- e) refusal of right of embarkation in the event of flagrant violation; and/or
- f) other sanctions deemed appropriate.

9. Because so-called "programmed" or "schedulized" charters can have a greater competitive impact on scheduled services than other types of non-scheduled operations, States may wish to make a distinction in their regulatory provisions between such charters and other categories of non-scheduled air transport operations.

10. Competition from so-called "programmed" or "schedulized" charters should not prevent an adequate frequency of direct scheduled services, when considered to be essential by States, from attaining or maintaining economic viability.

11. The regulatory devices applied to non-scheduled air services will be considered as incorporating "substantial restrictions" if, in a specific market, they result in a significant proportion of the general public being unable or unwilling to make use of such services or to meet the conditions imposed. "Substantial restrictions" are commonly of such character as to cause non-scheduled air transport to be effectively limited to low price leisure and discretionary travel or specialized transport of passengers and cargo. Types of specialized charters include, but are not limited to, the following:

- a) affinity group
- b) common purpose and/or special event
- c) student
- d) migrant worker

- e) civil-military
- f) religious (pilgrim)
- g) humanitarian/emergency
- h) air taxi/ambulance
- i) own-use/entity/single entity:
 - refugee
 - sports teams
 - ships crews
 - incentive (sales/productivity)
 - land sales

12. The travel and other restrictions applied to non-scheduled (charter) operations should not be more confining than is necessary for maintaining the distinction between scheduled and non-scheduled air transport as well as preserving the desired balance between the two types of service as determined by States and in the public interest.

13. An absence of “substantial restrictions” may lead to erosion of the distinction between scheduled and non-scheduled (charter) air transport. Under such circumstances, non-scheduled (charter) services may be reclassified as scheduled, in conformity with the amended Notes to the ICAO Council 1952 Definition of Scheduled Services, or alternatively, States may apply similar regulatory devices to both types of air transport.

14. Subject to Article 5 of the Chicago Convention, direct capacity control of non-scheduled (charter) services, if considered necessary, should not be imposed by one State against another without prior consultations and with due consideration being given to all relevant factors, including the desirability in most circumstances to preserve a viable non-scheduled (charter) sector.

15. In a unilateral regulatory framework States always reserve the right to authorize or not authorize charter flights for reasons of public interest consistent with Article 5 of the Convention. States may, however, decide to limit this discretionary power such as by international agreement, for example, the 1956 Multilateral Agreement on Commercial Rights of Non-scheduled Air Services in Europe.

16. Whenever imposed, regulatory devices concerning charter flights should be fair, reasonable, non-discriminatory, clear and readily available in written form, non-redundant in purpose, and applied with minimal paperwork requirements or procedural delays. (An example of minimal procedural requirements for permission for the operation of a non-scheduled flight is provided in paragraphs 2.41 and 2.42 of Annex 9, Tenth Edition).

17. Whenever regulatory devices concerning charter flights are established, or where differences in their application arise between States, consultations between States, or, where feasible, bilateral or multilateral agreements can establish or increase coordination and harmonization so as to avoid as far as possible problems caused by conflicting regulations.

18. Where States consider the minimal use of regulatory devices or, whenever possible, no such use to be ideal, devices which could limit the volume or kinds of charter flights offered are found largely unnecessary. For example,

minimal use or non-use of regulatory devices can occur in various situations such as in authorizing small aircraft flights or humanitarian flights. It can also occur when the origin and destination States both avoid their use, or agree with each other not to use them. However, regulatory devices such as those to protect consumer funds, to fulfil intergovernmental agreements or to maintain comity and reciprocity may still be required.

19. States should bear in mind that any regulatory device applied to non-scheduled air services may affect the demand for and volume of such services offered, just as pricing, routings, market access and similar factors may affect the demand for and supply of scheduled service capacity.

20. In order to protect consumers of non-scheduled (charter) air transport from performance failures by air carriers, charterers or their agents, the supervision and monitoring of these operators should ensure their fitness to perform as represented in part by the lodgement of performance bonds, other sureties and evidence of adequate liability coverage required by applicable Conventions, Agreements or national legislation.

21. In fostering competition in air transport careful attention should be paid to the possible and unwanted developments of predatory or dumping practices which may in turn produce cut-throat competition or oligopoly or monopoly conditions in the international air transport market as a whole and, in particular, the international non-scheduled market.

22. When seeking to expand passenger and cargo markets, the limitation of resources, such as airways, airports and environmental restriction should be taken into account, especially when the provision of non-scheduled services is considered by States to be less important than the provision of scheduled services.

23. When permitting non-scheduled operations to provide direct point-to-point service where none exists, reasonable connecting services on scheduled services should not be disregarded for the purpose of providing an adequate degree of economic protection for scheduled services.

24. When considering minimization of regulatory devices applied to non-scheduled operations the purpose in imposing particular devices on non-scheduled operations should be carefully examined and if the purpose is appropriately attained only by such devices they should be retained.

25. Recognizing the variety of States' objectives and the diversity of operational areas the publication and publicity of existing national non-scheduled regulations would usefully assist other States, carriers, and users.

26. The minimization or, in some cases, elimination of regulatory devices governing charter services may be used by States wishing to encourage the general development of low prices and which do not have as a primary objective the protection of scheduled services but are interested in:

- a) substantially increasing incoming tourism;
- b) giving their users the benefit of the lowest possible prices;
- c) increasing passenger and cargo markets;
- d) minimizing restrictions as a matter of general economic policy or for administrative streamlining; or
- e) meeting periodic demands of a seasonal or occasional nature.

While the elimination of regulatory devices may appear to make the differentiation between scheduled and non-scheduled services no longer relevant it should not, however, be taken to mean that the two types of service would necessarily become indistinguishable.

27. States wishing to encourage incoming tourism and at the same time protect their scheduled services may authorize charter flights when these flights depart from gateways abroad distinct from those utilized by their scheduled airlines.

28. The differences between certain regulatory devices for charter operations and the conditions applied to scheduled air service traffic may be kept for the purpose of maintaining the desired relationship between scheduled and non-scheduled services and ensuring an adequate degree of economic protection for scheduled services and the viability of scheduled carriers.

Appendix 2

Guidance Material on the Avoidance or Resolution of Conflicts over the Application of Competition Laws to International Air Transport

In 1985 the Third Air Transport Conference adopted Recommendation 5 which called on the Council to “develop as a matter of high priority, appropriate guidance material for avoidance or resolution of conflicts between Contracting States over application of national competition laws to international air transport, especially where the provisions of bilateral air services agreements are affected and where extraterritorial application is alleged”. The Council subsequently approved Recommendation 5 and a study was undertaken by the Secretariat with the assistance of a group of experts drawn from Contracting States and international organizations.

The study led to the development of guidance material consisting of a number of specific guidelines for States, accompanied by explanatory comments, and a model clause for potential inclusion in bilateral air transport agreements. After examination by the Air Transport Committee in September 1988, the Council decided in November 1988 that the guidance material should be issued to States. While in no way binding on States, the guidance would assist them in the avoidance or resolution of conflicts over the application of national competition laws, policies and practices to international air transport.

Reproduced in this Appendix is the guidance material which was originally contained in ICAO Circular 215-AT/85 published in 1989.

INTRODUCTION

States adopt policies and practices, and often laws, regarding how competition in their domestic and foreign commerce shall be promoted or constrained. Because of the wide spectrum of national positions involved, conflicts tend to arise between States over the actual or potential application of the competition laws of one to commercial entities of the other. International air transport is a commercial activity where strongly differing views exist as to desirable levels of protection, competition and industry cooperation. Consequently, unilateral actions regarding competition in this field increase the potential for conflicts between and among States. The unilateral regulation by one State of air services activities of an airline of another State by use of competition laws or practices not accepted by that other State increases the likelihood of disputes between them which could adversely affect international air transport.

The guidance material on conflict avoidance and conflict resolution which follows consists of a number of specific guidelines, accompanied by explanatory comments, and a model clause for potential inclusion in bilateral air transport agreements. It is intended to assist States whenever the actual or potential application of competition laws of one State or group of States to international air transport, particularly on an extraterritorial basis, gives rise to an actual or potential conflict in air transport relations with another State or States. It should be noted that any reference hereinafter to “the application of competition laws” should be taken to also embrace the application of competition policies and practices, which are part of the wider process of government action.

A number of international bodies, including the Organization for Economic Cooperation and Development (OECD), the International Chamber of Commerce (ICC) and the International Law Association (ILA) have produced recommendatory material on the general problem of the extraterritorial application of national competition laws. In addition, several bilateral agreements on competition law procedures and cooperation are in existence. While these efforts with applications far beyond the air transport field were useful and relevant to the development of the guidance material contained herein, the ICAO guidance is particularly oriented towards dispute situations specifically involving international air transport. Furthermore, it is intended to be comprehensive in the international air transport field and seeks to take into account a wide range of national viewpoints among Contracting States of ICAO on this issue.

GUIDELINES

Each of the guidelines which follow is accompanied by commentary intended to draw out salient points or provide clarification as to its scope or intent. Because the line between conflict avoidance and conflict resolution may not always be clear-cut, the two categories of guidance have not been separated out. They have been placed instead in a logical sequence of progression from conflict avoidance principles and procedures through conflict resolution principles and procedures.

GUIDELINE A

States should ensure that their competition laws, policies and practices, and any application thereof to international air transport, are compatible with their obligations under relevant international agreements; with regard to the adoption of such laws, policies and practices or changes thereto, States should provide opportunities for the receipt of views from any interested foreign party and, upon the request of another State or States, clarify the extent to which such laws, policies and practices or changes thereto might affect the activities of the international airlines of such State or States.

Comments. An aspect of widespread concern in the airline industry is that of legal certainty about their cooperative activities. In recent years a number of States have revised their competition laws and in some cases brought air transport within their scope. One consequence is a period of uncertainty for airlines and the need for initiatives to clarify any actual or proposed application to international airlines and their activities. Guideline A contains principles and procedures aimed at regularizing such situations. Its emphasis is on compatibility with existing international air transport regulation, particularly bilateral regulation. States are presumed to seek harmony between their domestic legislation and their international commitments. The phrase “competition laws, policies and practices”, as used in this and in subsequent guidelines, is purposely wide because some competition law regimes may encompass some or all of statutes, regulations, directives, policy statements, administrative guidance and processes.

GUIDELINE B

When a State is implementing its competition laws, policies and practices it should give full and sympathetic consideration to the views expressed by any other State or States whose significant international air transport interests might be affected, and should have regard to international comity, moderation and restraint.

Comments. This guideline enunciates some relevant international principles and practices to guide States when implementing their competition laws where international air transport interests might be affected. “Comity” is a concept often found in international air transport and is also a prominent aspect of the judicial rules, doctrines and precedence built up around the extraterritorial application of national legislation and jurisdictional issues. It means deference by one State or its agency to the acts of another State or its agency. It is not generally considered a binding obligation in international law but is rather a matter of courtesy and its relevance and application will depend on circumstances.

GUIDELINE C

Where the competition laws, policies or practices of States are such that they might give rise to actual or potential conflicts in their international air transport relations, consultation should take place among those States to seek an understanding on what competition laws, policies and practices shall be applied in such relations so as to provide airlines with as much legal certitude as possible and to avoid potential conflict as much as possible.

Comments. Guideline C stresses cooperation and legal certainty and encourages understandings between States on what competition laws, if any, should be applied in their aviation relations. An “understanding” could be an agreement or something less and conceivably could deal with the question of specific exemptions.

GUIDELINE D

When the application of competition laws, policies and practices to international air transport may result in disputes between States over matters of jurisdiction or policy, States should have regard to their relevant international commitments and to practices in international relations such as notification, consultation, comity and cooperation; States should carefully weigh the interests of other States in such matters.

Comments. This guideline deals with conflict resolution and complements Guideline B concerning conflict avoidance. It urges use of certain practices in international relations when the application of competition laws leads to a dispute. The application referred to could be public or private. Similarly, the weighing of interests could be public or private although the idea of a domestic court weighing foreign interests is contentious.

GUIDELINE E

Any conflict arising from the application of competition laws to international air transport which has been raised by another State and which involves significant national interests or policies of that other State should, to the extent permitted by national laws and policies and as a matter of international relations between the two States, be addressed by the executive level or branch of government.

Comments. A conflict over the application of competition laws to international air transport is essentially a matter of international relations, but it may also involve different levels or branches of a State. This guideline stresses that the executive level of the government should be the main focus of conflict resolution whenever significant national air transport interests or policies of other States are involved. With use of the phrase “to the extent permitted by national laws and policies”, this guideline recognizes that constitutional or administrative limitations may exist which take a private legal action beyond the control of the national executive.

GUIDELINE F

Without prejudice to the right of each State to protect its interests, when a potential conflict arises over the application by one State of its competition laws, policies and practices to matters related to the operation of an air transport agreement with another State, the States concerned should use their agreed bilateral process of consultation before taking any unilateral action which might aggravate the conflict.

Comments. Over the past four decades bilateral air service agreements have in varying degrees permitted the evolution of airline cooperative practices. They have invariably contained one important and constant feature, the consultation process. In an era when national policies are being reassessed and the regulatory environment is experiencing changes and strains, this Guideline states that the consultation process should be accorded priority over unilateral action whenever a potential competition law conflict concerns matters coming under a bilateral agreement. However, such priority could not foreclose a State's right of action to protect its interests. Examples of matters would be any cooperative airline practices such as multilateral tariff coordination that are endorsed or sanctioned by the agreement.

GUIDELINE G

A State which undertakes under its competition laws an investigation or proceeding that may affect significant international air transport interests or policies of another State should notify that other State, if possible in advance, and consult with it if requested. Consultations should clarify the particular interests and concerns of each State and should aim to avoid, minimize or resolve any possible conflict between them.

Comments. A bilateral air services agreement may not always exist when competition law actions of one State are considered by another State to affect its interests or policies. This guideline is intended to cover any situation when enforcement actions by the competition authorities are involved. While the onus in this Guideline falls on the State taking action to notify another potentially affected State, the initiative for consultation is borne by the latter. The notification by the State taking action should be as early as possible so that the consultation mechanism can be used for the purposes specified in the Guideline.

GUIDELINE H

A State which becomes aware of a private legal action under its competition laws, where such action may affect significant international air transport interests or policies of another State, should notify that other State and consult with it if requested.

Comments. This guideline complements Guideline G and covers private legal actions. It also incorporates the notions of notification and consultation but differs from Guideline G in that notification is, of necessity, an *ex post facto* matter, since advance notification of a private legal action would be highly improbable. Furthermore, this guideline does not set out the purposes of consultation as does its counterpart. Nevertheless, consultation is, by implication, a mechanism to clarify interests and avoid or resolve possible conflicts.

GUIDELINE I

When a private legal action has been instituted under the competition laws of one State, and where such action may affect significant international air transport interests of another State, the State where the action has been instituted should facilitate access by the other State to the relevant judicial body and/or, as appropriate, provide information to that body. Such information could include its own foreign relations interests, the interests of the other State as notified by that State and, if possible, the results of any consultation with that other State concerning the action.

Comments. Although constitutional and administrative arrangements may preclude outside intervention in a judicial process, many States accept the need to permit access to the judicial system by parties or agencies having an indirect interest in the proceeding but who may be able to assist the judiciary by volunteering relevant views or information. In some systems this is known as an *amicus curiae*, a "friend of the court". Other States permit variations of this idea. This

guideline addresses the idea but places the onus for using it on the State whose interests may be affected. If the State in which the action takes place approaches its judiciary, the guideline indicates the matters which may be presented. Presumably, if the affected State is permitted to approach the judiciary it would present its own interests.

GUIDELINE J

States should cooperate, in accordance with any applicable international obligations and to the extent not precluded by their national laws or policies, in allowing the disclosure by their airlines or other nationals of information pertinent to a competition law action to the competent authorities of another State, provided that such cooperation or disclosure would not be contrary to their significant national interests.

Comments. Legal discovery or disclosure of information procedures, particularly in private competition law actions, are a major area of controversy and a source of conflict. “Blocking legislation” has been spawned in some States in response to expansive discovery actions by other States. Cooperation in discovery should be encouraged where it accords with international obligations and is not contrary to national interests. The aim of the Guideline is simply to set some parameters for the use of a practice which can be a source of that conflict. “International obligations” refers not just to bilateral agreements but also to the obligations and requirements arising for States who are parties to the Hague Convention of 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters. That Treaty deals with the national processing and implementation of discovery requests from judicial bodies of another State; it also permits a Member State to refuse assistance or discovery where to do so would prejudice its sovereignty.

GUIDELINE K

While an action taken by the competition law authorities of one State is the subject of consultation with another State, the State in which the action is being taken should refrain from requiring the disclosure of information situated in the other State and that other State should refrain from applying any so called “blocking legislation” which may exist regarding such disclosure.

Comments. This guideline is also designed to control a conflict situation and deals with the use of discovery procedures by one party and of “blocking legislation” by the other. It urges both parties to refrain from taking action in these two respects while consultation is pending in order to give that process the maximum opportunity to resolve the issue. The guideline’s application is restricted to consultation on actions taken by competition enforcement authorities of one State. This guideline was not extended to private legal actions, in part because control over the discovery process may reside in the judicial body.

GUIDELINE L

Where relevant, these guidelines should be applied, *mutatis mutandis*, to relations between States where a group of States has common competition laws, policies and practices or where multilateral arrangements exist.

Comments. The final guideline extends all the foregoing guidance, to the extent relevant, to groups of States which have competition law regimes that apply to their individual Members. Several such groupings exist but the best known is the European Communities where, increasingly, the Community competition standards, as laid out in the Treaty of Rome and supplemented by Commission Regulations and Directives and European Court of Justice decisions, are being applied to air transport activities within the Communities. The long-term implications for air transport activities within the Communities by non-Community operators are unclear but the potential for conflict exists since the “effects doctrine” is recognized in the Community’s competition law regime.

MODEL CLAUSE ON COMPETITION LAWS

The model clause which follows is intended to be a comprehensive but adaptable guide for any pair of States which have or may have a bilateral agreement and which have experienced or may experience difficulties in their air transport relations from the application of national competition laws. Its use by States in their bilateral agreements is entirely optional and it would be of little relevance, for example, where both parties endorse cooperative airline practices and neither party has a competition law. Nor is the clause intended to supplant any existing procedures. In general it seeks to strengthen the bilateral machinery for conflict avoidance and resolution and to bring issues in the application of competition law standards to air transport into the bilateral framework. The clause draws mainly on the concepts and principles laid out in the Guidelines.

MODEL CLAUSE**Article "X"
Competition Laws**

- (1) The Parties shall inform each other about their competition laws, policies and practices or changes thereto, and any particular objectives thereof, which could affect the operation of air transport services under this agreement and shall identify the authorities responsible for their implementation;
- (2) The Parties shall, to the extent permitted under their own laws and regulations, assist each other's airlines by providing guidance as to the compatibility of any proposed airline practice with their competition laws, policies and practices;
- (3) The Parties shall notify each other whenever they consider that there may be incompatibility between the application of their competition laws, policies and practices and the matters related to the operation of this Agreement; the consultation process contained in this Agreement shall, if so requested by either Party, be used to determine whether such a conflict exists and to seek ways of resolving or minimizing it;
- (4) The Parties shall notify one another of their intention to begin proceedings against each other's airline(s) or of the institution of any relevant private legal actions under their competition laws which may come to their attention;
- (5) Without prejudice to the right of action of either Party the consultation process contained in this agreement shall be used whenever either Party so requests and should aim to identify the respective interests of the Parties and the likely implications arising from the particular competition law action;
- (6) The Parties shall endeavour to reach agreement during such consultations, having due regard to the relevant interests of each Party and to alternative means which might also achieve the objectives of that competition law action;
- (7) In the event agreement is not reached, each Party shall, in implementing its competition laws, policies and practices, give full and sympathetic consideration to the views expressed by the other Party and shall have regard to international comity, moderation and restraint;
- (8) The Party under whose competition laws a private legal action has been instituted shall facilitate access by the other Party to the relevant judicial body and/or, as appropriate, provide information to that body. Such information could include its own foreign relations interests, the interests of the other Party as notified by that Party and, if possible, the results of any consultation with that other Party concerning the action.

-
- (9) The Parties shall cooperate, to the extent not precluded by their national laws or policies and in accordance with any applicable international obligations, in allowing the disclosure by their airlines or other nationals of information pertinent to a competition law action to the competent authorities of each other, provided that such cooperation or disclosure would not be contrary to their significant national interests.
- (10) While an action taken by the competition law authorities of one Party is the subject of consultations with the other Party, the Party in whose territory the action is being taken shall, pending the outcome of these consultations, refrain from requiring the disclosure of information situated in the territory of the other Party and that other Party shall refrain from applying any blocking legislation.
-

Appendix 3

Preferential Measures for Developing Countries in the Economic Regulation of International Air Transport

The 1994 Worldwide Air Transport Conference recommended that ICAO proceed with studies and develop recommendations on a number of important issues including “preferential measures in the economic regulation of international air transport to ensure the effective participation of developing countries in such transport”. The Council subsequently approved the recommendation and a study was undertaken by the Secretariat, which *inter alia* presented some potential preferential measures, with associated commentary.

After examination by the Air Transport Committee in September 1996, the Council decided in November 1996 that the study should be disseminated to States for their consideration and use as far as possible. In making the decision, the Council noted that it would be up to States, based on their particular needs and circumstances, to determine whether, when and how to apply any preferential measures in their regulatory relationships. The issue was also addressed by the 32nd Session of the Assembly, which agreed that States be urged to give special consideration in their air transport relationships to the interests and needs of the developing countries and, where circumstances warrant, to grant appropriate preferential measures.

The term “preferential measures”, in the context of the economic regulation of international air transport, was defined in the Secretariat study as “those non-reciprocal regulatory arrangements which States in a regulatory relationship agree are needed by a developing country in that relationship for its effective and sustained participation in international air transport”. Such measures are intended to be just one of a wide range of instruments that may be used by developing countries to increase their participation.

In the table below, which is taken from the Secretariat study (distributed by State Letter EC 2/75-97/1 of 17 January 1997), some potential preferential measures are listed. They are indicative only and are not mutually exclusive; if circumstances warrant, more than one measure could be employed in a specific market. They could be unilaterally granted or bilaterally or regionally negotiated. It should be noted that these suggested measures would apply mainly in situations where participation of a State in international air transport is through the direct provision of air service by its designated airline(s).

Potential Preferential Measures for Consideration and Possible Use by States

MARKET ACCESS

<i>Potential preferential measures</i>	<i>Comments</i>
<p>A. In a bilateral air transport relationship involving developed and developing country parties, market access could be liberalized on an asymmetric basis in favour of the developing country partner (at least in the earlier period of a phased introduction of expanded market access), for example:</p> <ul style="list-style-type: none"> — to accord the air carrier of a developing country the right to serve more cities; — to grant “Fifth Freedom” traffic rights on route(s) of interest to it that the granting State would not normally grant to a developed third party or parties; — to allow it to operate service unilaterally on certain routes for an agreed period; — to allow it to operate greater capacity for an agreed fixed period. <p>B. Air carriers of developing countries could be accorded more flexibility than their counterparts from the developed countries for the operation of their services to/from developed countries, for example:</p> <ul style="list-style-type: none"> — to allow shift of capacity between routes in a bilateral market; — to permit codesharing to markets of interest to them, including on routes without underlying authority; — to permit unrestricted change of gauge. <p>C. Developing countries could be allowed trial periods in introducing new liberal air service arrangements with developed countries for an agreed fixed period of time.</p> <p>D. Developing countries could be allowed longer time periods than those between and among developed countries in the gradual introduction of more liberal market access arrangements.</p>	<p>Such measures could give the beneficiary air carrier the “head start” needed to establish a viable presence in the market and help market development. An example of such arrangement is the China-United States air transport agreement of 1980 under which, <i>inter alia</i>, the second United States designated airline would start its service two years after the commencement of service by the first designated carriers.</p> <p>The 1995 agreement between Canada and United States is an example of how this has been done between two developed countries, whereby full market access for the United States carriers to three major Canadian airports (Montreal, Toronto and Vancouver) would be introduced three years later than to other cities.</p> <p>These measures, in general, would assist airlines from developing countries through improved market access and more operational flexibility.</p> <p>Airline codesharing could benefit developing countries by providing their airlines the possibility to serve very thin routes at minimal cost, and thus utilize better their traffic rights. Therefore, where joint airline activities require approval under national competition laws, sympathetic consideration could be given to grant exemption or immunity for this form of airline cooperation between developing countries.</p> <p>This would enable developing countries to test the benefit of any new liberal arrangement with the assurance that they could remedy any undesired results or even opt out if the arrangement did not work.</p> <p>In general, phased introduction would assist the participation objective, enable monitoring of market presence and competitiveness and serve as potential measures for wider application, such as at regional or even multilateral level.</p> <p>The air service arrangement agreed in 1995 between the United States and the Philippines under which the latter would phase in full market access by 2003 is an example of how this can be done bilaterally. The European Union’s phased introduction of its “single market” is a comparable example of gradual introduction of full market access with respect to developed countries on a regional basis.</p>

<i>Potential preferential measures</i>	<i>Comments</i>
E. Developing countries could accord greater market access at a faster pace between or among themselves than with developed countries.	Examples of how this can be done include: the Andean Pact (where member States' carriers have full market access to all five member States of the subregion); the Caribbean Community and Common Market (Caricom) involving countries in the Caribbean Region; and the Yamoussoukro Declaration involving African States.

OWNERSHIP AND CONTROL CRITERIA

<i>Potential preferential measures</i>	<i>Comments</i>
F. Subject to adequate arrangements ensuring safety, developed countries could waive their right to require that an air carrier of a developing country be substantially owned and effectively controlled by that country or its nationals so as to allow, for example: <ul style="list-style-type: none"> — jointly or foreign owned airlines of such States to operate the agreed service; — developing countries in the same economic grouping to designate an airline from another State to operate traffic rights on its behalf to a third country. 	The concept of “community of interest” in Assembly Resolution A24-12 was designed as a preferential measure for developing countries (and subsequently adopted by the Worldwide Air Transport Conference for application on a broader basis).
G. Subject to adequate safety arrangements, developed countries could waive clauses in air transport agreements restricting the use of leased aircraft from a third party to allow developing countries' airlines to lease modern equipment for operation of their air services.	This would assist airlines of developing countries to introduce more modern but expensive equipment and help improve quality, thus the competitiveness of their service. (Ratification of, or arrangements made pursuant to Article 83 <i>bis</i> of the Convention on International Civil Aviation by States would facilitate the achievement of this objective).

SLOT ALLOCATION

<i>Potential preferential measures</i>	<i>Comments</i>
H. At airports where demand for slots exceeds supply, preference could be accorded to air carriers from developing countries in two ways with respect to the use of airport slots: <ol style="list-style-type: none"> 1) to give priority to their requests when new slots are made available by increases in airport capacity or when slots are made available as a result of a “use-or-lose” rule; 2) where a “use-or-lose” rule applies, to apply a less rigorous “use-or-lose” criterion for slots presently held by air carriers of developing countries. 	The existing IATA scheduling committees for slot allocation continue to provide a viable way to deal with slot allocation problems at congested airports. However, since most carriers of developing countries have a smaller fleet and usually operate with less frequency than their counterparts from the developed States, certain preference accorded to them would help alleviate potential difficulties in scheduling their operations, thus assist the participation objective. The European Union has introduced regulation in respect of slot allocation, under which, <i>inter alia</i> , a certain percentage of the newly available slots must be allocated to new entrant carriers. In a similar situation, the request of a developing country carrier, particularly for slots required for starting a new service, could be given similar treatment as that accorded to new entrant carriers in the group.

“DOING BUSINESS” MATTERS

<i>Potential preferential measures</i>	<i>Comments</i>
<p>I. Developing countries could be allowed longer time periods for the introduction of liberalization in some “doing business” areas such as ground handling, currency conversion and remittance, employment of nationals and computer reservation systems (e.g. measures similar to Article 12. c) of the ICAO CRS Code of Conduct).</p>	<p>Most of the regulatory arrangements with respect to “doing business” matters recommended by the Air Transport Conference were designed as responses to specific situations to ensure a fair competitive environment for all airlines. In certain situations developing countries may have the need for the use of local work force in ground handling service, foreign exchange control, protection of job opportunities in airline industry and safeguards for opening up CRS markets. However, in light of the objectives of the Conference arrangements on “doing business” matters care would need to be exercised so that exceptions from those arrangements, in the form of preferential measures, do not result in unfair treatment of other air carriers. With respect to CRS, it should be noted that withholding the introduction of other CRSs not only could restrict the market but also limit the opportunities of developing country air carriers to compete in growing third country markets.</p>

Appendix 4

Conclusions, Model Clauses and Recommendations of the Fifth Worldwide Air Transport Conference

The fifth Worldwide Air Transport Conference (ATConf/5), held in Montreal from 24 to 28 March 2003, on the theme of “Challenges and Opportunities of Liberalization” considered a range of regulatory issues in the liberalization process. The essence of the Conference results is reflected in a package of Conclusions, Model Clauses, Recommendations and a Declaration of Global Principles for the Liberalization of International Air Transport, which were all adopted by consensus. These results provide a broad policy framework and practical guidance for safeguarded economic liberalization, which States may use at their discretion and in a flexible manner. The Council reviewed the results of the ATConf/5 in June 2003 and decided that they be disseminated to States for guidance and appropriate action (State Letter SC 5/1-03/71 dated 25 July 2003).

Presented below are the Conclusions, Model clauses and Recommendations produced by the Conference under their respective agenda items. The context in which they were adopted can be found in Doc 9819, *Report of the Worldwide Air Transport Conference*. The model clauses have been incorporated in the Template Air Services Agreements (presented in Appendix 5). The Declaration of the Conference is presented separately in Part 1, Section E of this document.

Agenda Item 1.1: Background to and experience of liberalization

CONCLUSIONS

From the documentation and ensuing discussion on background to and experience of liberalization under Agenda Item 1.1, the Conference concluded that:

- a) a case study approach to liberalization experiences, while of necessity limited in scope, provides a suitable vehicle for the analysis and dissemination of information on such experiences of States at national, sub-regional, regional or plurilateral level. Case studies on liberalization may assist States to further develop their liberalization approaches and policy options;
- b) ICAO should continue to develop and disseminate by appropriate means case studies and information on liberalization experiences. States should be urged to submit such information to ICAO for general dissemination;
- c) for more than a decade, airlines, airports and air navigation service providers have become more commercialized in an increasingly competitive environment. The dynamic development of commercialization and the spread of liberalization will continue to interact and have implications on each other;
- d) while airlines and providers of airport and air navigation services are interdependent, their commercialization and privatization in a liberalized environment has a number of competitive consequences and financial

implications for both sides. Long-term cooperation between airlines and service providers is one means to bring stability in that environment. Furthermore, the use of consultation should be an essential part of their relationship;

- e) States should evaluate in advance and anticipate, to the extent possible, certain effects of the increase in traffic on the infrastructure and the environment that may result from the air transport liberalization process; and
- f) liberalization may have various implications for labour, which should continue to participate as an important stakeholder for the development of the air transport industry. States should observe and respect the ILO *Declaration on Fundamental Principles and Rights at Work*¹, and take the necessary measures to promote social dialogue with the active participation of labour as a way to find innovative and socially responsible solutions.

Agenda Item 1.2: Safety and security aspects of liberalization

CONCLUSIONS

From the documentation and ensuing discussion on safety and security aspects of liberalization under Agenda Item 1.2, the Conference concluded that:

- 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 on Contracting States for compliance with standards and practices related to safety and security. 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 should also 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. Regardless of the form of economic regulatory arrangements, there should be a clear point of contact for the safety and security oversight responsibility in a clearly identified Contracting State or other regulatory authority designated by that State for any given aircraft operation;
- 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 and all other stakeholders in civil aviation;

1. Secretariat note.— The texts of the ILO *Declaration on Fundamental Principles and Rights at Work* are available on the ILO website at: <http://www.ilo.org/public/english/standards/decl/declaration/index.htm>

- e) bearing in mind the limited human and financial resources available in many developing countries required to ensure safety and security when liberalizing, all avenues, including contributions to the ICAO aviation security mechanism, the ICAO technical cooperation programme, the International Financial Facility for Aviation Safety (IFFAS) and the support of other complementary regional and international arrangements (including COSCAP and similar cooperative development projects), should be utilized to assist these States to improve safety and security oversight and rectify deficiencies identified by the ICAO safety and security audits; and
- f) ICAO should conduct a study with a view to clarifying the definition of the State or States responsible for safety and security oversight, and possibly to recommend amendments to the existing ICAO regulatory provisions in this area.

Agenda Item 2.1: Air Carrier ownership and control

CONCLUSIONS

From the documentation and ensuing discussion on air carrier ownership and control under Agenda Item 2.1, the Conference concluded that:

- a) growing and widespread liberalization, privatization and globalization call for regulatory modernization in respect of conditions for air carrier designation and authorization in order to enable carriers to adapt to the dynamic environment. While there are concerns to be addressed, there could also be benefits in liberalizing air carrier ownership and control provisions. Past experience of liberalization in ownership and control has demonstrated that it can take place without conflicting with the obligations of the parties under the Chicago Convention and without undermining the nature of international air transport;
- b) there is widespread support by States for liberalization, in some form, of provisions governing air carrier designation and authorization. Particular approaches vary widely from substantial broadening of provisions beyond national ownership and control in the near term, through gradual reduction of specified proportions of national ownership, to limited change for the time being regarding certain types of operations (for example non-scheduled or cargo), application within certain geographic regions, or simply case by-case consideration;
- c) there is a consequential need for flexibility in associated regulatory arrangements to enable all States to follow the approach of their own choice at their own pace while accommodating the approaches chosen by others;
- d) whatever the form and pace of liberalization, conditions for air carrier designation and authorization should ensure that safety and security remain paramount, and that clear lines of responsibility and accountability for safety and security are established for the parties involved in liberalized arrangements;
- e) in liberalizing the conditions for air carrier designation and authorization, States should ensure that the economic and social impact, including the concerns of labour, are properly addressed, and that other potential risks associated with foreign investments (such as flight of capital, uncertainty for assurance of service) are fully taken into account;
- f) the regulatory arrangement in paragraph 2.1.3.2 below provides a practical option for States wishing to liberalize provisions regarding air carrier designation and authorization in their air services agreements. Complementing other options already developed by ICAO (including that of "community of interest"), it would facilitate and contribute to the pursuit by States of the general goal of progressive regulatory liberalization. While it is up to each State to choose its liberalization approach and direction based on

national interest, the use of the arrangement could be a catalyst for broader liberalization. However, use of the arrangement by a State would not necessitate that State changing its existing laws or regulations pertaining to national ownership and control for its own carriers;

- g) given the flexibility already existing in the framework of air services agreements, States may, in the short term and at their discretion, take more positive approaches (including coordinated action) to facilitating liberalization by accepting designated foreign air carriers that might not meet the traditional national ownership and control criteria or the criteria of principle place of business and effective regulatory control;
- h) States may choose to liberalize air carrier ownership and control on a unilateral, bilateral, regional, plurilateral or multilateral basis; and
- i) ICAO has played, and should continue to play, a leading role in facilitating liberalization in this area, should promote the Organization's guidance, keep developments under review and study further, as necessary, the underlying issues in the broader context of progressive liberalization.

Without prejudice to the specificities of regional agreements, the Conference agreed that States should give consideration to the following model clause as an option for use at their discretion in air services agreements.

“Article X: Designation and Authorization

1. *Each Party shall have the right to designate in writing to the other Party [an airline] [one or more airlines] [as many airlines as it wishes] to operate the agreed services [in accordance with this Agreement] and to withdraw or alter such designation.*
2. *On receipt of such a designation, and of application from the designated airline, in the form and manner prescribed for operating authorization [and technical permission,] each Party shall grant the appropriate operating authorization with minimum procedural delay, provided that:*
 - a) *the designated airline has its principal place of business* [and permanent residence] in the territory of the designating Party;*
 - b) *the Party designating the airline has and maintains effective regulatory control** of the airline;*
 - c) *the Party designating the airline is in compliance with the provisions set forth in Article __ (Safety) and Article __ (Aviation security); and*
 - d) *the designated airline is qualified to meet other conditions prescribed under the laws and regulations normally applied to the operation of international air transport services by the Party receiving the designation.*
3. *On receipt of the operating authorization of paragraph 2, a designated airline may at any time begin to operate the agreed services for which it is so designated, provided that the airline complies with the applicable provisions of this Agreement.*

Integral Notes:

- (i) **evidence of principal place of business is predicated upon: the airline is established and incorporated in the territory of the designating Party in accordance with relevant national laws and regulations, has a substantial amount of its operations and capital investment in physical facilities in the territory of the designating Party, pays income tax, registers and bases its aircraft there, and employs a significant number of nationals in managerial, technical and operational positions.*

evidence of effective regulatory control is predicated upon but is not limited to: the airline holds a valid operating licence or permit issued by the licensing authority such as an Air Operator Certificate (AOC), meets the criteria of the designating Party for the operation of international air services, such as proof of financial health, ability to meet public interest requirement, obligations for assurance of service; and the designating Party has and maintains safety and security oversight programmes in compliance with ICAO standards.

- (ii) *The conditions set forth in paragraph 2 of this Article should also be used in the Article __ (Revocation of authorization)."*

RECOMMENDATION

RECOMMENDATION 1 — LIBERALIZATION OF AIR CARRIER OWNERSHIP AND CONTROL

THE CONFERENCE RECOMMENDS THAT:

- a) air carrier designation and authorization for market access should be liberalized at each State's pace and discretion progressively, flexibly and with effective regulatory control in particular regarding safety and security;
- b) States, when dealing with air carrier designation and authorization in their international air transport relationships, use as an option at their discretion and in a flexible manner, the alternative criterion in the model clause;
- c) States may at their discretion take positive approaches (including coordinated action) to facilitate liberalization by accepting designated foreign air carriers that might not meet the traditional national ownership and control criteria or the criteria of principle place of business and effective regulatory control. States that wish to liberalize the conditions under which they accept designation of a foreign air carrier in cases where that air carrier does not meet the ownership and control provisions of the relevant air services agreements, may do so by:
 - i) issuing individual statements of their policies for accepting designations of foreign air carriers;
 - ii) issuing joint statements of common policy; and/or
 - iii) developing a binding legal instrument;while assuring whenever possible that these policies are developed in accordance with the principles of non-discrimination and non-exclusive participation;
- d) the State designating the air carrier provides or ensures the provision of adequate oversight of safety and security for the designated air carrier, in accordance with standards established by ICAO;
- e) States notify ICAO of their policies, positions and practices including retention of the traditional criteria, and individual or joint statements of common policy, on the conditions under which they accept the designation of an air carrier pursuant to an air services agreement;
- f) ICAO maintain and make public information on States' policies, positions or practices on air carrier ownership and control;
- g) ICAO assist States or groups of States requesting development and further refinement of the option in paragraph c); and

- h) ICAO continue to monitor developments in the liberalization of air carrier ownership and control, and address related issues as required.

Agenda Item 2.2: Market access

PART 1. LIBERALIZATION OF MARKET ACCESS

CONCLUSIONS

From the documentation and ensuing discussion on the liberalization of market access under Agenda Item 2.2, the Conference concluded that:

- a) since the Worldwide Air Transport Conference (ATConf/4) in 1994, considerable progress has been made in liberalization of market access, particularly at the bilateral, subregional and regional levels. More importantly, States have generally become more open and receptive towards liberalization, with many adjusting their policies and practices to meet the challenges of liberalization;
- b) experience in the past decade has confirmed that the existing bilateral, regional and multilateral regulatory regimes based on the Chicago Convention can and do coexist, and can each accommodate different approaches to air transport regulation. These regimes continue to provide a viable and flexible platform for States in pursuing liberalization according to their specific needs, objectives and circumstances. The number of “open skies” and other liberal agreements are evidence that these regimes have been very effective in increasing liberalization, and the momentum should be maintained;
- c) the International Air Services Transit Agreement (IASTA) is important for liberalization and the operation of international air services. States should therefore be urged to pursue, and ICAO continue to promote, universal adherence to and implementation of the IASTA;
- d) applying the basic GATS principle of most favoured nation (MFN) treatment to traffic rights remains a complex and difficult issue. While there is some support to extend the GATS Annex on Air Transport Services to include some so called “soft rights” as well as some aspects of “hard rights”, there is no global consensus on whether or how this would be pursued. It is also inconclusive at this stage as to whether the GATS is an effective option for air transport liberalization;
- e) while multilateralism in commercial rights to the greatest extent possible continues to be an objective of ICAO, conditions are not ripe at this stage for a global multilateral agreement for the exchange of traffic rights. States should continue to pursue liberalization in this regard at their own choice and own pace, using bilateral, regional and/or multilateral avenues as appropriate. The ICAO Template Air Services Agreements (TASAs) provide detailed guidance on liberalization options and approaches;
- f) airport congestion has not thus far been a significant constraint on the conclusion by States of liberalized air services agreements. However, in liberalizing market access, due consideration should be given to airport capacity constraints and long-term infrastructure needs. Problems involving air carriers which are unable to exercise their entitled traffic rights at a capacity constrained airport may, if necessary, be addressed in the context of discussions on the relevant air services agreements. In this regard, sympathetic consideration should be given to the request for preferential treatment from those States whose airports are not slot constrained but whose air carriers are unsuccessful in obtaining slots at slot constrained airports, consistent with relevant national legislation and international obligations;
- g) any slot allocation system should be fair, non-discriminatory and transparent, and should take into account the interests of all stakeholders. It should also be globally compatible, aimed at maximizing effective use of airport capacity, simple, practicable and economically sustainable; and

- h) ICAO should continue to monitor closely regulatory and industry developments, develop an inventory of States' practical experience with liberalization and disseminate relevant information to Contracting States. ICAO should also continue to keep current the existing guidance material on the economic regulation of international air transport and develop new guidance, as necessary, to facilitate liberalization and improve harmonization, for example, through the TASAs.

PART 2. AIRCRAFT LEASING

CONCLUSIONS

From the documentation and ensuing discussion on aircraft leasing under Agenda Item 2.2, the Conference concluded that:

- a) leasing (both wet and dry) offers considerable benefits to air carriers, enables expanded and more flexible air services and provides opportunities for the establishment of new carriers. However, it also raises economic and safety regulatory issues which need to be addressed;
- b) States should, where necessary, review their regulatory responses to the use of leased aircraft in international services to and from their territory, and should ensure clear responsibility for safety oversight and compliance with minimum 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 on the Implementation of Article 83 bis of the Convention on International Civil Aviation* (Circular 295, 2003) may be used; and
- c) ICAO should make available to Contracting States, as an option for use at their discretion, the model clause on leasing proposed by the Secretariat after amendment and the addition of explanatory notes to:
 - i) clarify the meaning of "appropriate authority";
 - ii) make a clear distinction with respect to "wet" leased and "dry" leased aircraft; and
 - iii) take into account short-term, *ad hoc* wet-leases.

PART 3. AIR CARGO

CONCLUSIONS

From the documentation and ensuing discussion on air cargo under Agenda Item 2.2, the Conference concluded that:

- a) air cargo, and in particular all cargo operations, should be considered for accelerated liberalization and regulatory reform in view of its distinct features, the nature of the air cargo industry and the potential trade and economic development benefits possible from such reform;
- b) States should consider the possibility of liberalizing all cargo services using one or more of the following:
 - i) unilateral liberalization of market access for all cargo services without bilateral reciprocity or negotiation;
 - ii) liberalizing all cargo services through bilateral agreements and negotiations to ensure reciprocity; and
 - iii) using a multilateral/plurilateral approach for the liberalization of all cargo services.

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

ANNEX ON AIR CARGO SERVICES

The Parties agree that:

1. *Every designated airline when engaged in the international transport of air cargo:*
 - a) *shall be accorded non-discriminatory treatment with respect to access to facilities for cargo clearance, handling, storage, and facilitation;*
 - b) *subject to local laws and regulations may use and/or operate directly other modes of transport;*
 - c) *may use leased aircraft, provided that such operation complies with the equivalent safety and security standards applied to other aircraft of designated airlines;*
 - d) *may enter into cooperative arrangements with other air carriers including, but not limited to, codesharing, blocked spaced, and interlining; and*
 - e) *may determine its own cargo tariffs which may be required to be filed with the aeronautical authorities of either (any) Party.*
2. *In addition to the rights in paragraph 1 above, every designated airline when engaged in all cargo transportation as scheduled or non-scheduled services may provide such services to and from the territory of each (any) Party, without restriction as to frequency, capacity, routing, type of aircraft, and origin or destination of cargo.*

Agenda Item 2.3: Fair competition and safeguards

PART 1. SAFEGUARDS TO ENSURE FAIR COMPETITION

CONCLUSIONS

From the documentation and the ensuing discussion on safeguards to ensure fair competition under Agenda Item 2.3, the Conference concluded that:

- a) liberalization must be accompanied by appropriate safeguard measures to ensure fair competition, and effective and sustained participation of all States. Such measures should be an integral part of the liberalization process and a living tool corresponding to the needs and stages of liberalization. Such measures may include progressive introduction of liberalization, general competition laws, and/or aviation-specific safeguards;
- b) while general competition laws may be an effective tool in many cases, given the differences in competition regimes, the differing stages of liberalization among States and the distinct regulatory framework for international air transport, there may be a need for aviation-specific safeguards to prevent and eliminate unfair competition in international air transport. This may be done by means of an agreed set of anti-competitive practices which can be used, and if necessary modified or added to, by States as indications to trigger necessary regulatory action;

- c) in cases where national competition laws are applied to international air transport, care should be taken to avoid unilateral action. In dealing with competition issues involving foreign air carriers, States should give due consideration to the concerns of other States involved. In this context, cooperation between or among States, especially between or among competition authorities, and between such authorities and aviation authorities, has proved useful in facilitating liberalization and avoiding conflicts;
- d) harmonization of different competition regimes continues to be a major challenge. In cases where disputes arise from the use of aviation-specific safeguards or the application of competition laws, States should seek to resolve their disputes through the consultation and dispute settlement mechanisms available under relevant air services agreements, and in the case of the latter, by making use of the existing ICAO guidance on competition laws contained in *Policy and Guidance Material on the Economic Regulation of International Air Transport* (Doc 9587);
- e) the extraterritorial application of national competition laws can affect cooperative arrangements regarded by many as essential for the efficiency, regularity and viability of international air transport, certain forms of which benefit both users and air carriers alike. Consequently, where antitrust or competition laws apply to such arrangements, decisions should take into account the need for inter-carrier cooperation, including interlining, to continue where they benefit users and air carriers; and
- f) ICAO should continue to monitor developments in this area, and update its guidance material on competition and safeguards, where necessary and in light of the evolution of liberalization.

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

“Safeguards against anti-competitive practices

1. *The Parties agree that the following airline practices may be regarded as possible unfair competitive practices which may merit closer examination:*
 - a) *charging fares and rates on routes at levels which are, in the aggregate, insufficient to cover the costs of providing the services to which they relate;*
 - b) *the addition of excessive capacity or frequency of service;*
 - c) *the practices in question are sustained rather than temporary;*
 - d) *the practices in question have a serious negative economic effect on, or cause significant damage to, another airline;*
 - e) *the practices in question reflect an apparent intent or have the probable effect, of crippling, excluding or driving another airline from the market; and*
 - f) *behaviour indicating an abuse of dominant position on the route.*
2. *If the aeronautical authorities of one Party consider that an operation or operations intended or conducted by the designated airline of the other Party may constitute unfair competitive behaviour in accordance with the indicators listed in paragraph 1, they may request consultation in accordance with Article ___ (Consultation) with a view to resolving the problem. Any such request shall be accompanied by notice of the reasons for the request, and the consultation shall begin within 15 days of the request.*
3. *If the Parties fail to reach a resolution of the problem through consultations, either Party may invoke the dispute resolution mechanism under Article ___ (Settlement of disputes) to resolve the dispute.”*

PART 2. SUSTAINABILITY AND PARTICIPATION**CONCLUSIONS**

From the documentation and ensuing discussion on sustainability and participation under Agenda Item 2.3, the Conference concluded that:

- a) in a situation of transition to liberalization or even in an already-liberalized market, States may wish to continue providing some form of assistance to their airlines in order to ensure sustainability of the air transport industry and to address their legitimate concerns relating to assurance of services. However, States should bear in mind that provision of State aids/subsidies which confer benefits on national air carriers but are not available to competitors in the same market may distort trade in international air services and may constitute unfair competitive practices;
- b) because of the lack of an acceptable quantification method and the existence of various non-monetary measures, it is very difficult to estimate accurately the full scale of State assistance and the impact of specific State assistance on competition. Given this difficulty, States should recognize that any actions against foreign airlines which receive State aids/subsidies might lead to retaliatory action by the affected State and hamper the ongoing liberalization of international air transport;
- c) there may be some instances where State assistance can produce economic and/or social benefits in terms of restructuring of air carriers and assurance of services. Even in such special cases, however, States should take transparent and effective measures accompanied by clear criteria and methodology to ensure that aids/subsidies do not adversely impact on competition in the marketplace;
- d) States should consider the possibility of identifying and permitting assistance for essential service on specified routes of a public service nature in their air transport relationships; and
- e) to ensure the effective and sustained participation of developing countries and to facilitate the liberalization process, States should take into consideration in their air transport relationships the interests and needs of States with less-competitive air carriers and, wherever appropriate, grant preferential and participation measures. Such measures may be incorporated in the "Transition Annex" in their air services agreements.

The Conference agreed that States should give consideration to the following regulatory arrangement, in the form of a framework for a "Transition Annex" together with explanatory notes as an option for use at their discretion in air services agreements:

TRANSITION ANNEX*

The following transitional measures shall expire on (date), or such earlier date, as is agreed upon by the Parties:

1. *Notwithstanding the provisions of Article ___ (or Annex ___), the designated airline (or airlines) of Party A (or each Party) may (shall)*
2. *Notwithstanding the provisions of Article ___ (or Annex ___), the designated airline (or airlines) of Party A (or each Party) may (shall) ... as follows:*
 - a) *From (date) through (date), ...; and*
 - b) *From (date) through (date),*
3. *Notwithstanding the provisions of Article ___ (or Annex ___), the following provisions shall govern*

***Explanatory Notes**

- a) The first clause would be used when a particular Article (or Annex) would not take effect immediately but be implemented in a limited way during the transition period. The second clause would be similar to the first clause but with phase-in periods. The third clause would be used when an Article (or Annex) would not take effect immediately and a different scheme would be applied during the transition period; and
- b) The following is an indicative list in the form of a framework for a Transition Annex, for States to use at their discretion in bilateral, regional or plurilateral air services agreements: the number of designated airlines, ownership and control criteria, capacity and frequency, routes and traffic rights, codesharing, charter operations, intermodal services, tariffs, slot allocation and “doing business” matters such as ground handling. The language in the Annex is a framework, into which the Parties would need to agree on the terms and wording. ICAO Doc 9587 contains material on possible participation and preferential measures.

Agenda Item 2.4: Consumer interests**CONCLUSIONS**

From the documentation and ensuing discussion on consumer interests under Agenda Item 2.4, the Conference concluded that:

- a) as a premise in addressing consumer interests issues, States need to carefully examine what elements of consumer interests in service quality have adequately been dealt with by the current commercial practices of airlines (and service providers if applicable) and what elements need to be handled by the regulatory and/or voluntary commitment approaches²;
- b) States need to strike the right balance between voluntary commitments and regulatory measures, whenever the government intervention is considered necessary to improve service quality. States should rely generally and initially on voluntary commitments undertaken by airlines (and service providers), and when voluntary commitments are not sufficient, consider regulatory measures;
- c) in implementing new regulatory measures, States should minimize the unnecessary differences in the content and application of regulations. Efforts to minimize differences would avoid any potential legal uncertainty that could arise from the extra-territorial application of national laws, without diminishing the scope for competition and hampering the operating standards and procedures for interlining; and
- d) ICAO should continue to monitor developments regarding voluntary commitments to and government regulation of consumer interests with a view to providing useful information to States to assist in the harmonization process. Such monitoring should, in due course, enable ICAO to decide whether some form of action at multilateral level, such as the eventual development of a global code of conduct, is feasible or necessary to ensure harmonization of regulatory measures.

2. Secretariat note.— The following indicative lists, together with airlines' conditions of contract/carriage, could serve as checklists of many of the consumer interest subjects States may wish to monitor: 1) availabilities of lower fares including fares at Web site; 2) reservation, ticketing and refund rules; 3) advertisements; 4) airline's commercial and operational conditions; 5) check-in procedures; 6) handling of and compensation for flight delays, cancellation and denied boarding; 7) baggage handling and liability; 8) operational performance disclosure such as on-time performance and complaints; and 9) assistance for the disabled and special-needs passengers (i.e. people with reduced mobility). The revised ICAO Doc 9626 will refer to these subjects.

Agenda Item 2.5: Product distribution**CONCLUSIONS**

From the documentation and ensuing discussion on product distribution under Agenda Item 2.5, the Conference concluded that:

- a) the principles of ICAO Code of Conduct for the Regulation and Operation of Computer Reservation Systems (CRSs) should be considered as the reference framework for the regulation of CRSs in Contracting States or any other code of conduct of a regional nature. States should bear in mind that amendments of such regulations or codes of conduct do not undermine the principles of transparency, accessibility and non-discrimination;
- b) while there exist several instances where the ICAO CRS Code has no applicable provisions as a result of industry or regulatory changes, the scope of application of the ICAO CRS Code already potentially applies to the Internet, and States may take this up at their discretion according to their particular circumstances;
- c) States should consider the need to ensure that Internet-based systems provide consumers with comprehensive and non-deceptive information and airlines with a comparable opportunity to use these new systems as they have with conventional global CRSs, where necessary; and
- d) although it is not yet clear whether new regulations covering airline product distribution through the Internet should be adopted, some States have been actively examining this issue under the existing CRS rules/regulations, consumer protection laws and competition laws. ICAO should continue monitoring developments closely and disseminating information on this issue, and keep the effectiveness of the ICAO CRS Code under review.

Agenda Item 2.6: Dispute resolution**CONCLUSIONS**

From the documentation and ensuing discussion on dispute resolution under Agenda Item 2.6, 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.

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

“Article X: Settlement of disputes

...

- 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.*
- 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 otherwise agreed. 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 reapportionment 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 ___”*

Agenda Item 2.7: Transparency**CONCLUSIONS**

From the documentation and ensuing discussion on transparency under Agenda Item 2.7, 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 Chicago 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; and
- iii) States should consider making better use of electronic means of disseminating information, such as government websites for publicly available information on the status of their air transport liberalization as well as for posting information on the texts of relevant air services arrangements;
- 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; and
- d) transparency should also be pursued within national and regional regulatory frameworks and States should be invited to adopt and apply transparency principles, such as those laid out in the APEC Transparency Standards³, for national and regional regulatory actions relating to international civil aviation.

The Conference agreed that States should give 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]."

Agenda Item 3.1: Review of template air services agreement (TASA)

CONCLUSIONS

From the documentation and ensuing discussion on review of template air services agreement under Agenda Item 3.1, the Conference concluded that:

- a) in actively promoting its role in developing policy guidance for States on the economic regulation of international air transport, ICAO's development of the Template Air Services Agreements (TASAs) is intended to facilitate the liberalization process;
- b) the TASAs provide practical source documents for liberalization for States to use at their discretion in their air services relationships as well as in the development of their approaches and options in liberalization, serving as a useful tool in the liberalization process. The TASAs are "living documents" that should continue to be developed, particularly regarding additional material as to their application, in order to provide comprehensive guidance to States to facilitate liberalization and improve the harmonization of air services agreements in terms of language and approach;
- c) States should be encouraged to use the TASAs in their bilateral, regional or plurilateral relationships and to provide feedback to ICAO on the use of the TASAs; and

3. Secretariat note.— The text of the APEC Transparency Standards are available on the APEC website at: http://www.apecsec.org.sg/virtualib/econlead/10th_Leaders__Dec__ImplTranspStand.html

- d) ICAO should continue to monitor closely the regulatory experiences of States and regions in liberalization and in the use of the TASAs. It should disseminate to States relevant information on these developments and provide assistance on the use and application of the TASAs.

Agenda Item 4.1: Mechanisms to facilitate further liberalization

CONCLUSIONS

From the documentation and ensuing discussion on mechanisms to facilitate further liberalization under Agenda Item 4.1, the Conference concluded that:

- 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 refocussed 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; and
- 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 harmonize 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.

RECOMMENDATION

RECOMMENDATION 2 — ICAO'S FUTURE ROLE INCLUDING RELATIONS WITH THE WORLD TRADE ORGANIZATION

THE CONFERENCE RECOMMENDS THAT:

- a) ICAO's future role on economic regulation should focus on the development of policy guidance for economic liberalization which permits States to choose their own path and pace and ensures the safety and security of international air transport. This role should also include the facilitation, promotion and provision of assistance to States in harnessing liberalization for their broader benefit; and
 - 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.
-

Appendix 5

ICAO Template Air Services Agreements

This Appendix contains the texts of the bilateral and regional/plurilateral versions of the ICAO Template Air Services Agreements (TASAs). The TASAs are comprehensive framework air services agreements which include draft provisions on traditional, transitional and most liberal approaches, including optional wording, to the various elements in an air services agreement. The wording is based on model clauses or language developed by ICAO over the years on various air services agreement articles such as capacity, tariffs, competition laws, “doing business” and safety and aviation security provisions. The other source for the language in the provisions of the TASA is the practice and usage of States in their agreements; the text for most of the provisions therefore represents a distillation of the most common and current usage by States in this field.

The format of the TASA is arranged in two columns. The left column sets out the actual text of an Article or Annex in the agreement, including, if applicable, the different options and approaches (traditional, transitional and full liberalization). The various options (such as an alternative wording or provision within an article) provided within any approach, in particular the transitional approach, are not presented in any order of progression or priority. The right column includes the Explanatory Notes that are either specific to the provision or to the article in general and which provide information on the use of a particular approach. Most of the bilateral provisions have been adapted for regional or plurilateral use by a change of wording. However, the regional/plurilateral version includes also a number of Articles that contain issues only relevant in a regional or plurilateral context, for example, Article 36 (Exceptions).

The 2003 fifth Worldwide Air Transport Conference (ATConf/5) gave widespread support for the concept and contents of the TASA, its optional use by States in their air services relationships and its further development over time by ICAO as “living documents”. This ability to choose different approaches for different provisions in a TASA would allow States to shape agreements which best fit their own pace and path for changes in market access and other aspects of liberalization. In addition, it could help them identify potential areas and formulae for liberalization by comparing their existing agreements with the TASA. This template will continue to be developed, particularly regarding additional material as to its application, in order to provide comprehensive guidance to States to facilitate liberalization and improve the harmonization of air services agreements in terms of language and approach.

As ICAO guidance material, the TASAs are also made available in CD-ROM form, which includes a basic search engine to facilitate usage as well as each of the traditional, transitional and full liberalization approaches, in English, of the bilateral TASA in MS Word format. This will enable users to download and tailor the wording and options in the TASA to their specific needs and circumstances, particularly when preparing for air service agreements negotiations or developing their own liberalization approaches. The CD-ROM may be ordered (Order No. CD-104) through the ICAO Customer Services Unit (Telephone: +1 514-954-8022; Fax: +1 514-954-6769; E-mail: sales@icao.int).

Throughout this Appendix on Template Air Services Agreements (TASAs):

- 1) an asterisk is used to indicate that a specific provision within an article is common to each of the traditional, transitional and full liberalization approaches. No asterisk appears if the whole article applies to all three approaches. However in some articles, such as “Designation and authorization”, the provision is reproduced in full for each approach for purposes of readability and clarity of the Article;*
- 2) in an article which provides for more than one approach, i.e. traditional, transitional, full liberalization, the same sequential order of presentation is maintained down the page, for ease of readability;*
- 3) similarly, where there are options within an approach (for example, two options within the transitional approach) these are also provided separately, but not in any order of priority.*

BILATERAL TEMPLATE AIR SERVICES AGREEMENT

Table of Contents

	<i>Page</i>
Preamble	A5-4
Article 1 Definitions	A5-5
Article 2 Grant of rights	A5-6
Article 3 Designation and authorization	A5-7
Article 4 Withholding, revocation and limitation of authorization	A5-10
Article 5 Application of laws	A5-12
Article 6 Direct transit	A5-13
Article 7 Recognition of certificates	A5-13
Article 8 Safety	A5-14
Article 9 Aviation security	A5-15
Article 10 Security of travel documents	A5-16
Article 11 Inadmissible and undocumented passengers and deportees	A5-17
Article 12 User charges	A5-17
Article 13 Custom duties	A5-19
Article 14 Taxation	A5-20
Article 15 Fair competition	A5-21
Article 16 Capacity	A5-21
Article 17 Pricing (Tariffs)	A5-24
Article 18 Safeguards	A5-30
Article 19 Competition laws	A5-31
Article 20 Currency conversion and remittance of earnings	A5-32
Article 21 Sale and marketing of air service products	A5-32
Article 22 Non-national personnel and access to local services	A5-33
Article 23 Change of gauge	A5-34
Article 24 Ground handling	A5-36
Article 25 Codesharing/Cooperative arrangements	A5-38
Article 26 Leasing	A5-40
Article 27 Intermodal services	A5-43
Article 28 Computer reservations systems (CRSs)	A5-44
Article 29 Ban on smoking	A5-45
Article 30 Environmental protection	A5-45
Article 31 Statistics	A5-45
Article 32 Approval of schedules	A5-46
Article 33 Consultations	A5-46
Article 34 Settlement of disputes	A5-47
Article 35 Amendments	A5-52
Article 36 Multilateral agreements	A5-53
Article 37 Termination	A5-53
Article 38 Registration with ICAO	A5-53
Article 39 Entry into force	A5-54
Annex I Route schedules	A5-54
Annex II Non-scheduled/Charter operations	A5-57
Annex III Air cargo services	A5-60
Annex IV Transitional measures	A5-61
Annex V Essential Service and Tourism Development Routes	A5-62

Preamble	Explanatory Notes
<p style="text-align: center;">[Option 1 of 2]</p> <p>The Government of and the Government of hereinafter referred to as the "Parties";</p> <p>Being parties to the <i>Convention on International Civil Aviation</i>, opened for signature at Chicago on 7 December 1944;</p> <p>Desiring to contribute to the progress of international civil aviation;</p> <p>Desiring to conclude an agreement for the purpose of establishing and operating air services between and beyond their respective territories;</p> <p>Have agreed as follows:</p> <p style="text-align: center;">[Option 2 of 2]</p> <p>The Government of and the Government of (hereinafter, "the Parties");</p> <p>Being Parties to the <i>Convention on International Civil Aviation</i>, opened for signature at Chicago on 7 December, 1944;</p> <p>Desiring to promote an international aviation system based on competition among airlines in the marketplace with minimum government interference and regulation;</p> <p>Desiring to facilitate the expansion of international air services opportunities;</p> <p>Recognizing that efficient and competitive international air services enhance trade, the welfare of consumers, and economic growth;</p> <p>Desiring to make it possible for airlines to offer the travelling and shipping public a variety of service options [at the lowest prices that are not discriminatory and do not represent abuse of a dominant position], and wishing to encourage individual airlines to develop and implement innovative and competitive prices; and</p> <p>Desiring to ensure the highest degree of safety and security in international air services and reaffirming their grave concern about acts or threats against the security of aircraft, which jeopardize the safety of persons or property, adversely affect the operation of air services, and undermine public confidence in the safety of civil aviation.</p> <p>Have agreed as follows:</p>	<p><i>The initial part of the agreement presents the reason for entering into the agreement and declares that they have agreed to what will follow in subsequent parts of the agreement.</i></p> <p><i>This approach is common in more liberal agreements and the bracketed text is common to "open skies" agreements.</i></p>

Article 1 Definitions	Explanatory Notes
<p>For the purposes of this Agreement, unless otherwise stated, the term:</p> <p>a) "air transportation" means the public carriage by aircraft of passengers, baggage, cargo and mail, separately or in combination, for remuneration or hire;</p> <p>b) "aeronautical authorities" means, in the case of __ the __; in the case of __ the __; or in both cases any other authority or person empowered to perform the functions now exercised by the said authorities;</p> <p>c) "Agreement" means this Agreement, its Annex, and any amendments thereto;</p> <p>d) "capacity" is the amount(s) of services provided under the agreement, usually measured in the number of flights (frequencies) or seats or tons of cargo offered in a market (city pair, or country-to-country) or on a route during a specific period, such as daily, weekly, seasonally or annually;</p> <p>e) "Convention" means the <i>Convention on International Civil Aviation</i> opened for signature at Chicago on the seventh day of December, 1944, and includes any Annex adopted under Article 90 of that Convention, and any amendment of the Annexes or Convention under Articles 90 and 94, insofar as such Annexes and amendments have become effective for both Parties;</p> <p>f) "designated airline" means an airline which has been designated and authorized in accordance with Article __ of this Agreement;</p> <p>g) "domestic air transportation" is air transportation in which passengers, baggage, cargo and mail which are taken on board in a States territory are destined to another point in that same State's territory;</p> <p>h) "ICAO" means the International Civil Aviation Organization;</p> <p>i) "intermodal air transportation" means the public carriage by aircraft and by one or more surface modes of transport of passengers, baggage, cargo and mail, separately or in combination, for remuneration or hire;</p> <p>j) "international air transportation" is air transportation in which the passengers, baggage, cargo and mail which are taken on board in the territory of one State are destined to another State;</p> <p>k) "Party" is a State which has formally agreed to be bound by this agreement;</p> <p>l) ["price"] or ["tariff"] means any fare, rate or charge for the carriage of passengers, baggage and/or cargo (excluding mail) in air transportation (including any other mode of transportation in connection therewith) charged by airlines, including their agents, and the conditions governing the availability of such fare, rate or charge;</p>	<p><i>While the Parties to an air services agreement may choose to define any number of terms used in their agreement, for the purposes of clarity or in the event of any possible ambiguity, the foregoing are the terms that may be commonly found in a Definitions article.</i></p> <p><i>For "aeronautical authorities" the required insertions will depend on the prevailing administrative structures and arrangements in place in each Party.</i></p> <p><i>Although the broader and more modern term "price" is used rather than "tariff"; the definition is essentially the same for both terms.</i></p>

<p align="center">Article 1 Definitions</p>	<p align="center">Explanatory Notes</p>
<p>m) "territory" in relation to a State [means the land areas and territorial waters adjacent thereto and the airspace above them under the sovereignty of that State] has the meaning assigned to it in Article 2 of the Convention;</p> <p>n) "user charges" means a charge made to airlines by the competent authorities, or permitted by them to be made, for the provision of airport property or facilities or of air navigation facilities, or aviation security facilities or services, including related services and facilities, for aircraft, their crews, passengers and cargo; and</p> <p>o) "air service", "international air service", "airline", and "stop for non-traffic purposes", have the meanings assigned to them in Article 96 of the Convention.</p>	<p><i>For the term "territory" there are two possible ways to define it, one by reference to the definition of that word in Article 2 of the Convention, and the other spelling out the usual meaning attributed to it in international law and practice. Both are presented as alternative language.</i></p>

<p align="center">Article 2 Grant of rights</p>	<p align="center">Explanatory Notes</p>
<p>1.* Each Party grants to the other Party the rights specified in this Agreement for the purpose of operating international air services on the routes specified in the Route Schedule.</p> <p>2.* Subject to the provisions of this Agreement, the airline(s) designated by each Party shall enjoy the following rights:</p> <p>a)* the right to fly without landing across the territory of the other Party;</p> <p>b)* the right to make stops in the territory of the other Party for non-traffic purposes;</p> <div style="border: 1px solid black; width: fit-content; margin: 10px auto; padding: 5px; text-align: center;">Traditional</div> <p>c) the right to make stops at the point(s) on the route(s) specified in the Route Schedule to this Agreement for the purpose of taking on board and discharging international traffic in passengers, cargo and mail [separately or in combination].</p> <div style="border: 1px solid black; width: fit-content; margin: 10px auto; padding: 5px; text-align: center;">Transitional and Full liberalization</div> <p>c) the rights otherwise specified in this Agreement.</p>	<p><i>The Grant of rights provision sets out both the traffic and non-traffic rights the Parties grant to each other and usually needs to be read in conjunction with a schedule or annex that sets out the routes, rights and any applicable conditions.</i></p> <p><i>The foregoing first two Freedoms of the air, although included in multilateral agreements (for scheduled services, the International Air Services Transit Agreement (IASTA); for non-scheduled services, Article 5 of the Convention), are also commonly included in bilateral and regional/plurilateral agreements, either because some States may not be, or may cease to be, parties to the IASTA.</i></p> <p><i>This provision exchanges the other traffic rights on the basis of the Route schedule. It is not necessary to distinguish among the Third, Fourth and Fifth Freedoms in the Grant of rights Article since the Route schedule will establish the routes and points for which the specific Freedoms apply. One phrase "separately or in combination" is bracketed as being optional since its insertion would enable the operation of all-cargo services. However, these could also be the subject of separate treatment and negotiation between the Parties, including specified routes.</i></p> <p><i>Traffic rights in liberal agreements are exchanged using this formulation, in particular, "open skies" agreements. The Route schedule will, by its presentation and wording, establish the various "Freedoms of the air" as well as the routes which may specify points to be exchanged.</i></p>

<p align="center">Article 2 Grant of rights</p>	<p align="center">Explanatory Notes</p>
<p>3.* The airlines of each Party, other than those designated under Article (Designation) of this Agreement, shall also enjoy the rights specified in paragraphs 2 a) and b) of this Article.</p> <div style="border: 1px solid black; width: fit-content; margin: 20px auto; padding: 5px; text-align: center;"> <p>Traditional and Transitional</p> </div> <p>4. Nothing in paragraph 2 shall be deemed to confer on the designated airline(s) of one Party the privilege of taking on board, in the territory of the other Party, passengers, cargo and mail for remuneration and destined for another point in the territory of the other Party.</p>	<p><i>The use of the term “airlines of each Party” includes both airlines which are designated and those which are not.</i></p> <p><i>A standard provision that excludes cabotage operations from the grant of rights. Under full liberalization where cabotage rights have been exchanged, this is usually covered in the context of the Route schedule.</i></p>

<p align="center">Article 3 Designation and authorization</p>	<p align="center">Explanatory Notes</p>
<div style="border: 1px solid black; width: fit-content; margin: 20px auto; padding: 5px; text-align: center;"> <p>Traditional</p> </div> <p>1. Each Party shall have the right to designate in writing to the other Party an airline to operate the agreed services [in accordance with this Agreement] and to withdraw or alter such designation.</p> <p>2.* On receipt of such a designation, and of application from the designated airline, in the form and manner prescribed for operating authorization [and technical permission], each Party shall grant the appropriate operating authorization with minimum procedural delay, provided that:</p> <p>a) substantial ownership and effective control are vested in the Party designating the airline, nationals of that Party, or both;</p>	<p><i>The formulation of the Designation and authorization provision may be simplified by addressing the reasons in paragraph 2 for a State to receive an authorization in the Revocation of authorization Article, since the conditions for not granting an authorization are the same.</i></p> <p><i>The traditional approach refers to one airline or a single designation.</i></p> <p><i>The traditional “substantial ownership and effective control” formula is still used in the majority of bilateral agreements. The phrase is not defined and the authorizing Party is the sole judge of whether the ownership and control criteria have been met. Nevertheless, “substantial ownership” is broadly considered to mean more than 50 per cent equity ownership. On the other hand, States take varying views in their domestic legislation or practice as to what might constitute “effective control”. With the traditional clause, there have been individual instances where the authorizing Party has waived its right to require that the ownership and control criteria be met.</i></p> <p><i>For a Party which receives the designation, it would retain the discretionary right of refusal as a measure of control to address legitimate concerns if and when required. This provision addresses potential concerns such as safety, security or other economic aspects including potential emergence of “flags of convenience”.</i></p>

<p style="text-align: center;">Article 3 Designation and authorization</p>	<p style="text-align: center;">Explanatory Notes</p>
<p>3.* On receipt of the operating authorization of paragraph 2, a designated airline may at any time begin to operate the agreed services for which it is so designated, provided that the airline complies with the applicable provisions of this Agreement.</p> <div style="text-align: center; border: 1px solid black; width: fit-content; margin: 20px auto; padding: 5px;"> <p>Transitional</p> </div> <p>1. Each Party shall have the right to designate in writing to the other Party one or more airlines to operate the agreed services [in accordance with this Agreement] and to withdraw or alter such designation.</p> <p>2. On receipt of such a designation, and of application from the designated airline, in the form and manner prescribed for operating authorization [and technical permission], each Party shall grant the appropriate operating authorization with minimum procedural delay, provided that:</p> <p style="text-align: center;">[Sub-paragraphs 2a) through 2 c)*, option 1 of 2]</p> <p>a) the airline is and remains substantially owned and effectively controlled by nationals of any one or more States in a group, or by any one or more of the Parties themselves;</p> <p>b)* the Party designating the airline is in compliance with the provisions set forth in Article __ (Safety) and Article __ (Aviation Security); and</p> <p>c)* the designated airline is qualified to meet other conditions prescribed under the laws and regulations normally applied to the operation of international air transport services by the Party receiving the designation.</p>	<p><i>The transitional approach refers to one or more airlines or multiple designation. The phrasing was sometimes interpreted as being met by the designation of two airlines. The transitional approach also includes formulae for increasing the number of designated airlines on specific routes based on, for example, negotiated multi-year increases or the achievement of a specified level of passenger traffic in city-pair markets.</i></p> <p><i>This approach uses the recommendation of the 1994 Worldwide Air Transport Conference (ATConf/4) which refers to an airline which is and remains substantially owned and effectively controlled by nationals of one or more States that are not necessarily party to the agreement concerned but are within a predefined group with a “community of interest”. A second group formulation by ATConf/4 is an airline which is substantially owned and effectively controlled by nationals of any one or more States that are parties to an agreement, or any one or more of the parties themselves. The definition of a European Union (EU) air carrier is an example of this ownership and control within a group (the EU criteria also includes principal place of business and administrative headquarters in a Member State).</i></p> <p><i>In agreements where a reference is made to ownership by nationals within a group of States, for example, Member States within the European Union, the text would be modified to take into consideration any changes in the European Community legislation.</i></p>

<p style="text-align: center;">Article 3 Designation and authorization</p>	<p style="text-align: center;">Explanatory Notes</p>
<p style="text-align: center;">[Sub-paragraphs a) through d)*, option 2 of 2]</p> <p>a) the designated airline has its principal place of business (see (i) below) [and permanent residence] in the territory of the designating Party;</p> <p>b) the Party designating the airline has and maintains effective regulatory control (see (ii) below) of the airline;</p> <p>Notes: —</p> <p>(i) evidence of principal place of business includes such factors as: the airline is established and incorporated in the territory of the designating Party in accordance with relevant national laws and regulations, has a substantial amount of its operations and capital investment in physical facilities in the territory of the designating Party, pays income tax, registers and bases its aircraft there, and employs a significant number of nationals in managerial, technical and operational positions.</p> <p>3.* On receipt of the operating authorization of paragraph 2, a designated airline may at any time begin to operate the agreed services for which it is so designated, provided that the airline complies with the applicable provisions of this Agreement.</p> <div style="text-align: center; border: 1px solid black; width: fit-content; margin: 10px auto; padding: 5px;">Full liberalization</div> <p>1. Each Party shall have the right to designate in writing to the other Party as many airlines as it wishes to operate the agreed services [in accordance with this Agreement] and to withdraw or alter such designation.</p> <p>2.* On receipt of such a designation, and of application from the designated airline, in the form and manner prescribed for operating authorization [and technical permission], each Party shall grant the appropriate operating authorization with minimum procedural delay, provided that:</p> <p>a) the airline is under the effective regulatory control of the designating State;</p> <p>b)* the Party designating the airline is in compliance with the provisions set forth in Article __ (Safety) and Article __ (Aviation Security); and</p> <p>c)* the designated airline is qualified to meet other conditions prescribed under the laws and regulations normally applied to the operation of international air transport services by the Party receiving the designation.</p>	<p><i>This approach recommended by ICAO would enable a State to designate air carriers as it sees qualified (including those with majority national ownership) to use and benefit from its entitled market access rights under a bilateral agreement. At the same time, it would reinforce the obligation on the part of the designating party to maintain effective regulatory control (including safety and security oversight) over the airline it designates. Such control is envisioned primarily through licensing which can include both economic and operational elements. The arrangement would not require the State to change its existing laws, policies or regulations pertaining to national ownership and control of its own national air carrier(s), but would allow such change if and when the State wishes to do so.</i></p> <p><i>The full liberalization approach refers to as many airlines or no quantitative limit on the number of airlines which can be designated.</i></p> <p><i>Full liberalization removes all criteria pertaining to the airline, but requires effective regulatory control by the designating State to ensure compliance with Safety and Security standards. It would also include a "right of establishment" that is a right for non-nationals to establish and operate an airline in the territory of a Party which could then engage in domestic and international air services.</i></p>

Article 3 Designation and authorization	Explanatory Notes
3.* On receipt of the operating authorization of paragraph 2, a designated airline may at any time begin to operate the agreed services for which it is so designated, provided that the airline complies with the applicable provisions of this Agreement.	

Article 4 Withholding, revocation and limitation of authorization	Explanatory Notes
<p>1.* The aeronautical authorities of each Party shall have the right to withhold the authorizations referred to in Article (Authorization) of this Agreement with respect to an airline designated by the other Party, and to revoke, suspend or impose conditions on such authorizations, temporarily or permanently:</p> <div data-bbox="310 856 664 905" style="text-align: center; border: 1px solid black; padding: 5px; margin: 10px auto; width: fit-content;"> <p>Traditional</p> </div> <p>a) in the event that they are not satisfied that substantial ownership and effective control are vested in the Party designating the airline, nationals of that Party, or both;</p> <p>b)* in the event of failure of the Party designating the airline to comply with the provisions set forth in Article __ (Safety) and Article __ (Aviation Security); and</p> <p>c)* in the event of failure that such designated airline is qualified to meet other conditions prescribed under the laws and regulations normally applied to the operation of international air transport services by the Party receiving the designation.</p> <div data-bbox="310 1287 664 1335" style="text-align: center; border: 1px solid black; padding: 5px; margin: 10px auto; width: fit-content;"> <p>Transitional</p> </div> <p>[Sub-paragraphs a) through c)*, option 1 of 2]</p> <p>a) in the event that they are not satisfied that the airline is and remains substantially owned and effectively controlled by nationals of any one or more States in a group, or by any one or more of the Parties themselves;</p> <p>b)* in the event of failure of the Party designating the airline to comply with the provisions set forth in Article __ (Safety) and Article __ (Aviation Security); and</p> <p>c)* in the event of failure that such designated airline is qualified to meet other conditions prescribed under the laws and regulations normally applied to the operation of international air transport services by the Party receiving the designation.</p>	<p><i>The reasons for a State that receives a request for an authorization to not authorize initially or to subsequently revoke, suspend or condition an authorization it has granted are the same. Consequently, if the criteria for designation requires such formulation as "substantial ownership and effective control" or "principal place of business", then the failure to meet that requirement will be grounds for revocation, suspension or the imposition of conditions on the operating permission.</i></p> <p><i>Other bases for revocation are broader in scope and are covered by cross reference to the requirements to comply with the provisions on safety, security and the laws and regulations of that Party.</i></p> <p><i>In agreements where a reference is made to ownership by nationals within a group of States, for example, Member States within the European Union, the text would be modified to take into consideration any changes in the European Common Law legislation.</i></p>

<p style="text-align: center;">Article 4 Withholding, revocation and limitation of authorization</p>	<p style="text-align: center;">Explanatory Notes</p>
<div style="text-align: center; border: 1px solid black; width: fit-content; margin: 0 auto; padding: 5px;"> <p>Transitional</p> </div> <p style="text-align: center;">[Sub-paragraphs a) through d)*, option 2 of 2]</p> <p>a) in the event that they are not satisfied that the designated airline has its principal place of business (see (i) below) [and permanent residence] in the territory of the designating Party;</p> <p>b) in the event that they are not satisfied that the Party designating the airline has and maintains effective regulatory control (see (ii) below) of the airline;</p> <p><i>Notes: —</i></p> <p>(i) evidence of principal place of business includes such factors as: the airline is established and incorporated in the territory of the designating Party in accordance with relevant national laws and regulations, has a substantial amount of its operations and capital investment in physical facilities in the territory of the designating Party, pays income tax, registers and bases its aircraft there, and employs a significant number of nationals in managerial , technical and operational positions.</p> <p>ii) evidence of effective regulatory control includes but is not limited to: the airline holds a valid operating licence or permit issued by the licensing authority such as an Air Operator Certificate (AOC), meets the criteria of the designating Party for the operation of international air services, such as proof of financial health, ability to meet public interest requirement, obligations for assurance of service; and the designating Party has and maintains safety and security oversight programmes in compliance with ICAO standards.</p> <p>c)* in the event of failure of the Party designating the airline to comply with the provisions set forth in Article __ (Safety) and Article __ (Aviation Security); and</p> <p>d)* in the event of failure that such designated airline is qualified to meet other conditions prescribed under the laws and regulations normally applied to the operation of international air transport services by the Party receiving the designation.</p> <div style="text-align: center; border: 1px solid black; width: fit-content; margin: 20px auto; padding: 5px;"> <p>Full liberalization</p> </div> <p>a) in the event that they are not satisfied that the airline is under the effective regulatory control of the designating State;</p> <p>b)* in the event of failure of the Party designating the airline to comply with the provisions set forth in Article __ (Safety) and Article __ (Aviation Security); and</p> <p>c)* in the event of failure that such designated airline is qualified to meet other conditions prescribed under the laws and regulations normally applied to the operation of international air transport services by the Party receiving the designation.</p>	

<p style="text-align: center;">Article 4 Withholding, revocation and limitation of authorization</p>	<p style="text-align: center;">Explanatory Notes</p>
<p>2.* Unless immediate action is essential to prevent infringement of the laws and regulations referred to above or unless safety or security requires action in accordance with the provisions of Articles (Safety) or (Security), the rights enumerated in paragraph 1 of this Article shall be exercised only after consultations between the aeronautical authorities in conformity with Article (Consultation) of this Agreement.</p>	<p><i>Compliance with the laws and regulations as well as safety and security provisions is constrained in paragraph 2 by the need in the first instance for consultation.</i></p>

<p style="text-align: center;">Article 5 Application of laws</p>	<p style="text-align: center;">Explanatory Notes</p>
<p style="text-align: center;">[Paragraph 1, option 1 of 2]</p> <p>1. The laws and regulations of one Party governing entry into and departure from its territory of aircraft engaged in international air services, or the operation and navigation of such aircraft while within its territory, shall be applied to aircraft of the designated airline of the other Party.</p> <p style="text-align: center;">[Paragraph 1, option 2 of 2]</p> <p>1. While entering, within, or leaving the territory of one Party, its laws and regulations relating to the operation and navigation of aircraft shall be complied with by the other Party's airlines.</p> <p style="text-align: center;">[Paragraph 2, option 1 of 2]</p> <p>2. The laws and regulations of one Party relating to the entry into, stay in and departure from its territory of passengers, crew and cargo including mail such as those regarding immigration, customs, currency and health and quarantine shall apply to passengers, crew, cargo and mail carried by the aircraft of the designated airline of the other Party while they are within the said territory.</p> <p style="text-align: center;">[Paragraph 2, option 2 of 2]</p> <p>2. While entering, within, or leaving the territory of one Party, its laws and regulations relating to the admission to or departure from its territory of passengers, crew or cargo on aircraft (including regulations relating to entry, clearance, aviation security, immigration, passports, customs and quarantine, or in the case of mail, postal regulations) shall be complied with by, or on behalf of, such passengers, crew or cargo of the other Party's airlines.</p>	<p><i>This Article is found in most bilateral agreements and reproduces the substance of Article 11 of the Convention. There is a general commitment by the Parties to use ICAO Standards and Recommended Practices (SARPs) concerning facilitation. The Article on "Inadmissible and undocumented passengers and deportees" contains a more specific commitment concerning Annex 9 procedures.</i></p> <p><i>Under the first alternative, paragraph 1 recognizes that a Party's laws with respect to the operation of aircraft and admission of passengers, crew, cargo and mail will be applied to the other Party's airlines.</i></p> <p><i>Under the second alternative, paragraph 1 shifts the emphasis to compliance by airlines with a Party's laws on operation and navigation of aircraft and the admission, transit and departure of passengers, crew, cargo and mail.</i></p> <p><i>Paragraph 2 focuses on the application of, which is to say, compliance with those laws and regulations related to customs, immigration, currency, health and quarantine of the other Party.</i></p> <p><i>Paragraph 2 focuses on the application of, which is to say, compliance with those laws and regulations related to customs, immigration, currency, health and quarantine of the other Party.</i></p>

<p style="text-align: center;">Article 5 Application of laws</p>	<p style="text-align: center;">Explanatory Notes</p>
<p>3.* Neither Party shall give preference to its own or any other airline over a designated airline of the other Party engaged in similar international air transportation in the application of its immigration, customs, quarantine and similar regulations.</p>	<p><i>Paragraph 3 is common to both alternatives and addresses non-discrimination.</i></p>

<p style="text-align: center;">Article 6 Direct transit</p>	<p style="text-align: center;">Explanatory Notes</p>
<p style="text-align: center;">[Option 1 of 2]</p> <p>Passengers, baggage, cargo and mail in direct transit shall be subject to no more than a simplified control. Baggage and cargo in direct transit shall be exempt from customs duties and other similar taxes.</p> <p style="text-align: center;">[Option 2 of 2]</p> <p>Passengers, baggage and cargo in direct transit through the territory of any Party and not leaving the area of the airport reserved for such purpose shall not undergo any examination except for reasons of aviation security, narcotics control, prevention of illegal entry or in special circumstances.</p>	<p><i>In some agreements, this provision could be stated separately or included in the Application of laws Article.</i></p> <p><i>Option 1 is a standard facilitation measure for simplified transit found in most air services agreements.</i></p> <p><i>Option 2, found in "open skies" agreements, addresses the security situation of transit traffic rather than the controls or customs and tax treatment.</i></p>

<p style="text-align: center;">Article 7 Recognition of certificates</p>	<p style="text-align: center;">Explanatory Notes</p>
<p>1. Certificates of airworthiness, certificates of competency and licenses issued or rendered valid by one Party and still in force shall be recognized as valid by the other Party for the purpose of operating the agreed services provided that the requirements under which such certificates and licenses were issued or rendered valid are equal to or above the minimum standards which may be established pursuant to the Convention.</p> <p>2. If the privileges or conditions of the licences or certificates referred to in paragraph 1 above, issued by the aeronautical authorities of one Party to any person or designated airline or in respect of an aircraft used in the operation of the agreed services, should permit a difference from the minimum standards established under the Convention, and which difference has been filed with the International Civil Aviation Organization, the other Party may request consultations between the aeronautical authorities with a view to clarifying the practice in question.</p>	<p><i>This provision on Recognition of Certificates is found in most air service agreements even though, in essence, it simply reproduces in paragraphs 1 and 2 two provisions of the Convention, Articles 33 and 32 b) respectively, with some minor variations in wording.</i></p> <p><i>In paragraph 1, the Parties exchange mutual recognition of currently valid certificates of airworthiness and competency and licenses issued by the other Party.</i></p> <p><i>States may find it useful to have a procedure to deal with differences filed with respect to the standards established pursuant to the Convention.</i></p>

<p style="text-align: center;">Article 7 Recognition of certificates</p>	<p style="text-align: center;">Explanatory Notes</p>
<p>3. Each Party reserves the right, however, to refuse to recognize for the purpose of flights above or landing within its own territory, certificates of competency and licenses granted to its own nationals by the other Party.</p>	<p><i>This provision reserves the right to refuse to recognize any certificates or licences issued by the other Party to the first Party's nationals. Drawn from Article 32 b) of the Convention, the provision is necessary because Article 32 a) requires pilots to be provided with licences issued by the State of registry of the aircraft. Consequently, it is not possible for the recognition to extend to a licence issued to that State's own nationals by another State.</i></p>

<p style="text-align: center;">Article 8 Safety</p>	<p style="text-align: center;">Explanatory Notes</p>
<p>1. Each Party may request consultations at any time concerning the safety standards maintained by the other Party in areas relating to aeronautical facilities, flight crew, aircraft and the operation of aircraft. Such consultations shall take place within thirty days of that request.</p> <p>2. If, following such consultations, one Party finds that the other Party does not effectively maintain and administer safety standards in the areas referred to in paragraph 1 that meet the Standards established at that time pursuant to the <i>Convention on International Civil Aviation</i> (Doc 7300), the other Party shall be informed of such findings and of the steps considered necessary to conform with the ICAO Standards. The other Party shall then take appropriate corrective action within an agreed time period.</p> <p>3. Pursuant to Article 16 of the Convention, it is further agreed that, any aircraft operated by, or on behalf of an airline of one Party, on service to or from the territory of another Party, may, while within the territory of the other Party be the subject of a search by the authorized representatives of the other Party, provided this does not cause unreasonable delay in the operation of the aircraft. Notwithstanding the obligations mentioned in Article 33 of the Chicago Convention, the purpose of this search is to verify the validity of the relevant aircraft documentation, the licensing of its crew, and that the aircraft equipment and the condition of the aircraft conform to the Standards established at that time pursuant to the Convention.</p> <p>4. When urgent action is essential to ensure the safety of an airline operation, each Party reserves the right to immediately suspend or vary the operating authorization of an airline or airlines of the other Party.</p> <p>5. Any action by one Party in accordance with paragraph 4 above shall be discontinued once the basis for the taking of that action ceases to exist.</p>	<p><i>The foregoing model clause on safety developed by ICAO provides a standardized process for Parties to an agreement to address safety concerns. It is intended to ensure that aircraft operated by, or on behalf of, designated airlines in the other Party's territory are operated and maintained in accordance with ICAO Standards and Recommended Practices. The provision takes a wide view of an aircraft operation by including aeronautical facilities, which implies the provision of facilities such as air traffic control, airport and navigation aids, in addition to the aircraft and its crew.</i></p> <p><i>However, nothing prevents the Parties from inserting additional or more restrictive criteria that they feel may be necessary for assessing the safety of an aircraft operation, such as the alternative wording for ramp inspection which specifies the findings and determinations that can be made by aeronautical authorities following a ramp inspection, and additionally addresses the situation where there is a denial of access for a ramp inspection.</i></p> <p><i>Except for this provision, there is no specific reference to sanctions in the Safety Article in view of the possibility of taking action under the Revocation provision to revoke, suspend or impose conditions on a designated airlines authorization for failing to comply with, inter alia, the Safety Article.</i></p>

Article 8 Safety	Explanatory Notes
6. With reference to paragraph 2, if it is determined that one Party remains in non-compliance with ICAO Standards when the agreed time period has lapsed, the Secretary General of ICAO should be advised thereof. The latter should also be advised of the subsequent satisfactory resolution of the situation.	

Article 9 Aviation security	Explanatory Notes
<p>1. Consistent with their rights and obligations under international law, the Parties reaffirm that their obligation to each other to protect the security of civil aviation against acts of unlawful interference forms an integral part of this Agreement. Without limiting the generality of their rights and obligations under international law, the Parties shall, in particular, act in conformity with the provisions of the <i>Convention on Offences and Certain Other Acts Committed on Board Aircraft</i>, signed at Tokyo on 14 September 1963, the <i>Convention for the Suppression of Unlawful Seizure of Aircraft</i>, signed at The Hague on 16 December 1970 and the <i>Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation</i>, signed at Montreal on 23 September 1971, the <i>Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, Done at Montreal on 23 September 1971</i>, signed at Montreal on 24 February 1988, as well as with any other Convention and Protocol relating to the security of civil aviation which both Parties adhere to.</p> <p>2. The Parties shall provide, upon request, all necessary assistance to each other to prevent acts of unlawful seizure of civil aircraft and other unlawful acts against the safety of such aircraft, their passengers and crew, airports and air navigation facilities, and any other threat to the security of civil aviation.</p> <p>3. The Parties shall, in their mutual relations, act in conformity with the aviation security provisions established by ICAO and designated as Annexes to the Convention; they shall require that operators of aircraft of their registry or operators of aircraft who have their principal place of business or permanent residence in their territory and the operators of airports in their territory act in conformity with such aviation security provisions. [Each Party shall advise the other Party of any difference between its national regulations and practices and the aviation security standards of the Annexes. Either Party may request immediate consultations with the other Party at any time to discuss any such differences.]</p> <p>4. Each Party agrees that such operators of aircraft may be required to observe the aviation security provisions referred to in paragraph 3) above required by the other Party for entry into, departure from, or while within, the territory of that other Party. Each Party shall ensure that adequate measures are effectively applied within its territory to protect the aircraft and to inspect passengers, crew, carry-on items, baggage, cargo and aircraft stores prior to and during boarding or loading. Each Party shall also give sympathetic consideration to any request from the</p>	<p><i>The provision on aviation security was developed by ICAO. It incorporates by general reference, in paragraphs 1 and 3 respectively, obligations on aviation security arising from the various international instruments on unlawful interference to which the Parties may be signatories, and to Annex 17 to the Convention (Aviation Security), which applies to all Contracting States of ICAO. Any changes to the Standards and Recommended Practices of the latter which may come into effect subsequent to the adoption of the agreement would also apply to the Parties. The clause emphasizes mutual assistance in the prevention of unlawful seizure or other such acts, requests for special security measures and whenever there is an unlawful act or the threat of one. The clause does not limit the contractual freedom of Parties to expand or limit its scope or to use a different approach.</i></p> <p><i>The bracketed language in paragraph 3 provides a procedure for handling differences which could be filed for security standards.</i></p>

<p style="text-align: center;">Article 9 Aviation security</p>	<p style="text-align: center;">Explanatory Notes</p>
<p>other Party for reasonable special security measures to meet a particular threat.</p> <p>5. When an incident or threat of an incident of unlawful seizure of civil aircraft or other unlawful acts against the safety of such aircraft, their passengers and crew, airports or air navigation facilities occurs, the Parties shall assist each other by facilitating communications and other appropriate measures intended to terminate rapidly and safely such incident or threat thereof.</p> <p>[6. Each Party shall have the right, within sixty (60) days following notice (or such shorter period as may be agreed between the aeronautical authorities), for its aeronautical authorities to conduct an assessment in the territory of the other Party of the security measures being carried out, or planned to be carried out, by aircraft operators in respect of flights arriving from, or departing to the territory of the first Party. The administrative arrangements for the conduct of such assessments shall be agreed between the aeronautical authorities and implemented without delay so as to ensure that assessments will be conducted expeditiously.]</p> <p>[7. When a Party has reasonable grounds to believe that the other Party has departed from the provisions of this Article, the first Party may request consultations. Such consultations shall start within fifteen (15) days of receipt of such a request from either Party. Failure to reach a satisfactory agreement within fifteen (15) days from the start of consultations shall constitute grounds for withholding, revoking, suspending or imposing conditions on the authorizations of the airline or airlines designated by the other Party. When justified by an emergency, or to prevent further non-compliance with the provisions of this Article, the first Party may take interim action at any time.]</p>	<p><i>The alternative paragraphs 6 and 7 address, respectively, the inspection of security facilities and procedures in the other Party's territory and the need for prompt consultations on security matters (which have greater urgency than consultation on other issues) as well as the ability to take interim action when warranted.</i></p>

<p style="text-align: center;">Article 10 Security of travel documents</p>	<p style="text-align: center;">Explanatory Notes</p>
<p>1. Each Party agrees to adopt measures to ensure the security of their passports and other travel documents.</p> <p>2. In this regard, each Party agrees to establish controls on the lawful creation, issuance, verification and use of passports and other travel documents and identity documents issued by, or on behalf of, that Party.</p> <p>3. Each Party also agrees to establish or improve procedures to ensure that travel and identity documents issued by it are of such quality that they cannot easily be misused and cannot readily be unlawfully altered, replicated or issued.</p> <p>4. Pursuant to the objectives above, each Party shall issue their passports and other travel documents in accordance with ICAO Doc 9303, <i>Machine Readable Travel Documents: Part 1 — Machine Readable Passports</i>, Part 2 — <i>Machine Readable Visas</i>, and/or Part 3 — <i>Size 1 and Size 2 Machine Readable Official Travel Documents</i>.</p>	<p><i>ICAO's Machine Readable Travel Document's technical specifications, contained in ICAO Doc 9303, permit reliable verification of the authenticity of travel documents and their holders and provide strong safeguards against alteration, forgery or counterfeit. Nearly 100 Contracting States issue Machine Readable Passports and other Machine Readable Travel Documents, in accordance with the specifications in Doc 9303. ICAO's Resolutions recognize that Doc 9303's specifications not only are effective in accelerating the movement of international passengers and crew members through border control, they also enhance security and immigration compliance programmes. Resolutions of the United Nations (UN) Security Council and other bodies of the UN, call upon States to enhance international cooperation to combat the smuggling of aliens and to prevent the use of fraudulent documents.</i></p> <p><i>Inclusion of this Article in air services agreements would enhance international efforts, by States, against the use of fraudulent and counterfeit travel documents for illegal migration, the smuggling of migrants and the movement of terrorists or terrorist groups across borders.</i></p>

<p style="text-align: center;">Article 10 Security of travel documents</p>	<p style="text-align: center;">Explanatory Notes</p>
<p>5. Each Party further agrees to exchange operational information regarding forged or counterfeit travel documents, and to cooperate with the other to strengthen resistance to travel document fraud, including the forgery or counterfeiting of travel documents, the use of forged or counterfeit travel documents, the use of valid travel documents by imposters, the misuse of authentic travel documents by rightful holders in furtherance of the commission of an offence, the use of expired or revoked travel documents, and the use of fraudulently obtained travel documents.</p>	

<p style="text-align: center;">Article 11 Inadmissible and undocumented passengers and deportees</p>	<p style="text-align: center;">Explanatory Notes</p>
<p>1. Each Party agrees to establish effective border controls.</p> <p>2. In this regard, each Party agrees to implement the Standards and Recommended Practices of Annex 9 (Facilitation) to the Chicago Convention concerning inadmissible and undocumented passengers and deportees in order to enhance cooperation to combat illegal migration.</p> <p>3. Pursuant to the objectives above, each Party agrees to issue, or to accept, as the case may be, the letter relating to "fraudulent, falsified or counterfeit travel documents or genuine documents presented by imposters" set out in Appendix 9 b) to Annex 9 (Twelfth Edition), when taking action under relevant paragraphs of Chapter 3 of the Annex regarding the seizure of fraudulent, falsified or counterfeit travel documents.</p>	<p><i>Chapter 3 of Annex 9 (Facilitation) to the Chicago Convention includes Standards and Recommended Practices setting out general procedures to be followed by States and airlines when dealing with inadmissible passengers, undocumented passengers and deportees. Appendix 9 is intended to replace, as a travel document, fraudulent, falsified or counterfeit travel documents seized from passengers who have used them for travel. The idea behind existing paragraphs and Appendix 9 is to remove, from circulation, fraudulent, falsified and counterfeit documents.</i></p> <p><i>Inclusion of this Article in air services agreements would enhance international efforts, by States, against the smuggling of migrants and the movement of terrorists or terrorist groups across borders.</i></p>

<p style="text-align: center;">Article 12 User charges</p>	<p style="text-align: center;">Explanatory Notes</p>
<p style="text-align: center;">[Paragraphs 1 and 2, option 1 of 2]</p> <p>1. Neither Party shall impose or permit to be imposed on the designated airlines of the other Party user charges higher than those imposed on its own airlines operating similar international services.</p>	<p><i>These two alternative approaches to a provision on user charges differ significantly. Some provisions refer to "designated airlines". Parties would need to consider whether the provisions on the activities contained in this Party should also be extended to all airlines of a Party rather than only designated ones.</i></p> <p><i>This alternative is less detailed and merely reproduces in the first paragraph the non-discrimination principle governing user charges in Article 15 of the Convention viz. that charges on a foreign aircraft shall be no higher than those that would be imposed on its own aircraft in similar international operations.</i></p>

<p style="text-align: center;">Article 12 User charges</p>	<p style="text-align: center;">Explanatory Notes</p>
<p>2. Each Party shall encourage consultations on user charges between its competent charging authority [or airport or air navigation service provider] and airlines using the service and facilities provided by those charging authorities [or service provider], where practicable through those airlines' representative organizations. Reasonable notice of any proposals for changes in user charges should be given to such users to enable them to express their views before changes are made. Each Party shall further encourage its competent charging authority [or service provider] and such users to exchange appropriate information concerning user charges.</p> <p style="text-align: center;">[Paragraphs 1 and 2, option 2 of 2]</p> <p>1. User charges that may be imposed by the competent charging authorities or bodies of each Party on the airlines of the other Party shall be just, reasonable, not unjustly discriminatory, and equitably apportioned among categories of users. In any event, any such user charges shall be assessed on the airlines of the other Party on terms not less favourable than the most favourable terms available to any other airline at the time the charges are assessed.</p> <p>2. User charges imposed on the airlines of the other Party may reflect, but shall not exceed, the full cost to the competent charging authorities or bodies of providing the appropriate airport, airport environmental, air navigation, and aviation security facilities and services at the airport or within the airport system. Such full costs may include a reasonable return on assets, after depreciation. Facilities and services for which charges are made shall be provided on an efficient and economic basis.</p> <p>3. Each Party shall encourage consultations between the competent charging authorities or bodies in its territory and the airlines using the services and facilities, and shall encourage the competent authorities or bodies and the airlines to exchange such information as may be necessary to permit an accurate review of the reasonableness of the charges in accordance with the principles in paragraphs 1 and 2. Each Party shall encourage the competent charging authorities to provide users with reasonable notice of any proposal for changes in user charges to enable users to express their views before changes are made.</p> <p>4. Neither Party shall be held, in dispute resolution procedures pursuant to Article __ (Settlement of Disputes), to be in breach of a provision of this Article, unless:</p> <p>a) it fails to undertake a review of the charge or practice that is the subject of complaint by the other Party within a reasonable amount of time; or</p> <p>b) following such a review it fails to take all steps within its power to remedy any charge or practice that is inconsistent with this Article.</p>	<p><i>The provision encourages consultation between the charging authority and the users, that reasonable notice is given for any changes in charges and that appropriate information is exchanged concerning charges. These principles reflect ICAO policy on charges (Doc 9082). Because some States have commercialized or privatized their airport and air navigation service providers, and have delegated authority to set user charges, suitable wording in brackets is added to address such situations.</i></p> <p><i>In the second alternative, this provision includes certain principles which again reflect ICAO-developed policy. However, rather than use the formula from Article 15 of the Convention, as is done in the first alternative, this version applies a type of "most favoured nation" provision which is broader in application than Article 15.</i></p> <p><i>Certain ICAO cost-recovery principles are set out in this provision.</i></p> <p><i>There are similar requirements regarding consultations, exchange of information and reasonable notice as can be found in the first alternative.</i></p> <p><i>The second approach introduces a review process prior to any treatment of user charges within the dispute settlement framework, and indicates that there is no breach of the Article, for purposes of the dispute settlement mechanism, if that review process is undertaken.</i></p>

<p style="text-align: center;">Article 12 User charges</p>	<p style="text-align: center;">Explanatory Notes</p>
<p>[5. Airports, airways, air traffic control and air navigation services, aviation security, and other related facilities and services that are provided in the territory of one Party shall be available for use by the airlines of the other Party on terms no less favourable than the most favourable terms available to any airline engaged in similar international air services at the time arrangements for use are made.]</p>	<p><i>The bracketed language is essentially a more detailed version of Article 15 of the Convention.</i></p>

<p style="text-align: center;">Article 13 Customs duties</p>	<p style="text-align: center;">Explanatory Notes</p>
<p>1. Each Party shall on the basis of reciprocity exempt a designated airline of the other Party to the fullest extent possible under its national law from [import restrictions,] customs duties, excise taxes, inspection fees and other national duties and charges [not based on the cost of services provided on arrival] on aircraft, fuel, lubricating oils, consumable technical supplies, spare parts including engines, regular aircraft equipment, aircraft stores and other items [such as printed ticket stock, air waybills, any printed material which bears the insignia of the company printed thereon and usual publicity material distributed free of charge by that designated airline] intended for use or used solely in connection with the operation or servicing of aircraft of the designated airline of such other Party operating the agreed services.</p> <p>2. The exemptions granted by this article shall apply to the items referred to in paragraph 1:</p> <p>a) introduced into the territory of the Party by or on behalf of the designated airline of the other Party;</p> <p>b) retained on board aircraft of the designated airline of one Party upon arrival in or leaving the territory of the other Party; or</p> <p>c) taken on board aircraft of the designated airline of one Party in the territory of the other Party and intended for use in operating the agreed services;</p> <p>whether or not such items are used or consumed wholly within the territory of the Party granting the exemption, provided the ownership of such items is not transferred in the territory of the said Party.</p> <p>3. The regular airborne equipment, as well as the materials and supplies normally retained on board the aircraft of a designated airline of either Party, may be unloaded in the territory of the other Party only with the approval of the customs authorities of that territory. In such case, they may be placed under the supervision of the said authorities up to such time as they are re-exported or otherwise disposed of in accordance with customs regulations.</p>	<p><i>A provision on customs and other duties is to be found in nearly all air services agreements and supplements the exemption on fuel, lubricating oils, spare parts, regular equipment and aircraft stores retained on board on arrival in another State's territory, found in Article 24 of the Convention. It also reflects ICAO policies on the taxation of international air transport (Doc 8632). The purpose of the provision is to exempt international aviation operations from various customs duties and other taxes on fuel, spare parts, supplies and equipment, that would normally be applied to a foreign aircraft when operating in another jurisdiction. The nature of international air transport and the potentially adverse economic impact of such imposts have been the rationale for the almost global acceptance of this provision.</i></p> <p><i>It should be noted that there are different interpretations of what constitutes an international leg of a service, for example, as it applies to tariffs and customs duties exemptions. States may therefore seek to include a clarification to this effect in any air services agreement entered into, particularly where cabotage rights are exchanged. In such cases, exemptions provided by this Article would be modified to take into account the nature of the service and its compatibility with domestic laws.</i></p> <p><i>In some situations the exemption is not a blanket exemption from all taxes and charges and where, for instance, there are government-imposed charges for services provided to international air transport (e.g. customs and quarantine fees), then the agreement would need a qualifying statement such as: "not based on the cost of services provided on arrival". Other items that could be covered (but have not been inserted in this Article) are equipment used for reservations and operations, security equipment, cargo loading and passenger-handling equipment, instructional material and training aids.</i></p>

Article 14 Taxation	Explanatory Notes
<p style="text-align: center;">[Paragraphs 1 through 3, option 1 of 2]</p> <p>1. Profits from the operation of the aircraft of a designated airline in international traffic shall be taxable only in the territory of the Party in which the place of effective management of that airline is situated.</p> <p>2. Capital represented by aircraft operated in international traffic by a designated airline and by movable property pertaining to the operation of such aircraft shall be taxable only in the territory of the Party in which the place of effective management of the airline is situated.</p> <p>3. Where a special agreement for the avoidance of double taxation with respect to taxes on income and on capital exists between the Parties, the provisions of the latter shall prevail.</p> <p style="text-align: center;">[Paragraphs 1 through 3, option 2 of 2]</p> <p>1. Profits or income from the operation of aircraft in international traffic derived by an airline of one Party, including participation in inter-airline commercial agreements or joint business ventures, shall be exempt from any tax on profits or income imposed by the Government of the other Party.</p> <p>2. Capital and assets of an airline of one Party relating to the operation of aircraft in international traffic shall be exempt from all taxes on capital and assets imposed by the Government of the other Party.</p> <p>3. Gains from the alienation of aircraft operated in international traffic and movable property pertaining to the operation of such aircraft which are received by an airline of one Party shall be exempt from any tax on gains imposed by the Government of the other Party.</p> <p>[4.* Each Party shall on a reciprocal basis grant relief from value added tax or similar indirect taxes on goods and services supplied to the airline designated by the other Party and used for the purposes of its operation of international air services. The tax relief may take the form of an exemption or a refund.]</p>	<p><i>A provision on the taxation of income and capital in agreements is not widespread, in part because such matters may be the subject of a separate treaty on double taxation between the parties. One is presented above in light of the policy of ICAO (Doc 8632) that such an exemption be granted. Since the issue of taxation and taxation agreements between States would be an issue for financial authorities, a provision such as is presented here would require the involvement of those authorities in its formulation and negotiation.</i></p> <p><i>In this alternative, paragraphs 1 and 2 address the taxation of income and capital respectively.</i></p> <p><i>Paragraph 3 provides for a treaty between the Parties on double taxation to override the provisions of this agreement.</i></p> <p><i>This alternative exempts airlines from certain taxes imposed by the Government of the other Party rather than specifying where airlines are taxable, i.e., in the territory of effective management of the airline, thereby clarifying the scope of tax exemptions.</i></p> <p><i>Paragraph 1 specifically exempts profits and income from inter-airline commercial agreements.</i></p> <p><i>The exemption is reciprocal though its coverage may vary as indicated by the bracketed text. For example, the Parties may also choose to include import restrictions, or airline supplies such as ticket stock, or computer equipment.</i></p>

Article 15 Fair competition	Explanatory Notes
<p style="text-align: center;">Traditional</p> <p>Each designated airline shall have a fair opportunity to operate the routes specified in the Agreement.</p> <p style="text-align: center;">Transitional</p> <p>Each Party agrees:</p> <p>a) that each designated airline shall have a fair and equal opportunity to compete in providing the international air transportation governed by the agreement; and</p> <p>b) to take action to eliminate all forms of discrimination or unfair competitive practices adversely affecting the competitive position of a designated airline of the other Party.</p> <p style="text-align: center;">Full liberalization</p> <p>Each designated airline shall have a fair competitive environment under the competition laws of the Parties.</p>	<p><i>The traditional formulation is based on the phrase in the Convention (Article 44 f) which refers to every contracting State having “a fair opportunity to operate international air services”.</i></p> <p><i>A limited transitional approach would be to apply the fair and equal opportunity to the routes specified in the annex to the agreement. However, a broader version is provided here, as well as in paragraph b).</i></p> <p><i>Under full liberalization, the Parties’ competition laws would be used to ensure a fair competitive environment for all designated airlines.</i></p> <p><i>Some States, while fully supporting the application of competition laws, sometimes refer to them in memoranda of consultations rather than in the actual air services agreement.</i></p>

Article 16 Capacity	Explanatory Notes
<p style="text-align: center;">Traditional</p> <p style="text-align: center;">Predetermination</p> <p>1. The total capacity to be provided on the agreed services by the designated airlines of the Parties shall be agreed between, or approved by, the aeronautical authorities of the Parties before the commencement of the operations, and thereafter according to anticipated traffic requirements.</p> <p>2. The agreed services to be operated by the designated airlines of the Parties shall have as their primary objective the</p>	<p><i>The model clauses for Predetermination, Bermuda I and full liberalization methods of capacity determination were developed by ICAO in the early 1980s to encompass the principal regulatory approaches by States to the determination of the capacity offered by their designated airlines. Extensive guidance on the application and objectives of each of these methods is set out in the Policy and Guidance Material on the Economic Regulation of International Air Transport (Doc 9587).</i></p> <p><i>Each designated airline may offer capacity based on predetermination where both Parties, or all designated airlines with government approval, agree jointly, in advance, on the total capacity to be offered on each route; increases require approval of both Parties.</i></p> <p><i>In terms of the number of bilateral agreements, the traditional and most widely used method of capacity regulation is</i></p>

Article 16 Capacity	Explanatory Notes
<p>provision at reasonable load factors of capacity adequate to meet the traffic requirements between the territories of the two Parties.</p> <p>3. Each Party shall allow fair and equal opportunity for the designated airlines of both Parties to operate the agreed services between their respective territories so as to achieve equality and mutual benefit, in principle by equal sharing of the total capacity between the Parties.</p> <p>4. Each Party and its designated airline(s) shall take into consideration the interests of the other Party and its designated airline(s) so as not to affect unduly the services which the latter provides.</p> <p>5. If, on review, the Parties fail to agree on the capacity to be provided on the agreed services, the capacity that may be provided by the designated airlines of the Parties shall not exceed the total capacity (including seasonal variations) previously agreed to be provided.</p>	<p><i>predetermination. The requirement for mutual government and airline agreement ensures that a Party can require that the designated airlines of both Parties offer the same amount of capacity on all routes, and that both governments must agree on any change in the capacity offered. Some flexibility is provided by the practice of Parties individually approving "extra sections" (flights in addition to those regularly scheduled), for example, during holiday periods when demand increases sharply but temporarily. A more formal approach is for the Parties, after agreement has been reached on basic entitlements to capacity, to agree on temporary increases which would not, however, constitute a change in capacity entitlements.</i></p>
<div style="text-align: center; border: 1px solid black; width: fit-content; margin: 0 auto; padding: 5px;"> <p>Transitional</p> </div> <p style="text-align: center;">Bermuda I [see alternatively, "Partial liberalization and predetermined increase" below]</p> <p>1. The air transport facilities available to the travelling public should bear a close relationship to the requirements of the public for such transport.</p> <p>2. The designated airline or airlines of each Party shall have a fair and equal opportunity to [compete] [operate] on any agreed route between the territories of the two Parties.</p> <p>3. Each Party shall take into consideration the interests of the airlines of the other Party so as not to affect unduly their opportunity to offer the services covered by this Agreement.</p> <p>4. Services provided by a designated airline under this Agreement shall retain as their primary objective the provision of capacity adequate to the traffic demands between the country of which such airline is a national and the country of ultimate destination of the traffic. The right to embark or disembark on such services international traffic destined for and coming from third countries at a point or points on the routes specified in this Agreement shall be exercised in accordance with the general principles of orderly development of international air transport to which both Parties subscribe and shall be subject to the general principle that capacity should be related to:</p>	<p><i>Each designated airline may offer capacity based on Bermuda I where airlines determine capacity individually, based on qualitative criteria and subject to ex post facto review by the Parties.</i></p> <p><i>In the Bermuda I type method of capacity regulation, the Parties adopt the capacity principles for airlines to follow, but then allow each airline the freedom to determine, in conformity with these principles, its own capacity based on airline analysis of market requirements. The capacity operated on the agreed routes is subject to ex post facto review by aeronautical authorities through their consultations. The Parties continued agreement on the principles on which capacity is to be determined as well as the effective functioning of the ex post facto review mechanism is critical to the successful functioning of this method.</i></p>

<p align="center">Article 16 Capacity</p>	<p align="center">Explanatory Notes</p>
<p>a) the traffic requirements between the country of origin and the countries of ultimate destination of the traffic;</p> <p>b) the requirements of through airline operations; and</p> <p>c) the traffic requirements of the area through which the airline passes, after taking account of local and regional services.</p> <p>5. Consultations between the Parties shall be arranged whenever a Party requests that the capacity provided under the Agreement be reviewed to ensure the application of the principles in the Agreement governing the conduct of the services.</p> <p align="center">Partial liberalization and predetermined increases [see alternatively, "Bermuda I" above]</p> <div style="border: 1px solid black; width: fit-content; margin: 20px auto; padding: 5px;"> <p align="center">Full liberalization</p> </div> <p align="center">Free determination</p> <p>1. Each Party shall allow each designated airline to determine the frequency and capacity of the international air transportation it offers based on commercial considerations of the marketplace.</p> <p>2. Neither Party shall unilaterally limit the volume of traffic, frequency, or regularity of service, or the aircraft type or types operated by the designated airlines of the other Party, except as may be required for customs, technical, operational, or environmental reasons under uniform conditions consistent with Article 15 of the Convention.</p>	<p><i>Each designated airline may offer capacity based on partial liberalization and predetermined increases where Parties agree not to regulate capacity on certain services or routes and/or on one of several formulae for individual airlines to increase capacity on a regular basis. Additional flexibility for airlines to determine capacity falls into two general categories: 1) partial liberalization — allowing airlines to freely and individually determine their own capacity in certain markets or for certain services and 2) predetermined increases — agreement on formulae or schedules for future capacity increases.</i></p> <p><i>Examples of Partial liberalization include no capacity restrictions on: 1) all-cargo services; 2) non-scheduled passenger services to points not served by scheduled airlines; and 3) scheduled services to points not being served under existing agreements, including aircraft size limitation, but no limitation on the number of frequencies which could be operated.</i></p> <p><i>Examples of Predetermined increases include: 1) varying the percentages of capacity between the designated airlines on a route from 50-50 to 60-40; 2) agreed annual increases in the number of seats offered by individual airlines in city-pair markets; and 3) negotiated capacity increases over a multi-year period. Transitions are frequently negotiated as part of an "open skies" agreement.</i></p> <p><i>Some agreements do not require a separate article on Capacity but make a reference to it in the Route schedule.</i></p> <p><i>Each designated airline may offer capacity based on free determination where individual airlines determine capacity to be offered without government approval or intervention, subject to competition law(s).</i></p> <p><i>In the Free determination method typically found in "open skies" agreements and arrangements, the parties agree to abrogate their direct bilateral control of capacity while retaining the ability to apply non-discriminatory, multilateral controls consistent with the Convention.</i></p>

Article 16 Capacity	Explanatory Notes
<p>3. Neither Party shall impose on the other Party's designated airlines a first refusal requirement, uplift ratio, no-objection fee, or any other requirement with respect to the capacity, frequency or traffic which would be inconsistent with the purposes of this Agreement.</p> <p>4. Neither Party shall require the filing of schedules, programmes for charter flights, or operational plans by airlines of the other Party for approval, except as may be required on a non-discriminatory basis to enforce uniform conditions as foreseen by paragraph 2) of this Article or as may be specifically authorized in an Annex to this Agreement. If a Party requires filings for information purposes, it shall minimize the administrative burdens of filing requirements and procedures on air transportation intermediaries and on designated airlines of the other Party.</p>	<p><i>No specific provision on the relationship between capacity and demand is contained in the Free determination method, the competitive pricing and scheduling responses of airlines to market forces being relied on to bring about necessary adjustment. This mechanism may work less effectively where the free play of market forces is impaired or inhibited.</i></p> <p><i>The Free determination method normally proscribes all forms of discrimination or unfair competitive practices, including predatory pricing, such practices being the cause for possible consultation and remedy. The provision on safeguards for unfair competitive practices addresses this additional and complementary procedure.</i></p> <p><i>Given the wide latitude accorded designated airlines on the capacity they may offer and in view of the increased potential for anti-competitive actions such as "capacity dumping", the full liberalization approach should be subject to intervention on the basis of the competition laws of the Parties.</i></p>

Article 17 Pricing (Tariffs)	Explanatory Notes
<div data-bbox="306 1268 664 1318" style="border: 1px solid black; text-align: center; margin: 0 auto; width: 200px; height: 20px;"> <p>Traditional</p> </div> <p style="text-align: center;">Double approval</p> <p>1. The tariffs to be applied by the designated airline or airlines of a Party for services covered by this Agreement shall be established at reasonable levels, due regard being paid to all relevant factors, including interests of users, cost of operation, characteristics of service, reasonable profit, tariffs of other airlines and other commercial considerations in the marketplace.</p> <p style="text-align: center;">[Paragraph 2, option 1 of 3]</p> <p>2. The tariffs shall, wherever possible, be agreed by the designated airlines concerned of both Parties, after discussion as required with their respective governments and, if applicable, consultation with other airlines. Such agreement shall, wherever</p>	<p><i>ICAO has developed extensive guidance on all aspects of international fares and rates. Additional detailed explanatory notes on the usage and application of these provisions can be found in Doc 9587. Hybrid approaches are possible with the traditional and transitional approaches, where for example one regulatory approach is chosen for normal tariffs and another for promotional. The provisions are therefore capable of being used in a flexible manner with appropriate elements being selected from each approach as required.</i></p> <p><i>The definition of a "tariff" or "pricing" is included in the article on definitions.</i></p> <p><i>The traditional double approval model remains the most common (in terms of the number of bilateral agreements) approach for establishing tariffs. A degree of liberalization can be provided under this approach if both Parties allow designated airlines wide latitude in the tariffs they are prepared to approve, or if they agree to approve certain tariffs, such as those meeting the criteria of a zone-pricing regime.</i></p> <p><i>Parties may need to agree on which factors should be included or emphasized.</i></p> <p><i>The mechanism for developing tariffs includes two other options which would place progressively less emphasis on the need for a multilateral or bilateral airline agreement. Airlines may participate, under the auspices of the International Air Transport</i></p>

<p style="text-align: center;">Article 17 Pricing (Tariffs)</p>	<p style="text-align: center;">Explanatory Notes</p>
<p>possible, be reached by the use of the appropriate international tariff coordination mechanism. Failing any multilateral or bilateral agreement, each designated airline may develop tariffs individually.</p> <p style="text-align: center;">[Paragraph 2, option 2 of 3]</p> <p>2. The tariffs may be agreed by the designated airlines concerned of both Parties, after consultation, if applicable, with other airlines. Such agreement may be reached by the use of the appropriate international tariff coordination mechanism. However, neither Party shall make participation in multilateral carrier tariff coordination a condition for approval of any tariff nor shall either Party prevent or require participation by the designated airline(s) of either Party in such multilateral tariff coordination. Each designated airline may, at its option, develop tariffs individually.</p> <p style="text-align: center;">[Paragraph 2, option 3 of 3]</p> <p>2. The tariffs shall, wherever possible, be established by the designated airlines individually. However, tariffs may be agreed by the designated airlines of the Parties if both Parties permit designated airlines to participate in the activities of the appropriate international tariff coordination mechanism(s). Any tariff agreement resulting from such activities shall be subject to the approval of each Party, and may be disapproved at any time whether or not previously approved.</p> <p>3. Each Party may require notification or filing of tariffs proposed by the designated airline(s) [of the other Party] [of both Parties] for carriage to or from its territory. Such notification or filing may be required not more than __ days before the proposed date of introduction. In special cases, this period may be reduced.</p> <p>4. The tariffs to be charged by the designated airlines of the Parties for carriage between their territories shall be subject to the approval of both Parties. [The tariffs to be charged by a designated airline of one Party for carriage between the territory of the other Party and that of a third State on services covered by this agreement shall be subject to the approval requirements of the other Party.]</p> <p>5. Approval of tariffs consequent upon the provisions of Paragraph 4 above may be given expressly by either Party to the airline(s) filing the tariffs. However, if a Party has not given in writing to the other Party [and [or] the airline(s) concerned] notice of disapproval of such tariffs of the airline(s) of the other Party within __ days from the date of submission, the tariffs concerned shall be considered approved. In the event of the period of submission being reduced in accordance with Paragraph 3, the Parties may agree that the period within which any disapproval shall be given be reduced accordingly. No tariff shall come into force if either Party has given notice of disapproval [except as provided in Paragraph 6 below].</p> <p>6. Each Party may request consultation regarding any tariff of an airline of either Party for services covered by this Agreement, including where the tariff concerned has been subject to a</p>	<p><i>Association (IATA), in tariff coordination for the purpose of interlining, subject to government approval and conditions.</i></p> <p><i>In recognition of the need to streamline filing procedures, the provision expresses the period for filing as a maximum period, with the number of days left blank (usually 30) and to be settled by the Parties according to the circumstances prevailing for the bilateral in question.</i></p> <p><i>Unlike the filing requirements, which can be far reaching, the scope of approval falls primarily on tariffs for Third and Fourth Freedom services which are completely within the regulatory ambit of the two Parties. It also incorporates an option to address tariffs for third-party carriage.</i></p> <p><i>With regard to the alternative procedures of express and tacit approval, the provision recognizes the need for streamlining the handling of tariff submissions and emphasizes the latter approach. As with the filing period, the period within which any disapproval must be notified has been left blank (usually 15 days for a 30 day filing/notification), to be settled by the Parties according to their particular bilateral circumstances.</i></p> <p><i>This is a provision for a specific consultative process to be invoked under the bilateral regulation of tariffs, without limiting the circumstance under which it applies. In each case the time</i></p>

<p style="text-align: center;">Article 17 Pricing (Tariffs)</p>	<p style="text-align: center;">Explanatory Notes</p>
<p>notice of disapproval. Such consultations shall be held not later than ___ days after receipt of the request. The Parties shall cooperate in securing information necessary for reasoned resolution of the issues. If the Parties reach agreement, each Party shall use its best efforts to put that agreement into effect. If no agreement is reached any decision to disapprove a tariff shall prevail.</p> <p>7. [If the Parties cannot resolve an issue with respect to the tariffs mentioned in Paragraph 4, the dispute shall be settled in accordance with the provisions of Article ___ of this Agreement.]</p> <p>8. A tariff established in accordance with the provisions of this clause shall remain in force, unless withdrawn by the airline(s) concerned or until a new tariff has been approved. [However a tariff shall not be prolonged for more than ___ months after the date on which it otherwise would have expired unless approved by the Parties. Where a tariff has been approved without an expiry date and where no new tariff has been filed and approved, that tariff shall remain in force until either of the Parties gives notice terminating its approval on its own initiative or at the request of the airline(s) concerned. Such termination shall not take place with less than ___ days notice.]</p> <p>9. [The Parties shall endeavour to ensure that active and effective machinery exists within their jurisdictions to investigate violations by any airline, passenger or freight agent, tour organizer, or freight forwarder, of tariffs established in accordance with this Article. They shall furthermore ensure that the violation of such tariffs is punishable by deterrent measures on a consistent and non-discriminatory basis.]</p>	<p><i>scale for holding such consultation is left blank to be settled by the Parties according to their particular circumstances.</i></p> <p><i>The optional text presents the traditional arbitration procedure for the settlement of disputes when the consultation process has failed to resolve an issue between the Parties.</i></p> <p><i>The text on the duration of established tariffs covers such circumstances as a withdrawal of the tariffs by the airline(s) concerned, or a disapproval (of a previously approved tariff) by one or both of the Parties. Prolongation beyond the expiry date is subject to the applicable approval regime and may be limited to 12 months.</i></p> <p><i>A provision on tariff enforcement is included on an optional basis.</i></p>
<div style="border: 1px solid black; width: 150px; margin: 0 auto; padding: 5px;"> <p>Transitional</p> </div> <p>Country of origin</p>	<p><i>The country of origin tariffs approach forms a middle ground between double approval, the most widely adopted method of regulating tariffs, and the dual disapproval, where the Parties concerned have no unilateral powers of intervention in tariffs.</i></p>
<p>[See alternatively “Dual disapproval” below]</p>	
<p>1. The tariffs to be applied by the designated airline or airlines of a Party for services covered by this Agreement shall be established at reasonable levels, due regard being paid to all relevant factors, including interests of users, cost of operation, characteristics of service, reasonable profit, tariffs of other airlines, and other commercial considerations in the marketplace.</p> <p>2. The Parties agree to give particular attention to tariffs which may be objectionable because they appear unreasonably discriminatory, unduly high or restrictive because of the abuse of a dominant position, or artificially low because of direct or indirect governmental subsidy or support.</p>	<p><i>Parties may need to agree on which factors should be included or emphasized.</i></p>
<p>[Paragraph 3, option 1 of 3]</p>	
<p>3. The tariffs shall, wherever possible, be agreed by the designated airlines concerned of both Parties, after discussion</p>	<p><i>The mechanism for developing tariffs includes two other options which would place progressively less emphasis on the need for</i></p>

<p style="text-align: center;">Article 17 Pricing (Tariffs)</p>	<p style="text-align: center;">Explanatory Notes</p>
<p>as required with their respective governments and, if applicable, consultation with other airlines. Such agreement shall, wherever possible, be reached by the use of the appropriate international tariff coordination mechanism. Failing any multilateral or bilateral agreement, each designated airline may develop tariffs individually.</p> <p style="text-align: center;">[Paragraph 3, option 2 of 3]</p> <p>3. The tariffs may be agreed by the designated airlines concerned of both Parties, after consultation, if applicable, with other airlines. Such agreement may be reached by the use of the appropriate international tariff coordination mechanism. However, neither Party shall make participation in multilateral carrier tariff coordination a condition for approval of any tariff nor shall either Party prevent or require participation by the designated airline(s) of either Party in such multilateral tariff coordination. Each designated airline may, at its option, develop tariffs individually.</p> <p style="text-align: center;">[Paragraph 3, option 3 of 3]</p> <p>3. The tariffs shall, wherever possible, be established by the designated airlines individually. However, tariffs may be agreed by the designated airlines of the Parties if both Parties permit designated airlines to participate in the activities of the appropriate international tariff coordination mechanism(s). Any tariff agreement resulting from such activities shall be subject to the approval of each Party, and may be disapproved at any time whether or not previously approved.</p> <p>4. Each Party may require notification or filing of tariffs proposed by the designated airline(s) [of the other Party] [of both Parties] for carriage to or from its territory. Such notification or filing may be required not more than ___ days before the proposed date of introduction. In special cases, this period may be reduced.</p> <p>5. Each Party shall have the right to approve or disapprove tariffs for one-way or round-trip carriage between the territories of the two Parties which commences in its own territory. [The tariffs to be charged by a designated airline of one Party for carriage between the territory of the other Party and that of a third State on services covered by this agreement shall be subject to the approval requirements of the other Party.] Neither Party shall take unilateral action to prevent the inauguration of proposed tariffs or the continuation of effective tariffs for one-way or round-trip carriage between the territories of the two Parties commencing in the territory of the other Party.</p> <p>6. Approval of tariffs consequent upon the provisions of Paragraph 5 above may be given expressly by either Party to the airline(s) filing the tariffs. However, if the Party concerned has not given in writing to the other Party [and [or] the airline(s) concerned] notice of disapproval of such tariffs of the airline(s) of the other Party within ___ days from the date of submission, the tariffs concerned shall be considered approved. In the event of the period of submission being reduced in accordance with Paragraph 4, the Parties may agree that the period within which any disapproval shall be given be reduced accordingly.</p>	<p><i>a multilateral or bilateral airline agreement. Airlines may participate, under the auspices of IATA, in tariff coordination for the purpose of interlining, subject to government approval and conditions.</i></p> <p><i>In recognition of the need to streamline filing procedures, the provision expresses the period for filing as a maximum period, with the number of days left blank (usually 30) and to be settled by the Parties according to the circumstances prevailing for the bilateral in question.</i></p> <p><i>Unlike the filing requirements, which can be far reaching, the scope of approval falls primarily on tariffs for Third and Fourth Freedom services which are completely within the regulatory ambit of the two Parties. The country of origin approach forms a middle ground between double approval, the most widely adopted method of regulating tariffs, and the dual disapproval, where the Parties concerned have no unilateral powers of intervention in tariffs. The approval paragraph also incorporates an option to address tariffs for third party carriage.</i></p> <p><i>The filing period, the period within which any disapproval must be notified has been left blank (usually 15 days for a 30 day filing/notification), to be settled by the Parties according to their particular bilateral circumstances.</i></p>

<p style="text-align: center;">Article 17 Pricing (Tariffs)</p>	<p style="text-align: center;">Explanatory Notes</p>
<p>7. Where either Party believes that a tariff for carriage to its territory falls within the categories described in Paragraph 2 above, such Party shall give notice of dissatisfaction to the other Party [as soon as possible and at least] within ___ days of the date of notification or filing of the tariff, and may avail itself of the consultation procedures set out in Paragraph 8 below.</p> <p>8. Each Party may request consultation regarding any tariff of an airline of either Party for services covered by this Agreement, including where the tariff concerned has been subject to a notice of disapproval or dissatisfaction. Such consultations shall be held not later than ___ days after receipt of the request. The Parties shall cooperate in securing information necessary for reasoned resolution of the issues. If the Parties reach agreement, each Party shall use its best efforts to put that agreement into effect. If no agreement is reached, the decision of the Party in whose territory the carriage originates shall prevail.</p> <p>9. A tariff established in accordance with the provisions of this clause shall remain in force, unless withdrawn by the airline(s) concerned or until a new tariff has been approved. [However a tariff shall not be prolonged for more than ___ months after the date on which it otherwise would have expired unless approved by the Parties. Where a tariff has been approved without an expiry date and where no new tariff has been filed and approved, that tariff shall remain in force until either of the Parties gives notice terminating its approval on its own initiative or at the request of the airline(s) concerned. Such termination shall not take place with less than ___ days notice.]</p> <p>10. [The Parties shall endeavour to ensure that active and effective machinery exists within their jurisdictions to investigate violations by any airline, passenger or freight agent, tour organizer, or freight forwarder, of tariffs established in accordance with this Article. They shall furthermore ensure that the violation of such tariffs is punishable by deterrent measures on a consistent and non-discriminatory basis.]</p> <p style="text-align: center;">Dual disapproval [See alternatively “Country of origin” above]</p>	<p><i>A traditional settlement of dispute provision involving arbitration is not applicable in the case of country of origin or dual disapproval, where only a consultation provision would apply. However, disputes that arise over such anti-competitive practices as predatory pricing may well arise in the case of the country of origin and dual disapproval approaches. Because of the time-sensitive nature of tariffs in these kinds of disputes under these more liberal regimes, the Parties may wish to utilize the more accelerated dispute resolution procedure specifically developed for tariffs and capacity as set out in the article on dispute settlement.</i></p> <p><i>The text on the duration of established tariffs covers such circumstances as a withdrawal of the tariffs by the airline(s) concerned, or a disapproval (of a previously approved tariff) by the Party in whose territory the carriage originates.</i></p> <p><i>Prolongation beyond the expiry date is subject to the applicable approval regime and may be limited to 12 months.</i></p> <p><i>A provision on tariff enforcement is included on an optional basis.</i></p> <p><i>The requirement for both Parties to disapprove a tariff to prevent its going into effect gives airlines wider latitude in setting fares. Unless a Party had reason to believe that the other Party could be convinced in consultations to disapprove or modify a fare, it would be unlikely to take action against it because such action would have no practical effect.</i></p> <p><i>The wide latitude accorded the airlines to set tariffs and the limited ability of the Parties to intervene to prevent a tariff from coming into effect at this and subsequent full liberalization stages may argue for a mechanism outside of the tariff regime to deal with anti-competitive behaviour. Two possibilities are the Safeguard Article in the TASA and the competition laws of the Parties.</i></p> <p><i>In some dual disapproval articles, the terms “tariffs” is replaced by the more general term “pricing”.</i></p>

Article 17 Pricing (Tariffs)	Explanatory Notes
<p>1. The Parties agree to give particular attention to tariffs which may be objectionable because they appear unreasonably discriminatory, unduly high or restrictive because of the abuse of a dominant position, or artificially low because of direct or indirect governmental subsidy or support.</p> <p style="text-align: center;">[Paragraph 2, option 1 of 2]</p> <p>2. Each Party may require notification or filing of tariffs proposed by the designated airline(s) [of the other Party] [of both Parties] for carriage to or from its territory. Such notification or filing may be required not more than ___ days before the proposed date of introduction. In special cases, this period may be reduced.</p> <p style="text-align: center;">[Paragraph 2, option 2 of 2]</p> <p>2. Prices for international air transportation between the territories of the Parties shall not be required to be filed, unless such filing shall be required for the purpose of implementing a mutual agreement reached under paragraph 3 of this Article. Neither Party shall require notification or filing by airlines of the other Party of prices charged by caterers to the public, except as may be required on a non-discriminatory basis for information purposes. Notwithstanding the foregoing, the designated airlines of the Parties shall continue to provide immediate access, on request, to information on historical, existing and proposed prices to the aeronautical authorities of the Parties in a manner and format acceptable to those aeronautical authorities.</p> <p>3. Neither Party shall take unilateral action to prevent the inauguration of a proposed tariff or the continuation of an effective tariff of a designated airline of either Party [or on the basis of reciprocity of the airline(s) of a third State] for carriage between the territories of the Parties [or between the territory of the other Party and that of a third State.]</p> <p>4. [Approval of tariffs consequent upon the provisions of Paragraph 3 above may be given expressly by either Party to the airline(s) filing the tariffs. Where either Party believes that a tariff falls within the categories described in Paragraph 1 above, such Party shall give notice of dissatisfaction to the other Party [as soon as possible and at least] within ___ days of the date of notification or filing of the tariff, and may avail itself of the consultation procedures set out in Paragraph 5 below. However, unless both Parties have agreed in writing to disapprove the tariffs concerned under those procedures, the tariffs shall be considered approved.]</p>	<p><i>In agreements where a reference is made to pricing within a group of States, for example, Member States within the European Union, the text would be modified to take into consideration any changes in the European Common Law legislation.</i></p> <p><i>This provision is particularly common in "open skies" provisions on pricing. It incorporates the approval element of the dual disapproval approach but limits intervention to three criteria and relies specifically on the marketplace to determine the tariffs offered by the designated airlines. The approach here is to allow the airlines to establish prices unilaterally and to specifically limit intervention to situations involving certain specified unfair competitive practices by the airlines.</i></p> <p><i>Two alternative approaches to the filing of tariffs are set out in paragraph 2, one which requires filing and the other which does not. Parties may agree to dispense with formal tariff filing altogether.</i></p> <p><i>The possibility of unilateral action to intervene is further circumscribed in this provision by paragraph 3 which prohibits unilateral action to prevent the inauguration or continuation of a price proposed to be charged. The only recourse, if one Party is dissatisfied or believes that a price is inconsistent with the considerations on unfair competitive practices set out in paragraph 1, is to the consultation mechanism. The prices would go into effect or continue in effect if no agreement comes out of the consultation process.</i></p> <p><i>As with the country of origin approach, the Parties may wish to modify this provision to address a dispute through the article on dispute settlement when the consultation process fails to achieve agreement. In such a case the final sentence of paragraph 3, on the price going into effect if there is no agreement, would be affected. The filing period, the period within which any disapproval must be notified has been left blank (usually 15 days for a 30 day filing/notification), to be settled by the Parties according to their particular bilateral circumstances.</i></p>

Article 17 Pricing (Tariffs)	Explanatory Notes
<p>5. Each Party may request consultation regarding any tariff of an airline of either Party for services covered by this Agreement, including where the tariff concerned has been subject to a notice of dissatisfaction. Such consultations shall be held not later than __ days after receipt of the request. The Parties shall cooperate in securing information necessary for reasoned resolution of the issues. If the Parties reach agreement with respect to a tariff for which notice of dissatisfaction has been given, each Party shall use its best efforts to put that agreement into effect but if no agreement is reached the tariff in question shall go into or continue in effect.</p> <div style="border: 1px solid black; width: fit-content; margin: 10px auto; padding: 5px; text-align: center;">Full liberalization</div> <p>Prices [Tariffs] charged by airlines shall not be required to be filed with, or approved, by either Party.</p>	<p><i>A text, similar to the country of origin, on the duration of established tariffs may be included to cover such circumstances as a withdrawal of the tariffs by the airline(s) concerned, or a disapproval by both Parties.</i></p> <p><i>Under full liberalization, tariffs could not be disapproved for any reason. Airlines practices with respect to tariffs would continue, however, to be subject to the competition laws of the Parties.</i></p>

Article 18 Safeguards	Explanatory Notes
<p>1. The Parties agree that the following airline practices may be regarded as possible unfair competitive practices which may merit closer examination:</p> <ul style="list-style-type: none"> a) charging fares and rates on routes at levels which are, in the aggregate, insufficient to cover the costs of providing the services to which they relate; b) the addition of excessive capacity or frequency of service; c) the practices in question are sustained rather than temporary; d) the practices in question have a serious negative economic effect on, or cause significant damage to, another airline; e) the practices in question reflect an apparent intent or have the probable effect, of crippling, excluding or driving another airline from the market; and f) behaviour indicating an abuse of dominant position on the route. <p>2. If the aeronautical authorities of one Party consider that an operation or operations intended or conducted by the designated airline of the other Party may constitute unfair competitive behaviour in accordance with the indicators listed in paragraph 1, they may request consultation in accordance with Article __ [Consultation] with a view to resolving the problem. Any such request shall be accompanied by notice of the reasons for the request, and the consultation shall begin within 15 days of the request.</p>	<p><i>The provision on Safeguards will only be relevant and applicable if the Parties have agreed to move to a liberalized, even if not a fully "open skies" environment for their designated carriers. The list of airline commercial practices that may be signals of possible unfair competitive practices are indicative only and were developed by ICAO and distributed to Contracting States as a Recommendation. This provision could be used where two States have agreed to move toward a less controlled regime but either one or both parties do not have competition laws, they may need to have a mutually-agreed set of descriptions of what would constitute unfair and/or fair competitive practices as a safeguard measure. Given the particular competitive environment in which the airlines will operate and the competition law regimes applicable to their respective territories, the Parties may decide on other indicators of unfair competitive behaviour which could be included in this provision.</i></p> <p><i>The "safeguard mechanism" consists of the safeguards provision together with the fourth alternative on dispute settlement, a mediation process based on an ICAO Recommendation which is contained in the Dispute Settlement Article.</i></p> <p><i>As an alternative to the safeguard mechanism, Parties could agree on the phasing in of full market access and other provisions, to ease the transition to full liberalization (see Annex IV).</i></p>

Article 18 Safeguards	Explanatory Notes
<p>3. If the Parties fail to reach a resolution of the problem through consultations, either Party may invoke the dispute resolution mechanism under Article ___ [Settlement of disputes] to resolve the dispute.</p>	

Article 19 Competition laws	Explanatory Notes
<p>1. The Parties shall inform each other about their competition laws, policies and practices or changes thereto, and any particular objectives thereof, which could affect the operation of air transport services under this agreement and shall identify the authorities responsible for their implementation.</p> <p>2. The Parties shall, to the extent permitted under their own laws and regulations, assist each other's airlines by providing guidance as to the compatibility of any proposed airline practice with their competition laws, policies and practices.</p> <p>3. The Parties shall notify each other whenever they consider that there may be incompatibility between the application of their competition laws, policies and practices and the matters related to the operation of this Agreement; the consultation process contained in this Agreement shall, if so requested by either Party, be used to determine whether such a conflict exists and to seek ways of resolving or minimizing it.</p> <p>4. The Parties shall notify one another of their intention to begin proceedings against each other's airline(s) or of the institution of any relevant private legal actions under their competition laws which may come to their attention.</p> <p>5. Without prejudice to the right of action of either Party the consultation process contained in this agreement shall be used whenever either Party so requests and should aim to identify the respective interests of the Parties and the likely implications arising from the particular competition law action.</p> <p>6. The Parties shall endeavour to reach agreement during such consultations, having due regard to the relevant interests of each Party and to alternative means which might also achieve the objectives of that competition law action.</p> <p>7. In the event agreement is not reached, each Party shall, in implementing its competition laws, policies and practices, give full and sympathetic consideration to the views expressed by the other Party and shall have regard to international comity, moderation and restraint.</p> <p>8. The Party under whose competition laws a private legal action has been instituted shall facilitate access by the other Party to the relevant judicial body and/or, as appropriate, provide information to that body. Such information could include its own foreign relations interests, the interests of the other Party as notified by that Party and, if possible, the results of any consultation with that other Party concerning the action.</p>	<p><i>The foregoing model clause developed by ICAO is intended to be a comprehensive but adaptable set of procedures wherever two Parties have experienced or may experience difficulties in their air transport relations from the application of national competition laws. The provisions place emphasis on notification, cooperation, restraint and the consultation process to avoid and resolve conflicts or potential conflicts. Its use by the Parties would not be relevant, for example, where both Parties endorse cooperative airline practices, such as tariff coordination, and neither Party has a competition law. Nor is it intended to supplement any existing procedures and the obligations to be included would, of course, have to be agreed by the Parties' competition authorities. In general it seeks to strengthen the bilateral machinery for conflict avoidance and resolution and to bring issues in the application of competition law standards to air transport into the bilateral framework. The clause draws mainly on the concepts and principles set out in detailed Guidelines on this topic that were developed by ICAO concurrently with this model clause (see Doc 9587).</i></p>

<p style="text-align: center;">Article 19 Competition laws</p>	<p style="text-align: center;">Explanatory Notes</p>
<p>9. The Parties shall cooperate, to the extent not precluded by their national laws or policies and in accordance with any applicable international obligations, in allowing the disclosure by their airlines or other nationals of information pertinent to a competition law action to the competent authorities of each other, provided that such cooperation or disclosure would not be contrary to their significant national interests.</p> <p>10. While an action taken by the competition law authorities of one Party is the subject of consultations with the other Party, the Party in whose territory the action is being taken shall, pending the outcome of these consultations, refrain from requiring the disclosure of information situated in the territory of the other Party and that other Party shall refrain from applying any blocking legislation.</p>	

<p style="text-align: center;">Article 20 Currency conversion and remittance of earnings</p>	<p style="text-align: center;">Explanatory Notes</p>
<p>Each Party shall permit airline(s) of the other Party to convert and transmit abroad to the airline's(s') choice of State, on demand, all local revenues from the sale of air transport services and associated activities directly linked to air transport in excess of sums locally disbursed, with conversion and remittance permitted promptly without restrictions, discrimination or taxation in respect thereof at the rate of exchange applicable as of the date of the request for conversion and remittance.</p>	<p><i>In some agreements, this provision could be a separate article or could also be part of a "Commercial opportunities" Article.</i></p> <p><i>This ICAO-developed provision to facilitate currency conversion and remittance is a more comprehensive version of a provision found in almost all bilateral air service agreements.</i></p> <p><i>The term "associated activities directly linked to air transport" would normally include activities closely related to the provision of air services, such as a bus service between the airport and hotels, and where permitted, the provision of ground handling services to other airlines. The term would not include activities such as revenue from hotels, car rentals, investments in local real estate or stocks and bonds, which will presumably be subject to a different conversion and remittance regime. The term "without taxation" refers to taxation on the conversion and remittance, not to national income tax, which is dealt with in the Article on "Taxation".</i></p>

<p style="text-align: center;">Article 21 Sale and marketing of air service products</p>	<p style="text-align: center;">Explanatory Notes</p>
<p>1. Each Party shall accord airlines of the other Party the right to sell and market international air services and related products in its territory (directly or through agents or other intermediaries of the airline's choice), including the right to establish offices, both on-line and off-line.</p>	<p><i>In some agreements, this provision could be a separate article or could also be part of a "Commercial opportunities" Article.</i></p> <p><i>Some provisions in this Article refer to "designated airlines". Parties would need to consider whether the provisions on the activities contained in this Article should also be extended to all airlines of a Party rather than only designated ones.</i></p> <p><i>This ICAO-developed provision provides a simple but fair standard for authorizing airlines to sell and market their services. This clause does not apply to the sale and marketing of air service products through computer reservation systems (CRSs) which is dealt with by a separate provision. The term "on-line office" describes a situation where an office is located in a city or country served by the airline directly; an "off-line office"</i></p>

<p style="text-align: center;">Article 21 Sale and marketing of air service products</p>	<p style="text-align: center;">Explanatory Notes</p>
<p>2. [Each airline shall have the right to sell transportation in the currency of that territory or, at its discretion, in freely convertible currencies of other countries, and any person shall be free to purchase such transportation in currencies accepted by that airline.]</p>	<p><i>is located in a city/country not directly served by the airline. Some recent bilateral agreements add the alternative provision in brackets.</i></p> <p><i>The optional text provides assurance to airlines that they can freely sell in convertible currencies accepted for sale by that airline, while not requiring airlines to accept currencies in which the airlines do not deal.</i></p>

<p style="text-align: center;">Article 22 Non-national personnel and access to local services</p>	<p style="text-align: center;">Explanatory Notes</p>
<div style="border: 1px solid black; padding: 5px; margin: 10px auto; width: fit-content;"> <p style="text-align: center;">Traditional and Transitional</p> </div> <p>1. The designated airline or airlines of one Party shall be allowed, on the basis of reciprocity, to bring into and to maintain in the territory of the other Party their representatives and commercial, operational and technical staff as required in connection with the operation of the agreed services.</p> <p>2. These staff requirements may, at the option of the designated airline or airlines of one Party, be satisfied by its own personnel or by using the services of any other organization, company or airline operating in the territory of the other Party and authorized to perform such services for other airlines.</p> <p>3. The representatives and staff shall be subject to the laws and regulations in force of the other Party, and consistent with such laws and regulations:</p> <p>a) each Party shall, on the basis of reciprocity and with the minimum of delay, grant the necessary employment authorizations, visitor visas or other similar documents to the representatives and staff referred to in paragraph 1 of this Article; and</p> <p>b) both Parties shall facilitate and expedite the requirement of employment authorizations for personnel performing certain temporary duties not exceeding ninety (90) days.</p>	<p><i>In some agreements, this provision could be a separate article or could also be part of a "Commercial opportunities" Article.</i></p> <p><i>Some provisions in this Article refer to "designated airlines". Parties would need to consider whether the provisions on the activities contained in this Article should also be extended to all airlines of a Party rather than only designated ones.</i></p> <p><i>The traditional and transitional approaches rely on reciprocity which, if interpreted in a quantitative manner, would result in a numerical limitation on the number of airline employees which could be stationed in the other Party's territory.</i></p> <p><i>Paragraph 3 b) provides for temporary employees for whom the employment and residence requirements could be less extensive than for long-term employees.</i></p>

<p style="text-align: center;">Article 22 Non-national personnel and access to local services</p>	<p style="text-align: center;">Explanatory Notes</p>
<div style="text-align: center; border: 1px solid black; width: fit-content; margin: 0 auto; padding: 5px;"> <p>Full liberalization</p> </div> <p>Each Party shall permit designated airlines of the other Party to:</p> <p>a) bring in to its territory and maintain non-national employees who perform managerial, commercial, technical, operational and other specialist duties which are required for the provision of air transport services, consistent with the laws and regulations of the receiving State concerning entry, residence and employment; and</p> <p>b) use the services and personnel of any other organization, company or airline operating in its territory and authorized to provide such services.</p>	<p><i>Paragraph a) of this ICAO provision on non-national personnel, is intended to facilitate the stationing abroad of certain airline personnel — those who perform managerial, commercial, technical and operational duties. The provision is subject to international obligations as well as national laws of the receiving Party concerning entry, residence and employment, which in most cases should be flexible enough to accommodate the obligations of a Party under this provision.</i></p> <p><i>Paragraph b) is intended to respond to the need to accommodate the more frequent use of personnel from third countries by air carriers as a result of the increasing number of alliances and the globalization of airline commercial activities. Consequently, it would include the ability to use personnel and services of an airline partner in an alliance or codeshare arrangement, as well as any local company or organization authorized to provide a service.</i></p> <p><i>In some agreements, this provision could be a separate article, could also be part of a “Commercial opportunities” Article, or could be covered in the Route schedule.</i></p>

<p style="text-align: center;">Article 23 Change of gauge</p>	<p style="text-align: center;">Explanatory Notes</p>
<div style="text-align: center; border: 1px solid black; width: fit-content; margin: 0 auto; padding: 5px;"> <p>Traditional</p> </div> <p>1. In operating any agreed service on any specified route a designated airline of one Party may substitute one aircraft for another at a point in the territory of the other Party on the following conditions only:</p> <p>a) that it is justified by reason of economy of operation;</p> <p>b) that the aircraft used on the section of the route more distant from the terminal in the territory of the first Party is not larger in capacity than that used on the nearer section;</p> <p>c) that the aircraft used on the more distant section shall operate only in connection with and as an extension of the service provided by the aircraft used on the nearer section and shall be scheduled so to do; the former shall arrive at the point of change for the purpose of carrying traffic transferred from or to be transferred into, the aircraft used on the nearer section; and its capacity shall be determined with primary reference to this purpose;</p> <p>d) that there is an adequate volume of through traffic;</p> <p>e) that the airline [shall not hold itself out to the public by advertisement or otherwise] [shall not hold itself out directly or</p>	<p><i>A provision on change of gauge may be a stand alone article or be dealt with in the route schedule. Generally, a change of gauge enables an airline to operate more economically over international route sectors distant from its own territory by more closely matching the capacity of its flights on such sectors to the lower volumes of traffic to and from its home territory normally expected in the case of the more remote sectors of a long-haul route.</i></p> <p><i>In the traditional type of change of gauge formula a change of aircraft is permitted, but subject to a number of conditions including scheduling coordination, size of aircraft, volume of traffic and capacity limitations in the case of a capacity controlled regime. The conditions are aimed at permitting, but nevertheless circumscribing the use of change of gauge. In sub-paragraph e), optional text is given to encompass other modern marketing and selling means than advertising when holding out a change of gauge service. In sub-paragraph h), the optional text provides greater flexibility for the operating carrier by enabling, subject to authorization, more than one flight from the change point. However, the other conditions on change of gauge would continue to apply.</i></p>

<p style="text-align: center;">Article 23 Change of gauge</p>	<p style="text-align: center;">Explanatory Notes</p>
<p>indirectly and whether in timetables, computer reservation systems, fare quote systems or advertisements, or by other means], [as providing a service which originates at a point where the change of aircraft is made] as providing any service other than the agreed service on the relevant specified routes;</p> <p>f) that where an agreed service includes a change of aircraft this fact is shown in all timetables, computer reservation systems, fare quote systems, advertisements and other like means;</p> <p>g) that the provisions of Article ___ of this Agreement shall govern all arrangements made with regard to change of aircraft; and</p> <p>h) that in connection with any one aircraft flight into the territory in which the change of aircraft is made, only one flight may be made out of that territory [unless the airline is authorized by the aeronautical authorities of the other Party to operate more than one flight].</p> <p>2. The provisions of paragraph 1 of this Article shall:</p> <p>a) not restrict the right of a designated airline to change aircraft in the territory of the Party designating that airline; and</p> <p>b) not allow a designated airline of one Party to station its own aircraft in the territory of the other Party for the purpose of change of aircraft.</p> <p>3. The provisions of this Article shall not limit the ability of an airline to provide services through codesharing and/or blocked space arrangements as provided for in this Agreement [the Route Schedules of this Agreement].</p> <div style="text-align: center; border: 1px solid black; width: fit-content; margin: 20px auto; padding: 5px;">Transitional</div> <p>1. Each designated airline may on any or all flights on the agreed services and at its option, change aircraft in the territory of the other Party or at any point along the specified routes, provided that:</p> <p>a) aircraft used beyond the point of change of aircraft shall be scheduled in coincidence with the inbound or outbound aircraft, as the case may be; and</p> <p>b) in the case of a change of aircraft in the territory of the other Party and where more than one aircraft is operated beyond the point of change, not more than one such aircraft may be of equal size and none may be larger than the aircraft used on the Third And Fourth Freedom sector.</p> <p>2. For the purpose of change of gauge operations, a designated airline may use its own equipment and, subject to national regulations, leased equipment, and may operate under commercial arrangements with another airline.</p>	<p><i>Paragraph 2 allows unrestricted change of gauge in an airline's own country but prohibits stationing aircraft in the other Party's territory.</i></p> <p><i>The provisions of traditional change of gauge articles often cannot be practically applied to codeshare and/or blocked space situations and if these activities are to be permitted, an exception to the change of gauge provisions is needed. The bracketed language will be used when the Route schedules are contained in an Annex to the Agreement. In such cases, States may wish to include change of gauge provisions in that Annex.</i></p> <p><i>The transitional approach is a more modern and flexible change of gauge formula, one which is constrained only by conditions regarding scheduling coordination, and size of aircraft when there is more than one aircraft operating beyond the point of change. The references in paragraph 2 to the use of leased equipment and commercial arrangements presupposes that the Parties have also agreed on these matters.</i></p>

<p style="text-align: center;">Article 23 Change of gauge</p>	<p style="text-align: center;">Explanatory Notes</p>
<p>3. A designated airline may use different or identical flight numbers for the sectors of its change of aircraft operations.</p> <div style="text-align: center; border: 1px solid black; width: fit-content; margin: 10px auto; padding: 5px;"> <p>Full liberalization</p> </div> <p>On any international segment or segments of the agreed routes, a designated airline may perform international air transportation without any limitation as to change, at any point on the route, in type or number of aircraft operated; provided that [with the exception of all-cargo services] the transportation beyond such point is a continuation of the transportation from the territory of the Party that has designated the airline and, in the inbound direction, the transportation to the territory of the Party that has designated the airline is a continuation of the transportation from beyond such point.</p>	<p><i>The full liberalization approach is found in many “open skies” agreements and it provides extensive operational flexibility in the use of equipment. This type of provision would, for example, enable a hub-type operation to be established at the change point, subject of course to agreement being reached with other relevant bilateral partners. The only restriction is that services be conducted in a linear fashion, that is that the flight on the second sector be the extension or continuation of the prior connecting outbound or inbound flight. The bracketed language removes this restriction for all-cargo services.</i></p> <p><i>In some fully liberalized agreements, there is no need to retain a restriction requiring a service to be a continuation of a connecting flight. In these agreements, there is no need for a separate article, and a reference to “no restriction” is made in the Route schedule.</i></p>

<p style="text-align: center;">Article 24 Ground handling</p>	<p style="text-align: center;">Explanatory Notes</p>
<div style="text-align: center; border: 1px solid black; width: fit-content; margin: 10px auto; padding: 5px;"> <p>Traditional</p> </div> <p>Subject to applicable safety provisions, including ICAO Standards and Recommended Practices (SARPs) contained in Annex 6, the designated airline may on the basis of reciprocity, use the services of a designated airline of the other Party for ground handling services in that Party’s territory.</p> <div style="text-align: center; border: 1px solid black; width: fit-content; margin: 10px auto; padding: 5px;"> <p>Transitional</p> </div> <p style="text-align: center;">[Option 1 of 2]</p> <p>Subject to applicable safety provisions, including ICAO Standards and Recommended Practices (SARPs) contained in Annex 6, the designated airline may choose from among competing providers of ground handling services.</p>	<p><i>In some agreements, this provision could be a separate article or could also be part of a “Commercial opportunities” Article.</i></p> <p><i>All provisions should contain a cross reference to safety provisions, or a sentence which indicates that ground handling will be covered by Annex 6.</i></p> <p><i>Some provisions in this Article refer to “designated airlines”. Parties would need to consider whether the provisions on the activities contained in this Article should also be extended to all airlines of a Party rather than only designated ones.</i></p> <p><i>The reciprocal nature of the traditional approach generally results in satisfactory ground handling services being provided where designated airlines of both Parties serve the same airports in both Parties. However, where there is no reciprocity (for example, if no designated airline of the other Party serves an airport where the designated airlines of the first Party have ground handling services) airlines sometimes find the services unsatisfactory and prices non-competitive.</i></p> <p><i>This approach allows a designated airline to choose from among competing providers of ground handling services. This can provide some improvement in services and cost depending on the degree of competition among the providers. This</i></p>

<p style="text-align: center;">Article 24 Ground handling</p>	<p style="text-align: center;">Explanatory Notes</p>
<p style="text-align: center;">[Option 2 of 2]</p> <p>1. Subject to applicable safety provisions, including ICAO Standards and Recommended Practices (SARPs) contained in Annex 6, the designated airline or airlines of one Party shall be permitted, on the basis of reciprocity, to perform its own ground handling in the territory of the other Party and, at its option, to have ground handling services provided in whole or in part by any agent authorized by the competent authorities of the other Party to provide such services.</p> <p>2. The designated airline or airlines of one Party shall also have the right to provide ground handling services for other airlines operating at the same airport in the territory of the other Party.</p> <p>3. The exercise of the rights set forth in paragraphs 1 and 2 of this Article shall be subject only to physical or operational constraints resulting from considerations of airport safety or security. Any constraints shall be applied uniformly and on terms no less favourable than the most favourable terms available to any airline engaged in similar international air services at the time the constraints are imposed.</p> <div style="text-align: center; border: 1px solid black; padding: 5px; margin: 10px auto; width: fit-content;"> <p>Full liberalization</p> </div> <p>1. Subject to applicable safety provisions, including ICAO Standards and Recommended Practices (SARPs) contained in Annex 6, each Party shall authorize airline(s) of the other Party, at each airline's choice, to:</p> <ol style="list-style-type: none"> a) perform its own ground handling services; b) handle another or other air carrier(s); c) join with others in forming a service-providing entity; and/or d) select among competing service providers. <p>2. An air carrier is permitted to choose freely from among the alternatives available and to combine or change its option, except where this is demonstrably impractical and also where constrained by relevant safety and security considerations, and (with the exception of self-handling in a) above) by the scale of airport operations being too small to sustain competitive providers.</p> <p>3. Parties would always be required to take the necessary measures to ensure reasonable cost-based pricing and fair and equal treatment for air carrier(s) of the other Party/Parties.</p>	<p><i>approach is commonly found at airports with a large number of airlines and physical limitations on the number of ground handlers that can be accommodated.</i></p> <p><i>This transition permits an airline on the basis of reciprocity to perform its own ground handling, or choose to have those services provided by any agent authorized by the competent authority of the other Party, to provide ground handling services to other airlines operating at the same airport in the territory of the other Party.</i></p> <p><i>Paragraph 3 recognizes that ground handling rights may have to be constrained but only due to airport safety or security considerations. It also accords most favoured nation and national treatment to the application of any such constraints.</i></p> <p><i>In the full liberalization approach, developed by ICAO, the designated airline has a wider choice with respect to ground handling: it can perform its own, or use those of another airline, provide the services to other airlines, or join with other airlines in providing the services collectively, or choose from among competing providers (see Doc 9587).</i></p> <p><i>Depending on their particular circumstances, States should consider the gradual, phased introduction of self-handling and multiple suppliers based, where appropriate, on the size of the airport.</i></p> <p><i>At certain airports the number of air carriers and limited physical facilities may not permit all air carriers to perform their own airside ground handling; in such cases, carriers allowed to do so should be selected by objective, transparent and non-discriminatory procedures and competitive, alternative suppliers should be available.</i></p>

<p style="text-align: center;">Article 25 Codesharing/Cooperative arrangements</p>	<p style="text-align: center;">Explanatory Notes</p>
<div style="text-align: center; margin-bottom: 20px;"> <div style="border: 1px solid black; padding: 5px; width: fit-content; margin: 0 auto;"> Traditional </div> </div> <p style="text-align: center; margin-bottom: 20px;">[Option 1 of 2]</p> <div style="text-align: center; margin-bottom: 20px;"> <div style="border: 1px solid black; padding: 5px; width: fit-content; margin: 0 auto;"> Transitional </div> </div> <p>Each designated airline may enter into cooperative marketing arrangements such as joint-venture, blocked space and codeshare with airlines of either Party, provided that both airlines involved hold the appropriate authority and meet the requirements normally applied to such arrangements.</p> <div style="text-align: center; margin-bottom: 20px;"> <div style="border: 1px solid black; padding: 5px; width: fit-content; margin: 0 auto;"> Full liberalization </div> </div> <p>1. In operating or holding out the authorized services on the agreed routes, any designated airline of one Party may enter into cooperative marketing arrangements such as joint venture, blocked space or codesharing arrangements, with:</p> <ol style="list-style-type: none"> a) an airline or airlines of either Party; b) an airline or airlines of a third country; and c) a surface transportation provider of any country, provided that all airlines in such arrangements 1) hold the appropriate authority and 2) meet the requirements normally applied to such arrangements. <p>2. The Parties agree to take the necessary action to ensure that consumers are fully informed and protected with respect to codeshared flights operating to or from their territory and that, as a minimum, passengers be provided with the necessary information in the following ways:</p> <ol style="list-style-type: none"> a) orally and, if possible, in writing at the time of booking; 	<p><i>Codesharing may be treated in the same manner as other cooperative airline arrangements, requiring the airlines involved to have the appropriate authority (in the case of codesharing, the underlying traffic rights) and meet the requirements normally applied to such agreements. However, for States which may wish to have a specific article on codesharing, the following text is provided.</i></p> <p><i>Alternatively, some States may find it preferable that codesharing be addressed in an Article on Commercial opportunities or in the notes to the Route schedule.</i></p> <p><i>Most traditional agreements deal implicitly with interlining through the approval of interline tariffs, but rarely have specific provisions concerning the use of leased aircraft, blocked space and the more recent codesharing arrangements. Such arrangements are either approved by the aeronautical authorities concerned on a case-by-case basis or under Memoranda of Understanding.</i></p> <p><i>The transitional approach specifically recognizes the use of these types of cooperative agreements, but limits them to designated airlines of the Parties to the agreement. As a transition measure, some bilateral agreements limit the use of codesharing to specific routes or a specific number of flights which could be further modified by subsequent discussions and/or an exchange of notes.</i></p> <p><i>The full liberalization stage includes cooperative arrangements with third-country airlines and surface providers. In most “open skies” agreements it also includes wet leasing between airlines of the Parties but for the purposes of this Template Agreement separate provisions on leasing have been included.</i></p> <p><i>The phrase, “the requirements normally applied” to the cooperative arrangements would include, in the case of codesharing for example, requirements for consumer notification and protection. This could take the form of an additional article drawn from Doc 9587.</i></p>

<p style="text-align: center;">Article 25 Codesharing/Cooperative arrangements</p>	<p style="text-align: center;">Explanatory Notes</p>
<p>b) in written form, on the ticket itself and/or (if not possible), on the itinerary document accompanying the ticket or on any other document replacing the ticket, such as a written confirmation, including information on whom to contact in case of a problem and a clear indication of which airline is responsible in case of damage or accident; and</p> <p>c) orally again, by the airline's ground staff at all stages of the journey.</p> <p>[3. The airlines are required to file for approval any proposed cooperative arrangement with the aeronautical authorities of both Parties at least _ days before its proposed introduction].</p>	<p><i>The term in b) "any other document replacing the ticket, such as written confirmation" includes electronic ticketing.</i></p> <p><i>The optional filing requirement could serve as a means for the aeronautical authorities to verify that all airlines have the appropriate authority and meet requirements applied to such arrangements, Alternatively, national law and regulations may be used for this purpose.</i></p>
<p style="text-align: center;">[Option 2 of 2]</p> <div style="border: 1px solid black; padding: 5px; text-align: center; margin: 10px auto; width: fit-content;"> <p>Transitional and Full liberalization</p> </div> <p>1. Subject to the regulatory requirements normally applied to such operations by the aeronautical authorities of each Party, each designated airline of the other Party may enter into cooperative arrangements for the purpose of:</p> <p>a) holding out the agreed services on the specified routes by codesharing (i.e. selling transportation under its own code) on flights operated by an airline(s) of either Party [and/or of any third country]; and/or</p> <p>b) carrying traffic under the code of any other airline(s) where such other airline(s) has been authorized by the aeronautical authorities of one Party to sell transportation under its own code on flights operated by that designated airline of the other Party.</p> <p>2. Codesharing services involving transportation between points in one Party shall be restricted to flights operated by (an) airline(s) authorized by the aeronautical authorities of that Party to provide service between points in that Party's territory and all transportation between points in such territory under the code of the designated airline(s) of the other Party shall only be available as part of an international journey. All airlines involved in codesharing arrangements shall hold the appropriate underlying route authority. Airlines shall be permitted to transfer traffic between aircraft involved in codeshare services without limitation. The aeronautical authorities of one Party shall not withhold permission for codesharing services identified in a) above by the designated airline(s) of the other Party on the basis that the airline(s) operating the aircraft does not have the right from such aeronautical authorities to carry traffic under the code of the designated airline(s) of the other Party.</p>	<p><i>Sub-paragraph a) allows air carriers to hold out their services by selling transportation under their own codes (marketing carriers) on flights operated by airlines of either Party and/or third country carriers (operating carriers), where the bracketed language is included. (To limit codesharing to designated airlines of the Parties, the bracketed language should be omitted.).</i></p> <p><i>Sub-paragraph b) allows designated airlines to carry the codes of other airlines.</i></p> <p><i>The first sentence of paragraph 2 allows codesharing on domestic segments in a Party's territory, but only as part of an international journey. The last sentence of paragraph 2 prohibits aeronautical authorities of a Party from withholding codeshare approval on the basis that the operating airline does not have the rights from that Party to carry traffic under the code of the designated airline of the other Party. If such withholding were allowed, many potential codeshare opportunities that the provisions are intended to permit could be prevented by the other Party.</i></p>

<p style="text-align: center;">Article 25 Codesharing/Cooperative arrangements</p>	<p style="text-align: center;">Explanatory Notes</p>
<p>3. For the purposes of Article ___ (Capacity) of the Agreement, there shall be no limit imposed by the aeronautical authorities of one Party on the capacity to be offered by the airline or airlines designated by the other Party on codesharing services.</p>	<p><i>Paragraph 3 recognizes the importance of clarity with respect to the capacity entitlements permitted for codeshare operations. Often there are no limitations on the capacity that may be offered by marketing air carriers on codeshare services; however, flights operated with their own equipment by carriers that are designated under the agreement are frequently subject to capacity restrictions whether or not another air carrier's code is also used on the flights. The capacity of third country operating air carriers is normally only subject to the provisions of an air agreement between the State of the operating air carrier and the other Party.</i></p>

<p style="text-align: center;">Article 26 Aircraft leasing</p>	<p style="text-align: center;">Explanatory Notes</p>
<p>1.* Either Party may prevent the use of leased aircraft for services under this agreement which does not comply with Articles ___ (Safety) and ___ (Security).</p>	<p><i>Definitions</i></p> <p>a) <i>The term "wet lease" means the lease of an aircraft with crew.</i></p> <p>b) <i>The term "dry lease" means the lease of an aircraft without crew.</i></p> <p><i>This paragraph treats leased aircraft on the same basis vis-à-vis safety and security as other aircraft operated by designated airlines under the agreement. It makes clear that a party can prevent the use of leased aircraft that do not meet safety and security standards. In implementing this type of paragraph, some States require prior filing of leasing arrangements involving international routes to permit timely action to be taken if the authorities have safety concerns. In some instances, States may use lists of airlines from which aircraft may be leased, and/or lists of airlines from which they may not be leased, based, for example, on ICAO Safety Oversight audit reports or the records of ramp inspections.</i></p> <p><i>To meet safety concerns with the use of leased aircraft in certain situations, States in all three stages can use agreements under Article 83 bis to transfer certain responsibilities of the State of Registry under the Convention to the State of the Aircraft Operator in accordance with relevant ICAO guidance. A Party which has not ratified Article 83 bis (and is therefore not bound to recognize an agreement concluded under that amendment) could agree to recognize a transfer of responsibilities pursuant to an agreement under Article 83 bis concluded by the other (another) Party to the air service agreement. This recognition would, of course, only extend to operations under the relevant air service agreement.</i></p> <p><i>As a practical matter, a Party with safety concerns about a specific situation involving the use of leased aircraft may find it easier, at least initially, to consult with the Party whose airline has leased the aircraft, bearing in mind that the State of the lessor airline may not be a party to the agreement. In considering action under paragraph 1, States should first assess whether their safety concerns with leased aircraft have been addressed by the use of existing ICAO guidance and procedures which make clear the responsibility for continuing airworthiness and the adequacy</i></p>

Article 26 Aircraft leasing	Explanatory Notes
<div data-bbox="370 573 667 621" style="text-align: center; border: 1px solid black; padding: 5px; margin: 10px auto; width: fit-content;"> Traditional </div> <p data-bbox="191 636 802 741">2. Subject to paragraph 1 above, the designated airlines of each Party may use leased aircraft from other airlines to operate the agreed services under this agreement, provided that the leasing arrangements entered into satisfy the following conditions:</p> <p data-bbox="191 768 802 846">a) such arrangements are not equivalent to giving a lessor airline of another country access to traffic rights not otherwise available to that airline;</p> <p data-bbox="191 873 802 951">b) the financial benefit to be obtained by the lessor airline will not be related to the financial success of the operations of the lessee airline; and</p> <p data-bbox="191 978 802 1083">c) the agreed services operated by the lessee airline when using the leased aircraft will not be linked so as to provide through services by the same aircraft to or from services operated by the lessor airline on its own route or routes.</p> <p data-bbox="191 1110 802 1266">3. The proposed leasing arrangements will be subject to the approval of the aeronautical authorities of both Contracting Parties. The designated airline proposing the use of leased aircraft shall give the aeronautical authorities of each Contracting Party the earliest possible notification of the proposed terms of such arrangements.</p> <p data-bbox="191 1293 802 1476">4. However, the aeronautical authorities shall not withhold approval of arrangements under which the designated airline or airlines of either Contracting Party lease aircraft for emergency reasons, provided that the period of such arrangements does not exceed [90] days and the aeronautical authorities are notified of the terms of such arrangements including the nature of the emergency.</p> <p data-bbox="191 1503 802 1686">5. Nothing in the foregoing will prevent the leasing of aircraft by a designated airline from the other designated airline or airlines of either Contracting Party or from a non-airline source which does not control (and is not controlled by and is not under common control with) another airline. In such cases a simple notification by the designated airline to the aeronautical authorities of the other Contracting Party will suffice.</p>	<p data-bbox="829 327 1435 537"><i>of operating and maintenance standards in respect of such leased aircraft, taking into account relevant ICAO Standards and Recommended Practices (SARPS) and guidance such as the Manual of Procedures for Operations, Inspection, Certification and Continued Surveillance (Doc 8335), the Airworthiness Manual (Doc 9760), and the Guidance on the Implementation of Article 83 bis of the Convention on International Civil Aviation (Circular 295).</i></p> <p data-bbox="829 636 1435 789"><i>These paragraphs set out conditions for the use of leased aircraft, which are designed to ensure that the rights granted in the agreement are exercised by, and benefit, only the designated airlines of the two Contracting Parties. Procedurally, prior approval by the aeronautical authorities is generally required for using leased aircraft except the cases specified in paragraph 5.</i></p>
<div data-bbox="370 1713 667 1761" style="text-align: center; border: 1px solid black; padding: 5px; margin: 10px auto; width: fit-content;"> Transitional </div>	<p data-bbox="829 1776 1435 1854"><i>Under this approach, a choice of two options are provided. The main difference is in the treatment of wet-leased aircraft from third countries.</i></p>

Article 26 Aircraft leasing	Explanatory Notes
<p style="text-align: center;">[Option 1 of 2]</p> <p>2 Subject to paragraph 1 above, the designated airlines of each Party may provide services under this agreement by:</p> <p>a) using aircraft dry-leased from any [company including] airlines;</p> <p>b) using aircraft wet-leased from other airlines of the same Party;</p> <p>c) using aircraft wet-leased from airlines of the other Party; and</p> <p>d) using aircraft wet-leased from airlines of third countries,</p> <p>provided that all airlines participating in the arrangements listed in b), c) and d) above, hold the appropriate authorization and meet the requirements normally applied to those arrangements.</p>	<p><i>Dry leases from non-airline owners, sometimes known as “financial” leases, are virtually universally permitted and are not generally the subject of air services agreements. Some States, however, have included express reference to such leases in their air services agreements. Optional languages [shown in square brackets] are provided within each approach.</i></p> <p><i>Some States may, by national law, policy or regulation, or mutual agreement between aeronautical authorities concerned, authorize in advance one or more types of aircraft leases, such as dry leases from any airline, wet leases between airlines of the same Party, wet leases from airlines of the other Party, or wet leases from airlines of third countries, subject in all cases to enforcement of applicable bilateral, national and regional safety and security provisions.</i></p> <p><i>In some cases, a State may prevent the operation of services by an airline whose fleet is composed of mostly or all wet-leased aircraft from a third party.</i></p> <p><i>The term “appropriate authorization” has a meaning broader than the usual “route and/or traffic rights” granted under a bilateral agreement, and includes:</i></p> <p><i>i) the economic and safety-related operating authorization that the lessor and lessee airlines have been granted (whether or not under the bilateral agreement) on the routes to be served; and</i></p> <p><i>ii) any other national or regional approvals required for the particular type of lease involved.</i></p> <p><i>This paragraph covers four leasing situations described in the four subparagraphs. In the case of situation a) [dry leases], such use is permitted without restriction, subject only to safety and security requirements. Some States prefer to deal with dry-leased aircraft owned by airlines only in the agreement while others may want to expressly cover all dry leases including those from non-airline entities.</i></p> <p><i>In the case of situations b) and c), this option allows such use by subjecting it to both safety and security requirements as well as a requirement that the lessor and lessee possess the necessary operating authorization. Although both the lessor and lessee would ordinarily have the necessary operating authorization in such situations, they are listed separately here to cover a possible situation where the safety requirements of the State of the lessee may not permit any wet leases from airlines of other States (e.g. the United States).</i></p> <p><i>For situation d) [wet leases from airlines of third countries], this option allows such use by subjecting it to a broader authority requirement which includes not only the grant of any necessary economic rights to the airlines in the leasing arrangement, but also any national or regional approvals required. This takes into account the situation where States may require specific authorization for certain operations with leased aircraft.</i></p>

<p align="center">Article 26 Aircraft leasing</p>	<p align="center">Explanatory Notes</p>
<p align="center">[Option 2 of 2]</p> <p>2. Subject to paragraph 1 above, the designated airlines of each Party may provide services under this agreement by:</p> <p>a) using aircraft dry-leased from any [company including] airlines;</p> <p>b) using aircraft wet-leased from other airlines of the same Party</p> <p>c) using aircraft wet-leased from airlines of the other Party;</p> <p>d) using aircraft wet-leased from airlines of third countries, provided that this will only be done under arrangements which are not equivalent to giving a lessor airline access to traffic rights not otherwise available to that airline.</p> <p>3. Notwithstanding paragraph 2 d) above, the designated airlines of each Party may provide services under this agreement by using aircraft wet-leased on a short-term, <i>ad hoc</i> basis from airlines of third countries.</p> <div style="border: 1px solid black; padding: 2px; margin: 10px auto; width: fit-content;"> <p align="center">Full liberalization</p> </div> <p>2. Subject to paragraph 1, the designated airlines of each Party may operate services under this agreement by using leased aircraft which meets applicable safety and security requirements.</p>	<p><i>This option allows the use of leased aircraft in the first three situations subject only to safety and security requirements. In the case of situation d), unlike the first option, this second option permits such use with a more specific and restrictive condition, namely, the arrangement would not result in the lessor airline providing the aircraft and crew exercising traffic rights it does not have.</i></p> <p><i>Paragraph 3 of this second option creates an exception to the traffic rights requirement in paragraph 2 d) in order to deal with unforeseen emergency situations such as those in which an aircraft must be replaced by an aircraft with crew on an urgent basis for a limited period of time, such as, for example, the operation of one or several flights when the original aircraft unexpectedly has a mechanical failure and cannot be operated as a scheduled service.</i></p> <p><i>This approach allows the use of leased aircraft of all types as long as such aircraft meet the applicable safety and security requirements</i></p>

<p align="center">Article 27 Intermodal services</p>	<p align="center">Explanatory Notes</p>
<div style="border: 1px solid black; padding: 2px; margin: 10px auto; width: fit-content;"> <p align="center">Traditional</p> </div> <p>Each designated airline may use intermodal transportation if approved by the aeronautical authorities of both Parties.</p> <div style="border: 1px solid black; padding: 2px; margin: 10px auto; width: fit-content;"> <p align="center">Transitional</p> </div> <p>Each designated airline may employ the services of their own or others for the surface transport of air cargo.</p> <div style="border: 1px solid black; padding: 2px; margin: 10px auto; width: fit-content;"> <p align="center">Full liberalization</p> </div> <p align="center">[Option 1 of 2]</p> <p>Each designated airline may use surface modes of transport without restriction in conjunction with the international air transport of passengers and cargo.</p>	<p><i>In the traditional approach the filing and approval of intermodal passenger and cargo tariffs (e.g. air/rail, air/truck) implicitly recognized this form of intermodal transport .</i></p> <p><i>The transition stage includes such facilities as the use of airport customs facilities for surface cargo, transport under bond, carriage to or from any points in third countries and charging a single price for the intermodal transport (provided the shipper is not misled as to the facts of such transport).</i></p> <p><i>The inclusion of passengers and the phrase “without restriction” are the principle differences between the transition and full liberalization stages.</i></p>

<p style="text-align: center;">Article 27 Intermodal services</p>	<p style="text-align: center;">Explanatory Notes</p>
<p style="text-align: center;">[Option 2 of 2]</p> <p>Notwithstanding any other provision of this Agreement, airlines and indirect providers of cargo transportation of both Parties shall be permitted, without restriction, to employ in connection with international air transportation any surface transportation for cargo to or from any points in the territories of the Parties or in third countries, including transport to and from all airports with customs facilities, and including, where applicable, the right to transport cargo in bond under applicable laws and regulations. Such cargo, whether moving by surface or by air, shall have access to airport customs processing and facilities. Airlines may elect to perform their own surface transportation or to provide it through arrangements with other surface carriers, including surface transportation operated by other airlines and indirect providers of cargo transportation. Such intermodal cargo services may be offered at a single, through price for the air and surface transportation combined, provided that shippers are not misled as to the facts concerning such transportation.</p>	<p><i>This provision is aimed at giving full service, capacity and pricing flexibility as well as access to customs and other facilities, to the various parties in an intermodal shipment of cargo. Such a provision is now inserted in many "open skies" agreements, particularly where the volume of trade by air between the parties warrants such a liberalizing provision.</i></p>
<p style="text-align: center;">Article 28 Computer reservation systems (CRSs)</p> <p style="text-align: center;">[Option 1 of 3]</p> <p>Each Party shall apply the ICAO Code of Conduct for the Regulation and Operation of Computer Reservation Systems within its territory.</p> <p style="text-align: center;">[Option 2 of 3]</p> <p>Each Party shall apply the ICAO Code of Conduct for the Regulation and Operation of Computer Reservation Systems within its territory consistent with other applicable regulations and obligations concerning computer reservation systems.</p> <p style="text-align: center;">[Option 3 of 3]</p> <p>The Parties agree that:</p> <p>a) one of the most important aspects of the ability of an airline to compete is its ability to inform the public of its services in a fair and impartial manner, and that, therefore, the quality of information about airline services available to travel agents who directly distribute such information to the travelling public and the ability of an airline to offer those agents competitive computer reservations systems (CRSs) represent the foundation for an airline's competitive opportunities; and</p>	<p><i>Some provisions refer to "designated airlines". Parties would need to consider whether the provisions on the activities contained in this Article should also be extended to all airlines of a Party rather than only designated ones.</i></p> <p><i>This alternative is an ICAO model for use, in particular, by Parties which may not have CRS regulations but are willing to apply the ICAO Code of Conduct for the Regulation and Operation of Computer Reservation Systems (see Doc 9587).</i></p> <p><i>This alternative applies the ICAO Code, but it is consistent with any other applicable regulations. (These could include the European Union, the European Civil Aviation Conference and the Arab Civil Aviation Commission CRS Codes, or national regulations. The reference to "obligations" recognizes that some States will apply the provisions of the General Agreement on Trade in Services (GATS) which has an Annex on Air Transport Services applicable to CRSs.)</i></p> <p><i>This alternative recognizes that some bilateral agreements set out in considerable detail the applicable principles to govern the regulation and operation of CRSs, usually because only one of the parties has extensive CRS regulations which are reflected in the detailed provisions of this type of article. However, given the rapidly evolving nature of airline product distribution, a less comprehensive approach may be more flexible and more easily applied to current conditions.</i></p>

<p align="center">Article 28 Computer reservation systems (CRS)</p>	<p align="center">Explanatory Notes</p>
<p>b) it is equally necessary to ensure that the interests of the consumers of air transport products are protected from any misuse of such information and its misleading presentation and that airlines and travel agents have access to effectively competitive computer reservations systems.</p>	

<p align="center">Article 29 Ban on smoking</p>	<p align="center">Explanatory Notes</p>
<p>1. Each Party shall prohibit or cause their airlines to prohibit smoking on all flights carrying passengers operated by its airlines between the territories of the Parties. This prohibition shall apply to all locations within the aircraft and shall be in effect from the time an aircraft commences enplanement of passengers to the time deplanement of passengers is completed.</p> <p>2. Each Party shall take all measures that it considers reasonable to secure compliance by its airlines and by their passengers and crew members with the provisions of this Article, including the imposition of appropriate penalties for non-compliance.</p>	<p><i>This Article obligates each Party to prohibit smoking on all passenger flights by its airlines between the Parties, and to take reasonable measures to enforce this ban. The need for this provision would lessen as the practice of prohibiting smoking on flights spreads globally.</i></p>

<p align="center">Article 30 Environmental Protection</p>	<p align="center">Explanatory Notes</p>
<p>The Parties support the need to protect the environment by promoting the sustainable development of aviation. The Parties agree with regard to operations between their respective territories to comply with the ICAO Standards and Recommended Practices (SARPs) of Annex 16 and the existing ICAO policy and guidance on environmental protection.</p>	<p><i>States may wish to consider the inclusion of an aviation environmental clause into their bilateral air services agreements to take into account the impact of air transport industry on the environment.</i></p>

<p align="center">Article 31 Statistics</p>	<p align="center">Explanatory Notes</p>
<div style="border: 1px solid black; padding: 5px; margin-bottom: 10px; text-align: center;"> <p>Traditional</p> </div> <p>The aeronautical authorities of each Party shall provide [or cause its designated airline or airlines to provide] the aeronautical authorities of the other Party, [upon request,] periodic or other statements of statistics as may be reasonably required for the purpose of reviewing the capacity provided on the agreed services operated by the designated airline(s) of the first Party.</p>	<p><i>A provision on statistics is usually found in agreements which have either a pre-determination type or a Bermuda I type capacity regime. The principal difference in use of this alternative is that the furnishing of statistics is likely to be mandatory in the case of pre-determination, but "upon request" in the case of Bermuda I. The statistics may be furnished by the aeronautical authority, or alternatively, it may also provide that the designated airlines submit them. When the purpose is to review the capacity on the agreed routes, the origin and destination statistics would be required. Some agreements may specify the periodicity of the traffic period or the submission, such as monthly, if the submission is mandatory.</i></p>

Article 31 Statistics	Explanatory Notes
<div data-bbox="332 363 651 411" style="border: 1px solid black; text-align: center; padding: 2px;">Transitional</div> <p>The aeronautical authorities of both Parties shall supply each other, on request, with periodic statistics or other similar information relating to the traffic carried on the agreed services.</p> <div data-bbox="332 695 651 743" style="border: 1px solid black; text-align: center; padding: 2px;">Full liberalization</div>	<p><i>This alternative may also be applied to pre-determination or Bermuda I arrangements but is more simple and does not spell out the purpose of the submission. It is therefore an approach that might be used in more liberal agreements where the need for statistics is not related to capacity control, but rather review.</i></p> <p><i>In some such agreements, a Party may require an airline to furnish data with respect to prices (tariff), for example, where there is an allegation of predatory pricing (see Article 17 — Pricing (Tariffs)), Dual disapproval, paragraph 2, alternative 2).</i></p> <p><i>“Open skies” agreements would not normally require the filing of any statistics.</i></p>

Article 32 Approval of schedules	Explanatory Notes
<div data-bbox="386 995 599 1043" style="border: 1px solid black; text-align: center; padding: 2px;">Traditional</div> <p>1. The designated airline of each Party shall submit its envisaged flight schedules for approval to the aeronautical authorities of the other Party at least thirty (30) days prior to the operation of the agreed services. The same procedure shall apply to any modification thereof.</p> <p>2. For supplementary flights which the designated airline of one Party wishes to operate on the agreed services outside the approved timetable, that airline must request prior permission from the aeronautical authorities of the other Party. Such requests shall usually be submitted at least two (2) working days prior to the operation of such flights.</p>	<p><i>This provision is common to traditional agreements where capacity is determined by both Parties in advance. There is a requirement for the designated airlines to submit to the aeronautical authorities, prior to the operation of the services, the agreed flight schedules including timetables, the frequency of the services and the types of aircraft to be used, as well as any modifications or supplementary flights.</i></p> <p><i>In some agreements, this provision could be covered in the Capacity Article.</i></p>

Article 33 Consultations	Explanatory Notes
	<p><i>The consultation provision is normally general in scope and some issues, such as aviation security and safety, but also capacity and tariffs, as well as amendment of the agreement, may be subject to separate and specific consultation processes as regards purpose, time frames and methods (e.g. exchange of documents).</i></p> <p><i>The consultation provision is based on a relatively standardized formula although there are a number of different approaches in wording with regard to the purpose of the consultation, the format of the consultation and the form of the request.</i></p>

Article 33 Consultations	Explanatory Notes
<div style="text-align: center; border: 1px solid black; padding: 5px; margin: 10px auto; width: 200px;"> Traditional </div> <p>In the spirit of close cooperation, the aeronautical authorities of the Parties shall consult with each other from time to time with a view to ensuring the implementation of and satisfactory compliance with the provisions of this Agreement. Either Party may also request to hold a “High-level” meeting, up to Ministerial level, if and when deemed necessary, to advance the process of consultations.</p> <div style="text-align: center; border: 1px solid black; padding: 5px; margin: 10px auto; width: 200px;"> Transitional and Full liberalization </div> <ol style="list-style-type: none"> 1. Either Party may, at any time, request consultation on the interpretation, application, implementation or amendment of this Agreement or compliance with this Agreement. 2. Such consultations [which may be through discussion or by correspondence] shall begin within a period of 60 [30] days from the date the other Party receives a [written or oral] request, unless otherwise agreed by the Parties. 	<p><i>In this approach, the consultation process can take the form of a regular process with the alternative to escalate the consultations to higher governmental levels.</i></p> <p><i>In this approach, the consultation process can be triggered by a request from either Party to address a specific issue. The “request” rather than the “time to time” formulation is more likely to be used in liberalized or “open skies” agreements, where the need for regular consultation may be considered to be less.</i></p> <p><i>The bracketed language in paragraph 2 is found in more recent agreements and takes into account modern communication methods which lessen the need for meetings between personnel of the Parties.</i></p>

Article 34 Settlement of disputes	Explanatory Notes
<div style="text-align: center; border: 1px solid black; padding: 5px; margin: 10px auto; width: 200px;"> Traditional </div> <p style="text-align: center;">Diplomatic channels</p> <p style="text-align: center;">[See alternatively two “Arbitration” approaches below]</p> <ol style="list-style-type: none"> 1. Any dispute arising between the Parties relating to the interpretation or application of this Agreement [except those that may arise under Article __ (Fair competition), Article __ (Safety), Article __ (Tariffs/Pricing)], the Parties shall in the first place endeavour to settle it by consultations and negotiation. 2. If the Parties fail to reach a settlement by negotiation, the dispute shall be settled through diplomatic channels. 	<p><i>At the bilateral level, the initial and most successful step in all basic approaches to the settlement of disputes is consultations and/or negotiations. Should that process fail to produce an agreement, or the Parties fail to reach a settlement of the dispute, then three alternatives are provided which includes settlement through diplomatic channels, arbitration and mediation, an intermediate step between consultation and arbitration. The three alternatives link the dispute settlement process to the bilateral agreement. (However, a broad, fair and equal opportunity to compete clause has often been used to address situations not specifically covered by the agreement.)</i></p> <p><i>This provision takes into account an optional wording where there may be a separate consultation process with regard to the article on fair competition or with regard to the article on safety.</i></p> <p><i>This approach relies on diplomatic channels if consultation fails to produce a settlement. It should be recognized that escalating a dispute to higher governmental levels may run the risk of a decision on other than air transport grounds.</i></p>

<p style="text-align: center;">Article 34 Settlement of disputes</p>	<p style="text-align: center;">Explanatory Notes</p>
<p style="text-align: center;">Arbitration</p> <p style="text-align: center;">[See alternatively “Diplomatic channels” above or second “Arbitration” approach below]</p> <p>1. Any dispute arising between the Parties relating to the interpretation or application of this Agreement [except those that may arise under Article __ (Fair competition), Article __ (Safety), Article __ (Tariffs/Pricing)], the Parties shall in the first place endeavour to settle it by consultations and negotiation.</p> <p>2. If the Parties fail to reach a settlement through consultations, the dispute may, at the request of either Party, be submitted to arbitration in accordance with the procedures set forth below.</p> <p>3. Arbitration shall be by a Tribunal of three arbitrators, one to be named by each Party and the third to be agreed upon by the two arbitrators so chosen, provided that the third such arbitrator shall not be a national of either Party. Each Party shall designate an arbitrator within a period of sixty (60) days from the date of receipt by either Party from the other Party of a diplomatic note requesting arbitration of the dispute, and the third arbitrator shall be agreed upon within a further period of sixty (60) days. If either of the Parties fails to designate its own arbitrator within the period of sixty (60) days or if the third arbitrator is not agreed on within the period indicated, the President of the Council of ICAO may be requested by either Party to appoint an arbitrator or arbitrators. If the President is of the same nationality as one of the Parties, the most senior Vice-President who is not disqualified on that ground shall make the appointment.</p> <p>4. The arbitration tribunal shall determine its own procedure.</p> <p style="text-align: center;">[Paragraph 5, option 1 of 2]</p> <p>5. Each Party shall [to the degree consistent with its national law] give full effect to any decision or award of the tribunal.</p> <p style="text-align: center;">[Paragraph 5, option 2 of 2]</p> <p>5. The decision of the tribunal shall be binding on the Parties.</p> <p style="text-align: center;">[Paragraph 6, option 1 of 2]</p> <p>6. The expenses of the tribunal shall be shared equally between the Parties.</p> <p style="text-align: center;">[Paragraph 6, option 2 of 2]</p> <p>6. Each Party shall bear the costs of the arbitrator appointed by it. The other costs of the tribunal shall be shared equally by the Parties, including any expenses incurred by the President of the Council of ICAO in implementing the procedures in paragraph 3 of this Article.</p>	<p><i>Should the process of consultations fail to produce an agreement, or the Parties fail to reach a settlement of the dispute, then this approach relies on settling disputes through arbitration. The arbitration process in bilateral air services agreements has rarely been used in practice, in part because of its costs and the time involved, though also because most disputes do not get beyond the stage of negotiation.</i></p> <p><i>The arbitration process is to provide for the establishment of a three-person arbitration tribunal.</i></p> <p><i>This alternative leaves it to the tribunal to establish its own procedures.</i></p> <p><i>There are different approaches possible on the implementation of a tribunal decision. The arbitral tribunal may hold a conference on the issues to be decided, receive written and oral testimony from both Parties, establish a schedule for reaching a decision, and issue interpretations thereof; and a majority of the tribunal will be sufficient to issue a decision.</i></p> <p><i>There are a number of variations as to the division of the expenses. For example, both Parties may equally share the expenses of the tribunal, or each Party may bear the costs of the arbitrator it appoints and share the other costs of the tribunal.</i></p>

<p style="text-align: center;">Article 34 Settlement of disputes</p>	<p style="text-align: center;">Explanatory Notes</p>
<p>7. If and so long as either Party fails to comply with any decision given under paragraph 3, the other Party may limit, withhold or revoke any rights or privileges which it has granted by virtue of this agreement to the Party in default or to the designated airline or airlines in default.</p> <p style="text-align: center;">[See alternatively, “Diplomatic channels” or first “Arbitration” approach above]</p> <p>1. Any dispute arising between the Parties relating to the interpretation or application of this Agreement [except those that may arise under Article __ (Fair competition), Article __ (Safety), Article __ (Tariffs/Pricing)], the Parties shall in the first place endeavour to settle it by consultations and negotiation.</p> <p>2. If the Parties fail to reach a settlement through consultations, the dispute may, at the request of either Party, be submitted to arbitration in accordance with the procedures set forth below.</p> <p>3. Arbitration shall be by a Tribunal of three arbitrators, one to be named by each Party and the third to be agreed upon by the two arbitrators so chosen, provided that the third such arbitrator shall not be a national of either Party. Each Party shall designate an arbitrator within a period of sixty (60) days from the date of receipt by either Party from the other Party of a diplomatic note requesting arbitration of the dispute, and the third arbitrator shall be agreed upon within a further period of sixty (60) days. If either of the Parties fails to designate its own arbitrator within the period of sixty (60) days or if the third arbitrator is not agreed on within the period indicated, the President of the Council of ICAO may be requested by either Party to appoint an arbitrator or arbitrators. If the President is of the same nationality as one of the Parties, the most senior Vice-President who is not disqualified on that ground shall make the appointment.</p> <p>4. Except as otherwise agreed, the arbitration tribunal shall determine the limits of its jurisdiction in accordance with this Agreement and shall establish its own procedure. At the direction of the tribunal or at the request of either of the Parties, a conference to determine the precise issues to be arbitrated and the specific procedures to be followed shall be held no later than fifteen (15) days after the tribunal is fully constituted.</p> <p>5. Except as otherwise agreed by the Parties or prescribed by the tribunal, each Party shall submit a memorandum within forty-five (45) days of the time the tribunal is fully constituted. Replies shall be due sixty (60) days later. The tribunal shall hold a hearing at the request of either Party or at its discretion within fifteen (15) days after replies are due.</p> <p>6. The tribunal shall attempt to render a written decision within thirty (30) days after completion of the hearing or, if no hearing is held, after the date both replies are submitted. The decision of the majority of the tribunal shall prevail.</p>	<p><i>Should the process of consultations fail to produce an agreement, or the Parties fail to reach a settlement of the dispute, then this approach relies on settling disputes through arbitration. The arbitration process in bilateral air services agreements has rarely been used in practice, in part because of its costs and the time involved, though also because most disputes do not get beyond the stage of negotiation.</i></p> <p><i>The arbitration process is to provide for the establishment of a three-person arbitration tribunal.</i></p> <p><i>This alternative leaves it to the tribunal to establish its own procedures, including the appointment process for the arbitrators, with time frames, to be followed.</i></p>

<p align="center">Article 34 Settlement of disputes</p>	<p align="center">Explanatory Notes</p>
<p>7. The Parties may submit requests for clarification of the decision within fifteen (15) days after it is rendered and any clarification given shall be issued within fifteen (15) days of such request.</p> <p align="center">[See alternatively, “Diplomatic channels” or first “Arbitration” approach above]</p> <p align="center">[Paragraph 8, option 1 of 2]</p> <p>8. Each Party shall [to the degree consistent with its national law] give full effect to any decision or award of the tribunal.</p> <p align="center">[Paragraph 8, option 2 of 2]</p> <p>8. The decision of the tribunal shall be binding on the Parties.</p> <p align="center">[Paragraph 9, option 1 of 2]</p> <p>9. The expenses of the tribunal shall be shared equally between the Parties.</p> <p align="center">[Paragraph 9, option 2 of 2]</p> <p>9. Each Party shall bear the costs of the arbitrator appointed by it. The other costs of the tribunal shall be shared equally by the Parties, including any expenses incurred by the President of the Council of ICAO in implementing the procedures in paragraph 4 of this Article.</p> <p>10. If and so long as either Party fails to comply with any decision given under paragraph 3, the other Party may limit, withhold or revoke any rights or privileges which it has granted by virtue of this agreement to the Party in default or to the designated airline or airlines in default.</p> <div data-bbox="245 1314 724 1362" style="border: 1px solid black; padding: 5px; margin: 10px auto; width: fit-content;"> <p align="center">Transitional and Full liberalization</p> </div> <p>1. Any dispute arising between the Parties relating to the interpretation or application of this Agreement [except those that may arise under Article __ (Fair competition), Article __ (Safety), Article __ (Tariffs/Pricing)], the Parties shall in the first place endeavour to settle it by consultations and negotiation.</p>	<p><i>This alternative developed by ICAO is to address those commercial disputes, such as on pricing, capacity and other competitive practices that arise in a liberalized environment. It could also be used to address disputes beyond unfair practices, for example, disputes related to market access in a less regulatory controlled environment. The mechanism is deliberately broader in scope and could apply to issues not specifically included in the bilateral agreement. It is not intended as a substitute for the formal arbitration process, but rather as a means to resolve disputes in a relatively simple, responsive and cost-effective manner.</i></p>

<p style="text-align: center;">Article 34 Settlement of disputes</p>	<p style="text-align: center;">Explanatory Notes</p>
<p>2. Any dispute which cannot be resolved by consultations, may at the request of either 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.</p> <p>3. 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.</p> <p>4. 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.</p> <p>5. 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.</p> <p>6. The Parties shall cooperate in good faith to advance the mediation and to be bound by any decision or determination of the mediator or the panel, unless they otherwise agreed. If the Parties agree in advance to request only a determination of the facts, they shall use those facts for resolution of the dispute.</p> <p>7. The costs of this mechanism shall be estimated upon initiation and apportioned equally, but with the possibility of reapportionment under the final decision.</p> <p>8. The mechanism is without prejudice to the continuing use of the consultation process, the subsequent use of arbitration, or Termination under Article ____.</p>	<p><i>The normal consultation process may resolve such disputes but could also have the effect of prolonging an unfair competitive practice to the commercial detriment of one or more airlines. Consequently, this procedure, which is less formal and time consuming than arbitration, is designed, by means of a panel, to reach a resolution through mediation, fact finding or decision, using the services of an expert or experts in the subject matter of the dispute. The primary objective is to enable the Parties to restore a healthy competitive environment in the airline market place as expeditiously as possible.</i></p> <p><i>“Open skies” agreements also include a similar recourse to refer disputes “for decision to some person or body”.</i></p> <p><i>The mechanism requires the Parties to agree in advance on such matters as the purpose of the panel, viz its terms of reference and procedure, and in particular whether the panel is permitted to grant any interim or injunctive relief to the complainant. Such relief could take the form, for example, of a temporary freeze or reversion to the status quo ante.</i></p> <p><i>The two important time frames built in to the mechanism are 15 days for selection of the experts to constitute the panel, and 60 days for the rendering of a decision or determination. Thus the emphasis is on minimizing legal formalities and procedural time-frames, yet allowing adequate time for the panel to arrive at a decision or determination.</i></p>

Article 34 Settlement of disputes	Explanatory Notes
<p>9. If the Parties fail to reach a settlement through mediation, the dispute may, at the request of either Party, be submitted to arbitration in accordance with the procedures set forth below.</p>	<p><i>The use of the mechanism does not preclude the implementation of the arbitration process if that is also provided for in the agreement and if the above mechanism has failed to resolve the dispute to the satisfaction of one or more Parties. Nevertheless, it may be expected that the subsequent use of arbitration should be unnecessary if the Parties have committed to this complementary procedure for resolving certain kinds of commercial and time-sensitive disputes.</i></p> <p><i>The arbitration procedures are the same as outlined in the traditional text.</i></p>

Article 35 Amendments	Explanatory Notes
<p>1. Either Party may at any time request consultation with the other Party for the purpose of amending the present Agreement [or its Annex] [or its Route Schedule]. Such consultation shall begin within a period of sixty (60) days from the date of receipt of such request. [Such consultations may be conducted through discussion or by correspondence.]</p> <p>2. Any amendment shall enter into force when confirmed by an exchange of diplomatic notes.</p> <p style="text-align: center;">[Paragraph 3, option 1 of 2]</p> <p>3. Any amendment of the [Annex] [Route schedule] may be made by written agreement between the aeronautical authorities of the Parties and shall come into force when confirmed by an exchange of diplomatic notes.</p> <p style="text-align: center;">[Paragraph 3, option 2 of 2]</p> <p>3. Any amendments of this Agreement agreed by the Parties shall come into effect when confirmed by an exchange of diplomatic notes.</p>	<p><i>The amendment or modification provision in an agreement may take a variety of forms. The variety arises because of differing treatment of air services agreements (whether treaty or executive agreement) and the differing constitutional procedures applied to the approval of such agreements and their amendments. Sometimes the amendment process in an agreement is dealt with in the context of the consultation provision since the negotiation of an amendment may be seen as merely another matter for consultation.</i></p> <p><i>This alternative takes a more detailed approach. It includes a time frame of 60 days for the start of the consultations; optional wording at the end of paragraph 1 enables the consultation process to be in writing.</i></p> <p><i>As regards the date of coming into force, practices differ widely, although the most common approach is to give effect to amendments when there has been an exchange of diplomatic notes.</i></p> <p><i>In order to provide greater flexibility for amending the Route schedule, paragraph 3 allows the consultation and amendment process to take place between the aeronautical authorities.</i></p> <p><i>This alternative takes a more simple approach and does not address the amendment procedure, it simply addresses the coming into force of any agreed amendment. In such an approach it would be presumed that the amendment procedure to be followed would be that of the agreement's general consultation process.</i></p>

<p style="text-align: center;">Article 36 Multilateral agreements</p>	<p style="text-align: center;">Explanatory Notes</p>
<p style="text-align: center;">[Option 1 of 2]</p> <p>If a multilateral agreement concerning air transport comes into force in respect of both Parties, the present Agreement shall be [deemed to be] amended so as [so far as is necessary] to conform with the provisions of that multilateral agreement.</p> <p style="text-align: center;">[Option 2 of 2]</p> <p>If both Parties become parties to a multilateral agreement that addresses matters covered by this agreement, they shall consult to determine whether this agreement should be revised to take into account the multilateral agreement.</p>	<p><i>This provision concerning the effect on the bilateral agreement of any multilateral agreement that may come into effect for both Parties has been inserted in most bilateral agreements over the years in anticipation of progress towards a broad multilateral air transport agreement for the exchange of traffic rights; in the absence of such an agreement it nevertheless continues to be relevant with respect to more limited regional and plurilateral agreements.</i></p> <p><i>From the bilateral perspective there are at least two options for taking into account that Parties to a bilateral may subsequently become Parties to a multilateral agreement that deals with the same matters as the bilateral: either amend the bilateral to conform to the multilateral or consult on whether this needs to be done. (Different options are presented from the multilateral perspective; these are discussed in the Regional/Plurilateral TASA).</i></p> <p><i>The unbracketed text in this alternative commits the Parties to amend the bilateral to conform the multilateral agreement using the normal amendment procedure. The bracketed text eliminates the need for the normal amendment procedure but adds a limitation “so far as is necessary” on the extent of amendment of the bilateral.</i></p> <p><i>This alternative allows the Parties to decide, after consultations, whether the bilateral should be revised to take into account the multilateral agreement.</i></p>
<p style="text-align: center;">Article 37 Termination</p> <p>Either Party may, at any time, give notice in writing, through diplomatic channels, to the other Party of its [intention] [decision] to terminate this Agreement. Such notice shall be simultaneously communicated to ICAO. This Agreement shall terminate [at midnight (at the place of receipt of the notice) immediately before the first anniversary of] [twelve months after] the date of receipt of the notice by the other Party, unless the notice is withdrawn by agreement before the end of this period. [In the absence of acknowledgement of receipt by the other Party, the notice shall be deemed to have been received fourteen (14) days after receipt of the notice by ICAO.]</p>	<p><i>The termination or withdrawal provision (also called denunciation) is fairly standard in format although some variations in wording exist. The main variation is the optional wording in brackets, in the final sentence, to cover a situation where the Party receiving the notice of termination does not acknowledge receipt — in that case receipt is deemed to have taken place 14 days after receipt of the notice by ICAO. Termination provisions normally require 12 months notice before the termination comes into effect although a shorter period may be agreed.</i></p>
<p style="text-align: center;">Article 38 Registration with ICAO</p>	<p style="text-align: center;">Explanatory Notes</p>
	<p><i>Articles 81 and 83 of the Convention obligate States to register their aeronautical agreements and the above provision formalizes this requirement at the bilateral level. However, in practice, many agreements and amendments are not registered,</i></p>

<p style="text-align: center;">Article 38 Registration with ICAO</p>	<p style="text-align: center;">Explanatory Notes</p>
<p style="text-align: center;">[Option 1 of 2]</p> <p>This Agreement and any amendment thereto shall be registered upon its signature with the International Civil Aviation Organization by [name of the Registering Party].</p> <p style="text-align: center;">[Option 2 of 2]</p> <p>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].</p>	<p><i>a fact which has a negative impact on the transparency of the whole process. This clause developed by ICAO includes the requirement to register, upon signature (option 1) or entry into force (option 2), the name of the Party responsible for registering the agreement and is intended to encourage better compliance with the registration requirement.</i></p>

<p style="text-align: center;">Article 39 Entry into force</p>	<p style="text-align: center;">Explanatory Notes</p>
<p style="text-align: center;">[Option 1 of 2]</p> <p>This Agreement shall [be applied provisionally from the date of its signature and shall] enter into force [thirty (30) days after both Parties have notified each other through diplomatic channels that their constitutional procedures for the entry into force of this agreement have been completed] [from the date on which the exchange of diplomatic notes between the Parties has been completed].</p> <p style="text-align: center;">[Option 2 of 2]</p> <p>This Agreement shall enter into force on the date of signature.</p>	<p><i>The two basic approaches to an entry into force provision presented above involve, in the first alternative, an anticipated ratification process and, in the second alternative, a simple and immediate entry into force upon signature. In the former the Parties may wish to allow for protracted constitutional formalities by enabling the agreement to provisionally enter into force upon signature. There are a number of formulae for the date of entry into force following such formalities and two are included in the first alternative. The choices made on the wording of this final provision will largely depend on the respective national processes of the Parties for giving effect to their air services agreements.</i></p>

<p style="text-align: center;">Annex I Route schedules</p>	<p style="text-align: center;">Explanatory Notes</p>
<p>Section 1</p> <p>Airlines of each Party designated under this Annex shall be entitled to provide air transportation between points on the following routes:</p> <div style="text-align: center; border: 1px solid black; width: fit-content; margin: 10px auto; padding: 5px;"> <p>Traditional</p> </div> <p>A. Routes to be operated by the designated airline (or airlines) of Party A:</p> <p>From (named cities) in Party A via (intermediate points) to (named cities) in Party B and beyond (beyond points).</p>	<p><i>The traditional approach limits air transportation to cities named on specified route(s). This formula covers the exchange of Third, Fourth and Fifth Freedoms. It also usually specifically prohibits cabotage.</i></p>

Annex I Route schedules	Explanatory Notes
<p>B. Routes to be operated by the designated airline (or airlines) of Party B:</p> <p>From (named cities) in Party B via (named intermediate points) to (named cities) in Party A and beyond (named beyond points).</p> <div style="text-align: center; border: 1px solid black; width: fit-content; margin: 0 auto; padding: 5px;">Transitional</div> <p style="text-align: center;">[Option 1 of 3]</p> <p>A. Routes to be operated by the designated airline (or airlines) of Party A:</p> <p>From any point or points in Party A via (intermediate points) to any point or points in Party B and beyond (beyond points).</p> <p>B. Routes to be operated by the designated airline (or airlines) of Party B:</p> <p>From any point or points in Party B via (intermediate points) to any point or points in Party A and beyond (beyond points).</p> <div style="text-align: center; border: 1px solid black; width: fit-content; margin: 0 auto; padding: 5px;">Transitional</div> <p style="text-align: center;">[Option 2 of 3]</p> <p>A. Routes to be operated by the designated airline (or airlines) of Party A:</p> <ol style="list-style-type: none"> 1. From points behind Party A via Party A and intermediate points to any point or points in Party B and beyond. 2. For all-cargo service(s) between Party B and any point or points. <p>B. Routes to be operated by the designated airline (or airlines) of Party B:</p> <ol style="list-style-type: none"> 1. From points behind Party B via Party B and intermediate points to any point or points in Party A and beyond. 2. For all-cargo service(s), between Party A and any point or points. <p style="text-align: center;">[Option 3 of 3]</p> <p>A. Routes to be operated by the designated airline (or airlines) of Party A:</p> <p>From points to and from the territory of Party B with limited cabotage.</p> <p>B. Routes to be operated by the designated airline (or airlines) of Party B:</p> <p>From points to and from the territory of Party A with limited cabotage.</p>	<p><i>This approach broadens the choice for international air transportation to any city in one Party to any city in the other Party and beyond to any city in a third country. This choice has been narrowed to include only services between these two countries (Third and Fourth Freedoms). It also usually specifically prohibits cabotage.</i></p> <p><i>This approach further broadens traffic rights by explicitly including Sixth Freedom, covering passengers, mail and cargo, and Seventh Freedom for all-cargo services. It also usually specifically prohibits cabotage.</i></p> <p><i>This transition adds Seventh Freedom for passenger services and limited cabotage which could take two forms. First, a domestic segment operated in conjunction with an international one (used by the European Union for several years in its transition to a single European market) or where two points with international services in a Party are co-terminalized (e.g. both points served by the same flight) by a designated airline of the other party and domestic air transportation is permitted between those two points.</i></p>

Annex I Route schedules	Explanatory Notes
<div style="text-align: center; border: 1px solid black; padding: 5px; margin: 10px auto; width: fit-content;"> Full liberalization </div> <p style="text-align: center;">[Option 1 of 2]</p> <p>A. Routes to be operated by the designated airline (or airlines) of Party A:</p> <p>Points to, from and within the territory of Party B.</p> <p>B. Routes to be operated by the designated airline (or airlines) of Party B:</p> <p>Points to, from and within the territory of Party A.</p> <p>Section 2 Operational flexibility</p> <p>The designated airlines of either Party may, on any or all flights and at its option:</p> <ol style="list-style-type: none"> 1. operate flights in either or both directions; 2. combine different flight numbers within one aircraft operation; 3. serve intermediate and beyond points in the territories of the Parties on the routes in any combination and in any order; 4. omit stops at any point or points; 5. transfer traffic (including codesharing operations) from any of its aircraft to any of its other aircraft at any point on the routes; and 6. serve points behind any point in its territory with or without change of aircraft or flight number and may hold out and advertise such services to the public as through services; <p>without directional or geographic limitation and without loss of any right to carry traffic otherwise permissible under the present Agreement; provided that (with the exception of all-cargo services) the service serves a point in the territory of the Party designating the airlines.</p> <p style="text-align: center;">[Option 2 of 2]</p> <ol style="list-style-type: none"> 1. The designated airlines of each Party shall be entitled to perform air services, whether for the carriage of passengers, cargo, mail or in combination, across, to, from or within the territory of the other Party, without limitation as to route, capacity or frequency. 2. The designated airlines of each Party shall be entitled without limitation to exercise traffic rights on all services and combinations of services. 	<p><i>Full liberalization opens all international as well as the domestic markets of the parties. European Community air carriers have this type of market access within the European Union.</i></p> <p><i>Some of these provisions may be relevant to only one or more approach(es).</i></p> <p><i>Notwithstanding Article __ (Change of gauge) of this Agreement, airlines shall be permitted to transfer traffic between aircraft involved in codesharing operations without limitation.</i></p> <p><i>Option 2 provides for full liberalization including cabotage.</i></p>

<p style="text-align: center;">Annex II Non-scheduled/Charter operations</p>	<p style="text-align: center;">Explanatory Notes</p>
<p style="text-align: center; border: 1px solid black; padding: 5px;">Traditional</p> <p>1. The provisions of this Agreement, except those dealing with Traffic Rights, Capacity and Tariffs shall be applicable also to non-scheduled flights operated by an air carrier of one Party into or from the territory of the other Party and to the air carrier operating such flights.</p> <p style="text-align: center;">[Paragraph 2, option 1 of 2]</p> <p>2. The provisions of paragraph 1 of this Article shall not affect national laws and regulations governing the authorization of non-scheduled operations or to the conduct of air carriers or other parties involved in the organization of such operations.</p>	<p><i>A provision on non-scheduled operations may be dealt with in a variety of ways and contexts in an agreement. Basically it may be treated as a grant of rights matter or a matter for separate regulatory attention. It may be in the body of the Agreement or in an Annex.</i></p> <p><i>A simpler and more direct approach to the grant of rights for non-scheduled operations would be simply to refer in the grant of rights article to the conduct of "international air services" scheduled and non-scheduled. In this way all the provisions of the agreement would be applicable to both scheduled and non-scheduled services.</i></p> <p><i>This approach may be used when the Parties anticipate the possibility of non-scheduled operations, need to identify the various administrative and commercial opportunity provisions that would be applied to those operations, but wish to take no position on whether authorization would be granted under their respective national laws and regulations. This provision makes clear that the provisions of the main agreement other than those designed for scheduled air services will apply to non-scheduled air services. Alternatively, this clause could list the Articles in the main agreement that would apply to non-scheduled services, e.g. User Charges, Customs Duties, Safety, Security, etc.</i></p> <p><i>The provision leaves to Each Party's national law and regulation the determination of which non-scheduled services would be permitted and under what conditions.</i></p>
<p style="text-align: center; border: 1px solid black; padding: 5px;">Traditional</p> <p style="text-align: center;">[Paragraph 2, option 2 of 2]</p> <p>2. Each Party shall give sympathetic consideration to applications for [non-scheduled flights] [charter flights] between their territories for passengers and cargo in accordance with their respective laws and regulations.</p>	<p><i>The requirement to give "sympathetic consideration" is not a grant of market access but implies a positive treatment to non-scheduled operations in general or, more specifically charter flights. This provision also reflects the fact that the regulatory regime governing authorization for such operations is generally unilateral, with the destination State or States applying their national rules to any applicant.</i></p>
<p style="text-align: center; border: 1px solid black; padding: 5px;">Transitional</p> <p style="text-align: center;">[Option 1 of 3]</p> <p>1. Each Party shall authorize non-scheduled passenger flights between points at which no established scheduled air services exist. In cases where such scheduled services exist, authorizations shall be granted provided the offer of non-scheduled flights does not endanger the economic stability of existing scheduled services.</p> <p>2. When series of non-scheduled passenger flights are requested, these must correspond to the definition of "inclusive</p>	<p><i>This approach has no adverse impact on scheduled services.</i></p> <p><i>Historically, many States were concerned with preventing non-scheduled passenger services from having an adverse impact on scheduled services and a wide variety of policies and mechanisms were developed to address this issue (see Doc 9587). Three such mechanisms are contained in this text: 1) authorizing non-scheduled passenger services between points</i></p>

<p style="text-align: center;">Annex II Non-scheduled/Charter operations</p>	<p style="text-align: center;">Explanatory Notes</p>
<p>package tours” and must be carried out on a round-trip basis, with pre-established departures and returns.</p> <p style="text-align: center;">[Option 2 of 3]</p> <p>1. The airlines of each Party designated pursuant to this Agreement to operate under this Annex shall have the right to operate non-scheduled international air transport over the routes specified and in accordance with the rights granted for scheduled services in this Agreement.</p> <p>2. Each Party shall extend favourable consideration to applications by airlines of the other Party to carry traffic not covered by this Annex on the basis of comity and reciprocity.</p> <p style="text-align: center;">[Option 3 of 3]</p> <p>1. The [designated] airlines of one Party shall [, in accordance with the terms of their designation and of the Route Schedule at Annex __,] be entitled to perform international non-scheduled air transportation to and from any point or points in the territory of the other Party, either directly or with stopovers en route, for one-way or round-trip carriage of any traffic to or from a point or points in the territory of the Party which has designated the airline. Multi-destination charters shall also be permitted. In addition, [designated] airlines of one Party may operate charters with traffic originating in or destined for the territory of the other Party.</p> <p>2. Each [designated] airline performing air transportation under this provision shall comply with such laws, regulations and rules of the Party in whose territory the traffic originates, whether on a one-way or round-trip basis, as that Party now or hereafter specifies shall be applicable to such transportation.</p> <div style="border: 1px solid black; padding: 5px; text-align: center; margin: 20px auto; width: 150px;"> <p>Full liberalization</p> </div>	<p><i>not served by scheduled services (usually referred to as “off-route charters”) 2) not permitting non-scheduled passenger services which would adversely impact on scheduled services, and 3) authorizing types of non-scheduled passenger services (in this case inclusive tour charters which include a ground package of services such as hotels, land transport, etc. in addition to air transport) which are not regarded as endangering the economic viability of scheduled services.</i></p> <p><i>This transitional approach opens the routes in the agreement to non-scheduled services, under the same conditions (e.g. change of gauge) for scheduled services, while off-route non-scheduled services are approved/disapproved on the basis of comity and reciprocity. Depending on the grant of rights for scheduled services this would normally open non-scheduled services to both passengers and cargo.</i></p> <p><i>The use of “comity and reciprocity” results in the amount and type of off-route charters being based on the Party with the most restrictive view of such charters.</i></p> <p><i>In this approach, although the regulatory regime governing non-scheduled operations, and particularly charter type operations, is usually that of the destination State, the Parties to some agreements may choose to stipulate that the rules of the country of origin of the operation should be applied. This should facilitate the conduct of these operations. This is therefore an example of such an arrangement which could be used in a liberal agreement, though it nevertheless requires compliance with rules.</i></p> <p><i>Paragraph 1 spells out a broad market access for these operations whereas the second paragraph applies the country of origin rules.</i></p> <p><i>The text with bracketed language is used where the Route schedule at Annex __ is not city specific and where the Parties designate airlines for non-scheduled services. Without the bracketed language all airlines of each Party (whether or not they are also designated for scheduled services) would be authorized by the other Party to perform the non-scheduled services described in the first paragraph.</i></p> <p><i>The full liberalization approach is an option for States which might wish to liberalize non-scheduled services while continuing to regulate scheduled services. This approach may be found in liberal or “open skies” agreements. Its conditions are minimal.</i></p>

<p style="text-align: center;">Annex II Non-scheduled/Charter operations</p>	<p style="text-align: center;">Explanatory Notes</p>
<p>Section 1</p> <p>Airlines of each Party designated under this Annex shall, in accordance with the terms of their designation, have the right to carry international charter traffic of passengers (and their accompanying baggage) and/or cargo (including, but not limited to, freight forwarder, split, and combination (passenger/cargo) charters):</p> <p>Between any point or points in the territory of the Party that has designated the airline and any point or points in the territory of the other Party; and</p> <p>Between any point or points in the territory of the other Party and any point or points in a third country or countries, provided that, except with respect to cargo charters, such service constitutes part of a continuous operation, with or without a change of aircraft, that includes service to the homeland for the purpose of carrying local traffic between the homeland and the territory of the other Party.</p> <p>In the performance of services covered by this Annex, airlines of each Party designated under this Annex shall also have the right: (1) to make stopovers at any points whether within or outside of the territory of either Party; (2) to carry transit traffic through the other Party's territory; (3) to combine on the same aircraft traffic originating in one Party's territory, traffic originating in the other Party's territory, and traffic originating in third countries; and (4) to perform international air transportation without any limitation as to change, at any point on the route, in type or number of aircraft operated; provided that, except with respect to cargo charters, in the outbound direction, the transportation beyond such point is a continuation of the transportation from the territory of the Party that has designated the airline and in the inbound direction, the transportation to the territory of the Party that has designated the airline is a continuation of the transportation from beyond such point.</p> <p>Each Party shall extend favourable consideration to applications by airlines of the other Party to carry traffic not covered by this Annex on the basis of comity and reciprocity.</p> <p>Section 2</p> <p>Any airline designated by either Party performing international charter air transportation originating in the territory of either Party, whether on a one-way or round-trip basis, shall have the option of complying with the charter laws, regulations, and rules either of its homeland or of the other Party. If a Party applies different rules, regulations, terms, conditions, or limitations to one or more of its airlines, or to airlines of different countries, each designated airline shall be subject to the least restrictive of such criteria.</p> <p>However, nothing contained in the above paragraph shall limit the rights of either Party to require airlines designated under this Annex by either Party to adhere to requirements relating to the protection of passenger funds and passenger cancellation and refund rights.</p>	<p><i>It equates non-scheduled with scheduled services in terms of rights and market access, and without the necessity of compliance with the national regulations of the destination Party, but in the first paragraph limits this to the designated airlines of each party. It also contains a provision for favourable consideration to be given to non-scheduled operations not covered by the rights granted under the first paragraph, for example, services by airlines not designated to provide scheduled services or Seventh Freedom passenger services.</i></p> <p><i>A difference between the previous transitional approach and full liberalization is the ability of the designated airline to choose either the charter rules of its own country or that of the other Party for the operation of its non-scheduled services.</i></p>

Annex II Non-scheduled/Charter operations	Explanatory Notes
<p>Section 3</p> <p>Except with respect to the consumer protection rules referred to in the preceding paragraph above, neither Party shall require an airline designated under this Annex by the other Party, in respect of the carriage of traffic from the territory of that other Party or of a third country on a one-way or round-trip basis, to submit more than a declaration of conformity with the applicable laws, regulations and rules referred to under section 2 of this Annex or of a waiver of these laws, regulations, or rules granted by the applicable aeronautical authorities.</p>	

Annex III Air cargo services	Explanatory Notes
<div data-bbox="386 1066 597 1115" style="border: 1px solid black; text-align: center; margin: 10px auto; width: fit-content;"> <p>Transitional</p> </div> <p>1. Every designated airline when engaged in the international transport of air cargo:</p> <ol style="list-style-type: none"> a) shall be accorded non-discriminatory treatment with respect to access to facilities for cargo clearance, handling, storage, and facilitation; b) subject to local laws and regulations may use and/or operate directly other modes of transport; c) may use leased aircraft, provided that such operation complies with the equivalent safety and security standards applied to other aircraft of designated airlines; d) may enter into cooperative arrangements with other air carriers including, but not limited to, codesharing, blocked spaced, and interlining; and e) may determine its own cargo tariffs which shall not be required to be filed with the aeronautical authorities of either Party. <p>2. In addition to the rights in paragraph 1 above, every designated airline when engaged in all cargo transportation as scheduled or non-scheduled services may provide such services to and from the territory of each Party, without restriction as to frequency, capacity, routing, type of aircraft, and origin or destination of cargo.</p>	<p><i>Some agreements provide no specific provision on all-cargo operations as the right to operate all-cargo services is usually implicit in the grant of rights wherein the Parties typically grant the right for their designated airlines to transport passengers, cargo and mail on the agreed scheduled international air services. However, other agreements are more specific, referring to "passengers, cargo and mail or in any combination". The agreement may in the route schedule specify particular routes, including restrictions or flexibility as agreed, for all-cargo services, or the routes may be those exchanged for scheduled passenger services.</i></p> <p><i>The purpose of this paragraph is to achieve a fair competitive balance between all air carriers engaged in the transport of international air cargo. Where the main agreement contains a provision which also appears in the Annex (for example, leasing), that provision should be omitted from the Annex.</i></p> <p><i>This paragraph provides the Third through the Seventh Freedoms of the air for only all-cargo services operated on a scheduled or non-scheduled basis. The first two Freedoms, overflight and technical stops, are not included as they are normally provided in the main agreement. Operational flexibility is described in general terms and includes those elements generally regarded as important for all-cargo operations.</i></p>

Annex III Air cargo services	Explanatory Notes
<div style="border: 1px solid black; padding: 5px; width: fit-content; margin: 0 auto;">Full liberalization</div>	<p><i>The Annex on air cargo services is unlikely to be used in full liberalization and more recent "open skies" agreements in which the rights and operational flexibility in this Annex will be in the main agreement.</i></p>

Annex IV Transitional measures	Explanatory Notes
<p>The following transitional measures shall expire on (date), or such earlier date as is agreed upon by the Parties:</p> <ol style="list-style-type: none"> 1. Notwithstanding the provisions of Article ___ (or Annex ___), the designated airline (or airlines) of Party A (or each Party) may (shall) 2. Notwithstanding the provisions of Article ___ (or Annex ___), the designated airline (or airlines) of Party A (or each Party) may (shall) as follows: <ol style="list-style-type: none"> a) From (date) through (date), b) From (date) through (date), 3. Notwithstanding the provisions of Article ___ (or Annex ___), the following provisions shall govern 	<p><i>The Annex is an ICAO recommendation which addresses the issues of participation as well as sustainability in moving towards liberalization. It is drawn from existing practices and approaches covering both participation and preferential measures. It consists of one or more of three types of clauses. If these clauses apply to each Party in the same manner, then they would be considered to be participation measures. If not, then they would be regarded as preferential measures.</i></p> <p><i>In giving effect to the three clauses of the Annex, the following three paragraphs of the Explanatory notes, excluding the examples given, could be made part of the Annex.</i></p> <p><i>The first clause would be used when a particular Article (or Annex) would not take effect immediately but be implemented in a limited way during the transition period. By way of example, the Parties would agree that, notwithstanding the Annex on Route schedules granting each Party unlimited Fifth Freedom rights, the airline(s) of one Party (the developed State) would not be permitted to exercise those local traffic rights fully between the other Party (the developing State) and a third State until a specified date.</i></p> <p><i>The second clause would be similar to the first clause but with phase-in periods. For example, the Parties would agree that, notwithstanding an Article allowing unlimited codesharing, the airlines of each Party would be permitted to expand their third-country codeshare services (frequencies) only in a gradual manner for specified periods.</i></p> <p><i>The third clause would be used when an Article (or Annex) would not take effect immediately and a different scheme would be applied during the transition period. For example, the Parties would agree that, notwithstanding a tariff Article with a double disapproval regime, a country-of-origin regime would govern pricing until a specific date.</i></p> <p><i>The following is an indicative list of subjects that States may use at their discretion as transitional measures in the Annex: the number of designated airlines, ownership and control criteria, capacity and frequency, routes and traffic rights, codesharing, charter operations, intermodal services, tariffs, slot allocation and "doing business" matters such as ground handling. The language in the Annex is a framework, into which the Parties would need to agree on the terms and wording. ICAO Doc 9587 contains material on possible participation and preferential measures.</i></p>

<p style="text-align: center;">Annex V Essential Service and Tourism Development Routes</p>	<p style="text-align: center;">Explanatory Notes</p>
<p>1. A Party, following consultations with (or after having consent of) the other Party and after having informed an airline or airlines operating on the route, may specify an essential air service route or an essential tourism development route linking a point in a remote or peripheral area or a development area in its territory with a point in the territory of the other Party. On such route or a group of routes, an adequate level of air services set forth in Paragraph 2 of this Annex shall be considered vital for the protection of the lifeline provision for or the economic development of an area, [including tourism route development], but would not be provided if airlines solely considered their commercial interest [or could be provided solely at unreasonably discriminatory, unduly high or restrictive prices].</p> <p>2. The Party having specified an essential air service route or an essential tourism development route shall assess an adequate level of scheduled air services [on each route or a group of routes] [in a flexible and market-oriented manner], taking into consideration, <i>inter alia</i>, the particular needs for scheduled air services on the route concerned; the level of demand; the availability of connecting air services, third country airlines, non-scheduled operators and other forms of transport; airfares and conditions; and the effect on all airlines operating or intending to operate on the route and adjacent routes. [Non-scheduled air services may also be considered adequate, provided they meet the terms set forth in Paragraph 1 of this Annex.]</p> <p>3. [Notwithstanding the provisions of Article __ (Capacity) and Article __ (Pricing)], the Party concerned, following consultations with (or after having consent of) the other Party, may require an airline operating or intending to operate on an essential air service route or an essential tourism development route to provide air services satisfying the adequate level for a period of up to __ years. [The Party may require an airline wishing to terminate, suspend or reduce an existing service on the route below an adequate level to file notice at least __ days prior to the proposed service reduction.]</p> <p>4. Notwithstanding the provisions of [Article __ (Capacity), Article __ (Pricing) and] Annex __ (Route schedules), if no airline has assumed or is about to assume air services at the adequate level [individually or in the aggregate] on an essential air service route or an essential tourism development route, the Party concerned may invite applications to provide such services, and if necessary and following consultations with (or after having consent of) the other Party, may limit access to that route to only one airline [excluding airlines of third countries] for a period of up to __ years, and/or provide the payment of subsidy compensation</p>	<p><i>The application of an Essential Service and Tourism Development Routes (ESTDR) scheme presupposes the existence of, or the transitional process to a liberalized international market. In exceptional cases the scheme could be applied to non-liberalized routes with tourism potential, as traditional-type air services agreements already provide implicit assistance to operations on such routes by limiting the scope of competition.</i></p> <p><i>The Annex gives legal certainty to the parties involved in implementing an ESTDR scheme and also allows a Party to exercise flexibility in how they interpret and administer, for example, the criteria for the route selection and adequate service levels, the tendering procedure for carrier selection, and the contents of contractual arrangements.</i></p> <p><i>An example of the flexible approach is to set minimum requirement of capacities only, leaving the airline to decide frequencies, aircraft types, tariffs, etc. Capacity requirements could be defined in terms of numbers of seats from the origin(s) to the destination(s) as X “units of carriage” per week over part or all of the tourism season.</i></p> <p><i>The optional text requires an incumbent airline to file an advance notice of its intention to withdraw or reduce services on the route.</i></p> <p><i>The model explicitly provides three options for support: a) a guarantee of a monopoly operation with a subsidy, b) a guarantee of a monopoly without a subsidy, or c) a subsidy without a guarantee of a monopoly operation.</i></p>

<p style="text-align: center;">Annex V Essential Service and Tourism Development Routes</p>	<p style="text-align: center;">Explanatory Notes</p>
<p>to the airline. The right to operate such services shall be offered by public tender [either singly or for a group of such routes] to any designated airline entitled to operate [and market] its service between the territories. [Airlines of third countries eligible to operate on the route shall also have the right to tender.]</p> <p>5. The invitation to tender and subsequent contract shall cover, <i>inter alia</i>, the following information: the required level and standard of services set forth in Paragraph 2 of this Annex; the period of validity of the contract; rules concerning amendment, termination or review of the contract, in particular to take account of unforeseeable changes; and penalties in the event of failure to comply with the contract.</p> <p>6. The selection of an airline shall be made within a period of ___ months by the Party having issued the invitation of tender, taking into consideration, <i>inter alia</i>, applicants' financial viability, proposed business plan, ways to develop partnerships with the tourism sector, airfares and conditions, and the amount of the compensation required, if any.</p> <p>7. The Party having issued the invitation of tender may reimburse an airline, which has been selected under Paragraph 6 of this Annex, for the losses as a result of the required operation at the adequate level in accordance with the contract. Such reimbursement shall be assessed as the [expected] shortfall between costs and revenues generated by the service with a reasonable remuneration for capital employed. [No additional subsidy shall be paid for services above the adequate level that the airline may choose to undertake.]</p> <p>8. Consultations between the Parties shall be arranged in accordance with Article ___ (Consultation) whenever either Party considers that the selection of and/or compensation for an airline are inconsistent with the considerations set forth in Paragraphs 6 and 7 of this Annex, or that the development of and competition on a route is being unduly restricted by the terms of this Annex. [If the Parties fail to reach a resolution of the problem through consultations, either Party may invoke the dispute settlement mechanism under Article ___ (Settlement of disputes) to resolve the dispute.]</p>	<p><i>It is important to note, that regardless of the duration of the contract, the ESTDR application would not be permanent but transitional or only for a reasonable period of time (mostly for a start-up period) especially on routes serving "development areas". For instance, if the public demand goes up as a result of network development or through the improvement of the aviation infrastructure, it will make the route less likely a natural monopoly and with no need for regulation.</i></p> <p><i>The inclusion of both ex ante and ex post facto review-style consultations between States and/or the requirement of getting an advance agreement from other State(s) could be an effective deterrent against a potential risk that each State would favour its national airlines and use the scheme excessively.</i></p>

REGIONAL OR PLURILATERAL TEMPLATE AIR SERVICES AGREEMENT

Table of Contents

	<i>Page</i>
Preamble	A5-65
Article 1 Definitions	A5-66
Article 2 Grant of rights	A5-67
Article 3 Designation and authorization	A5-70
Article 4 Withholding, revocation and limitation of authorization	A5-73
Article 5 Application of laws	A5-75
Article 6 Direct transit	A5-76
Article 7 Recognition of certificates	A5-76
Article 8 Safety	A5-77
Article 9 Aviation security	A5-77
Article 10 Security of travel documents	A5-79
Article 11 Inadmissible and undocumented passengers and deportees	A5-80
Article 12 User charges	A5-80
Article 13 Custom duties	A5-81
Article 14 Taxation	A5-82
Article 15 Fair competition	A5-83
Article 16 Capacity	A5-84
Article 17 Pricing (Tariffs)	A5-85
Article 18 Safeguards	A5-86
Article 19 Competition laws	A5-87
Article 20 Currency conversion and remittance of earnings	A5-88
Article 21 Sale and marketing of air service products	A5-88
Article 22 Non-national personnel and access to local services	A5-89
Article 23 Change of gauge	A5-90
Article 24 Ground handling	A5-92
Article 25 Codesharing/Cooperative arrangements	A5-93
Article 26 Leasing	A5-95
Article 27 Intermodal services	A5-98
Article 28 Computer reservations systems (CRSs)	A5-99
Article 29 Ban on smoking	A5-99
Article 30 Environmental protection	A5-100
Article 31 Statistics	A5-100
Article 32 Consultations	A5-100
Article 33 Settlement of disputes	A5-101
Article 34 Amendments	A5-105
Article 35 Registration with ICAO	A5-107
Article 36 Exceptions	A5-107
Article 37 Existing agreements	A5-108
Article 38 Review	A5-109
Article 39 Withdrawal	A5-109
Article 40 Depository	A5-109
Article 41 Signature and notification	A5-109
Article 42 Accession	A5-110
Article 43 Entry into force	A5-111
Annex I Non-scheduled/Charter operations	A5-112
Annex II Air cargo services	A5-115
Annex III Transitional Measures	A5-116
Annex IV Essential Service and Tourism Development Routes	A5-117

Preamble	Explanatory Notes
<p style="text-align: center;">[Option 1 of 2]</p> <p>The Government of and the Government of hereinafter referred to as the “Parties”;</p> <p>Being parties to the <i>Convention on International Civil Aviation</i>, opened for signature at Chicago on 7 December 1944;</p> <p>Desiring to contribute to the progress of international civil aviation;</p> <p>Desiring to conclude an agreement for the purpose of establishing and operating air services between and beyond their respective territories;</p> <p>Have agreed as follows:</p> <p style="text-align: center;">[Option 2 of 2]</p> <p>The Government of and the Government of.... (hereinafter, “the Parties”);</p> <p>Being Parties to the <i>Convention on International Civil Aviation</i>, opened for signature at Chicago on 7 December, 1944;</p> <p>Desiring to promote an international aviation system based on competition among airlines in the marketplace with minimum government interference and regulation;</p> <p>Desiring to facilitate the expansion of international air services opportunities;</p> <p>Recognizing that efficient and competitive international air services enhance trade, the welfare of consumers, and economic growth;</p> <p>Desiring to make it possible for airlines to offer the travelling and shipping public a variety of service options [at the lowest prices that are not discriminatory and do not represent abuse of a dominant position], and wishing to encourage individual airlines to develop and implement innovative and competitive prices; and</p> <p>Desiring to ensure the highest degree of safety and security in international air services and reaffirming their grave concern about acts or threats against the security of aircraft, which jeopardize the safety of persons or property, adversely affect the operation of air services, and undermine public confidence in the safety of civil aviation.</p> <p>Have agreed as follows:</p>	<p><i>The initial part of the agreement presents the reason for entering into the agreement and declares that they have agreed to what will follow in subsequent parts of the agreement.</i></p> <p><i>This approach is common in more liberal agreements and the bracketed text is common to “open skies” agreements.</i></p>

Article 1 Definitions	Explanatory Notes
<p>For the purposes of this Agreement, unless otherwise stated, the term:</p> <p>a) "air transportation" means the public carriage by aircraft of passengers, baggage, cargo and mail, separately or in combination, for remuneration or hire;</p> <p>b) "aeronautical authorities" means, in the case of __ the __; in the case of __ the __; or in both cases any other authority or person empowered to perform the functions now exercised by the said authorities;</p> <p>c) "Agreement" means this Agreement, its Annex, and any amendments thereto;</p> <p>d) "capacity" is the amount(s) of services provided under the agreement, usually measured in the number of flights (frequencies) or seats or tons of cargo offered in a market (city pair, or country-to-country) or on a route during a specific period, such as daily, weekly, seasonally or annually;</p> <p>e) "Convention" means the <i>Convention on International Civil Aviation</i> opened for signature at Chicago on the seventh day of December, 1944, and includes any Annex adopted under Article 90 of that Convention, and any amendment of the Annexes or Convention under Articles 90 and 94, insofar as such Annexes and amendments have become effective for both Parties;</p> <p>f) "designated airline" means an airline which has been designated and authorized in accordance with Article __ of this Agreement;</p> <p>g) "domestic air transportation" is air transportation in which passengers, baggage, cargo and mail which are taken on board in a States territory are destined to another point in that same State's territory;</p> <p>h) "ICAO" means the International Civil Aviation Organization;</p> <p>i) "intermodal air transportation" means the public carriage by aircraft and by one or more surface modes of transport of passengers, baggage, cargo and mail, separately or in combination, for remuneration or hire;</p> <p>j) "international air transportation" is air transportation in which the passengers, baggage, cargo and mail which are taken on board in the territory of one State are destined to another State;</p> <p>k) "Party" is a State which has formally agreed to be bound by this agreement;</p> <p>l) ["price"] or ["tariff"] means any fare, rate or charge for the carriage of passengers, baggage and/or cargo (excluding mail) in air transportation (including any other mode of transportation in connection therewith) charged by airlines, including their agents, and the conditions governing the availability of such fare, rate or charge;</p>	<p><i>While the Parties to an air services agreement may choose to define any number of terms used in their agreement, for the purposes of clarity or in the event of any possible ambiguity, the foregoing are the terms that may be commonly found in a Definitions article.</i></p> <p><i>For "aeronautical authorities" the required insertions will depend on the prevailing administrative structures and arrangements in place in each Party.</i></p> <p><i>Although the broader and more modern term "price" is used rather than "tariff"; the definition is essentially the same for both terms.</i></p>

Article 1 Definitions	Explanatory Notes
<p>m) "territory" in relation to a State [means the land areas and territorial waters adjacent thereto and the airspace above them under the sovereignty of that State] has the meaning assigned to it in Article 2 of the Convention;</p> <p>n) "user charges" means a charge made to airlines by the competent authorities, or permitted by them to be made, for the provision of airport property or facilities or of air navigation facilities, or aviation security facilities or services, including related services and facilities, for aircraft, their crews, passengers and cargo; and</p> <p>o) "air service", "international air service", "airline", and "stop for non-traffic purposes", have the meanings assigned to them in Article 96 of the Convention.</p>	<p><i>For the term "territory" there are two possible ways to define it, one by reference to the definition of that word in Article 2 of the Convention, and the other spelling out the usual meaning attributed to it in international law and practice. Both are presented as alternative language.</i></p>

Article 2 Grant of rights	Explanatory Notes
<div style="text-align: center; border: 1px solid black; width: fit-content; margin: 0 auto; padding: 2px 10px;"> Traditional </div> <p>1.* Each Party grants to the other Parties the following rights for the conduct of international air transportation by the airlines of the other Parties:</p> <p>a)* the right to fly across its territory without landing;</p> <p>b)* the right to make stops in its territory for non-traffic purposes;</p> <p>c) the right to provide international air transportation to and from any other Party, provided such services originate or terminate in the territory of the Party designating the airline. [International air transportation to or coming from the territories of non-Party State shall require the authorization of the Parties involved.]</p> <p style="text-align: center;">[Paragraph 2, option 1 of 2]</p> <p>2. Nothing in this Agreement shall be deemed to confer on the airline or airlines of one Party the right to take on board, in the territory of another Party, passengers, baggage, cargo, or mail carried for remuneration and destined for another point in the territory of that other Party.</p>	<p><i>A key issue for States negotiating a regional or plurilateral agreement is what provisions, if any, should be made in the regional or plurilateral agreement with respect to rights for air services between Parties to the agreement and non-Party States.</i></p> <p><i>The foregoing first two Freedoms of the air, although included in multilateral agreements (for scheduled services, the International Air Services Transit Agreement (IASTA); for non-scheduled services, Article 5 of the Convention), are also commonly included in regional or plurilateral agreements, either because some States may not be, or may cease to be, parties to the IASTA.</i></p> <p><i>In a traditional approach, an agreement does not deal with air services between a Party and a non-Party, leaving those rights to be determined by the relevant agreements between a Party and non-Parties. In this sense such agreements could be described as self-contained. An alternative for this type of self-contained agreement is for the Parties to define and exchange the first five Freedoms of the air.</i></p> <p><i>In a manner similar to the practice in bilateral agreements, an approach may be for Parties to explicitly exclude cabotage rights (option 1), or to make it clear in the agreement that Parties to the Agreement are not required to grant such rights, leaving this decision to the Parties to the Agreement (option 2).</i></p>

<p style="text-align: center;">Article 2 Grant of rights</p>	<p style="text-align: center;">Explanatory Notes</p>
<p style="text-align: center;">[Paragraph 2, option 2 of 2]</p> <p>2. A Party shall not be required to grant cabotage rights to an airline of another Party.</p> <div style="text-align: center; border: 1px solid black; padding: 5px; width: fit-content; margin: 20px auto;">Transitional</div> <p>1.* Each Party grants to the other Parties the following rights for the conduct of international air transportation by the airlines of the other Parties:</p> <p>a)* the right to fly across its territory without landing;</p> <p>b)* the right to make stops in its territory for non-traffic purposes; and</p> <p>c) the right to provide international air transportation to and from any other Party, and between non-Party States and those other Parties with which the designating State has negotiated Fifth Freedom rights, provided such services originate or terminate in the territory of the Party designating the airline; and</p> <p>d) the right to provide [scheduled and] non-scheduled air cargo services between any other Party and a non-Party State.</p>	<p><i>The foregoing first two Freedoms of the air, although included in multilateral agreements (for scheduled services, the International Air Services Transit Agreement (IASTA); for non-scheduled services, Article 5 of the Convention), are also commonly included in regional or plurilateral agreements, either because some States may not be, or may cease to be, parties to the IASTA.</i></p> <p><i>This transitional approach envisions the negotiation between Parties to the Agreement of beyond rights to non-Parties (Fifth Freedom rights) on the basis of specific criteria. Exercise of these rights would, of course, be dependent on obtaining the corresponding rights from the non-Party State.</i></p> <p><i>This approach includes Seventh Freedom for scheduled (as an option) and non-scheduled all-cargo services.</i></p>
<p style="text-align: center;">[Paragraph 2, option 1 of 2]</p> <p>2. Until [insert a date agreed to by the Parties], a Party shall authorize cabotage traffic rights for the designated airline(s) of every other Party, provided that the traffic rights are exercised on a service which constitutes and is scheduled as an extension of a service from, or as preliminary to, the Party designating the airline.</p>	<p><i>The transitional approach to cabotage would usually precede a conversion to unrestricted cabotage after the agreed date.</i></p> <p><i>The direct link of domestic and international flight segments caused this type of operation to be described as consecutive cabotage (Eighth Freedom).</i></p>
<p style="text-align: center;">[Paragraph 2, option 2 of 2]</p> <p>2. A Party shall authorize cabotage rights for the designated airline(s) of every other Party provided the cabotage segment is operated between two international segments of the flight.</p> <div style="text-align: center; border: 1px solid black; padding: 5px; width: fit-content; margin: 20px auto;">Full liberalization</div> <p>1.* Each Party grants to the other Parties the following rights for the conduct of international air transportation by the airlines of the other Parties:</p> <p>a)* the right to fly across its territory without landing;</p> <p>b)* the right to make stops in its territory for non-traffic purposes; and</p>	<p><i>This option limits cabotage to situations where an air carrier provides international transportation to two points in another State on a co-terminal basis (where the same flight serves two points in another State.)</i></p> <p><i>The foregoing first two Freedoms of the air, although included in multilateral agreements (for scheduled services, the International Air Services Transit Agreement (IASTA); for non-scheduled services, Article 5 of the Convention), are also commonly included in regional or plurilateral agreements, either because some States may not be, or may cease to be, parties to the IASTA.</i></p>

Article 2 Grant of rights	Explanatory Notes
<p>c) the right, in accordance with the terms of their designations, to perform scheduled and charter international air transportation between points on the following routes:</p> <p>i) from points behind the territory of the Party designating the airline via the territory of that Party and intermediate points to any point or points in the territory of the Party granting the right and beyond;</p> <p>ii) for passenger and all-cargo service or services, between the territory of the Party granting the right and any point or points; and</p> <p>d) the rights otherwise specified in the Agreement.</p> <p>2. Each designated airline may on any or all flights and at its option:</p> <p>a) operate flights in either or both directions;</p> <p>b) combine different flight numbers within one aircraft operation;</p> <p>c) serve behind, intermediate and beyond points and points in the territories of the Parties on the routes in any combination and in any order;</p> <p>d) omit stops at any point or points;</p> <p>e) transfer traffic from any of its aircraft to any of its other aircraft at any point on the routes;</p> <p>f) serve points behind any point in its territory with or without change of aircraft or flight number and hold out and advertise such services to the public as through services;</p> <p>g) make stopovers at any points whether within or outside the territory of any Party;</p> <p>h) carry transit traffic through any other Party's territory; and</p> <p>i) combine traffic on the same aircraft regardless of where such traffic originates;</p> <p>without directional or geographic limitation and without loss of any right to carry traffic otherwise permissible under the present Agreement.</p> <p>3. On any international segment or segments of the agreed routes, a designated airline may perform international air transportation without any limitation as to change, at any point on the route, in type or number of aircraft operated; provided that [with the exception of all-cargo services] the transportation beyond such point is a continuation of the transportation from the territory of the Party that has designated the airline and, in the inbound direction, the transportation to the territory of the Party that has designated the airline is a continuation of the transportation from beyond such point.</p>	<p><i>The full liberalization formula accords each Party not only full traffic rights to/from every other Party to the agreement but Fifth Freedom rights to/from the territory of every other Party and non-Party States as well as Seventh Freedom for all-cargo services. However, as with the transitional formulation, the exercise of Fifth Freedom rights between another Party and a non-Party will depend on the rights available between the non-Party and the Party exercising the Fifth Freedom rights in the regional or plurilateral agreement. (For example, the more "open skies" bilateral agreements which a Party has with non-Party States, the more potential Fifth Freedom routes it will have to/from other Parties to the agreement.) Some agreements may also grant rights with respect to a specific type of service, for example including a provision dealing with non-scheduled cargo flights to non-Party States.</i></p> <p><i>Most of these provisions on operational flexibility are similar to that of liberal bilateral provisions that are usually covered in a Route schedule.</i></p> <p><i>This provision may not be needed if the agreement includes an article on Change of gauge.</i></p> <p><i>The provision provides extensive operational flexibility in the use of equipment. This type of provision would, for example, enable a hub type operation to be established at the change point, subject of course to agreement being reached with other relevant partners. The only restriction is that services be conducted in a linear fashion, that is that the flight on the second sector be the extension or continuation of the prior connecting</i></p>

Article 2 Grant of rights	Explanatory Notes
<p>4. A Party shall authorize cabotage rights for the designated airline(s) of every other Party without restriction.</p>	<p><i>outbound or inbound flight. The bracketed language removes this restriction for all-cargo services.</i></p> <p><i>Full liberalization does not require any link between the cabotage segment and any international segment; it would permit a designated airline of one Party to establish a hub and spoke operation (with domestic segments as the spokes) in the territory of any other Party (stand-alone cabotage or Ninth Freedom).</i></p>

Article 3 Designation and authorization	Explanatory Notes
<div data-bbox="329 825 634 873" style="border: 1px solid black; text-align: center; padding: 2px; margin: 10px auto; width: fit-content;"> Traditional </div> <p>1. Each Party shall have the right to designate in writing an airline [or an eligible airline from another Party State] to operate the agreed services in accordance with this Agreement and to withdraw or alter such designation. Such designation shall be transmitted to the other Parties in writing through diplomatic channels [and to the Depository].</p> <p>2.* On receipt of such a designation, and of application from the designated airline, in the form and manner prescribed for operating authorization [and technical permission], each Party shall grant the appropriate operating authorization with minimum procedural delay, provided that:</p> <p>a) the airline is substantially owned and effectively controlled by one or more of the Parties to this Agreement, their nationals or both;</p> <p>b)* the Party designating the airline is in compliance with the provisions set forth in Article ___ (Safety) and Article ___ (Aviation Security); and</p> <p>c)* the designated airline is qualified to meet other conditions prescribed under the laws and regulations normally applied to the operation of international air transport services by the Party considering the application or applications.</p>	<p><i>The formulation of the Designation and authorization provision may be simplified by addressing the reasons in paragraph 2 for a State to receive an authorization in the Revocation of authorization Article, since the conditions for not granting an authorization are the same.</i></p> <p><i>The traditional approach refers to one airline or a single designation. An option may also be for a State Party to designate an eligible airline from another State Party to operate air services on its behalf. In this case the Parties, prior to granting the authorization, should agree on certain eligibility criteria such as the right of establishment, licensing, and safety and security standards.</i></p> <p><i>The traditional ownership and control criteria in regional or plurilateral agreements and arrangements is common ownership and control of the air carrier concerned by Parties to the agreement and/or their nationals. As an attempt to broaden the ownership and control requirement and to encourage multinational airlines this has faced the problem of the acceptance of this criteria by non-Party States. In the absence of widespread acceptance by non-Party States of common ownership and control criteria, regionally owned airlines may find their markets confined to the territories of other Parties to the regional or plurilateral agreement or arrangement.</i></p> <p><i>For a Party which receives the designation, it would retain the discretionary right of refusal as a measure of control to address legitimate concerns if and when required. This provision addresses potential concerns such as safety, security or other economic aspects including potential emergence of "flags of convenience".</i></p>

<p style="text-align: center;">Article 3 Designation and authorization</p>	<p style="text-align: center;">Explanatory Notes</p>
<p>3.* On receipt of the operating authorization of paragraph 2, a designated airline may at any time begin to operate the agreed services for which it is so designated, provided that the airline complies with the applicable provisions of this Agreement.</p> <p>[4.* Parties granting operating authorizations in accordance with paragraph 2 of this Article shall notify such action to the Depository.]</p> <div style="text-align: center; border: 1px solid black; width: fit-content; margin: 10px auto; padding: 5px;"> <p>Transitional</p> </div> <p>1. Each Party shall have the right to designate one or more airlines to operate the agreed services in accordance with this Agreement and to withdraw or alter such designation. Such designation shall be transmitted to the other Parties in writing through diplomatic channels [and to the Depository].</p> <p>2.* On receipt of such a designation, and of application from the designated airline, in the form and manner prescribed for operating authorization [and technical permission], each Party shall grant the appropriate operating authorization with minimum procedural delay, provided that:</p> <p>a) the designated airline has its principal place of business (see (i) below) [and permanent residence] in the territory of the designating Party;</p> <p>b) the Party designating the airline has and maintains effective regulatory control (see (ii) below) of the airline;</p> <p>Notes.—</p> <p>(i) evidence of principal place of business includes such factors as: the airline is established and incorporated in the territory of the designating Party in accordance with relevant national laws and regulations, has a substantial amount of its operations and capital investment in physical facilities in the territory of the designating Party, pays income tax, registers and bases its aircraft there, and employs a significant number of nationals in managerial, technical and operational positions.</p> <p>(ii) evidence of effective regulatory control includes but is not limited to: the airline holds a valid operating licence or permit issued by the licensing authority such as an Air Operator Certificate (AOC), meets the criteria of the designating Party for the operation of international air services, such as proof of financial health, ability to meet public interest requirement, obligations for assurance of service; and the designating Party has and maintains safety and security oversight programmes in compliance with ICAO standards.</p>	<p><i>As an option, upon granting of an authorization, Parties agree to notify the Depository of the agreement who is responsible for maintaining a centralized register of airline designation and operating authorizations.</i></p> <p><i>The transitional approach refers to one or more airlines or multiple designation. The phrasing was sometimes interpreted as being met by the designation of two airlines. The transitional approach also includes formulae for increasing the number of designated airlines on specific routes based on, for example, negotiated multi-year increases or the achievement of a specified level of passenger traffic in city-pair markets.</i></p> <p><i>This transitional approach recommended by ICAO removes the ownership requirement but retains effective control (including safety and security oversight) while adding incorporation in and principal place of business in the designating Party. It would permit investment by entities from non-Parties in airlines of the Parties. Such control is envisioned primarily through licensing which can include both economic and operational elements. The arrangement would not require the State to change its existing laws, policies or regulations pertaining to national ownership and control of its own national air carrier(s), but would allow such change if and when the State wishes to do so.</i></p>

<p style="text-align: center;">Article 3 Designation and authorization</p>	<p style="text-align: center;">Explanatory Notes</p>
<p>c)* the Party designating the airline is in compliance with the provisions set forth in Article __ (Safety) and Article __ (Aviation Security); and</p> <p>d)* the designated airline is qualified to meet other conditions prescribed under the laws and regulations normally applied to the operation of international air transport services by the Party considering the application or applications.</p> <p>3.* On receipt of the operating authorization of paragraph 2, a designated airline may at any time begin to operate the agreed services for which it is so designated, provided that the airline complies with the applicable provisions of this Agreement.</p> <p>[4.* Parties granting operating authorizations in accordance with paragraph 2 of this Article shall notify such action to the Depository.]</p>	<p><i>For a Party which receives the designation, it would retain the discretionary right of refusal as a measure of control to address legitimate concerns if and when required. This provision addresses potential concerns such as safety, security or other economic aspects including potential emergence of "flags of convenience".</i></p> <p><i>As an option, upon granting of an authorization, Parties agree to notify the Depository of the agreement who is responsible for maintaining a centralized register of airline designation and operating authorizations.</i></p>
<div style="border: 1px solid black; padding: 5px; width: fit-content; margin: 0 auto;"> <p>Full liberalization</p> </div>	
<p>1. Each Party shall have the right to designate as many airlines as it wishes to operate the agreed services in accordance with this Agreement and to withdraw or alter such designation. Such designation shall be transmitted to the other Parties in writing through diplomatic channels [and to the Depository].</p> <p>2.* On receipt of such a designation, and of application from the designated airline, in the form and manner prescribed for operating authorization [and technical permission], each Party shall grant the appropriate operating authorization with minimum procedural delay, provided that:</p> <p>a) the airline is under the effective regulatory control of the designating Party;</p> <p>b)* the Party designating the airline is in compliance with the provisions set forth in Article __ (Safety) and Article __ (Aviation Security); and</p> <p>c)* the designated airline is qualified to meet other conditions prescribed under the laws and regulations normally applied to the operation of international air transport services by the Party considering the application or applications.</p> <p>3.* On receipt of the operating authorization of paragraph 2, a designated airline may at any time begin to operate the agreed services for which it is so designated, provided that the airline complies with the applicable provisions of this Agreement.</p> <p>[4.* Parties granting operating authorizations in accordance with paragraph 2 of this Article shall notify such action to the Depository.]</p>	<p><i>The full liberalization approach refers to as many airlines or no quantitative limit on the number of airlines which can be designated.</i></p> <p><i>Full liberalization removes all criteria pertaining to the airline, but requires effective regulatory control by the designating State to ensure compliance with Safety and Security standards. It would also include a "right of establishment" that is a right for non-nationals to establish and operate an airline in the territory of a Party which could then engage in domestic and international air services.</i></p> <p><i>For a Party which receives the designation, it would retain the discretionary right of refusal as a measure of control to address legitimate concerns if and when required. This provision addresses potential concerns such as safety, security or other economic aspects including potential emergence of "flags of convenience".</i></p> <p><i>As an option, upon granting of an authorization, Parties agree to notify the Depository of the agreement who is responsible of maintaining a centralized register of airline designation and operating authorizations.</i></p>

<p style="text-align: center;">Article 4 Withholding, revocation and limitation of authorization</p>	<p style="text-align: center;">Explanatory Notes</p>
<p style="text-align: center; border: 1px solid black; width: fit-content; margin: 0 auto; padding: 2px;">Traditional</p> <p>1.* The aeronautical authorities of each Party shall have the right to withhold the authorizations referred to in Article ___ (Designation and authorization) of this Agreement with respect to an airline designated by any other Party, and to revoke, suspend or impose conditions on such authorizations, temporarily or permanently:</p> <p>a) in the event that they are not satisfied that substantial ownership and effective control are vested in one or more of the Parties designating the airline, their nationals, or both;</p> <p>b)* in the event of failure of the Party designating the airline to comply with the provisions set forth in Article ___ (Safety) and Article ___ (Aviation security); and</p> <p>c)* in the event of failure that such designated airline is qualified to meet other conditions prescribed under the laws and regulations normally applied to the operation of international air transport services by the Party receiving the designation.</p> <p style="text-align: center; border: 1px solid black; width: fit-content; margin: 0 auto; padding: 2px;">Transitional</p> <p>1.* The aeronautical authorities of each Party shall have the right to withhold the authorizations referred to in Article ___ (Designation and authorization) of this Agreement with respect to an airline designated by any other Party, and to revoke, suspend or impose conditions on such authorizations, temporarily or permanently:</p> <p>a) in the event that they are not satisfied that the designated airline has its principal place of business (see (i) below) [and permanent residence] in the territory of the designating Party;</p> <p>b) in the event that they are not satisfied that the Party designating the airline has and maintains effective regulatory control (see (ii) below) of the airline;</p> <p><i>Notes.—</i></p> <p>(i) evidence of principal place of business includes such factors as: the airline is established and incorporated in the territory of the designating Party in accordance with relevant national laws and regulations, has a substantial amount of its operations and capital investment in physical facilities in the</p>	<p><i>The reasons for any Party that receives a request for an authorization to not authorize initially or to subsequently revoke, suspend or condition an authorization it has granted are the same. Consequently, if the criteria for designation requires such formulation as common ownership and control of the air carrier concerned by Parties to the agreement and/or their nationals or “principal place of business”, then the failure to meet that requirement will be grounds for revocation, suspension or the imposition of conditions on the operating permission.</i></p> <p><i>Other bases for revocation are broader in scope and are covered by cross reference to the requirements to comply with the provisions on safety, security and the laws and regulations of that Party.</i></p> <p><i>This transitional criteria removes the ownership requirement but retains effective control while adding incorporation in and principal place of business in the designating Party. It would permit investment by entities from non-Parties in airlines of the Parties.</i></p>

<p align="center">Article 4 Withholding, revocation and limitation of authorization</p>	<p align="center">Explanatory Notes</p>
<p>territory of the designating Party, pays income tax, registers and bases its aircraft there, and employs a significant number of nationals in managerial, technical and operational positions.</p> <p>(ii) evidence of effective regulatory control includes but is not limited to: the airline holds a valid operating licence or permit issued by the licensing authority such as an Air Operator Certificate (AOC), meets the criteria of the designating Party for the operation of international air services, such as proof of financial health, ability to meet public interest requirement, obligations for assurance of service; and the designating Party has and maintains safety and security oversight programmes in compliance with ICAO standards.</p> <p>c)* in the event of failure of the Party designating the airline to comply with the provisions set forth in Article __ (Safety) and Article __ (Aviation security); and</p> <p>d)* in the event of failure that such designated airline is qualified to meet other conditions prescribed under the laws and regulations normally applied to the operation of international air transport services by the Party receiving the designation.</p> <p align="center">Full liberalization</p> <p>1.* The aeronautical authorities of each Party shall have the right to withhold the authorizations referred to in Article __ (Designation and authorization) of this Agreement with respect to an airline designated by any other Party, and to revoke, suspend or impose conditions on such authorizations, temporarily or permanently:</p> <p>a) in the event that they are not satisfied that the airline is under the effective regulatory control of the designating State;</p> <p>b)* in the event of failure of the Party designating the airline to comply with the provisions set forth in Article __ (Safety) and Article __ (Aviation security); and</p> <p>c)* in the event of failure that such designated airline is qualified to meet other conditions prescribed under the laws and regulations normally applied to the operation of international air transport services by the Party receiving the designation.</p> <p align="center">Traditional/Transitional/ Full liberalization</p> <p>2.* Unless immediate action is essential to prevent infringement of the laws and regulations referred to above or unless safety or security requires action in accordance with the provisions of Article __ (Safety) or Article __ (Aviation security), the rights enumerated in paragraph 1 of this Article shall be exercised only after consultations between the aeronautical authorities in conformity with Article __ (Consultation) of this Agreement.</p>	<p align="center"><i>Compliance with the laws and regulations as well as safety and security provisions is constrained in paragraph 2 by the need in the first instance for consultation.</i></p>

<p style="text-align: center;">Article 5 Application of laws</p>	<p style="text-align: center;">Explanatory Notes</p>
<p style="text-align: center;">[Paragraph 1, option 1 of 2]</p> <p>1. The laws and regulations of any Party governing entry into and departure from its territory of aircraft engaged in international air services, or the operation and navigation of such aircraft while within its territory, shall be applied to aircraft of the designated airline of each Party.</p> <p style="text-align: center;">[Paragraph 1, option 2 of 2]</p> <p>1. While entering, within, or leaving the territory of one Party, its laws and regulations relating to the operation and navigation of aircraft shall be complied with by any other Party.</p> <p style="text-align: center;">[Paragraph 2, option 1 of 2]</p> <p>2. The laws and regulations of any Party relating to the entry into, stay in and departure from its territory of passengers, crew and cargo including mail such as those regarding immigration, customs, currency and health and quarantine shall apply to passengers, crew, cargo and mail carried by the aircraft of the designated airline of each Party while they are within the said territory.</p> <p style="text-align: center;">[Paragraph 2, option 2 of 2]</p> <p>2. While entering, within, or leaving the territory of one Party, its laws and regulations relating to the admission to or departure from its territory of passengers, crew or cargo on aircraft (including regulations relating to entry, clearance, aviation security, immigration, passports, customs and quarantine, or in the case of mail, postal regulations) shall be complied with by, or on behalf of, such passengers, crew or cargo of any Party.</p> <p>3.* No Party shall give preference to its own or any other airline over a designated airline of the other Parties engaged in similar international air transportation in the application of its immigration, customs, quarantine and similar regulations.</p>	<p><i>This Article is found in most air services agreements and reproduces the substance of Article 11 of the Convention. There is a general commitment by the Parties to use ICAO Standards and Recommended Practices (SARPs) concerning facilitation. The Article on "Inadmissible and undocumented passengers and deportees" contains a more specific commitment concerning Annex 9 procedures.</i></p> <p><i>Under the first alternative, paragraph 1 recognizes that a Party's laws with respect to the operation of aircraft and admission of passengers, crew, cargo and mail will be applied to the other Party's airlines.</i></p> <p><i>Under the second alternative, paragraph 1 shifts the emphasis to compliance by airlines with a Party's laws on operation and navigation of aircraft and the admission, transit and departure of passengers, crew, cargo and mail.</i></p> <p><i>Paragraph 2 focuses on the application of, which is to say, compliance with those laws and regulations related to customs, immigration, currency, health and quarantine of the other Party.</i></p> <p><i>Paragraph 2 focuses on the application of, which is to say, compliance with those laws and regulations related to customs, immigration, currency, health and quarantine of the other Party.</i></p> <p><i>Paragraph 3 is common to both alternatives and addresses non-discrimination.</i></p>

<p style="text-align: center;">Article 6 Direct transit</p>	<p style="text-align: center;">Explanatory Notes</p>
<p style="text-align: center;">[Option 1 of 2]</p> <p>Passengers, baggage, cargo and mail in direct transit shall be subject to no more than a simplified control. Baggage and cargo in direct transit shall be exempt from customs duties and other similar taxes.</p> <p style="text-align: center;">[Option 2 of 2]</p> <p>Passengers, baggage and cargo in direct transit through the territory of any Party and not leaving the area of the airport reserved for such purpose shall not undergo any examination except for reasons of aviation security, narcotics control, prevention of illegal entry or in special circumstances.</p>	<p><i>In some agreements, this provision could be stated separately or included in the Application of laws Article.</i></p> <p><i>Option 1 is a standard facilitation measure for simplified transit found in most air services agreements.</i></p> <p><i>Option 2, found in liberalized agreements, addresses the security situation of transit traffic rather than the controls or customs and tax treatment.</i></p>

<p style="text-align: center;">Article 7 Recognition of certificates</p>	<p style="text-align: center;">Explanatory Notes</p>
<p>1. Certificates of airworthiness, certificates of competency and licences issued or rendered valid by any Party and still in force shall be recognized as valid by each Party for the purpose of operating the agreed services provided that the requirements under which such certificates and licences were issued or rendered valid are equal to or above the minimum standards which may be established pursuant to the Convention.</p> <p>2. If the privileges or conditions of the licences or certificates referred to in paragraph 1 above, issued by the aeronautical authorities of one Party to any person or designated airline or in respect of an aircraft used in the operation of the agreed services, should permit a difference from the minimum standards established under the Convention, and which difference has been filed with the International Civil Aviation Organization, each Party may request consultations between the aeronautical authorities with a view to clarifying the practice in question.</p> <p>3. Each Party reserves the right, however, to refuse to recognize for the purpose of flights above or landing within its own territory, certificates of competency and licences granted to its own nationals by another Party.</p>	<p><i>This provision on Recognition of Certificates is found in most air service agreements even though, in essence, it simply reproduces in paragraphs 1 and 2 two provisions of the Convention, Articles 33 and 32 b) respectively, with some minor variations in wording. This provision could be a separate article or could also be part of a "Safety" Article.</i></p> <p><i>In paragraph 1, the Parties exchange mutual recognition of currently valid certificates of airworthiness and competency and licenses issued by the other Party.</i></p> <p><i>States may find it useful to have a procedure to deal with differences filed with respect to the standards established pursuant to the Convention.</i></p> <p><i>This provision reserves the right to refuse to recognize any certificates or licenses issued by any Party to the first Party's nationals. Drawn from Article 32 b) of the Convention, the provision is necessary because Article 32 a) requires pilots to be provided with licences issued by the State of registry of the aircraft. Consequently, it is not possible for the recognition to extend to a licence issued to that State's own nationals by another State.</i></p>

<p style="text-align: center;">Article 8 Safety</p>	<p style="text-align: center;">Explanatory Notes</p>
<p>1. Any Party may request consultations at any time concerning the safety standards maintained by another Party in areas relating to aeronautical facilities, flight crew, aircraft and the operation of aircraft. Such consultations shall take place within thirty days of that request.</p> <p>2. If, following such consultations, any Party finds that the other Party does not effectively maintain and administer safety standards in the areas referred to in paragraph 1 that meet the Standards established at that time pursuant to the <i>Convention on International Civil Aviation</i> (Doc 7300), that other Party shall be informed of such findings and of the steps considered necessary to conform with the ICAO Standards. That other Party shall then take appropriate corrective action within an agreed time period.</p> <p>3. Pursuant to Article 16 of the Convention, it is further agreed that, any aircraft operated by, or on behalf of an airline of any Party, on service to or from the territory of another Party, may, while within the territory of the other Party be the subject of a search by the authorized representatives of the other Party, provided this does not cause unreasonable delay in the operation of the aircraft. Notwithstanding the obligations mentioned in Article 33 of the Chicago Convention, the purpose of this search is to verify the validity of the relevant aircraft documentation, the licensing of its crew, and that the aircraft equipment and the condition of the aircraft conform to the Standards established at that time pursuant to the Convention.</p> <p>4. When urgent action is essential to ensure the safety of an airline operation, each Party reserves the right to immediately suspend or vary the operating authorization of an airline or airlines of another Party.</p> <p>5. Any action by any Party in accordance with paragraph 4 above shall be discontinued once the basis for the taking of that action ceases to exist.</p> <p>6. With reference to paragraph 2, if it is determined that any Party remains in non-compliance with ICAO Standards when the agreed time period has lapsed, the Secretary General of ICAO should be advised thereof. The latter should also be advised of the subsequent satisfactory resolution of the situation.</p>	<p><i>The foregoing model clause on safety developed by ICAO provides a standardized process for Parties to an agreement to address safety concerns. It is intended to ensure that aircraft operated by, or on behalf of, designated airlines in the other Party's territory are operated and maintained in accordance with ICAO Standards and Recommended Practices. The provision takes a wide view of an aircraft operation by including aeronautical facilities, which implies the provision of facilities such as air traffic control, airport and navigation aids, in addition to the aircraft and its crew.</i></p> <p><i>However, nothing prevents the Parties from inserting additional or more restrictive criteria that they feel may be necessary for assessing the safety of an aircraft operation, such as the alternative wording for ramp inspection which specifies the findings and determinations that can be made by aeronautical authorities following a ramp inspection, and additionally addresses the situation where there is a denial of access for a ramp inspection.</i></p> <p><i>Except for this provision, there is no specific reference to sanctions in the Safety Article in view of the possibility of taking action under the Revocation provision to revoke, suspend or impose conditions on a designated airline's authorization for failing to comply with, inter alia, the Safety Article.</i></p>

<p style="text-align: center;">Article 9 Aviation security</p>	<p style="text-align: center;">Explanatory Notes</p>
<p>1. Consistent with their rights and obligations under international law, the Parties reaffirm that their obligation to each other to protect the security of civil aviation against acts of unlawful interference forms an integral part of this Agreement.</p>	<p><i>The provision on aviation security was developed by ICAO. It incorporates by general reference, in paragraphs 1 and 3 respectively, obligations on aviation security arising from the various international instruments on unlawful interference to</i></p>

<p style="text-align: center;">Article 9 Aviation security</p>	<p style="text-align: center;">Explanatory Notes</p>
<p>Without limiting the generality of their rights and obligations under international law, the Parties shall, in particular, act in conformity with the provisions of the <i>Convention on Offences and Certain Other Acts Committed on Board Aircraft</i>, signed at Tokyo on 14 September 1963, the <i>Convention for the Suppression of Unlawful Seizure of Aircraft</i>, signed at The Hague on 16 December 1970 and the <i>Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation</i>, signed at Montreal on 23 September 1971, the <i>Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, Done at Montreal on 23 September 1971</i>, signed at Montreal on 24 February 1988, as well as with any other Convention and Protocol relating to the security of civil aviation which the Parties adhere to.</p> <p>2. Each Party shall provide, upon request of another Party, all necessary assistance to the other Party to prevent acts of unlawful seizure of civil aircraft and other unlawful acts against the safety of such aircraft, their passengers and crew, airports and air navigation facilities, and any other threat to the security of civil aviation.</p> <p>3. Each Party shall, in its mutual relations, act in conformity with the aviation security provisions established by ICAO and designated as Annexes to the Convention; it shall require that operators of aircraft of its registry or operators of aircraft who have their principal place of business or permanent residence in its territory and the operators of airports in its territory act in conformity with such aviation security provisions. [Each Party shall advise every other Party of any difference between its national regulations and practices and the aviation security standards of the Annexes. Any Party may request immediate consultations with each Party at any time to discuss any such differences.]</p> <p>4. Each Party agrees that such operators of aircraft may be required to observe the aviation security provisions referred to in paragraph 3) above required by every other Party for entry into, departure from, or while within, the territory of that other Party. Each Party shall ensure that adequate measures are effectively applied within its territory to protect the aircraft and to inspect passengers, crew, carry-on items, baggage, cargo and aircraft stores prior to and during boarding or loading. Each Party shall also give sympathetic consideration to any request from every Party for reasonable special security measures to meet a particular threat.</p> <p>5. When an incident or threat of an incident of unlawful seizure of civil aircraft or other unlawful acts against the safety of such aircraft, their passengers and crew, airports or air navigation facilities occurs, the Parties shall assist each other by facilitating communications and other appropriate measures intended to terminate rapidly and safely such incident or threat thereof.</p> <p>[6. Each Party shall have the right, within sixty (60) days following notice (or such shorter period as may be agreed</p>	<p><i>which the Parties may be signatories, and to Annex 17 to the Convention (Aviation Security), which applies to all Contracting States of ICAO. Any changes to the Standards and Recommended Practices of the latter which may come into effect subsequent to the adoption of the agreement would also apply to the Parties. The clause emphasizes mutual assistance in the prevention of unlawful seizure or other such acts, requests for special security measures and whenever there is an unlawful act or the threat of one. The clause does not limit the contractual freedom of Parties to expand or limit its scope or to use a different approach.</i></p> <p><i>The bracketed language in paragraph 3 provides a procedure for handling differences which could be filed for security standards.</i></p> <p><i>The alternative paragraphs 6 and 7 address, respectively, the inspection of security facilities and procedures in another Party's</i></p>

<p style="text-align: center;">Article 9 Aviation security</p>	<p style="text-align: center;">Explanatory Notes</p>
<p>between the aeronautical authorities), for its aeronautical authorities to conduct an assessment in the territory of another Party of the security measures being carried out, or planned to be carried out, by aircraft operators in respect of flights arriving from, or departing to the territory of the first Party. The administrative arrangements for the conduct of such assessments shall be agreed between the aeronautical authorities and implemented without delay so as to ensure that assessments will be conducted expeditiously.]</p> <p>[7. When a Party has reasonable grounds to believe that another Party has departed from the provisions of this Article, the aeronautical authorities of that Party may request consultations. Such consultations shall start within fifteen (15) days of receipt of such a request from any Party. Failure to reach a satisfactory agreement within fifteen (15) days from the start of consultations shall constitute grounds for withholding, revoking, suspending or imposing conditions on the authorizations of the airline or airlines designated by another Party. When justified by an emergency, or to prevent further non-compliance with the provisions of this Article, a Party may take interim action at any time.]</p>	<p><i>territory and the need for prompt consultations on security matters (which have greater urgency than consultation on other issues) as well as the ability to take interim action when warranted.</i></p>

<p style="text-align: center;">Article 10 Security of travel documents</p>	<p style="text-align: center;">Explanatory Notes</p>
<ol style="list-style-type: none"> 1. Each Party agrees to adopt measures to ensure the security of their passports and other travel documents. 2. In this regard, each Party agrees to establish controls on the lawful creation, issuance, verification and use of passports and other travel documents and identity documents issued by, or on behalf of, that Party. 3. Each Party also agrees to establish or improve procedures to ensure that travel and identity documents issued by it are of such quality that they cannot easily be misused and cannot readily be unlawfully altered, replicated or issued. 4. Pursuant to the objectives above, each Party shall issue their passports and other travel documents in accordance with ICAO Doc 9303, <i>Machine Readable Travel Documents: Part 1 — Machine Readable Passports, Part 2 — Machine Readable Visas, and/or Part 3 — Size 1 and Size 2 Machine Readable Official Travel Documents.</i> 5. Each Party further agrees to exchange operational information regarding forged or counterfeit travel documents, and to cooperate with the other to strengthen resistance to travel document fraud, including the forgery or counterfeiting of travel documents, the use of forged or counterfeit travel documents, the use of valid travel documents by imposters, the misuse of authentic travel documents by rightful holders in furtherance of the commission of an offence, the use of expired or revoked travel documents, and the use of fraudulently obtained travel documents. 	<p><i>ICAO's Machine Readable Travel Document's technical specifications, contained in ICAO Doc 9303, permit reliable verification of the authenticity of travel documents and their holders and provide strong safeguards against alteration, forgery or counterfeit. Nearly 100 Contracting States issue Machine Readable Passports and other Machine Readable Travel Documents, in accordance with the specifications in Doc 9303. ICAO's Resolutions recognize that Doc 9303's specifications not only are effective in accelerating the movement of international passengers and crew members through border control, they also enhance security and immigration compliance programmes. Resolutions of the United Nations (UN) Security Council and other bodies of the UN, call upon States to enhance international cooperation to combat the smuggling of aliens and to prevent the use of fraudulent documents.</i></p> <p><i>Inclusion of this Article in air services agreements would enhance international efforts, by States, against the use of fraudulent and counterfeit travel documents for illegal migration, the smuggling of migrants and the movement of terrorists or terrorist groups across borders.</i></p>

<p style="text-align: center;">Article 11 Inadmissible and undocumented passengers and deportees</p>	<p style="text-align: center;">Explanatory Notes</p>
<p>1. Each Party agrees to establish effective border controls.</p> <p>2. In this regard, each Party agrees to implement the Standards and Recommended Practices of Annex 9 (Facilitation) to the Chicago Convention concerning inadmissible and undocumented passengers and deportees in order to enhance cooperation to combat illegal migration.</p> <p>3. Pursuant to the objectives above, each Party agrees to issue, or to accept, as the case may be, the letter relating to "fraudulent, falsified or counterfeit travel documents or genuine documents presented by imposters" set out in Appendix 9 b) to Annex 9 (Twelfth Edition), when taking action under relevant paragraphs of Chapter 3 of the Annex regarding the seizure of fraudulent, falsified or counterfeit travel documents.</p>	<p><i>Chapter 3 of Annex 9 (Facilitation) to the Chicago Convention includes Standards and Recommended Practices setting out general procedures to be followed by States and airlines when dealing with inadmissible passengers, undocumented passengers and deportees. Appendix 9 is intended to replace, as a travel document, fraudulent, falsified or counterfeit travel documents seized from passengers who have used them for travel. The idea behind existing paragraphs and Appendix 9 is to remove, from circulation, fraudulent, falsified and counterfeit documents.</i></p> <p><i>Inclusion of this Article in air services agreements would enhance international efforts, by States, against the smuggling of migrants and the movement of terrorists or terrorist groups across borders.</i></p>

<p style="text-align: center;">Article 12 User charges</p>	<p style="text-align: center;">Explanatory Notes</p>
<p style="text-align: center;">[Paragraphs 1 and 2, option 1 of 2]</p> <p>1. No Party shall impose or permit to be imposed on the designated airlines of another Party user charges higher than those imposed on its own airlines operating similar international services.</p> <p>2. Each Party shall encourage consultations on user charges between its competent charging authority [or airport or air navigation service provider] and airlines using the service and facilities provided by those charging authorities [or service provider], where practicable through those airlines' representative organizations. Reasonable notice of any proposals for changes in user charges should be given to such users to enable them to express their views before changes are made. Each Party shall further encourage its competent charging authority [or service provider] and such users to exchange appropriate information concerning user charges.</p> <p style="text-align: center;">[Paragraphs 1 and 2, option 2 of 2]</p> <p>1. User charges that may be imposed by the competent charging authorities or bodies of each Party on the airlines of another Party shall be just, reasonable, not unjustly discriminatory, and equitably apportioned among categories of users. In any event, any such user charges shall be assessed on the airlines of another Party on terms not less favourable than the most favourable terms available to any other airline at the time the charges are assessed.</p>	<p><i>These two alternative approaches to a provision on user charges differ significantly. Some provisions refer to "designated airlines". Parties would need to consider whether the provisions on the activities contained in this Party should also be extended to all airlines of a Party rather than only designated ones.</i></p> <p><i>This alternative is less detailed and merely reproduces in the first paragraph the non-discrimination principle governing user charges in Article 15 of the Convention viz. that charges on a foreign aircraft shall be no higher than those that would be imposed on its own aircraft in similar international operations.</i></p> <p><i>The provision encourages consultation between the charging authority and the users, that reasonable notice is given for any changes in charges and that appropriate information is exchanged concerning charges. These principles reflect ICAO policy on charges (Doc 9082). Because some States have commercialized or privatized their airport and air navigation service providers, and have delegated authority to set user charges, suitable wording in brackets is added to address such situations.</i></p> <p><i>In the second alternative, this provision includes certain principles which again reflect ICAO-developed policy. However, rather than use the formula from Article 15 of the Convention, as is done in the first alternative, this version applies a type of "most favoured nation" provision which is broader in application than Article 15.</i></p>

<p style="text-align: center;">Article 12 User charges</p>	<p style="text-align: center;">Explanatory Notes</p>
<p>2. User charges imposed on the airlines of another Party may reflect, but shall not exceed, the full cost to the competent charging authorities or bodies of providing the appropriate airport, airport environmental, air navigation, and aviation security facilities and services at the airport or within the airport system. Such full costs may include a reasonable return on assets, after depreciation. Facilities and services for which charges are made shall be provided on an efficient and economic basis.</p> <p>3. Each Party shall encourage consultations between the competent charging authorities or bodies in its territory and the airlines using the services and facilities, and shall encourage the competent authorities or bodies and the airlines to exchange such information as may be necessary to permit an accurate review of the reasonableness of the charges in accordance with the principles in paragraphs 1 and 2. Each Party shall encourage the competent charging authorities to provide users with reasonable notice of any proposal for changes in user charges to enable users to express their views before changes are made.</p> <p>4. No Party shall be held, in dispute resolution procedures pursuant to Article ___ (Settlement of Disputes), to be in breach of a provision of this Article, unless:</p> <p>a) it fails to undertake a review of the charge or practice that is the subject of complaint by another Party within a reasonable amount of time; or</p> <p>b) following such a review it fails to take all steps within its power to remedy any charge or practice that is inconsistent with this Article.</p> <p>[5. Airports, airways, air traffic control and air navigation services, aviation security, and other related facilities and services that are provided in the territory of one Party shall be available for use by the airlines of another Party on terms no less favourable than the most favourable terms available to any airline engaged in similar international air services at the time arrangements for use are made.]</p>	<p><i>Certain ICAO cost-recovery principles are set out in this provision.</i></p> <p><i>There are similar requirements regarding consultations, exchange of information and reasonable notice as can be found in the first alternative.</i></p> <p><i>The second approach introduces a review process prior to any treatment of user charges within the dispute settlement framework, and indicates that there is no breach of the Article, for purposes of the dispute settlement mechanism, if that review process is undertaken.</i></p> <p><i>The bracketed language is essentially a more detailed version of Article 15 of the Convention.</i></p>

<p style="text-align: center;">Article 13 Customs duties</p>	<p style="text-align: center;">Explanatory Notes</p>
<p>1. Each Party shall on the basis of reciprocity exempt a designated airline of another Party to the fullest extent possible under its national law from [import restrictions,] customs duties, excise taxes, inspection fees and other national duties and charges [not based on the cost of services provided on arrival] on aircraft, fuel, lubricating oils, consumable technical supplies, spare parts including engines, regular aircraft equipment, aircraft stores and other items [such as printed ticket stock, air waybills, any printed material which bears the insignia of the company printed thereon and usual publicity material distributed free of charge by that designated airline] intended for use or</p>	<p><i>A provision on customs and other duties is to be found in nearly all air services agreements and supplements the exemption on fuel, lubricating oils, spare parts, regular equipment and aircraft stores retained on board on arrival in another State's territory, found in Article 24 of the Convention. It also reflects ICAO policies on the taxation of international air transport (Doc 8632). The purpose of the provision is to exempt international aviation operations from various customs duties and other taxes on fuel, spare parts, supplies and equipment, that would normally be applied to a foreign aircraft when operating in another jurisdiction. The nature of international air transport and the potentially</i></p>

<p style="text-align: center;">Article 13 Customs duties</p>	<p style="text-align: center;">Explanatory Notes</p>
<p>used solely in connection with the operation or servicing of aircraft of the designated airline of such other Party operating the agreed services.</p> <p>2. The exemptions granted by this Article shall apply to the items referred to in paragraph 1:</p> <p>a) introduced into the territory of the Party by or on behalf of the designated airline of another Party;</p> <p>b) retained on board aircraft of the designated airline of one Party upon arrival in or leaving the territory of another Party; or</p> <p>c) taken on board aircraft of the designated airline of one Party in the territory of another Party and intended for use in operating the agreed services;</p> <p>whether or not such items are used or consumed wholly within the territory of the Party granting the exemption, provided the ownership of such items is not transferred in the territory of the said Party.</p> <p>3. The regular airborne equipment, as well as the materials and supplies normally retained on board the aircraft of a designated airline of any Party, may be unloaded in the territory of another Party only with the approval of the customs authorities of that territory. In such case, they may be placed under the supervision of the said authorities up to such time as they are re-exported or otherwise disposed of in accordance with customs regulations.</p>	<p><i>adverse economic impact of such imposts have been the rationale for the almost global acceptance of this provision.</i></p> <p><i>It should be noted that there are different interpretations of what constitutes an international leg of a service, for example, as it applies to tariffs and customs duties exemptions. States may therefore seek to include a clarification to this effect in any air services agreement entered into, particularly where cabotage rights are exchanged. In such cases, exemptions provided by this Article would be modified to take into account the nature of the service and its compatibility with domestic laws.</i></p> <p><i>In some situations the exemption is not a blanket exemption from all taxes and charges and where, for instance, there are government-imposed charges for services provided to international air transport (e.g. customs and quarantine fees), then the agreement would need a qualifying statement such as: "not based on the cost of services provided on arrival". Other items that could be covered (but have not been inserted in this Article) are equipment used for reservations and operations, security equipment, cargo loading and passenger-handling equipment, instructional material and training aids.</i></p>

<p style="text-align: center;">Article 14 Taxation</p>	<p style="text-align: center;">Explanatory Notes</p>
<p style="text-align: center;">[Paragraphs 1 through 3, option 1 of 2]</p> <p>1. Profits from the operation of the aircraft of a designated airline in international traffic shall be taxable only in the territory of the Party in which the place of effective management of that airline is situated.</p> <p>2. Capital represented by aircraft operated in international traffic by a designated airline and by movable property pertaining to the operation of such aircraft shall be taxable only in the territory of the Party in which the place of effective management of the airline is situated.</p>	<p><i>A provision on the taxation of income and capital in agreements is not widespread, in part because such matters may be the subject of a separate treaty on double taxation between the parties. One is presented above in light of the policy of ICAO (Doc 8632) that such an exemption be granted. Since the issue of taxation and taxation agreements between States would be an issue for financial authorities, a provision such as is presented here would require the involvement of those authorities in its formulation and negotiation.</i></p> <p><i>In this alternative, paragraphs 1 and 2 address the taxation of income and capital respectively.</i></p>

<p align="center">Article 14 Taxation</p>	<p align="center">Explanatory Notes</p>
<p>3. Where a special agreement for the avoidance of double taxation with respect to taxes on income and on capital exists between any two of the Parties, the provisions of the latter shall prevail.</p> <p align="center">[Paragraphs 1 through 3, option 2 of 2]</p> <p>1. Profits or income from the operation of aircraft in international traffic derived by an airline of any Party, including participation in inter-airline commercial agreements or joint business ventures, shall be exempt from any tax on profits or income imposed by the Government of each Party.</p> <p>2. Capital and assets of an airline of any Party relating to the operation of aircraft in international traffic shall be exempt from all taxes on capital and assets imposed by the Government of each Party.</p> <p>3. Gains from the alienation of aircraft operated in international traffic and movable property pertaining to the operation of such aircraft which are received by an airline of any Party shall be exempt from any tax on gains imposed by the Government of another Party.</p> <p>[4.* Each Party shall on a reciprocal basis grant relief from value added tax or similar indirect taxes on goods and services supplied to the airline designated by another Party and used for the purposes of its operation of international air services. The tax relief may take the form of an exemption or a refund.]</p>	<p><i>Paragraph 3 provides for a treaty between the Parties on double taxation to override the provisions of this agreement.</i></p> <p><i>This alternative exempts airlines from certain taxes imposed by the Government of each Party rather than specifying where airlines are taxable, i.e., in the territory of effective management of the airline, thereby clarifying the scope of tax exemptions.</i></p> <p><i>Paragraph 1 specifically exempts profits and income from inter-airline commercial agreements.</i></p> <p><i>The exemption is reciprocal though its coverage may vary as indicated by the bracketed text. For example, the Parties may also choose to include import restrictions, or airline supplies such as ticket stock, or computer equipment.</i></p>

<p align="center">Article 15 Fair competition</p>	<p align="center">Explanatory Notes</p>
<p align="center"> <div style="border: 1px solid black; padding: 5px; width: fit-content; margin: 0 auto;">Traditional</div> </p> <p>Each designated airline shall have a fair opportunity to operate the routes specified in the Agreement.</p> <p align="center"> <div style="border: 1px solid black; padding: 5px; width: fit-content; margin: 0 auto;">Transitional</div> </p> <p>Each Party agrees:</p> <p>a) that each designated airline shall have a fair and equal opportunity to compete in providing the international air services governed by the Agreement; and</p> <p>b) to take action to eliminate all forms of discrimination or unfair competitive practices adversely affecting the competitive position of a designated airline of each Party.</p>	<p><i>The traditional formulation is based on the phrase in the Convention (Article 44 f)) which refers to every contracting State having "a fair opportunity to operate international air services".</i></p> <p><i>A limited transitional approach would be to apply the fair and equal opportunity to the routes specified in the annex to the agreement. However, a broader version is provided here, as well as in paragraph b).</i></p>

<p align="center">Article 15 Fair competition</p>	<p align="center">Explanatory Notes</p>
<p align="center"> <div style="border: 1px solid black; padding: 5px; display: inline-block;"> Full liberalization </div> </p> <p>Each designated airline shall have a fair competitive environment under the competition laws of the Parties.</p>	<p><i>Under full liberalization, the Parties' competition laws would be used to ensure a fair competitive environment for all designated airlines.</i></p> <p><i>Some States, while fully supporting the application of competition laws, sometimes refer to them in memoranda of consultations rather than in the actual air services agreement.</i></p>

<p align="center">Article 16 Capacity</p>	<p align="center">Explanatory Notes</p>
<p align="center"> [Option 1 of 2] <div style="border: 1px solid black; padding: 5px; display: inline-block; margin: 10px auto; width: 80%;"> Traditional/Transitional/ Full liberalization </div> </p> <p>Capacity offered on air services shall be subject to Article __ (Fair competition).</p> <p align="center"> [Option 2 of 2] <div style="border: 1px solid black; padding: 5px; display: inline-block; margin: 10px auto; width: 80%;"> Traditional </div> </p> <p align="center">[Paragraphs 1 and 2, option 1 of 2]</p> <ol style="list-style-type: none"> 1. Any Party may require designated airlines of the other Parties to file their schedules for any route to or from its territory. 2. Any Party may prevent an increase in capacity on any route to or from its territory which would lead to a serious financial loss to the designated airlines operating services on that route. <p align="center"> [Option 2 of 2] </p> <p>Any Party may limit the offer of non-scheduled passenger services on a route on which scheduled passenger service exists, if additional non-scheduled passenger services would endanger the stability of such scheduled service.</p> <p align="center"> <div style="border: 1px solid black; padding: 5px; display: inline-block; margin: 10px auto; width: 80%;"> Transitional </div> </p> <p>Until [an agreed date] any Party may limit the capacity of a designated airline on a route to or from its territory to [an agreed percentage] of the total capacity offered on that route.</p>	<p><i>An alternative, applicable to all three approaches, where a Party believes the amount of additional capacity to be an unfair competitive practice would be to invoke Article __ (Fair competition).</i></p> <p><i>Although no predetermination of capacity provision is found in any regional/plurilateral agreement, there are instances of limitations being permitted on capacity in such agreements. These limitations are designed to meet concerns of States with smaller airlines that their services would not be displaced by excessive capacity.</i></p> <p><i>A variation on a general right to limit capacity is applying the limitation to a certain type of service, such as non-scheduled passenger services.</i></p> <p><i>A time-limited transitional measure is to allow the capacity offered on a route to vary from the traditional 50/50 division to a 60/40 proportion or some other formula. This is not suited to routes with more than two airlines.</i></p>

Article 16 Capacity	Explanatory Notes
<p style="text-align: center;">Full liberalization</p> <p>1. Each Party shall allow each designated airline to determine the frequency and capacity of the international air transportation it offers based on commercial considerations of the marketplace.</p> <p>2. No Party shall unilaterally limit the volume of traffic, frequency, or regularity of service, or the aircraft type or types operated by the designated airlines of any other Party, except as may be required for customs, technical, operational, or environmental reasons under uniform conditions consistent with Article 15 of the Convention.</p> <p>3. No Party shall impose on another Party's designated airlines a first refusal requirement, uplift ratio, no-objection fee, or any other requirement with respect to the capacity, frequency or traffic which would be inconsistent with the purposes of this Agreement.</p> <p>4. No Party shall require the filing of schedules, programmes for charter flights, or operational plans by airlines of the other Party for approval, except as may be required on a non-discriminatory basis to enforce uniform conditions as foreseen by paragraph 2 of this Article or as may be specifically authorized in an Annex to this Agreement. If a Party requires filings for information purposes, it shall minimize the administrative burdens of filing requirements and procedures on air transportation intermediaries and on designated airlines of the other Party.</p>	<p><i>Each designated airline may offer capacity based on Free determination where individual airlines determine capacity to be offered without government approval or intervention, subject to competition law(s) where applicable.</i></p> <p><i>The Parties agree to abrogate their direct control of capacity while retaining the ability to apply non-discriminatory, multilateral controls consistent with the Convention.</i></p> <p><i>No specific provision on the relationship between capacity and demand is contained in the Free determination method, the competitive pricing and scheduling responses of airlines to market forces being relied on to bring about necessary adjustment. This mechanism may work less effectively where the free play of market forces is impaired or inhibited.</i></p> <p><i>The Free determination method normally proscribes all forms of discrimination or unfair competitive practices, including predatory pricing, such practices being the cause for possible consultation and remedy. The provision on safeguards for unfair competitive practices addresses this additional and complementary procedure.</i></p> <p><i>Given the wide latitude accorded designated airlines on the capacity they may offer and in view of the increased potential for anti-competitive actions such as "capacity dumping", the Full liberalization approach should be subject to intervention on the basis of the competition laws of the Parties where applicable.</i></p>

Article 17 Tariffs (Pricing)	Explanatory Notes
<p style="text-align: center;">[Option 1 of 2]</p> <p style="text-align: center;">Traditional/Transitional/ Full liberalization</p> <p>Prices (Tariffs) shall be subject to Article __ (Fair competition).</p> <p style="text-align: center;">[Option 2 of 2]</p> <p style="text-align: center;">Transitional</p> <p>1. The tariffs to be applied by the designated airline or airlines of any Party for services covered by this Agreement shall be subject to the principle of Country of Origin tariff approval.</p>	<p><i>An alternative, applicable to all three approaches, where any Party invokes Article __ (Fair competition) due to prices charged that may constitute unfair competitive behaviour.</i></p> <p><i>This transitional approach to approve tariffs between the Parties is based on the principle of country of origin.</i></p>

Article 17 Tariffs (Pricing)	Explanatory Notes
<p>2. Each Party shall have the right to approve or disapprove tariffs for one-way or round-trip carriage between the territories of the Parties which commences in its own territory. No Party shall take unilateral action to prevent the inauguration of proposed tariffs or the continuation of effective tariffs for one-way or round-trip carriage between the territories of the Parties commencing in the territory of the other Party.</p> <p>[3. Notwithstanding the provisions of this Article, a designated airline shall be free to apply tariffs in respect of carriage on non-scheduled services, as long as these tariffs have been notified to the Parties concerned.]</p> <div style="border: 1px solid black; padding: 5px; text-align: center; margin: 10px auto; width: fit-content;">Full liberalization</div> <p>Prices (Tariffs) charged by airlines shall not be required to be filed with, or approved by, any Party.</p>	<p><i>The scope of approval falls primarily on tariffs for third and Fourth Freedom services which are completely within the regulatory ambit of the concerned Parties.</i></p> <p><i>A provision on the approval of tariffs for non-scheduled services is included on an optional basis.</i></p> <p><i>Under Full liberalization, tariffs could not be disapproved for any reason. Airlines practices with respect to tariffs could be made subject to the competition laws of the Parties where applicable.</i></p>

Article 18 Safeguards	Explanatory Notes
<p>1. The Parties agree that the following airline practices may be regarded as possible unfair competitive practices which may merit closer examination:</p> <ul style="list-style-type: none"> a) charging fares and rates on routes at levels which are, in the aggregate, insufficient to cover the costs of providing the services to which they relate; b) the addition of excessive capacity or frequency of service; c) the practices in question are sustained rather than temporary; d) the practices in question have a serious negative economic effect on, or cause significant damage to, another airline; e) the practices in question reflect an apparent intent or have the probable effect, of crippling, excluding or driving another airline from the market; and f) behaviour indicating an abuse of dominant position on the route. <p>2. If the aeronautical authorities of any Party consider that an operation or operations intended or conducted by the designated airline of another Party may constitute unfair competitive behaviour in accordance with the indicators listed in paragraph 1, they may request consultation in accordance with Article ___ [Consultation] with a view to resolving the problem. Any such request shall be accompanied by notice of the reasons for the request, and the consultation shall begin within 15 days of the request.</p>	<p><i>The provision on Safeguards will only be relevant and applicable if the Parties have agreed to move to a liberalized, even if not a fully plurilateral "open skies" environment for their designated carriers. The list of airline commercial practices that may be signals of possible unfair competitive practices are indicative only and were developed by ICAO and distributed to Contracting States as a Recommendation. This provision could be used where a group of States has agreed to move toward a less controlled regime but none of the parties has competition laws, they may need to have a mutually-agreed set of descriptions of what would constitute unfair and/or fair competitive practices as a safeguard measure. Given the particular competitive environment in which the airlines will operate and the competition law regimes applicable to their respective territories, the Parties may decide on other indicators of unfair competitive behaviour which could be included in this provision.</i></p> <p><i>The "safeguard mechanism" consists of the safeguards provision together with the fourth alternative on dispute settlement, a mediation process based on an ICAO Recommendation which is contained in the Dispute Settlement Article.</i></p> <p><i>As an alternative to the safeguard mechanism, Parties could agree on the phasing in of full market access and other provisions, to ease the transition to full liberalization (see Annex IV).</i></p>

Article 18 Safeguards	Explanatory Notes
3. If the Parties fail to reach a resolution of the problem through consultations, any Party may invoke the dispute resolution mechanism under Article ___ [Settlement of disputes] to resolve the dispute.	

Article 19 Competition laws	Explanatory Notes
<p>1. The Parties shall inform each other about their competition laws, policies and practices or changes thereto, and any particular objectives thereof, which could affect the operation of air transport services under this Agreement and shall identify the authorities responsible for their implementation.</p> <p>2. The Parties shall, to the extent permitted under their own laws and regulations, assist each other's airlines by providing guidance as to the compatibility of any proposed airline practice with their competition laws, policies and practices.</p> <p>3. The Parties shall notify each other whenever they consider that there may be incompatibility between the application of their competition laws, policies and practices and the matters related to the operation of this Agreement; the consultation process contained in this Agreement shall, if so requested by any Party, be used to determine whether such a conflict exists and to seek ways of resolving or minimizing it.</p> <p>4. The Parties shall notify one another of their intention to begin proceedings against each other's airline(s) or of the institution of any relevant private legal actions under their competition laws which may come to their attention.</p> <p>5. Without prejudice to the right of action of any Party the consultation process contained in this Agreement shall be used whenever any Party so requests and should aim to identify the respective interests of the Parties and the likely implications arising from the particular competition law action.</p> <p>6. The Parties shall endeavour to reach agreement during such consultations, having due regard to the relevant interests of each Party and to alternative means which might also achieve the objectives of that competition law action.</p> <p>7. In the event agreement is not reached, each Party shall, in implementing its competition laws, policies and practices, give full and sympathetic consideration to the views expressed by the other Party and shall have regard to international comity, moderation and restraint.</p> <p>8. The Party under whose competition laws a private legal action has been instituted shall facilitate access by each Party to the relevant judicial body and/or, as appropriate, provide information to that body. Such information could include its own foreign relations interests, the interests of each Party as notified by that Party and, if possible, the results of any consultation with each Party concerning the action.</p>	<p><i>The foregoing model clause developed by ICAO is intended to be a comprehensive but adaptable set of procedures wherever two or more Parties have experienced or may experience difficulties in their air transport relations from the application of national competition laws. The provisions place emphasis on notification, cooperation, restraint and the consultation process to avoid and resolve conflicts or potential conflicts. Its use by the Parties would not be relevant, for example, where any Party endorses cooperative airline practices, such as tariff coordination, and no Party has a competition law. Nor is it intended to supplement any existing procedures and the obligations to be included would, of course, have to be agreed by the Parties' competition authorities. In general it seeks to strengthen the machinery for conflict avoidance and resolution and to bring issues in the application of competition law standards to air transport into the regional or plurilateral framework. The clause draws mainly on the concepts and principles set out in detailed Guidelines on this topic that were developed by ICAO concurrently with this model clause (see Doc 9587).</i></p>

<p style="text-align: center;">Article 19 Competition laws</p>	<p style="text-align: center;">Explanatory Notes</p>
<p>9. The Parties shall cooperate, to the extent not precluded by their national laws or policies and in accordance with any applicable international obligations, in allowing the disclosure by their airlines or other nationals of information pertinent to a competition law action to the competent authorities of each other, provided that such cooperation or disclosure would not be contrary to their significant national interests.</p> <p>10. While an action taken by the competition law authorities of one Party is the subject of consultations with another Party, the Party in whose territory the action is being taken shall, pending the outcome of these consultations, refrain from requiring the disclosure of information situated in the territory of another Party and that other Party shall refrain from applying any blocking legislation.</p>	

<p style="text-align: center;">Article 20 Currency conversion and remittance of earnings</p>	<p style="text-align: center;">Explanatory Notes</p>
<p>Each Party shall permit airline(s) of another Party to convert and transmit abroad to the airline's(s') choice of State, on demand, all local revenues from the sale of air transport services and associated activities directly linked to air transport in excess of sums locally disbursed, with conversion and remittance permitted promptly without restrictions, discrimination or taxation in respect thereof at the rate of exchange applicable as of the date of the request for conversion and remittance.</p>	<p><i>In some agreements, this provision could be a separate article or could also be part of a "Commercial opportunities" Article.</i></p> <p><i>This ICAO-developed provision to facilitate currency conversion and remittance is a more comprehensive version of a provision found in almost all air service agreements.</i></p> <p><i>The term "associated activities directly linked to air transport" would normally include activities closely related to the provision of air services, such as a bus service between the airport and hotels, and where permitted, the provision of ground handling services to other airlines. The term would not include activities such as revenue from hotels, car rentals, investments in local real estate or stocks and bonds, which will presumably be subject to a different conversion and remittance regime. The term "without taxation" refers to taxation on the conversion and remittance, not to national income tax, which is dealt with in the Article on "Taxation".</i></p>

<p style="text-align: center;">Article 21 Sale and marketing of air service products</p>	<p style="text-align: center;">Explanatory Notes</p>
<p>1. Each Party shall accord a designated airline of another Party the right to sell and market international air services and related products in its territory (directly or through agents or other intermediaries of the airline's choice), including the right to establish offices, both on-line and off-line.</p>	<p><i>In some agreements, this provision could be a separate article or could also be part of a "Commercial opportunities" Article.</i></p> <p><i>Some provisions in this Article refer to "designated airlines". Parties would need to consider whether the provisions on the activities contained in this Article should also be extended to all airlines of a Party rather than only designated ones.</i></p> <p><i>This ICAO-developed provision provides a simple but fair standard for authorizing airlines to sell and market their services. This clause does not apply to the sale and marketing of air service products through computer reservation systems (CRSs) which is dealt with by a separate provision. The term "on-line office" describes a situation where an office is located in a city or country served by the airline directly; an "off-line office"</i></p>

<p style="text-align: center;">Article 21 Sale and marketing of air service products</p>	<p style="text-align: center;">Explanatory Notes</p>
<p>2. [Each airline shall have the right to sell transportation in the currency of that territory or, at its discretion, in freely convertible currencies of other countries, and any person shall be free to purchase such transportation in currencies accepted by that airline.]</p>	<p><i>is located in a city/country not directly served by the airline. Some recent air services agreements add the alternative provision in brackets.</i></p> <p><i>The optional text provides assurance to airlines that they can freely sell in convertible currencies accepted for sale by that airline, while not requiring airlines to accept currencies in which the airlines do not deal.</i></p>

<p style="text-align: center;">Article 22 Non-national personnel and access to local services</p>	<p style="text-align: center;">Explanatory Notes</p>
<div style="text-align: center; border: 1px solid black; padding: 5px; margin: 10px auto; width: fit-content;"> <p>Traditional and Transitional</p> </div> <p>1. The designated airline or airlines of one Party shall be allowed, on the basis of reciprocity, to bring into and to maintain in the territory of each Party their representatives and commercial, operational and technical staff as required in connection with the operation of the agreed services.</p> <p>2. These staff requirements may, at the option of the designated airline or airlines of one Party, be satisfied by its own personnel or by using the services of any other organization, company or airline operating in the territory of another Party and authorized to perform such services for other airlines.</p> <p>3. The representatives and staff shall be subject to the laws and regulations in force of another Party, and consistent with such laws and regulations:</p> <p>a) each Party shall, on the basis of reciprocity and with the minimum of delay, grant the necessary employment authorizations, visitor visas or other similar documents to the representatives and staff referred to in paragraph 1 of this Article; and</p> <p>b) each Party shall facilitate and expedite the requirement of employment authorizations for personnel performing certain temporary duties not exceeding ninety (90) days.</p> <div style="text-align: center; border: 1px solid black; padding: 5px; margin: 10px auto; width: fit-content;"> <p>Full liberalization</p> </div> <p>Each Party shall permit designated airlines of another Party to:</p> <p>a) bring in to its territory and maintain non-national employees who perform managerial, commercial, technical, operational and other specialist duties which are required for the provision of air</p>	<p><i>In some agreements, this provision could be a separate article or could also be part of a "Commercial opportunities" Article.</i></p> <p><i>Some provisions in this Article refer to "designated airlines". Parties would need to consider whether the provisions on the activities contained in this Article should also be extended to all airlines of a Party rather than only designated ones.</i></p> <p><i>The traditional and transitional approaches rely on reciprocity which, if interpreted in a quantitative manner, would result in a numerical limitation on the number of airline employees which could be stationed in another Party's territory.</i></p> <p><i>Paragraph 3 b) provides for temporary employees for whom the employment and residence requirements could be less extensive than for long-term employees.</i></p> <p><i>Paragraph a) of this ICAO provision on non-national personnel, is intended to facilitate the stationing abroad of certain airline personnel — those who perform managerial, commercial, technical and operational duties. The provision is subject to international obligations as well as national laws of the receiving</i></p>

<p style="text-align: center;">Article 22 Non-national personnel and access to local services</p>	<p style="text-align: center;">Explanatory Notes</p>
<p>transport services, consistent with the laws and regulations of the receiving State concerning entry, residence and employment; and</p> <p>b) use the services and personnel of any other organization, company or airline operating in its territory and authorized to provide such services.</p>	<p><i>Party concerning entry, residence and employment, which in most cases should be flexible enough to accommodate the obligations of a Party under this provision.</i></p> <p><i>Paragraph b) is intended to respond to the need to accommodate the more frequent use of personnel from third countries by air carriers as a result of the increasing number of alliances and the globalization of airline commercial activities. Consequently, it would include the ability to use personnel and services of an airline partner in an alliance or codeshare arrangement, as well as any local company or organization authorized to provide a service.</i></p>

<p style="text-align: center;">Article 23 Change of gauge</p>	<p style="text-align: center;">Explanatory Notes</p>
<div style="text-align: center; border: 1px solid black; width: fit-content; margin: 0 auto; padding: 2px 10px;"> <p>Traditional</p> </div> <p>1. In operating any agreed service on any specified route a designated airline of any Party may substitute one aircraft for another at a point in the territory of another Party on the following conditions only:</p> <p>a) that it is justified by reason of economy of operation;</p> <p>b) that the aircraft used on the section of the route more distant from the terminal in the territory of any Party is not larger in capacity than that used on the nearer section;</p> <p>c) that the aircraft used on the more distant section shall operate only in connection with and as an extension of the service provided by the aircraft used on the nearer section and shall be scheduled so to do; the former shall arrive at the point of change for the purpose of carrying traffic transferred from or to be transferred into, the aircraft used on the nearer section; and its capacity shall be determined with primary reference to this purpose;</p> <p>d) that there is an adequate volume of through traffic;</p> <p>e) that the airline [shall not hold itself out to the public by advertisement or otherwise] [shall not hold itself out directly or indirectly and whether in timetables, computer reservation systems, fare quote systems or advertisements, or by other means], [as providing a service which originates at a point where the change of aircraft is made] as providing any service other than the agreed service on the relevant specified routes;</p>	<p><i>In some agreements, this provision could be a separate article, could also be part of a "Commercial opportunities" Article, or could be covered in the Route schedule.</i></p> <p><i>A provision on change of gauge may be a stand-alone article or be dealt with in the Route schedule. Generally, a change of gauge enables an airline to operate more economically over international route sectors distant from its own territory by more closely matching the capacity of its flights on such sectors to the lower volumes of traffic to and from its home territory normally expected in the case of the more remote sectors of a long-haul route.</i></p> <p><i>In the traditional type of change of gauge formula a change of aircraft is permitted, but subject to a number of conditions including scheduling coordination, size of aircraft, volume of traffic and capacity limitations in the case of a capacity-controlled regime. The conditions are aimed at permitting, but nevertheless circumscribing the use of change of gauge. In sub-paragraph e), optional text is given to encompass other modern marketing and selling means than advertising when holding out a change of gauge service. In sub-paragraph h), the optional text provides greater flexibility for the operating carrier by enabling, subject to authorization, more than one flight from the change point. However, the other conditions on change of gauge would continue to apply.</i></p>

<p style="text-align: center;">Article 23 Change of gauge</p>	<p style="text-align: center;">Explanatory Notes</p>
<p>f) that where an agreed service includes a change of aircraft this fact is shown in all timetables, computer reservation systems, fare quote systems, advertisements and other like means;</p> <p>g) that the provisions of Article ___ of this Agreement shall govern all arrangements made with regard to change of aircraft; and</p> <p>h) that in connection with any one aircraft flight into the territory in which the change of aircraft is made, only one flight may be made out of that territory [unless the airline is authorized by the aeronautical authorities of another Party to operate more than one flight].</p> <p>2. The provisions of paragraph 1 of this Article shall:</p> <p>a) not restrict the right of a designated airline to change aircraft in the territory of the Party designating that airline; and</p> <p>b) not allow a designated airline of any Party to station its own aircraft in the territory of another Party for the purpose of change of aircraft.</p> <p>3. The provisions of this Article shall not limit the ability of an airline to provide services through codesharing and/or blocked space arrangements as provided for in this Agreement [the Route Schedules of this Agreement].</p> <div style="text-align: center; border: 1px solid black; width: fit-content; margin: 20px auto; padding: 5px;">Transitional</div> <p>1. Each designated airline may on any or all flights on the agreed services and at its option, change aircraft in the territory of the other Party or at any point along the specified routes, provided that:</p> <p>a) aircraft used beyond the point of change of aircraft shall be scheduled in coincidence with the inbound or outbound aircraft, as the case may be; and</p> <p>b) in the case of a change of aircraft in the territory of the other Party and where more than one aircraft is operated beyond the point of change, not more than one such aircraft may be of equal size and none may be larger than the aircraft used on the Third And Fourth Freedom sector.</p> <p>2. For the purpose of change of gauge operations, a designated airline may use its own equipment and, subject to national regulations, leased equipment, and may operate under commercial arrangements with another airline.</p> <p>3. A designated airline may use different or identical flight numbers for the sectors of its change of aircraft operations.</p>	<p><i>Paragraph 2 allows unrestricted change of gauge in an airline's own country but prohibits stationing aircraft in another Party's territory.</i></p> <p><i>The provisions of traditional change of gauge articles often cannot be practically applied to codeshare and/or blocked space situations and if these activities are to be permitted, an exception to the change of gauge provisions is needed. The bracketed language will be used when the Route schedules are contained in an Annex to the Agreement. In such cases, States may wish to include change of gauge provisions in that Annex.</i></p> <p><i>The transitional approach is a more modern and flexible change of gauge formula, one which is constrained only by conditions regarding scheduling coordination, and size of aircraft when there is more than one aircraft operating beyond the point of change. The references in paragraph 2 to the use of leased equipment and commercial arrangements presupposes that the Parties have also agreed on these matters.</i></p>

<p align="center">Article 23 Change of gauge</p>	<p align="center">Explanatory Notes</p>
<p align="center" style="border: 1px solid black; padding: 5px;">Full liberalization</p> <p>On any international segment or segments of the agreed routes, a designated airline may perform international air transportation without any limitation as to change, at any point on the route, in type or number of aircraft operated; provided that [with the exception of all-cargo services] the transportation beyond such point is a continuation of the transportation from the territory of the Party that has designated the airline and, in the inbound direction, the transportation to the territory of the Party that has designated the airline is a continuation of the transportation from beyond such point.</p>	<p><i>The full liberalization approach provides extensive operational flexibility in the use of equipment. This type of provision would, for example, enable a hub-type operation to be established at the change point, subject of course to agreement being reached with other relevant partners. The only restriction is that services be conducted in a linear fashion, that is that the flight on the second sector be the extension or continuation of the prior connecting outbound or inbound flight. The bracketed language removes this restriction for all-cargo services.</i></p>

<p align="center">Article 24 Ground handling</p>	<p align="center">Explanatory Notes</p>
<p align="center" style="border: 1px solid black; padding: 5px;">Transitional</p> <p align="center">[Option 1 of 2]</p> <p>Subject to applicable safety provisions, including ICAO Standards and Recommended Practices (SARPs) contained in Annex 6, each designated airline may choose from among competing providers of ground handling services.</p> <p align="center">[Option 2 of 2]</p> <p>1. Subject to applicable safety provisions, including ICAO Standards and Recommended Practices (SARPs) contained in Annex 6, each designated airline or airlines shall be permitted, on the basis of reciprocity, to perform its own ground handling in the territory of any other Party and, at its option, to have ground handling services provided in whole or in part by any agent authorized by the competent authorities of another Party to provide such services.</p> <p>2. The designated airline or airlines of any Party shall also have the right to provide ground handling services for other airlines operating at the same airport in the territory of any Party.</p>	<p><i>In some agreements, this provision could be a separate article or could also be part of a "Commercial opportunities" Article.</i></p> <p><i>All provisions should contain a cross reference to safety provisions, or a sentence which indicates that ground handling will be covered by Annex 6.</i></p> <p><i>Some provisions in this Article refer to "designated airlines". Parties would need to consider whether the provisions on the activities contained in this Article should also be extended to all airlines of a Party rather than only designated ones.</i></p> <p><i>This approach allows a designated airline to choose from among competing providers of ground handling services. This can provide some improvement in services and cost depending on the degree of competition among the providers. This approach is commonly found at airports with a large number of airlines and physical limitations on the number of ground handlers that can be accommodated.</i></p> <p><i>This transition permits an airline on the basis of reciprocity to perform its own ground handling, or choose to have those services provided by any agent authorized by the competent authority of the other Party, to provide ground handling services to other airlines operating at the same airport in the territory of the other Party.</i></p>

<p style="text-align: center;">Article 24 Ground handling</p>	<p style="text-align: center;">Explanatory Notes</p>
<p>3. The exercise of the rights set forth in paragraphs 1 and 2 of this Article shall be subject only to physical or operational constraints resulting from considerations of airport safety or security. Any constraints shall be applied uniformly and on terms no less favourable than the most favourable terms available to any airline engaged in similar international air services at the time the constraints are imposed.</p> <p style="text-align: center; border: 1px solid black; padding: 5px; width: fit-content; margin: 20px auto;">Full liberalization</p> <p>1. Subject to applicable safety provisions, including ICAO Standards and Recommended Practices (SARPs) contained in Annex 6, any Party shall authorize airline(s) of another Party, at each airline's choice, to:</p> <ol style="list-style-type: none"> a) perform its own ground handling services; b) handle another or other air carrier(s); c) join with others in forming a service-providing entity; and/or d) select among competing service providers. <p>2. An air carrier is permitted to choose freely from among the alternatives available and to combine or change its option, except where this is demonstrably impractical and also where constrained by relevant safety and security considerations, and (with the exception of self-handling in a) above) by the scale of airport operations being too small to sustain competitive providers.</p> <p>3. Parties would always be required to take the necessary measures to ensure reasonable cost-based pricing and fair and equal treatment for air carrier(s) of the other Party/Parties.</p>	<p><i>Paragraph 3 recognizes that ground handling rights may have to be constrained but only due to airport safety or security considerations. It also accords most favoured nation and national treatment to the application of any such constraints.</i></p> <p><i>In the full liberalization approach, developed by ICAO, the designated airline has a wider choice with respect to ground handling: it can perform its own, or use those of another airline, provide the services to other airlines, or join with other airlines in providing the services collectively, or choose from among competing providers (see Doc 9587).</i></p> <p><i>Depending on their particular circumstances, States should consider the gradual, phased introduction of self-handling and multiple suppliers based, where appropriate, on the size of the airport.</i></p> <p><i>At certain airports the number of air carriers and limited physical facilities may not permit all air carriers to perform their own airside ground handling; in such cases, carriers allowed to do so should be selected by objective, transparent and non-discriminatory procedures and competitive, alternative suppliers should be available.</i></p>

<p style="text-align: center;">Article 25 Codesharing/Cooperative arrangements</p>	<p style="text-align: center;">Explanatory Notes</p>
<p style="text-align: center;">[Option 1 of 2]</p> <p style="text-align: center; border: 1px solid black; padding: 5px; width: fit-content; margin: 10px auto;">Transitional</p> <p>Each designated airline may enter into cooperative marketing arrangements such as joint-venture, blocked space and codeshare with airlines of each Party, provided that the airlines</p>	<p><i>Codesharing may be treated in the same manner as other cooperative airline arrangements, requiring the airlines involved to have the appropriate authority (in the case of codesharing, the underlying traffic rights) and meet the requirements normally applied to such agreements. However, for States which may wish to have a specific article on codesharing, the following text is provided.</i></p> <p><i>Alternatively, some States may find it preferable that codesharing be addressed in an Article on Commercial opportunities or in the notes to the Route schedule.</i></p> <p><i>The transitional approach specifically recognizes the use of these types of cooperative agreements, but limits them to designated airlines of the Parties to the agreement. As a</i></p>

<p style="text-align: center;">Article 25 Codesharing/Cooperative arrangements</p>	<p style="text-align: center;">Explanatory Notes</p>
<p>involved hold the appropriate authority and meet the requirements normally applied to such arrangements.</p> <p style="text-align: center; border: 1px solid black; padding: 5px;">Full liberalization</p> <p>1. In operating or holding out the authorized services on the agreed routes, each designated airline of one Party may enter into cooperative marketing arrangements such as joint venture, blocked space or codesharing arrangements, with:</p> <p>a) an airline or airlines of any Party;</p> <p>b) an airline or airlines of a third country; and</p> <p>c) a surface transportation provider of any country, provided that all airlines in such arrangements 1) hold the appropriate authority and 2) meet the requirements normally applied to such arrangements.</p> <p>2. The Parties agree to take the necessary action to ensure that consumers are fully informed and protected with respect to codeshared flights operating to or from their territory and that, as a minimum, passengers be provided with the necessary information in the following ways:</p> <p>a) orally and, if possible, in writing at the time of booking;</p> <p>b) in written form, on the ticket itself and/or (if not possible), on the itinerary document accompanying the ticket or on any other document replacing the ticket, such as a written confirmation, including information on whom to contact in case of a problem and a clear indication of which airline is responsible in case of damage or accident; and</p> <p>c) orally again, by the airline's ground staff at all stages of the journey.</p> <p>[3. The airlines are required to file for approval any proposed cooperative arrangement with the aeronautical authorities of all Parties at least __ days before its proposed introduction].</p>	<p><i>transition measure, the use of codesharing may be limited to specific routes or a specific number of flights which could be further modified by subsequent discussions and/or an exchange of notes.</i></p> <p><i>The full liberalization stage includes cooperative arrangements with third-country airlines and surface providers. In most liberalized agreements it also includes wet leasing between airlines of the Parties but for the purposes of this Template Agreement separate provisions on leasing have been included.</i></p> <p><i>The phrase, "the requirements normally applied" to the cooperative arrangements would include, in the case of codesharing for example, requirements for consumer notification and protection. This could take the form of an additional article drawn from Doc 9587.</i></p> <p><i>The term in b) "any other document replacing the ticket, such as written confirmation" includes electronic ticketing.</i></p> <p><i>The optional filing requirement could serve as a means for the aeronautical authorities to verify that all airlines have the appropriate authority and meet requirements applied to such arrangements. Alternatively, national law and regulations may be used for this purpose.</i></p>
<p style="text-align: center;">[Option 2 of 2]</p> <p style="text-align: center; border: 1px solid black; padding: 5px;">Transitional and Full liberalization</p> <p>1. Subject to the regulatory requirements normally applied to such operations by the aeronautical authorities of each Party, each designated airline of another Party may enter into cooperative arrangements for the purpose of:</p> <p>a) holding out the agreed services on the specified routes by codesharing (i.e. selling transportation under its own code) on flights operated by an airline(s) of any Party [and/or of any third country]; and/or</p>	<p><i>Sub-paragraph a) allows air carriers to hold out their services by selling transportation under their own codes (marketing carriers) on flights operated by airlines of any Party and/or third country carriers (operating carriers), where the bracketed language is included. (To limit codesharing to designated airlines of the Parties, the bracketed language should be omitted.)</i></p>

<p style="text-align: center;">Article 25 Codesharing/Cooperative arrangements</p>	<p style="text-align: center;">Explanatory Notes</p>
<p>b) carrying traffic under the code of any other airline(s) where such other airline(s) has been authorized by the aeronautical authorities of any Party to sell transportation under its own code on flights operated by that designated airline of another Party.</p> <p>2. Codesharing services involving transportation between points in any Party shall be restricted to flights operated by (an) airline(s) authorized by the aeronautical authorities of that Party to provide service between points in that Party's territory and all transportation between points in such territory under the code of the designated airline(s) of another Party shall only be available as part of an international journey. All airlines involved in codesharing arrangements shall hold the appropriate underlying route authority. Airlines shall be permitted to transfer traffic between aircraft involved in codeshare services without limitation. The aeronautical authorities of any Party shall not withhold permission for codesharing services identified in a) above by the designated airline(s) of another Party on the basis that the airline(s) operating the aircraft does not have the right from such aeronautical authorities to carry traffic under the code of the designated airline(s) of another Party.</p> <p>3. For the purposes of Article ___ (Capacity) of the Agreement, there shall be no limit imposed by the aeronautical authorities of any Party on the capacity to be offered by the airline or airlines designated by another Party on codesharing services.</p>	<p><i>Sub-paragraph b) allows designated airlines to carry the codes of other airlines.</i></p> <p><i>The first sentence of paragraph 2 allows codesharing on domestic segments in a Party's territory, but only as part of an international journey. The last sentence of paragraph 2 prohibits aeronautical authorities of a Party from withholding codeshare approval on the basis that the operating airline does not have the rights from that Party to carry traffic under the code of the designated airline of the other Party. If such withholding were allowed, many potential codeshare opportunities that the provisions are intended to permit could be prevented by the other Party.</i></p> <p><i>Paragraph 3 recognizes the importance of clarity with respect to the capacity entitlements permitted for codeshare operations. Often there are no limitations on the capacity that may be offered by marketing air carriers on codeshare services; however, flights operated with their own equipment by carriers that are designated under the agreement are frequently subject to capacity restrictions whether or not another air carrier's code is also used on the flights. The capacity of third country operating air carriers is normally only subject to the provisions of an air agreement between the State of the operating air carrier and the other Party.</i></p>

<p style="text-align: center;">Article 26 Aircraft leasing</p>	<p style="text-align: center;">Explanatory Notes</p>
<p>1.* Each Party may prevent the use of leased aircraft for services under this agreement which does not comply with Articles ___ (Safety) and ___ (Security).</p>	<p><i>Definitions</i></p> <p>a) <i>The term "wet lease" means the lease of an aircraft with crew.</i></p> <p>b) <i>The term "dry lease" means the lease of an aircraft without crew.</i></p> <p><i>This paragraph treats leased aircraft on the same basis vis-à-vis safety and security as other aircraft operated by designated airlines under the agreement. It makes clear that a party can prevent the use of leased aircraft that do not meet safety and security standards. In implementing this type of paragraph, some States require prior filing of leasing arrangements involving international routes to permit timely action to be taken if the authorities have safety concerns. In some instances, States may use lists of airlines from which aircraft may be leased, and/or lists of airlines from which they may not be leased, based, for example, on ICAO Safety Oversight audit reports or the records of ramp inspections.</i></p>

<p style="text-align: center;">Article 26 Aircraft leasing</p>	<p style="text-align: center;">Explanatory Notes</p>
<div style="text-align: center; border: 1px solid black; width: fit-content; margin: 0 auto; padding: 5px;"> <p>Transitional</p> </div> <p style="text-align: center; margin-top: 20px;">[Option 1 of 2]</p> <p>2. Subject to paragraph 1 above, the designated airlines of each Party may provide services under this agreement by:</p> <p>a) using aircraft dry-leased from any [company including] airlines;</p> <p>b) using aircraft wet-leased from other airlines of the same Party;</p>	<p><i>To meet safety concerns with the use of leased aircraft in certain situations, States may conclude agreements under Article 83 bis to transfer certain responsibilities of the State of Registry under the Convention to the State of the Aircraft Operator in accordance with relevant ICAO guidance.</i></p> <p><i>As a practical matter, a Party with safety concerns about a specific situation involving the use of leased aircraft may find it easier, at least initially, to consult with the Party whose airline has leased the aircraft, bearing in mind that the State of the lessor airline may not be a party to the agreement. In considering action under paragraph 1, States should first assess whether their safety concerns with leased aircraft have been addressed by the use of existing ICAO guidance and procedures which make clear the responsibility for continuing airworthiness and the adequacy of operating and maintenance standards in respect of such leased aircraft, taking into account relevant ICAO Standards and Recommended Practices (SARPS) and guidance such as the Manual of Procedures for Operations, Inspection, Certification and Continued Surveillance (Doc 8335), the Airworthiness Manual (Doc 9760), and the Guidance on the Implementation of Article 83 bis of the Convention on International Civil Aviation (Circular 295).</i></p> <p><i>Under this approach, a choice of two options are provided. The main difference is in the treatment of wet-leased aircraft from third countries.</i></p> <p><i>Dry leases from non-airline owners, sometimes known as “financial” leases, are virtually universally permitted and are not generally the subject of air services agreements. Some States, however, have included express reference to such leases in their air services agreements. Optional languages [shown in square brackets] are provided within each approach.</i></p> <p><i>Some States may, by national law, policy or regulation, or mutual agreement between aeronautical authorities concerned, authorize in advance one or more types of aircraft leases, such as dry leases from any airline, wet leases between airlines of the same Party, wet leases from airlines of another Party, or wet leases from airlines of third countries, subject in all cases to enforcement of applicable bilateral, national and regional safety and security provisions.</i></p> <p><i>In some cases, a State may prevent the operation of services by an airline whose fleet is composed of mostly or all wet-leased aircraft from a third country.</i></p> <p><i>The term “appropriate authorization” has a meaning broader than the usual “route and/or traffic rights” granted under a bilateral agreement, and includes:</i></p> <p><i>i) the economic and safety-related operating authorization that the lessor and lessee airlines have been granted on the routes to be served; and</i></p>

<p style="text-align: center;">Article 26 Aircraft leasing</p>	<p style="text-align: center;">Explanatory Notes</p>
<p>c) using aircraft wet-leased from airlines of any other Party; and</p> <p>d) using aircraft wet-leased from airlines of third countries,</p> <p>provided that all airlines participating in the arrangements listed in b), c) and d) above, hold the appropriate authorization and meet the requirements normally applied to those arrangements.</p>	<p>ii) <i>any other national or regional approvals required for the particular type of lease involved.</i></p> <p><i>This paragraph covers four leasing situations described in the four subparagraphs. In the case of situation a) [dry leases], such use is permitted without restriction, subject only to safety and security requirements. Some States prefer to deal with dry-leased aircraft owned by airlines only in the agreement while others may want to expressly cover all dry leases including those from non-airline entities.</i></p> <p><i>In the case of situations b) and c), this option allows such use by subjecting it to both safety and security requirements as well as a requirement that the lessor and lessee possess the necessary operating authorization. Although both the lessor and lessee would ordinarily have the necessary operating authorization in such situations, they are listed separately here to cover a possible situation where the safety requirements of the State of the lessee may not permit any wet leases from airlines of other States (e.g. the United States).</i></p> <p><i>For situation d) [wet leases from airlines of third countries], this option allows such use by subjecting it to a broader authority requirement which includes not only the grant of any necessary economic rights to the airlines in the leasing arrangement, but also any national or regional approvals required. This takes into account the situation where States may require specific authorization for certain operations with leased aircraft.</i></p>
<p style="text-align: center;">[Option 2 of 2]</p> <p>2. Subject to paragraph 1 above, the designated airlines of each Party may provide services under this agreement by:</p> <p>a) using aircraft dry-leased from any [company including] airlines;</p> <p>b) using aircraft wet-leased from other airlines of the same Party</p> <p>c) using aircraft wet-leased from airlines of any other Party;</p> <p>d) using aircraft wet-leased from airlines of third countries, provided that this will only be done under arrangements which are not equivalent to giving a lessor airline access to traffic rights not otherwise available to that airline.</p> <p>3. Notwithstanding paragraph 2 d) above, the designated airlines of each Party may provide services under this agreement by using aircraft wet-leased on a short-term, <i>ad hoc</i> basis from airlines of third countries.</p>	<p><i>This option allows the use of leased aircraft in the first three situations subject only to safety and security requirements. In the case of situation d), unlike the first option, this second option permits such use with a more specific and restrictive condition, namely, the arrangement would not result in the lessor airline providing the aircraft and crew exercising traffic rights it does not have.</i></p> <p><i>Paragraph 3 of this second option creates an exception to the traffic rights requirement in paragraph 2 d) in order to deal with unforeseen emergency situations such as those in which an aircraft must be replaced by an aircraft with crew on an urgent basis for a limited period of time, such as, for example, the operation of one or several flights when the original aircraft unexpectedly has a mechanical failure and cannot be operated as a scheduled service.</i></p>

Article 26 Aircraft leasing	Explanatory Notes
<p style="text-align: center;">Full liberalization</p> <p>2. Subject to paragraph 1, the designated airlines of each Party may operate services under this agreement by using leased aircraft which meet applicable safety and security requirements.</p>	<p><i>This approach allows the use of leased aircraft of all types as long as such aircraft meet the applicable safety and security requirements.</i></p>

Article 27 Intermodal services	Explanatory Notes
<p style="text-align: center;">Transitional</p> <p>Each designated airline may employ their own or use others services for the surface transport of air cargo.</p> <p style="text-align: center;">Full liberalization</p> <p style="text-align: center;">[Option 1 of 2]</p> <p>Each designated airline may use surface modes of transport without restriction in conjunction with the international air transport of passengers and cargo.</p> <p style="text-align: center;">[Option 2 of 2]</p> <p>Notwithstanding any other provision of this Agreement, airlines and indirect providers of cargo transportation of each Party shall be permitted, without restriction, to employ in connection with international air transportation any surface transportation for cargo to or from any points in the territories of the Parties or in third countries, including transport to and from all airports with customs facilities, and including, where applicable, the right to transport cargo in bond under applicable laws and regulations. Such cargo, whether moving by surface or by air, shall have access to airport customs processing and facilities. Airlines may elect to perform their own surface transportation or to provide it through arrangements with other surface carriers, including surface transportation operated by other airlines and indirect providers of cargo transportation. Such intermodal cargo services may be offered at a single, through price for the air and surface transportation combined, provided that shippers are not misled as to the facts concerning such transportation.</p>	<p><i>The transition stage includes such facilities as the use of airport customs facilities for surface cargo, transport under bond, carriage to or from any points in third countries and charging a single price for the intermodal transport (provided the shipper is not misled as to the facts of such transport).</i></p> <p><i>The inclusion of passengers and the phrase "without restriction" are the principle differences between the transition and full liberalization stages.</i></p> <p><i>This provision is aimed at giving full service, capacity and pricing flexibility as well as access to customs and other facilities, to the various parties in an intermodal shipment of cargo.</i></p>

<p style="text-align: center;">Article 28 Computer reservation systems (CRSs)</p>	<p style="text-align: center;">Explanatory Notes</p>
<p style="text-align: center;">[Option 1 of 3]</p> <p>Each Party shall apply the ICAO Code of Conduct for the Regulation and Operation of Computer Reservation Systems within its territory.</p> <p style="text-align: center;">[Option 2 of 3]</p> <p>Each Party shall apply the ICAO Code of Conduct for the Regulation and Operation of Computer Reservation Systems within its territory consistent with other applicable regulations and obligations concerning computer reservation systems.</p> <p style="text-align: center;">[Option 3 of 3]</p> <p>The Parties agree that:</p> <p>a) one of the most important aspects of the ability of an airline to compete is its ability to inform the public of its services in a fair and impartial manner, and that, therefore, the quality of information about airline services available to travel agents who directly distribute such information to the travelling public and the ability of an airline to offer those agents competitive computer reservations systems (CRSs) represent the foundation for an airline's competitive opportunities; and</p> <p>b) it is equally necessary to ensure that the interests of the consumers of air transport products are protected from any misuse of such information and its misleading presentation and that airlines and travel agents have access to effectively competitive computer reservation systems.</p>	<p><i>Some provisions refer to “designated airlines”. Parties would need to consider whether the provisions on the activities contained in this Article should also be extended to all airlines of a Party rather than only designated ones.</i></p> <p><i>This alternative is an ICAO model for use, in particular, by Parties which may not have CRS regulations but are willing to apply the ICAO Code of Conduct for the Regulation and Operation of Computer Reservation Systems (see Doc 9587).</i></p> <p><i>This alternative applies the ICAO Code, but it is consistent with any other applicable regulations. (These could include the European Union, the European Civil Aviation Conference and the Arab Civil Aviation Commission CRS Codes, or national regulations. The reference to “obligations” recognizes that some States will apply the provisions of the General Agreement on Trade in Services (GATS) which has an Annex on Air Transport Services applicable to CRSs.)</i></p> <p><i>This alternative recognizes that some bilateral agreements set out in considerable detail the applicable principles to govern the regulation and operation of CRSs, usually because only one of the parties has extensive CRS regulations which are reflected in the detailed provisions of this type of article. However, given the rapidly evolving nature of airline product distribution, a less comprehensive approach may be more flexible and more easily applied to current conditions.</i></p>

<p style="text-align: center;">Article 29 Ban on smoking</p>	<p style="text-align: center;">Explanatory Notes</p>
<p>1. Each Party shall prohibit or cause their airlines to prohibit smoking on all flights carrying passengers operated by its airlines between the territories of the Parties. This prohibition shall apply to all locations within the aircraft and shall be in effect from the time an aircraft commences enplanement of passengers to the time deplanement of passengers is completed.</p> <p>2. Each Party shall take all measures that it considers reasonable to secure compliance by its airlines and by their passengers and crew members with the provisions of this Article, including the imposition of appropriate penalties for non-compliance.</p>	<p><i>This Article obligates each Party to prohibit smoking on all passenger flights by its airlines between the Parties, and to take reasonable measures to enforce this ban. The need for this provision would lessen as the practice of prohibiting smoking on flights spreads globally.</i></p>

Article 30 Environmental Protection	Explanatory Notes
<p>The Parties support the need to protect the environment by promoting the sustainable development of aviation. The Parties agree with regard to operations between their respective territories to comply with the ICAO Standards and Recommended Practices (SARPs) of Annex 16 and the existing ICAO policy and guidance on environmental protection.</p>	<p><i>States may wish to consider the inclusion of an aviation environmental clause into their air services agreements to take into account the impact of air transport industry on the environment.</i></p>

Article 31 Statistics	Explanatory Notes
<div data-bbox="386 667 599 720" style="border: 1px solid black; padding: 5px; margin: 10px auto; width: fit-content;"> <p style="text-align: center;">Transitional</p> </div> <p>The aeronautical authorities of the Parties shall supply each other, on request, with periodic statistics or other similar information relating to the traffic carried on the agreed services.</p> <div data-bbox="386 871 599 924" style="border: 1px solid black; padding: 5px; margin: 10px auto; width: fit-content;"> <p style="text-align: center;">Full liberalization</p> </div>	<p><i>This approach may be applied to pre-determination or Bermuda I arrangements but is more simple and does not spell out the purpose of the submission. It is therefore an approach that might be used in more liberal agreements where the need for statistics is not related to capacity control, but rather review.</i></p> <p><i>Under full liberalization there would normally be no requirement for the filing of any statistics.</i></p>

Article 32 Consultations	Explanatory Notes
<div data-bbox="386 1438 599 1491" style="border: 1px solid black; padding: 5px; margin: 10px auto; width: fit-content;"> <p style="text-align: center;">Traditional</p> </div> <p>In the spirit of close cooperation, the aeronautical authorities of the Parties shall consult with each other from time to time with a view to ensuring the implementation of and satisfactory compliance with the provisions of this Agreement. Any Party may also request to hold a "High-level" meeting, up to Ministerial level, if and when deemed necessary, to advance the process of consultations.</p>	<p><i>The consultation provision is normally general in scope and some issues, such as aviation security and safety, but also capacity and tariffs, as well as amendment of the agreement, may be subject to separate and specific consultation processes as regards purpose, time frames and methods (e.g. exchange of documents).</i></p> <p><i>The consultation provision is based on a relatively standardized formula although there are a number of different approaches in wording with regard to the purpose of the consultation, the format of the consultation and the form of the request.</i></p> <p><i>In this approach, the consultation process can take the form of a regular process with the alternative to escalate the consultations to higher governmental levels.</i></p>

<p align="center">Article 32 Consultations</p>	<p align="center">Explanatory Notes</p>
<div style="border: 1px solid black; padding: 5px; margin: 10px auto; width: fit-content;"> <p align="center">Transitional and Full liberalization</p> </div> <p>1. Any Party may, at any time, request consultation on the interpretation, application, implementation or amendment of this Agreement or compliance with this Agreement.</p> <p>2. Such consultations [which may be through discussion or by correspondence], shall begin within a period of 60 [30] days from the date each Party receives a [written or oral] request, unless otherwise agreed by the Parties.</p>	<p><i>In this approach, the consultation process can be triggered by a request from each Party to address a specific issue. The “request” rather than the “time to time” formulation is more likely to be used in liberalized agreements, where the need for regular consultation may be considered to be less.</i></p> <p><i>The bracketed language in paragraph 2 is found in more recent agreements and takes into account modern communication methods which lessen the need for meetings between personnel of the Parties.</i></p>

<p align="center">Article 33 Settlement of disputes</p>	<p align="center">Explanatory Notes</p>
<div style="border: 1px solid black; padding: 5px; margin: 10px auto; width: fit-content;"> <p align="center">Traditional</p> </div> <p>1. Any dispute which is not settled by consultations or negotiation shall be submitted to arbitration if any one of the Parties in dispute so requests and shall be referred accordingly to one or more arbitrators selected by agreement by the Parties in dispute. If within forty-five days from the date of the request for arbitration the Parties in dispute are unable to agree on the selection of an arbitrator or arbitrators, any of those Parties may request the [official or entity of the regional organization] to nominate a single arbitrator to whom the dispute shall be referred for decision.</p> <p>2. The decision of the arbitrator or arbitrators shall be binding on all Parties to the dispute.</p> <p>3. If a Party does not comply with an arbitral decision, the other Parties can adopt measures restricting the operation of the airlines of the non-complying State to achieve compliance.</p> <div style="border: 1px solid black; padding: 5px; margin: 10px auto; width: fit-content;"> <p align="center">Transitional and Full liberalization</p> </div>	<p><i>A principle difference between the dispute settlement process in bilateral and those regional agreements which are based on broader regional organizations is the recourse to, and the role played by, inter alia, supra-national bodies such as the European Commission, the Commission of the Cartagena Agreement (The Andean Pact) and the Council of Ministers of the Common Market for Eastern and Southern Africa, as well as the dispute settlement processes of the broader regional organization which can make binding decisions with respect to disputes between member States which are Parties to a regional agreement or arrangement.</i></p> <p><i>Traditional dispute settlement provisions follow closely the bilateral pattern of consultations, negotiation and arbitration but take into account in the arbitral process the possibility that disputes may involve more than two Parties. In addition, in the event that the Parties in the dispute are unable to agree on an arbitrator, the process provides for recourse to a regional entity which plays an intermediate role in the selection process.</i></p> <p><i>This alternative developed by ICAO is to address those commercial disputes, such as on pricing, capacity and other competitive practices that arise in a liberalized environment. It</i></p>

<p style="text-align: center;">Article 33 Settlement of disputes</p>	<p style="text-align: center;">Explanatory Notes</p>
<p>1. Any dispute between two Parties which cannot be resolved by consultations and negotiations, may at the request of either Party 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.</p> <p>2. 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.</p> <p>3. 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.</p> <p>4. 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.</p> <p>5. The Parties shall cooperate in good faith to advance the mediation and to implement the 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.</p> <p>6. The costs of this mechanism shall be estimated upon initiation and apportioned equally, but with the possibility of reapportionment under the final decision.</p>	<p><i>could also be used to address disputes beyond unfair practices, for example, disputes related to market access in a less regulatory controlled environment. The mechanism is deliberately broader in scope and could apply to issues not specifically included in the agreement. It is not intended as a substitute for the formal arbitration process, but rather as a means to resolve disputes in a relatively simple, responsive and cost-effective manner.</i></p> <p><i>The normal consultation process may resolve such disputes but could also have the effect of prolonging an unfair competitive practice to the commercial detriment of one or more airlines. Consequently, this procedure, which is less formal and time consuming than arbitration, is designed, by means of a panel, to reach a resolution through mediation, fact finding or decision, using the services of an expert or experts in the subject matter of the dispute. The primary objective is to enable the Parties to restore a healthy competitive environment in the airline market place as expeditiously as possible.</i></p> <p><i>The mechanism requires the Parties to agree in advance on such matters as the purpose of the panel, viz its terms of reference and procedure, and in particular whether the panel is permitted to grant any interim or injunctive relief to the complainant. Such relief could take the form, for example, of a temporary freeze or reversion to the status quo ante.</i></p> <p><i>The two important time frames built into the mechanism are 15 days for selection of the experts to constitute the panel, and 60 days for the rendering of a decision or determination. Thus the emphasis is on minimizing legal formalities and procedural time frames, yet allowing adequate time for the panel to arrive at a decision or determination.</i></p>

<p style="text-align: center;">Article 33 Settlement of disputes</p>	<p style="text-align: center;">Explanatory Notes</p>
<p>7. The mechanism is without prejudice to the continuing use of the consultation process, the subsequent use of arbitration, or Withdrawal under Article ____.</p> <p>8. If the Parties fail to reach a settlement through mediation, the dispute may, at the request of one Party, be submitted to arbitration with respect to another Party in accordance with the procedures set forth below. The Party submitting the dispute to arbitration shall notify all other Parties of the dispute at the same time that it submits its arbitration request.</p> <p>9. Arbitration shall be by a panel of three arbitrators to be constituted as follows:</p> <p>a) within 30 days after the receipt of a request for arbitration, each Party to the dispute shall name one arbitrator. Within 60 days after these two arbitrators have been named, the Parties to the dispute shall by agreement appoint a third arbitrator, who shall act as President of the arbitral panel;</p> <p>b) if a Party to the dispute fails to name an arbitrator, or if the third arbitrator is not appointed in accordance with subparagraph a) of this paragraph, either Party may request the President of the Council of the International Civil Aviation Organization to appoint the necessary arbitrator or arbitrators within 30 days. If the President of the Council is of the same nationality as one of the Parties to the dispute, the most senior Vice-President who is not disqualified on that ground shall make the appointment.</p> <p>10. Except as otherwise agreed by the Parties to the dispute, the arbitral panel shall determine the limits of its jurisdiction in accordance with this Agreement and shall establish its own procedural rules. The arbitral panel, once formed, may recommend interim measures pending its final determination. At the direction of the arbitral panel or at the request of either of the Parties to the dispute, a conference concerning the precise issues to be arbitrated and the specific procedures to be followed shall be held on a date determined by the arbitral panel, in no event later than 15 days after the third arbitrator has been appointed. If the Parties to the dispute are unable to reach agreement on these issues, the arbitral panel shall determine the precise issues to be arbitrated and the specific procedures to be followed.</p> <p>11. Except as otherwise agreed by the Parties to the dispute or as directed by the panel, the complaining Party shall submit a memorandum within 45 days of the time the third arbitrator is appointed, and the reply of the responding Party shall be due 60 days after the complaining Party submits its memorandum. The complaining Party may submit a pleading in response to such reply within 30 days after the submission of the responding</p>	<p><i>The use of the mechanism does not preclude the implementation of the arbitration process if that is also provided for in the agreement and if the above mechanism has failed to resolve the dispute to the satisfaction of one or more Parties. Nevertheless, it may be expected that the subsequent use of arbitration should be unnecessary if the Parties have committed to this complementary procedure for resolving certain kinds of commercial and time-sensitive disputes.</i></p> <p><i>In the case Parties fail to reach settlement through mediation, the dispute is referred for decision by a panel of arbitrators. The Article includes a very detailed arbitration procedure for disputes involving more than two parties as well as a procedure for Parties to intervene in an arbitral procedure involving other Parties. Time frames are provided for the various steps in the arbitral process.</i></p> <p><i>The arbitral panel determines its procedural rules including the recommendation of any interim relief measures for the Parties pending a final decision.</i></p>

<p style="text-align: center;">Article 33 Settlement of disputes</p>	<p style="text-align: center;">Explanatory Notes</p>
<p>Party's reply and the responding Party may submit a pleading in response to the complaining Party's pleading within 30 days after the submission of such pleading. The arbitral panel shall hold a hearing at the request of either Party or on its own initiative within 15 days after the last pleading is due.</p> <p>12. The arbitral panel shall attempt to render a written decision within 30 days after completion of the hearing or, if no hearing is held, after the date the last pleading is submitted. The decision of the majority of the arbitral panel shall prevail.</p> <p>13. The Parties to the dispute may submit requests for clarification of the decision within 15 days after it is rendered, and any clarification given shall be issued within 15 days of such request.</p> <p>14. In the case of a dispute involving more than two Parties, multiple Parties may participate on either or both sides of a proceeding described in this Article. The procedures set out in this Article shall be applied with the following exceptions:</p> <p>a) with respect to paragraph 9 a), the Parties on each side of a dispute shall together name one arbitrator;</p> <p>b) with respect to paragraph 9 b), if the Parties on one side of a dispute fail to name an arbitrator within the permitted time, the Party or Parties on the other side of the dispute may utilize the procedures in paragraph 9 b) to secure the appointment of an arbitrator; and</p> <p>c) with respect to paragraphs 10, 11, and 13, each of the Parties on either side of the dispute has the right to take the action provided to a Party.</p> <p>15. Any other Party that is directly affected by the dispute has the right to intervene in the proceedings, under the following conditions:</p> <p>a) a Party desiring to intervene shall file a declaration to that effect with the arbitral panel no later than 10 days after the third arbitrator has been named;</p> <p>b) the arbitral panel shall notify the Parties to the dispute of any such declaration, and the Parties to the dispute shall each have 30 days from the date such notification is sent to submit to the arbitral panel any objection to an intervention under this paragraph. The arbitral panel shall decide whether to allow any intervention within 15 days after the date such objections are due;</p> <p>c) if the arbitral panel decides to allow an intervention, the intervening Party shall notify all other Parties to the Agreement of the intervention, and the arbitral panel shall take the necessary steps to make the documents of the case available to the intervening Party, who may file pleadings of a type and within a time limit to be set by the arbitral panel, within the timetable set out in paragraph 11 of this Article to the extent practical, and may participate in any subsequent proceedings; and</p>	

<p style="text-align: center;">Article 33 Settlement of disputes</p>	<p style="text-align: center;">Explanatory Notes</p>
<p>d) the decision of the arbitral panel will be equally binding upon the intervening Party.</p> <p>16. All Parties to the dispute, including intervening Parties, shall, to the degree consistent with their law, give full effect to any decision or award of the arbitral panel.</p> <p>17. The arbitral panel shall transmit copies of its decision or award to the Parties to the dispute, including any intervening Parties. The arbitral panel shall provide to the Depository a copy of the decision or award, provided that appropriate treatment shall be accorded to confidential business information.</p> <p>18. The expenses of the arbitral panel, including the fees and expenses of the arbitrators, shall be shared equally by all of the Parties to the dispute, including intervening Parties. Any expenses incurred by the President of the Council of the International Civil Aviation Organization in connection with the procedures of paragraph 9 b) of this Article shall be considered to be part of the expenses of the arbitral panel.</p>	

<p style="text-align: center;">Article 34 Amendments</p>	<p style="text-align: center;">Explanatory Notes</p>
<div style="text-align: center; border: 1px solid black; width: fit-content; margin: 0 auto; padding: 2px 10px;"> <p>Traditional</p> </div> <p style="text-align: center;">[Option 1 of 2]</p> <p>Any Party may propose any amendment to the provisions of this Agreement. Such amendment shall only come into force after it has been accepted by all the other Parties.</p> <p style="text-align: center;">[Option 2 of 2]</p> <p>1. Any Party may propose an amendment to this Agreement. The text of any such amendment and the reasons therefor shall be transmitted to the [official of the regional organization] who shall transmit them to the Government of each Party.</p> <p>2. The Parties shall communicate to the [official of the regional organization] whether or not the proposed amendment is acceptable and also to submit any comments thereon.</p> <p>3. If all Parties agree to the proposed amendment and deposit their respective Instruments of Ratification with the [official of the regional organization], the amendment shall enter into force on the deposit of the last such Instrument of Ratification.</p>	<p><i>As with the settlement of disputes, for regional air transport arrangements which are based on broader regional organizations [for example, the European Union, the Andean Pact, and the Common Market for Eastern and Southern Africa] the relevant council or commission amends the arrangement through its power to issue new or amended regulations.</i></p> <p><i>One of the decisions which States contemplating a regional or plurilateral agreement with a formal amendment provision is what criteria to apply with respect to such amendments coming into force. A traditional approach would require unanimity, all Parties to ratify an amendment before it enters into force.</i></p> <p><i>An alternative traditional approach assigns a procedural role in the amendment process to an official of the regional organization. Amendments require the approval of all Parties to come into force.</i></p>

Article 34 Amendments	Explanatory Notes
<p style="text-align: center;">Transitional</p> <p>1. The [body created by the Agreement] shall review and where necessary propose amendments to this Agreement.</p> <p>2. Such amendments shall come into force when approved by all Parties.</p>	<p><i>This transitional approach relies on a more simplified amendment process; nevertheless, approval by all Parties is required before the amendment enters into force.</i></p>
<p style="text-align: center;">Full liberalization</p> <p>1. The Agreement may be amended in accordance with the following procedures:</p> <p>a) if agreed by at least a simple majority of all Parties as of the date of proposal of the amendment, negotiations shall be held to consider the proposal;</p> <p>b) unless otherwise agreed, the Party proposing the amendment shall host the negotiations, which shall begin not more than 90 days after agreement is reached to hold such negotiations. All Parties shall have a right to participate in the negotiations;</p> <p>c) if adopted by at least a simple majority of the Parties attending such negotiations, the Depository shall then prepare and transmit a certified copy of the amendment to the Parties for their acceptance;</p> <p>d) any amendment shall enter into force, as between the Parties which have accepted it, 30 days following the date on which the Depository has received written notification of acceptance from a simple majority of the Parties; and</p> <p>e) following entry into force of such an amendment, it shall enter into force for any other Party 30 days following the date the Depository receives written notification of acceptance from that Party.</p> <p>2. In lieu of the procedures set forth in paragraph 1, the Agreement may be amended in accordance with the following procedures:</p> <p>a) if all Parties as of the time of proposal of the amendment give written notice through diplomatic or other appropriate channels to the Party proposing the amendment of their consent to its adoption, the Party proposing the amendment shall so notify the Depository, which shall then prepare and transmit a certified copy of such amendment to all of the Parties for their acceptance; and</p>	<p><i>The full liberalization approach provides flexibility, but also potential complexity to the amendment process by providing two procedures for amendment.</i></p> <p><i>One procedure is based on acceptance and ratification of an amendment by a simple majority of the Parties attending a negotiation to amend the agreement. The amendment is in force only between the Parties which have ratified it, but other States can accept and ratify the amendment subsequently.</i></p> <p><i>The second procedure envisions an amendment which is accepted by all the Parties when it is proposed, but goes into effect only after all Parties have ratified it.</i></p> <p><i>Depending on the Parties' initial reaction to a proposed amendment as well as its perceived urgency, Parties proposing an amendment to the Agreement can choose the option most likely to result in a prompt ratification.</i></p>

Article 34 Amendments	Explanatory Notes
b) an amendment so adopted shall enter into force for all Parties 30 days following the date on which the Depository has received written notification of acceptance from all of the Parties.	

Article 35 Registration with ICAO	Explanatory Notes
<p data-bbox="418 867 566 892" style="text-align: center;">[Option 1 of 2]</p> <p data-bbox="188 915 797 993">This Agreement and any amendment thereto shall be registered upon its signature with the International Civil Aviation Organization by [name of the Registering Party].</p> <p data-bbox="418 1016 566 1041" style="text-align: center;">[Option 2 of 2]</p> <p data-bbox="188 1064 797 1142">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].</p>	<p data-bbox="824 579 1435 842"><i>Articles 81 and 83 of the Convention obligate States to register their aeronautical agreements and the above provision formalizes this requirement at the bilateral level. However, in practice, many agreements and amendments are not registered, a fact which has a negative impact on the transparency of the whole process. This clause developed by ICAO includes the requirement to register, upon signature (option 1) or entry into force (option 2), the name of the Party responsible for registering the agreement and is intended to encourage better compliance with the registration requirement.</i></p>

Article 36 Exceptions	Explanatory Notes
<p data-bbox="386 1329 597 1377" style="text-align: center;">Traditional</p> <p data-bbox="188 1390 797 1493">Any Party may refuse to authorize additional air services on any route it declares to be of national interest and on which the annual capacity offered does not exceed [an agreed number of seats].</p> <p data-bbox="386 1554 597 1602" style="text-align: center;">Transitional</p> <p data-bbox="418 1614 566 1640" style="text-align: center;">[Option 1 of 2]</p> <p data-bbox="188 1663 797 1766">By a formal declaration made in writing to the other Parties, any Party shall have the option not to grant and receive the rights and obligations provided for in Article(s) ___ for a transitional period not exceeding [agreed time frame].</p>	<p data-bbox="824 1390 1435 1467"><i>A traditional approach provides an exception to the agreement which is not time-limited. The traditional approach to Article ___ (Capacity) also falls in this category.</i></p> <p data-bbox="824 1663 1435 1843"><i>In contrast, a transitional exception is time-limited and may apply to some potential articles such as on Grant of rights, Capacity or Tariff. Therefore, the exemptions from the application of the agreement terminate at the end of the set transitional period. In the first option, a Party informs other Parties in writing that specific rights and obligations in the agreement will not be granted for a period of time.</i></p>

Article 36 Exceptions	Explanatory Notes
<p data-bbox="418 325 565 352">[Option 2 of 2]</p> <p data-bbox="188 373 797 478">Notwithstanding the provisions in the Agreement, the Parties agree to apply the transitional measures set out in Annex ___ (Transitional measures) for a period not exceeding [agreed time frame].</p> <div data-bbox="386 537 597 583" style="border: 1px solid black; text-align: center; padding: 2px;"> <p data-bbox="402 548 581 573">Full liberalization</p> </div> <p data-bbox="188 600 797 674">In addition to the rights in the Agreement, the Parties to a Protocol to this Agreement also grant the rights for their designated airlines to perform:</p> <p data-bbox="188 705 797 856">a) scheduled and charter international air transportation in passenger and combination services between the territory of the party granting the rights and any point or points; and b) scheduled and charter international air transportation between points in the territory of the Party granting the rights.</p>	<p data-bbox="824 373 1438 453"><i>In this option, Parties agree to apply for a limited period of time some measures that they jointly determine in an Annex to the Agreement.</i></p> <p data-bbox="824 600 1438 751"><i>A full liberalization exception in the form of a Protocol to the basic Agreement, may provide additional rights, such as Seventh Freedom and limited cabotage, for those Parties willing to exchange them. Note that if the rights are in the agreement then a Protocol would not be needed. A Protocol would be used for those Parties wanting to go further than the whole group.</i></p>

Article 37 Existing agreements	Explanatory Notes
<div data-bbox="386 1150 597 1197" style="border: 1px solid black; text-align: center; padding: 2px;"> <p data-bbox="435 1161 548 1186">Traditional</p> </div> <p data-bbox="188 1213 797 1287">This Agreement shall not affect any bilateral, multilateral or other agreement or arrangements already in force between Parties or between a Party and a non-Party.</p> <div data-bbox="386 1325 597 1371" style="border: 1px solid black; text-align: center; padding: 2px;"> <p data-bbox="435 1335 548 1360">Transitional</p> </div> <p data-bbox="418 1388 565 1415">[Option 1 of 2]</p> <p data-bbox="188 1436 797 1509">This Agreement shall supersede any bilateral or multilateral air services agreement between the Parties to the extent that those agreements are incompatible with this Agreement.</p> <p data-bbox="418 1587 565 1614">[Option 2 of 2]</p> <p data-bbox="188 1635 797 1709">The provisions of this Agreement do not permit restrictions upon what is established in the air services agreements which the Parties have concluded between themselves.</p>	<p data-bbox="824 1010 1438 1136"><i>Parties need to decide what will be the relationship between the regional or plurilateral agreement and existing bilateral and other agreements 1) between Parties to the regional or plurilateral agreement, and 2) between Parties and non-Party States.</i></p> <p data-bbox="824 1209 1438 1314"><i>The traditional approach recognizes all existing other agreements both between Parties and between Parties and non-Parties. In effect this subordinates the regional agreement to existing agreements.</i></p> <p data-bbox="824 1436 1438 1562"><i>One transition approach allows provisions of existing agreement which are compatible with the regional agreement to remain in force, while those incompatible with it are superseded. This could raise questions as to which provisions of existing agreements fall in which category.</i></p> <p data-bbox="824 1635 1438 1740"><i>Another transitional approach would tend to treat the flexibility of the regional agreement as a minimum level, with more flexible arrangements permitted in bilateral agreements between Parties.</i></p>

<p align="center">Article 37 Existing agreements</p>	<p align="center">Explanatory Notes</p>
<p align="center" style="border: 1px solid black; padding: 5px;">Full liberalization</p> <p>Upon entry into force of this Agreement between one Party and any other Party, any bilateral air services agreement existing between them at the time of such entry into force shall be superseded by this Agreement.</p>	<p><i>The full liberalization formulation simply replaces any existing bilateral agreements between Parties with the regional or plurilateral agreement. This prevents a dual system of agreements between and among Parties to the regional or plurilateral agreement (where some provisions of the bilateral continue in effect) and eliminates potential questions as to whether certain bilateral provisions are compatible or incompatible with the regional or plurilateral agreement.</i></p>
<p align="center">Article 38 Review</p>	<p align="center">Explanatory Notes</p>
<p>1. The Agreement shall be subject to review every [number of years] in order to determine whether any amendments are required. An earlier review may take place if requested by [number of Parties] of the Parties.</p> <p>2. After consultation with the Parties, the Depository shall notify the Parties of the agreed date and the procedures for the review of the Agreement. Such notice should take place [number of days] days before the meeting.</p>	<p><i>This article provides the opportunity for a review to take place in order to assess the operation of the Agreement and decide if any amendments are needed to improve its effectiveness. Procedures for the review may be agreed by the Parties.</i></p>
<p align="center">Article 39 Withdrawal</p>	<p align="center">Explanatory Notes</p>
<p>1. Any Party may withdraw from this Agreement by giving written notice of withdrawal to the Depository who shall within [agreed number of days] of receipt of the notification of withdrawal notify the other Parties.</p> <p>2. The withdrawal shall be effective 12 months after receipt of the notice by the Depository, unless the Party withdraws its notice by written communication to the Depository within the 12-month period.</p> <p>[3. If, as a result of withdrawals, the number of Parties to this Agreement is less than [an agreed number], this Agreement shall cease to be in force from the date on which the last of such withdrawals becomes effective.]</p>	<p><i>In the case of some regional agreements based on broader regional organizations, the notice of withdrawal is provided to an official or entity of the regional organization. A Party, for its own national interest, has the right to withdraw from the agreement by giving notice within a certain time frame.</i></p> <p><i>The optional text provides for situations where the withdrawal of a Party may render an agreement ineffective since some agreements may require a certain number of ratifications for the agreement to remain in force.</i></p>
<p align="center">Article 40 Depository</p>	<p align="center">Explanatory Notes</p>
<p>1. The original of this Agreement shall be deposited with [the Party or regional entity agreed to], which shall be designated as the Depository of the Agreement.</p>	<p><i>Parties will need to designate a Depository who is responsible to transmit certified copies of this Agreement and any amendments or Protocols to all signatory and acceding Parties.</i></p>

Article 40 Depositary	Explanatory Notes
<p>2. The Depositary shall transmit certified copies of the Agreement to all Parties of the Agreement and to any States that may subsequently accede to the Agreement.</p> <p>3. Following entry into force of this Agreement, the Depositary shall transmit a certified true copy of this Agreement to the Secretary General of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations [and to the Secretary General of the International Civil Aviation Organization in accordance with Article 83 of the Convention.] The Depositary shall likewise transmit certified true copies of any amendments which enter into force.</p> <p>4. The Depositary shall make available to the Parties copies of any arbitral decision or award issued under Article __ (Settlement of disputes) of this Agreement.</p> <p>[5. The Depositary shall maintain a centralized register of airline designations and operating authorizations in accordance with Article __ (Designation and authorization), paragraph 4 of this Agreement.]</p>	<p><i>Notification to ICAO by the Depositary may be covered in a separate Article on Registration with ICAO.</i></p> <p><i>An optional text should the Parties agree to maintain a centralized register of airline designations and operating authorizations.</i></p>

Article 41 Signature and ratification	Explanatory Notes
<p>1. The Agreement shall be open for signature by the [Government of the Parties to the Agreement].</p> <p>2. The Agreement shall be subject to ratification. Instruments of ratification shall be deposited with the Depositary.</p>	<p><i>This article follows usual practice for multilateral agreements where the agreement is to be open for signature by all governments which are listed. The signing could take place at any time, for example, at a meeting of Ministers, or subsequently by duly authorized representatives of those governments.</i></p> <p><i>To become a Party to the agreement, a Party government must then also ratify its decision in accordance with its own constitutional procedures. The documents recording ratification are to be deposited with the assigned Depositary.</i></p>

Article 42 Accession	Explanatory Notes
<div style="border: 1px solid black; padding: 5px; text-align: center; margin: 10px auto; width: 150px;"> Traditional </div> <p style="text-align: center;">[Option 1 of 2]</p> <p>This Agreement shall be open to accession by any Party of (name of regional organization).</p> <p style="text-align: center;">[Option 2 of 2]</p> <p>This Agreement shall be open to accession by other Parties in (description of region) subject to the approval of all Parties to the Agreement.</p>	<p><i>The traditional approach to adding Parties to a regional or plurilateral agreement based on a broader regional organization is when new States are admitted to the organization.</i></p> <p><i>A traditional approach for regional agreements not based on a broader regional organization is to require unanimity of the existing Parties to allow other States in the region to become Parties to the agreement.</i></p>

<p align="center">Article 42 Accession</p>	<p align="center">Explanatory Notes</p>
<p align="center" style="border: 1px solid black; padding: 5px;">Transitional</p> <p>1. This Agreement shall apply, on the one hand to the territories in which the (agreement creating the broader regional organization) is applied and under the conditions laid down in that (agreement) and on the other hand, to the territory of (name of State being included in agreement).</p> <p>2. The acceding Party shall deposit an appropriate instrument of accession with the Depository. The accession shall take effect on the date of the receipt of such Instrument with the Depository who shall transmit a certified copy to all Party.</p> <p align="center" style="border: 1px solid black; padding: 5px;">Full liberalization</p> <p>After this Agreement has entered into force any State which is a Party to the aviation security Conventions listed in Article ___ (Aviation security) may accede to this Agreement by deposit of an instrument of accession with the Depository.</p>	<p><i>A transitional approach is to negotiate an agreement for the inclusion of a State not a member of the broader regional organization in the regional air transport arrangement.</i></p> <p><i>With full liberalization, the agreement is open to any State which has ratified the aviation security Conventions and therefore has the most flexible criteria for expansion of the agreement to other States.</i></p>

<p align="center">Article 43 Entry into force</p>	<p align="center">Explanatory Notes</p>
<p align="center" style="border: 1px solid black; padding: 5px;">Traditional</p> <p>This Agreement shall enter into force when all signatory Parties have deposited their instruments of ratification with the Depository.</p> <p align="center" style="border: 1px solid black; padding: 5px;">Transitional/Full liberalization</p> <p>1. This Agreement shall enter into force on the [agreed day] from the date of deposit of the [agreed number] instrument of ratification, and thereafter for each Party [number of days] days after the deposit of its instrument of ratification or accession.</p> <p>2. The Depository shall inform each Party of the date of entry into force of this Agreement.</p>	<p><i>The traditional entry into force provision requires all Parties which have negotiated and/or signed the agreement to ratify it before it comes into force for any Party.</i></p> <p><i>Parties will need to agree on the date of deposit as well as the number of signatory States necessary to bring the agreement into force for those Parties ratifying it. Agreeing on the number of ratifications will have an impact on the speed with which the agreement enters into force. A reasonable compromise formula (for example 50 per cent of ratifications) will allow it to come into force relatively quickly.</i></p>

Annex I Non-scheduled/Charter operations	Explanatory Notes
<p style="text-align: center;">Traditional</p> <p>1. The provisions of this Agreement, except those dealing with Traffic Rights, Capacity and Tariffs shall be applicable also to non-scheduled flights operated by an air carrier of any Party into or from the territory of another Party and to the air carrier operating such flights.</p> <p style="text-align: center;">[Paragraph 2, option 1 of 2]</p> <p>2. The provisions of paragraph 1 of this Article shall not affect national laws and regulations governing the authorization of non-scheduled operations or to the conduct of air carriers or other parties involved in the organization of such operations.</p> <p style="text-align: center;">[Paragraph 2, option 2 of 2]</p> <p>2. Each Party shall give sympathetic consideration to applications for [non-scheduled flights] [charter flights] between their territories for passengers and cargo in accordance with their respective laws and regulations.</p> <p style="text-align: center;">Transitional</p> <p style="text-align: center;">[Option 1 of 3]</p> <p>1. Each Party shall authorize non-scheduled passenger flights between points at which no established scheduled air services exist. In cases where such scheduled services exist, authorizations shall be granted provided the offer of non-scheduled flights does not endanger the economic stability of existing scheduled services.</p> <p>2. When series of non-scheduled passenger flights are requested, these must correspond to the definition of "inclusive package tours" and must be carried out on a round-trip basis, with pre-established departures and returns.</p>	<p><i>A provision on non-scheduled operations may be dealt with in a variety of ways and contexts in an agreement. Basically it may be treated as a grant of rights matter or a matter for separate regulatory attention. It may be in the body of the Agreement or in an Annex.</i></p> <p><i>A simpler and more direct approach to the grant of rights for non-scheduled operations would be simply to refer in the grant of rights article to the conduct of "international air services" scheduled and non-scheduled. In this way all the provisions of the agreement would be applicable to both scheduled and non-scheduled services.</i></p> <p><i>This approach may be used when the Parties anticipate the possibility of non-scheduled operations, need to identify the various administrative and commercial opportunity provisions that would be applied to those operations, but wish to take no position on whether authorization would be granted under their respective national laws and regulations. This provision makes clear that the provisions of the main agreement other than those designed for scheduled air services will apply to non-scheduled air services. Alternatively, this clause could list the Articles in the main agreement that would apply to non-scheduled services, e.g. User Charges, Customs Duties, Safety, Security, etc.</i></p> <p><i>The provision leaves to each Party's national law and regulation the determination of which non-scheduled services would be permitted and under what conditions.</i></p> <p><i>The requirement to give "sympathetic consideration" is not a grant of market access but implies a positive treatment to non-scheduled operations in general or, more specifically charter flights. This provision also reflects the fact that the regulatory regime governing authorization for such operations is generally unilateral, with the destination State or States applying their national rules to any applicant.</i></p> <p><i>This approach has no adverse impact on scheduled services.</i></p> <p><i>Historically, many States were concerned with preventing non-scheduled passenger services from having an adverse impact on scheduled services and a wide variety of policies and mechanisms were developed to address this issue (see Doc 9587). Three such mechanisms are contained in this text: 1) authorizing non-scheduled passenger services between points not served by scheduled services (usually referred to as "off-route charters") 2) not permitting non-scheduled passenger services which would adversely impact on scheduled services, and 3) authorizing types of non-scheduled passenger services</i></p>

<p style="text-align: center;">Annex I Non-scheduled/Charter operations</p>	<p style="text-align: center;">Explanatory Notes</p>
<p style="text-align: center;">[Option 2 of 3]</p> <p>1. The airlines of each Party designated pursuant to this Agreement to operate under this Annex shall have the right to operate non-scheduled international air transport over the routes specified and in accordance with the rights granted for scheduled services in this Agreement.</p> <p>2. Each Party shall extend favourable consideration to applications by airlines of another Party to carry traffic not covered by this Annex on the basis of comity and reciprocity.</p> <p style="text-align: center;">[Option 3 of 3]</p> <p>1. The [designated] airlines of any Party shall be entitled to perform international non-scheduled air transportation to and from any point or points in the territory of another Party, either directly or with stopovers en route, for one-way or round-trip carriage of any traffic to or from a point or points in the territory of the Party which has designated the airline. Multi-destination charters shall also be permitted. In addition, [designated] airlines of any Party may operate charters with traffic originating in or destined for the territory of another Party.</p> <p>2. Each [designated] airline performing air transportation under this provision shall comply with such laws, regulations and rules of the Party in whose territory the traffic originates, whether on a one-way or round-trip basis, as that Party now or hereafter specifies shall be applicable to such transportation.</p> <div style="border: 1px solid black; padding: 5px; text-align: center; margin: 10px auto; width: fit-content;"> <p>Full liberalization</p> </div> <p>Section 1</p> <p>Airlines of each Party designated under this Annex shall, in accordance with the terms of their designation, have the right to carry international charter traffic of passengers (and their accompanying baggage) and/or cargo (including, but not limited to, freight forwarder, split, and combination (passenger/cargo) charters):</p>	<p><i>(in this case inclusive tour charters which include a ground package of services such as hotels, land transport, etc. in addition to air transport) which are not regarded as endangering the economic viability of scheduled services.</i></p> <p><i>This transitional approach opens the routes in the agreement to non-scheduled services, under the same conditions (e.g. change of gauge) for scheduled services, while off-route non-scheduled services are approved/disapproved on the basis of comity and reciprocity. Depending on the grant of rights for scheduled services this would normally open non-scheduled services to both passengers and cargo.</i></p> <p><i>The use of “comity and reciprocity” results in the amount and type of off-route charters being based on the Party with the most restrictive view of such charters.</i></p> <p><i>In this approach, although the regulatory regime governing non-scheduled operations, and particularly charter type operations, is usually that of the destination State, the Parties to some agreements may choose to stipulate that the rules of the country of origin of the operation should be applied. This should facilitate the conduct of these operations. This is therefore an example of such an arrangement which could be used in a liberal agreement, though it nevertheless requires compliance with rules.</i></p> <p><i>Paragraph 1 spells out a broad market access for these operations whereas the second paragraph applies the country of origin rules.</i></p> <p><i>The text with bracketed language is used where the Route schedule at Annex __ is not city specific and where the Parties designate airlines for non-scheduled services. Without the bracketed language all airlines of each Party (whether or not they are also designated for scheduled services) would be authorized by the other Party to perform the non-scheduled services described in the first paragraph.</i></p> <p><i>The full liberalization approach is an option for States which might wish to liberalize non-scheduled services while continuing to regulate scheduled services.</i></p> <p><i>It equates non-scheduled with scheduled services in terms of rights and market access, and without the necessity of compliance with the national regulations of the destination Party, but in the first paragraph limits this to the designated airlines of each party. It also contains a provision for favourable consideration to be given to non-scheduled operations not</i></p>

<p style="text-align: center;">Annex I Non-scheduled/Charter operations</p>	<p style="text-align: center;">Explanatory Notes</p>
<p>Between any point or points in the territory of the Party that has designated the airline and any point or points in the territory of another Party; and</p> <p>Between any point or points in the territory of the other Party and any point or points in a third country or countries, provided that, except with respect to cargo charters, such service constitutes part of a continuous operation, with or without a change of aircraft, that includes service to the homeland for the purpose of carrying local traffic between the homeland and the territory of the other Party.</p> <p>In the performance of services covered by this Annex, airlines of each Party designated under this Annex shall also have the right: (1) to make stopovers at any points whether within or outside of the territory of either Party; (2) to carry transit traffic through the other Party's territory; (3) to combine on the same aircraft traffic originating in one Party's territory, traffic originating in the other Party's territory, and traffic originating in third countries; and (4) to perform international air transportation without any limitation as to change, at any point on the route, in type or number of aircraft operated; provided that, except with respect to cargo charters, in the outbound direction, the transportation beyond such point is a continuation of the transportation from the territory of the Party that has designated the airline and in the inbound direction, the transportation to the territory of the Party that has designated the airline is a continuation of the transportation from beyond such point.</p> <p>Each Party shall extend favourable consideration to applications by airlines of another Party to carry traffic not covered by this Annex on the basis of comity and reciprocity.</p> <p>Section 2</p> <p>Any airline designated by any Party performing international charter air transportation originating in the territory of any Party, whether on a one-way or round-trip basis, shall have the option of complying with the charter laws, regulations, and rules either of its homeland or of the other Party. If a Party applies different rules, regulations, terms, conditions, or limitations to one or more of its airlines, or to airlines of different countries, each designated airline shall be subject to the least restrictive of such criteria.</p> <p>However, nothing contained in the above paragraph shall limit the rights of any Party to require airlines designated under this Annex by another Party to adhere to requirements relating to the protection of passenger funds and passenger cancellation and refund rights.</p> <p>Section 3</p> <p>Except with respect to the consumer protection rules referred to in the preceding paragraph above, no Party shall require an airline designated under this Annex by another Party, in respect</p>	<p><i>covered by the rights granted under the first paragraph, for example, services by airlines not designated to provide scheduled services or Seventh Freedom passenger services.</i></p> <p><i>A difference between the previous transitional approach and full liberalization is the ability of the designated airline to choose either the charter rules of its own country or that of another Party for the operation of its non-scheduled services.</i></p>

Annex I Non-scheduled/Charter operations	Explanatory Notes
of the carriage of traffic from the territory of that other Party or of a third country on a one-way or round-trip basis, to submit more than a declaration of conformity with the applicable laws, regulations and rules referred to under section 2 of this Annex or of a waiver of these laws, regulations, or rules granted by the applicable aeronautical authorities.	

Annex II Air cargo services	Explanatory Notes
<div data-bbox="386 936 597 982" style="text-align: center; border: 1px solid black; padding: 2px; margin: 10px auto; width: fit-content;"> Transitional </div> <p data-bbox="188 999 797 1050">1. Every designated airline when engaged in the international transport of air cargo</p> <p data-bbox="188 1077 797 1152">a) shall be accorded non-discriminatory treatment with respect to access to facilities for cargo clearance, handling, storage, and facilitation;</p> <p data-bbox="188 1182 797 1232">b) subject to local laws and regulations may use and/or operate directly other modes of transport;</p> <p data-bbox="188 1262 797 1337">c) may use leased aircraft, provided that such operation complies with the equivalent safety and security standards applied to other aircraft of designated airlines;</p> <p data-bbox="188 1367 797 1442">d) may enter into cooperative arrangements with other air carriers including, but not limited to, codesharing, blocked spaced, and interlining; and</p> <p data-bbox="188 1472 797 1547">e) may determine its own cargo tariffs which shall not be required to be filed with the aeronautical authorities of either Party.</p> <p data-bbox="188 1577 797 1732">2. In addition to the rights in paragraph 1 above, every designated airline when engaged in all-cargo transportation as scheduled or non-scheduled services may provide such services to and from the territory of any Party, without restriction as to frequency, capacity, routing, type of aircraft, and origin or destination of cargo.</p>	<p data-bbox="824 636 1438 926"><i>Some agreements provide no specific provision on all-cargo operations as the right to operate all-cargo services is usually implicit in the grant of rights wherein the Parties typically grant the right for their designated airlines to transport passengers, cargo and mail on the agreed scheduled international air services. However, other agreements are more specific, referring to "passengers, cargo and mail or in any combination". The agreement may in the route schedule specify particular routes, including restrictions or flexibility as agreed, for all-cargo services, or the routes may be those exchanged for scheduled passenger services.</i></p> <p data-bbox="824 999 1438 1127"><i>The purpose of this paragraph is to achieve a fair competitive balance between all air carriers engaged in the transport of international air cargo. Where the main agreement contains a provision which also appears in the Annex (for example, leasing), that provision should be omitted from the Annex.</i></p> <p data-bbox="824 1577 1438 1759"><i>This paragraph provides the Third through the Seventh Freedoms of the air for only all-cargo services operated on a scheduled or non-scheduled basis. The first two Freedoms — overflight and technical stops - are not included as they are normally provided in the main agreement. Operational flexibility is described in general terms and includes those elements generally regarded as important for all-cargo operations.</i></p> <p data-bbox="824 1787 1438 1862"><i>The Annex on air cargo services is unlikely to be used in full liberalization agreements in which the rights and operational flexibility in this Annex will be in the main agreement.</i></p>

Annex III Transitional measures	Explanatory Notes
<p>The following transitional measures shall expire on (date), or such earlier date as is agreed upon by the Parties:</p> <p>1. Notwithstanding the provisions of Article __ (or Annex __), the designated airline (or airlines) of Party A (or each Party) may (shall)</p> <p>2. Notwithstanding the provisions of Article __ (or Annex __), the designated airline (or airlines) of Party A (or each Party) may (shall) as follows:</p> <p>a) From (date) through (date),; and</p> <p>b) From (date) through (date),</p> <p>3. Notwithstanding the provisions of Article__ (or Annex __), the following provisions shall govern</p>	<p><i>The Annex is an ICAO recommendation which addresses the issues of participation as well as sustainability in moving towards liberalization. It is drawn from existing practices and approaches covering both participation and preferential measures. It consists of one or more of three types of clauses. If these clauses apply to each Party in the same manner, then they would be considered to be participation measures. If not, then they would be regarded as preferential measures.</i></p> <p><i>In giving effect to the three clauses of the Annex, the following three paragraphs of the Explanatory notes, excluding the examples given, could be made part of the Annex.</i></p> <p><i>This clause is to be used when a particular Article (or Annex) would not take effect immediately but be implemented in a limited way during the transition period. By way of example, the Parties would agree that, notwithstanding the Annex on Route schedules granting each Party unlimited Fifth Freedom rights, the airline(s) of one Party (the developed State) would not be permitted to exercise those local traffic rights fully between the other Party (the developing State) and a third State until a specified date.</i></p> <p><i>This clause is similar to the first clause but with phase-in periods. For example, the Parties would agree that, notwithstanding an Article allowing unlimited codesharing, the airlines of each Party would be permitted to expand their third-country codeshare services (frequencies) only in a gradual manner for specified periods.</i></p> <p><i>This clause is used when an Article (or Annex) would not take effect immediately and a different scheme would be applied during the transitional period. For example, the Parties would agree that, notwithstanding a tariff Article with no requirement for filing and approval of tariffs, a country-of-origin regime would govern pricing until a specific date.</i></p> <p><i>The following is an indicative list of subjects that States may use at their discretion as transitional measures in the Annex: the number of designated airlines, ownership and control criteria, capacity and frequency, route and traffic rights, codesharing, charter operations, intermodal services, tariffs, slot allocation, and “doing business” matters such as ground handling. The language in the Annex is a framework, into which the Parties would need to agree on the terms and wording. ICAO Doc 9587 contains material on possible participation and preferential measures.</i></p>

Annex IV Essential Service and Tourism Development Routes	Explanatory Notes
<p>1. A Party, following consultations with (or after having consent of) the other Parties and after having informed an airline or airlines operating on the route, may specify an essential air service route or an essential tourism development route linking a point in a remote or peripheral area or a development area in its territory with a point in the territory of the other Parties. On such route or a group of routes, an adequate level of air services set forth in Paragraph 2 of this Annex shall be considered vital for the protection of the lifeline provision for or the economic development of an area, [including tourism route development], but would not be provided if airlines solely considered their commercial interest [or could be provided solely at unreasonably discriminatory, unduly high or restrictive prices].</p> <p>2. The Party having specified an essential air service route or an essential tourism development route shall assess an adequate level of scheduled air services [on each route or a group of routes][in a flexible and market-oriented manner], taking into consideration, <i>inter alia</i>, the particular needs for scheduled air services on the route concerned; the level of demand; the availability of connecting air services, third country airlines, non-scheduled operators and other forms of transport; air fares and conditions; and the effect on all airlines operating or intending to operate on the route and adjacent routes. [Non-scheduled air services may also be considered adequate, provided they meet the terms set forth in Paragraph 1 of this Annex.]</p> <p>3. [Notwithstanding the provisions of Article __ (Capacity) and Article __ (Pricing)], the Party concerned, following consultations with (or after having consent of) the other Parties, may require an airline operating or intending to operate on an essential air service route or an essential tourism development route to provide air services satisfying the adequate level for a period of up to __ years. [The Party may require an airline wishing to terminate, suspend or reduce an existing service on the route below an adequate level to file notice at least __ days prior to the proposed service reduction.]</p> <p>4. Notwithstanding the provisions of [Article __ (Capacity), Article __ (Pricing) and] Annex __ (Route schedules), if no airline has assumed or is about to assume air services at the adequate level [individually or in the aggregate] on an essential air service route or an essential tourism development route, the Party concerned may invite applications to provide such services, and if necessary and following consultations with (or after having consent of) the other Parties, may limit access to that route to only one airline [excluding airlines of third countries] for a period of up to __ years, and/or provide the payment of subsidy compensation to the airline. The right to operate such services shall be offered by public tender [either</p>	<p><i>The application of an Essential Service and Tourism Development Routes (ESTDR) scheme presupposes the existence of, or the transitional process to a liberalized international market. In exceptional cases the scheme could be applied to non-liberalized routes with tourism potential, as traditional-type air services agreements already provide implicit assistance to operations on such routes by limiting the scope of competition.</i></p> <p><i>The Annex gives legal certainty to the parties involved in implementing an ESTDR scheme and also allows Parties to exercise flexibility in how they interpret and administer, for example, the criteria for the route selection and adequate service levels, the tendering procedure for carrier selection, and the contents of contractual arrangements.</i></p> <p><i>An example of the flexible approach is to set minimum requirement of capacities only, leaving the airline to decide frequencies, aircraft types, tariffs, etc. Capacity requirements could be defined in terms of numbers of seats from the origin(s) to the destination(s) as X "units of carriage" per week over part or all of the tourism season</i></p> <p><i>The optional text requires an incumbent airline to file an advance notice of its intention to withdraw or reduce services on the route.</i></p> <p><i>The model explicitly provides three options for support: a) a guarantee of a monopoly operation with a subsidy, b) a guarantee of a monopoly without a subsidy, or c) a subsidy without a guarantee of a monopoly operation.</i></p>

<p style="text-align: center;">Annex IV Essential Service and Tourism Development Routes</p>	<p style="text-align: center;">Explanatory Notes</p>
<p>singly or for a group of such routes] to any designated airline entitled to operate [and market] its service between the territories. [Airlines of third countries eligible to operate on the route shall also have the right to tender].</p> <p>5. The invitation to tender and subsequent contract shall cover, <i>inter alia</i>, the following information: the required level and standard of services set forth in Paragraph 2 of this Annex; the period of validity of the contract; rules concerning amendment, termination or review of the contract, in particular to take account of unforeseeable changes; and penalties in the event of failure to comply with the contract.</p> <p>6. The selection of an airline shall be made within a period of ___ months by the Party having issued the invitation of tender, taking into consideration, <i>inter alia</i>, applicants' financial viability, proposed business plan, ways to develop partnerships with the tourism sector, airfares and conditions, and the amount of the compensation required, if any.</p> <p>7. The Party having issued the invitation of tender may reimburse an airline, which has been selected under Paragraph 6 of this Annex, for the losses as a result of the required operation at the adequate level in accordance with the contract. Such reimbursement shall be assessed as the [expected] shortfall between costs and revenues generated by the service with a reasonable remuneration for capital employed. [No additional subsidy shall be paid for services above the adequate level that the airline may choose to undertake.]</p> <p>8. Consultations between the Parties shall be arranged in accordance with Article ___ (Consultation) whenever either Party considers that the selection of and/or compensation for an airline are inconsistent with the considerations set forth in Paragraphs 6 and 7 of this Annex, or that the development of and competition on a route are being unduly restricted by the terms of this Annex. [If the Parties fail to reach a resolution of the problem through consultations, either Party may invoke the dispute settlement mechanism under Article ___ (Settlement of disputes) to resolve the dispute.]</p>	<p><i>It is important to note, that regardless of the duration of the contract, the ESTDR application would not be permanent but transitional or only for a reasonable period of time (mostly for a start-up period) especially on routes serving "development areas". For instance, if the public demand goes up as a result of network development or through the improvement of the aviation infrastructure, it will make the route less likely a natural monopoly and with no need for regulation.</i></p> <p><i>The inclusion of both ex ante and ex post facto review-style consultations between States and/or the requirement of getting an advance agreement from other State(s) could be an effective deterrent against a potential risk that States would favour their national airlines and use the scheme excessively.</i></p>

Appendix 6

ICAO Policies in the Air Transport Field

This Appendix contains the full text of Assembly Resolution A36-15, which constitutes a consolidated statement of continuing ICAO policies in the air transport field. This Resolution may also be found in Doc 9902 — *Assembly Resolutions in Force*.

A36-15: Consolidated statement of continuing ICAO policies in the air transport field

Introduction

Whereas the Convention on International Civil Aviation establishes the basic principles to be followed by governments to ensure that international air transport services may be developed in an orderly, regular, efficient, economical and harmonious manner and it is therefore one of the purposes of ICAO to support principles and arrangements in order that international air transport services may be established on the basis of equality of opportunity, sound and economic operation, mutual respect of the rights of States and taking into account the general interest;

Whereas air transport is a major factor in promoting and fostering sustained economic development at national as well as international levels;

Whereas it is becoming increasingly difficult, particularly for developing countries, to secure the necessary resources required to optimize the opportunities and meet the challenges inherent in the development of air transport, and to keep pace with the challenges posed by demands on air transport;

Whereas the Organization prepares guidance, studies and statistics on the development of air transport for Contracting States on a continuing basis and these should be kept current, focused and relevant and should be disseminated to Contracting States through the most effective means;

Whereas Contracting States are required to provide accurate and factual statistical data and other information in order that the Organization may prepare this guidance;

Whereas the Organization is moving toward management by objective with more focus on implementation over standard setting;

Whereas guidance developed by the Organization, and action taken by the Organization in implementing its Strategic Objectives, should assist Contracting States in developing policies and practices that facilitate the globalization, commercialization and liberalization of international air transport; and

Whereas it is important for Contracting States to participate in the work of the Organization in the air transport field;

The Assembly:

1. *Resolves* that the Appendices attached to this resolution and listed below constitute the consolidated statement of continuing ICAO policies in the air transport field, as these policies exist at the close of the 36th Session of the Assembly:

- Appendix A — Economic regulation of international air transport
- Appendix B — Statistics
- Appendix C — Forecasting and economic planning
- Appendix D — Facilitation
- Appendix E — Taxation
- Appendix F — Airports and air navigation services
- Appendix G — Air carrier economics
- Appendix H — Air mail

2. *Urges* Contracting States to have regard to these policies and their continuing elaboration by the Council in documents identified in this consolidated statement and by the Secretary General in manuals and circulars;

3. *Urges* Contracting States to make every effort to fulfil their obligations, arising out of the Convention and Assembly resolutions, to support the work of the Organization in the air transport field, and, in particular, to provide as completely and promptly as possible the statistical and other information asked for by the Organization for its air transport studies;

4. *Requests* the Council to attach particular importance to the problem of financing the development of the human and technical resources necessary to ensure the best possible contribution of air transport to the economic and social well-being of developing countries;

5. *Requests* the Council, when it considers that it would be of benefit in assisting its work on any air transport question, to seek the consultation of expert representatives from Contracting States by the most appropriate means, including the establishment of panels of qualified experts reporting to the Air Transport Committee or of Secretariat study groups, and work by correspondence or by meetings;

6. *Requests* the Council to convene Conferences or Divisional meetings, in which all Contracting States may participate, as the principal means of progressing the resolution of issues of worldwide importance in the air transport field, when such meetings are justified by the number and importance of the issues to be dealt with and where there is the likelihood of constructive action upon them;

7. *Requests* the Council to provide for workshops, seminars and other such meetings as may be required to disseminate ICAO's air transport policies and associated guidance to and amongst Contracting States;

8. *Requests* the Council to keep the consolidated statement of ICAO's air transport policies under review and advise the Assembly as appropriate when changes are needed to the statement; and

9. *Declares* that this resolution supersedes Resolution A35-18.

APPENDIX A

Economic regulation of international air transport

Section I. Agreements and arrangements

Whereas the basic principles of sovereignty, fair and equal opportunity, non-discrimination, interdependence, harmonization and cooperation set out in the Convention have served international air transport well and continue to provide the basis for its future development;

Whereas multilateralism in commercial rights to the greatest possible extent continues to be an objective of the Organization;

Whereas within the framework of the Convention, Contracting States have many differing regulatory goals and policies but share a fundamental objective of participation through reliable and sustained involvement in the international air transport system;

Whereas one of the objectives of the Convention is that international air transport services may be operated soundly and economically and in that regard the International Air Services Transit Agreement (IASTA) facilitates the achievement of that objective for the Contracting States who are already parties to it;

Whereas the Assembly has repeatedly stressed the obligation of each Contracting State to comply with Article 83 of the Convention by registering with the Council as soon as possible all arrangements relating to international civil aviation, in accordance with the *Rules for Registration with ICAO of Aeronautical Agreements and Arrangements*;

Whereas undue delays and non-compliance relating to the registration of aeronautical agreements and arrangements are not desirable for the accuracy and completeness of regulatory information and for enhancing transparency;

Whereas the establishment of international air transport fares and rates should be fair, transparent and designed to promote the satisfactory development of air services ; and

Whereas there is a need to adapt to the changing regulatory and operating environment in the air transport field and the Organization has developed policy guidance for the regulation of international air transport, including model clauses and template air services agreements, for optional use by States in bilateral or regional agreements;

The Assembly:

1. *Reaffirms* the primary role of ICAO in developing policy guidance on the regulation of international air transport and in facilitating liberalization;
2. *Urges* Contracting States that have not yet become parties to the International Air Services Transit Agreement (IASTA) to give urgent consideration to so doing;
3. *Urges* all Contracting States to register cooperative agreements and arrangements relating to international civil aviation with ICAO in accordance with Article 83 of the Convention and the *Rules for Registration with ICAO of Aeronautical Agreements and Arrangements*;
4. *Urges* Contracting States to keep the Council fully informed of important problems arising from the application of air services agreements or arrangements and of any developments achieved or contemplated which tend toward the objective of multilateralism in the exchange of commercial rights;
5. *Requests* the Council to continue to cooperate with regional and subregional bodies in their examination and development of measures of cooperation, including liberalized arrangements, and the results of these measures, in order to see whether similar or other measures should at the appropriate time be recommended to Contracting States for application on a wider basis;
6. *Requests* the Council to continue the comparative and analytical study of the policies and practices of Contracting States and airlines concerning commercial rights and the provisions of air services agreements and to inform all Contracting States of any new developments in international cooperation, including liberalized arrangements, with respect to commercial rights;
7. *Requests* the Council to keep under review the machinery for establishing the Organization's policy guidance on the regulation of international air transport, and to revise or update it as required;

8. *Requests* the Council to review periodically the rules for registration of aeronautical agreements and arrangements with a view to simplifying the process of registration;
9. *Requests* the Secretary General to remind Contracting States of the importance of registration without undue delay of aeronautical agreements and arrangements and to provide such assistance to Contracting States as they may require in registering their aeronautical agreements and arrangements with the Council; and
10. *Requests* the President of the Council and the Secretary General to promote universal adherence to and implementation of the International Air Services Transit Agreement (IASTA) and to urge Contracting States to inform the Secretariat of their intentions with respect to adherence to the agreement.

Section II. Cooperation in regulatory arrangements

Whereas certain economic, financial and operational constraints unilaterally introduced at the national level affect the stability of, and tend to create unfair discriminatory trading practices in, international air transport and might be incompatible with the basic principles of the Convention and the orderly and harmonious development of international air transport;

Whereas the provision of regular and reliable air transport services is of fundamental importance to the development of the economies of many developing States, including those dependent on tourism;

Whereas the strict application of the criterion of substantial ownership and effective control for the authorization of an airline to exercise route and other air transport rights could deny to many States a fair and equal opportunity to operate international air services and to optimize the benefits to be derived therefrom;

Whereas air carrier designation and authorization for market access should be liberalized at each State's pace and discretion progressively, flexibly and with effective regulatory control in particular regarding safety and security;

Whereas the broadening or the flexible application of the criteria for airline designation and authorization could help create an operating environment in which international air transport may develop and flourish in a stable, efficient and economical manner, and contribute to the participation objectives of States in the liberalization process, without prejudice to States' obligations for aviation safety and security;

Whereas the realization of developmental objectives among such States is increasingly being promoted by cooperative arrangements in the form of regional economic groupings and functional cooperation symbolic of the affinity and community of interest which are particularly shared among developing States belonging to such regional economic integration movements; and

Whereas the exercise of route and other air transport rights of a developing State having such community of interest by an airline substantially owned and effectively controlled by another developing State or States or its or their nationals sharing the same community of interests will serve to promote the foregoing interests of developing States;

The Assembly:

1. *Urges* Contracting States to avoid adopting unilateral measures that may affect the orderly and harmonious development of international air transport and to ensure that domestic policies and legislation are not applied to international air transport without taking due account of its special characteristics;
2. *Urges* Contracting States to accept such designations and allow such airlines to exercise the route rights and other air transport rights of a State or States, in particular developing States, within the same grouping, under mutually acceptable terms and conditions including air transport agreements negotiated or to be negotiated by the parties concerned;

3. *Urges* Contracting States to recognize the concept of community of interest within regional or subregional economic groupings as a valid basis for the designation by one developing State or States of an airline of another developing State or States within the same regional economic grouping where such airline is substantially owned and effectively controlled by such other developing State or States or its or their nationals;
4. *Urges* Contracting States to give consideration to the use of alternative criteria for airline designation and authorization, including those developed by ICAO, and to adopt a flexible and positive approach to accommodate other States in their efforts to liberalize air carrier ownership and control without compromising safety and security;
5. *Invites* Contracting States with experience in various forms of joint operation of international air services to submit to the Council, on a continuing basis, full information concerning their experience, so that the Organization may have in this particular field all information that might be of assistance to Contracting States;
6. *Requests* the Council, when approached, to render all feasible assistance to Contracting States wishing to enter regional or subregional economic groupings with respect to the operation of international air services; and
7. *Requests* the Council to give assistance, when approached, to Contracting States that take the initiative in developing cooperative arrangements for the joint ownership and operation of international air services, directly among themselves or whose airlines develop such arrangements, and to promptly circulate to States information concerning such cooperative arrangements.

Section III. Airline product distribution

Whereas the advancement of information and electronic technologies have had a significant impact on the way the airline industry is doing business, particularly on its product distribution; and

Whereas ICAO has developed a Code of Conduct for the Regulation and Operation of Computer Reservation Systems (CRSs) for States to follow, and two related Model Clauses for optional use by States in their air services agreements.

The Assembly:

1. *Requests* the Council to monitor developments in airline product distribution and related regulatory practices, and disseminate information to Contracting States on significant developments; and
2. *Requests* the Council to review whether there is a continued need for the ICAO CRS Code and Model Clauses in light of the industry and regulatory changes.

Section IV. Trade in services

Whereas on the issue of including aspects of international air transport under the General Agreement on Trade in Services (GATS), ICAO has actively promoted an understanding by all parties concerned of the provisions of the *Convention on International Civil Aviation* and of the particular mandate and role of ICAO in international air transport;

The Assembly:

1. *Reaffirms* the need for ICAO to continue to explore future regulatory arrangements and develop recommendations and proposals to meet the challenges facing international air transport, responding to the internal and external changes affecting it;

2. *Recognizes* that such arrangements should create an environment in which international air transport may develop and continue to flourish in an orderly, efficient and economical manner without compromising safety and security, while ensuring the interests of all Contracting States and their effective and sustained participation in international air transport;
3. *Reaffirms* the primary role of ICAO in developing policy guidance on the regulation of international air transport;
4. *Urges* Contracting States that participate in trade negotiations, agreements and arrangements relating to international air transport to:
 - a) ensure internal coordination in their national administrations and in particular the direct involvement of aeronautical authorities and the aviation industry in the negotiations;
 - b) ensure that their representatives are fully aware of the provisions of the *Convention on International Civil Aviation*, the particular characteristics of international air transport and its regulatory structures, agreements and arrangements;
 - c) take into account their rights and obligations vis-à-vis those ICAO Contracting States which are not members of the World Trade Organization;
 - d) examine carefully the implications of any proposed inclusion of an additional air transport service or activity in the GATS bearing in mind, in particular, the close linkage between economic, environmental, safety and security aspects of international air transport;
 - e) promote a full understanding of the role and mandate of ICAO in developing policy guidance on economic regulation, including liberalization of international air transport, and consider using this guidance; and
 - f) file with ICAO under Article 83 of the Convention copies of any exemptions and specific commitments pertaining to international air transport made under the GATS;
5. *Requests* the World Trade Organization, its Member States and Observers to accord due consideration to:
 - a) the particular regulatory structures and arrangements of international air transport and the liberalization taking place at the bilateral, subregional and regional levels;
 - b) ICAO's constitutional responsibility for international air transport and, in particular, for its safety and security; and
 - c) ICAO's existing policy and guidance material on the economic regulation of international air transport and its continued work in the field; and
6. *Requests* the Council to:
 - a) continue to exert a global leadership role in facilitating and coordinating the process of economic liberalization while ensuring safety, security and environmental protection in international air transport;
 - b) pursue in a proactive manner developments in trade in services that might impinge on international air transport and inform Contracting States accordingly; and
 - c) promote continued effective communication, cooperation and coordination among ICAO, the World Trade Organization, and other intergovernmental and non-governmental organizations dealing with trade in services.

Section V. Elaboration of policy guidance

Whereas governments have international obligations and responsibilities in the economic regulation of international air transport;

Whereas economic liberalization and the evolution of air transport industry will continue to bring about opportunities, challenges and issues with respect to the regulation of international air transport; and

Whereas the Organization has addressed many of the regulatory issues and compiled related policies and guidance material;

The Assembly:

1. *Urges* Contracting States in their regulatory functions to have regard to the policies and guidance material developed by ICAO on economic regulation of international air transport, such as those contained in Doc 9587, *Policy and Guidance Material on the Economic Regulation of International Air Transport*; and

2. *Requests* the Council to ensure that these policies and guidance material are current and responsive to the requirements of Contracting States, and to develop guidance on emerging issues of general interest where required.

APPENDIX B**Statistics**

Whereas ICAO's Statistics Programme provides an independent and global foundation for the purpose of fostering the planning and development of international air transport;

Whereas each Contracting State has undertaken that its international airlines shall file the statistics requested by the Council in accordance with Article 67 of the Convention;

Whereas the Council has also laid down requirements for statistics on domestic airline operations, international airports, and international route facilities, pursuant to Articles 54 and 55 of the Convention;

Whereas the Council has laid down requirements for data collection on civil aircraft on register pursuant to Article 21 of the Convention;

Whereas the Council has adopted a policy of management by objective which requires measuring the performance of the Organization as a whole and of its constituent parts in meeting the Strategic Objectives of the Organization;

Whereas the development of ICAO's validation and storage integrated statistical database provides Contracting States and other users with an efficient online system for the retrieval of statistical data;

Whereas a number of Contracting States have still not filed, or have not filed completely, the statistics requested by the Council; and

Whereas cooperation amongst international organizations active in the area of collection and distribution of aviation statistics may enable reduction in the burden of filing statistics;

The Assembly:

1. *Urges* Contracting States to make every effort to provide the statistics required on time and to submit them electronically whenever possible;

2. *Requests* the Council, calling on national experts in the relevant disciplines as required, to examine on a regular basis the statistical data collected by ICAO in order to meet more effectively the needs of the Organization and its Contracting States, and to establish the necessary metrics to monitor the performance of the Organization in meeting its Strategic Objectives, to improve the uniformity of the statistics, the completeness and timeliness of reporting by Contracting States, and the form and content of analyses; and
3. *Requests* the Council to:
 - a) continue to explore ways of closer cooperation with other international organizations active in the collection and distribution of aviation statistics; and
 - b) make arrangements, on an appropriate basis, for assistance to be given upon request to Contracting States by personnel of the Secretariat for the improvement of their civil aviation statistics and their statistical reporting to the Organization.

APPENDIX C

Forecasting and economic planning

Whereas ICAO's independence in carrying out investigations into trends and in applying economic analyses provides a necessary foundation for fostering the planning and development of international air transport;

Whereas Contracting States require global and regional forecasts of future civil aviation developments for various purposes;

Whereas the Council, in carrying out its continuing functions in the economic field, must foresee future developments likely to require action by the Organization and must initiate such action in good time;

Whereas the Organization has to regularly assess its performance against the Strategic Objectives with particular focus on safety, security, environment and efficiency; and

Whereas the Organization requires specific forecasts and economic support for airports and air navigation systems planning and environmental planning purposes;

The Assembly:

1. *Requests* the Council to prepare and maintain, as necessary, forecasts of future trends and developments in civil aviation of both a general and a specific kind, including, where possible, local and regional as well as global data, and to make these available to Contracting States and support data needs of safety, security, environment and efficiency;
2. *Requests* the Council to develop methodologies and procedures for the preparation of forecasts, the analysis of cost-benefit or cost-effectiveness, and the development of business cases to meet the needs of the Organization, the regional air navigation planning groups and, as required, other systems or environmental planning bodies of the Organization; and
3. *Requests* the Council to make arrangements to collect and develop material on current forecasting methods both for the purposes described in clauses 1 and 2 and for dissemination to Contracting States from time to time as guidance in their own forecasting and economic planning.

APPENDIX D

Facilitation

Section I. Development and implementation of facilitation provisions

Whereas Annex 9 — *Facilitation* was developed as a means of articulating the obligations of Contracting States under Articles 22, 23 and 24 of the Convention and standardizing procedures for meeting the legal requirements referred to in Articles 10, 13, 14, 29 and 35;

Whereas implementation of the Standards and Recommended Practices in Annex 9 is essential to facilitate the clearance of aircraft, passengers and their baggage, cargo and mail and manage challenges in border controls and airport processes so as to maintain the efficiency of air transport operations;

Whereas it is essential that Contracting States continue to pursue the objective of maximum efficiency in air transport while at the same time safeguarding international civil aviation;

Whereas the development of specifications for machine readable travel documents by the Organization has proved effective in the development of systems that accelerate the movement of international passengers and crew members through clearance control at airports while enhancing immigration compliance programmes; and

Whereas the development of a set of standard signs to facilitate the efficient use of airport terminals by travellers and other users has proved effective and beneficial;

The Assembly:

1. *Urges* Contracting States to give special attention to increasing their efforts to implement Annex 9 Standards and Recommended Practices.
2. *Requests* the Council to ensure that Annex 9 — *Facilitation* is current and addresses the contemporary requirements of Contracting States with respect to administration of border controls, cargo and passengers, and the protection of passenger and crew health;
3. *Requests* the Council to ensure that the provisions of Annex 9 — *Facilitation*, and Annex 17 — *Security* are compatible with and complementary to each other;
4. *Requests* the Council to ensure that its specifications and guidance material in Doc 9303, *Machine Readable Travel Documents*, remain up to date in the light of technological advances and to continue to explore technological solutions aimed at improving clearance procedures; and
5. *Requests* the Council to ensure that Doc 9636, *International Signs to Provide Guidance to Persons at Airports and Marine Terminals*, is current and responsive to the requirements of Contracting States.

Section II. International cooperation in protecting the security and integrity of passports

Whereas the passport is the basic official document that denotes a person's identity and citizenship and is intended to inform the State of transit or destination that the bearer can return to the State which issued the passport;

Whereas international confidence in the integrity of the passport is essential to the functioning of the international travel system;

Whereas Member States of the United Nations have resolved, under the Global Counter-Terrorism Strategy, adopted on 8 September 2006, to step up efforts and cooperation at every level, as appropriate, to improve the security of manufacturing and issuing identity and travel documents and to prevent and detect their alteration or fraudulent use;

Whereas high-level cooperation among States is required in order to strengthen resistance to passport fraud, including the forgery or counterfeiting of passports, the use of forged or counterfeit passports, the use of valid passports by impostors, the use of expired or revoked passports, and the use of fraudulently obtained passports;

Whereas the use of stolen blank passports, by those attempting to enter a country under a false identity, is increasing worldwide; and

Whereas ICAO has established the Universal Implementation of Machine Readable Travel Documents (UIMRTD) project to assist States in matters including project planning, implementation, education, training and system evaluation services, so that States can meet the 2010 deadline for the issuance of MRPs and has set up the Public Key Directory (PKD) to strengthen the security of biometrically-enhanced MRPs (ePassports);

The Assembly:

1. Urges Contracting States to intensify their efforts to safeguard the security and integrity of their passports, to protect their passports against passport fraud, and to assist one another in these matters;
2. Urges those Contracting States that have not already done so, to issue machine readable passports in accordance with the specifications of Doc 9303, Part 1, no later than 1 April 2010;
3. Urges Contracting States to ensure that the expiration date of non-machine readable passports falls before 24 November 2015;
4. Urges those Contracting States requiring assistance under the UIMRTD project to contact ICAO urgently;
5. Requests the Council to continue the work on enhancing the effectiveness of controls on passport fraud by implementing the related SARPs of Annex 9 and developing guidance material to assist Contracting States in maintaining the integrity and security of their passports and other travel documents;
6. Urges those States issuing ePassports to join the ICAO PKD; and
7. Urges those Contracting States that are not already doing so, to provide routine and timely submissions of lost and stolen passport data to Interpol's Automated Search Facility/Stolen and Lost Travel Document Database.

Section III. National and international action and cooperation on facilitation matters

Whereas there is a need for continuing action by Contracting States to improve the effectiveness and efficiency of clearance control formalities;

Whereas the establishment and active operation of national facilitation committees is a proven means of effecting needed improvements; and

Whereas cooperation on facilitation matters amongst Contracting States and with the various national and international parties interested in facilitation matters has brought benefits to all concerned;

The Assembly:

1. *Urges* Contracting States to establish and utilize national facilitation committees and adopt policies of cooperation on a regional basis among neighboring States;
2. *Urges* Contracting States to participate in regional and subregional facilitation programmes of other intergovernmental aviation organizations;
3. *Urges* Contracting States to take all necessary steps, through national facilitation committees or other appropriate means, for:
 - a) regularly calling the attention of all interested departments of their governments to the need for:
 - 1) making the national regulations and practices conform to the provisions and intent of Annex 9; and
 - 2) working out satisfactory solutions for day-to-day problems in the facilitation field; and
 - b) taking the initiative in any follow-up action required;
4. *Urges* Contracting States to encourage the study of facilitation problems by their national and other facilitation committees and to coordinate the findings of their committees on facilitation problems with those of other Contracting States with which they have air links;
5. *Urges* neighboring and bordering States to consult one another about common problems that they may have in the facilitation field whenever it appears that these consultations may lead to a uniform solution of such problems;
6. *Urges* Contracting States to encourage their aircraft operators to continue to cooperate intensively with their governments as regards:
 - a) identification and solution of facilitation problems; and
 - b) developing cooperative arrangements for the prevention of illicit narcotics trafficking, illegal immigration and other threats to national interests;
7. *Urges* Contracting States to call upon international operators and their associations to participate to the extent possible in electronic data interchange systems in order to achieve maximum efficiency levels in the processing of passenger and cargo traffic at international terminals; and
8. *Urges* States and operators, in cooperation with interested international organizations, to make all possible efforts to speed the handling and clearance of air cargo, while ensuring, at the same time, the security of the international supply chain.

APPENDIX E

Taxation

Whereas international air transport plays a major role in the development and expansion of international trade and travel and the imposition of taxes on aircraft, fuel, and consumable technical supplies used for international air transport, taxes on the income of international air transport enterprises and on aircraft and other movable property associated with the operation of aircraft in international air transport, and taxes on its sale or use, may have an adverse economic and competitive impact on international air transport operations;

Whereas ICAO policies in Doc 8632, *ICAO's Policies on Taxation in the Field of International Air Transport*, make a conceptual distinction between a charge and a tax in that “a charge is a levy that is designed and applied specifically to recover the costs of providing facilities and services for civil aviation, and a tax is a levy that is designed to raise national or local government revenues which are generally not applied to civil aviation in their entirety or on a cost-specific basis”;

Whereas it is a matter of great concern that taxes are increasingly being imposed by some Contracting States in respect of certain aspects of international air transport and that charges on air traffic, several of which can be categorized as taxes on the sale or use of international air transport, are proliferating;

Whereas the matter of aircraft engine emission-related levies is addressed in Assembly Resolution A36-22, *Consolidated statement of continuing ICAO policies and practices related to environmental protection*; and

Whereas the resolution in Doc 8632 supplements Article 24 of the Convention and is designed to recognize the uniqueness of international civil aviation and the need to accord tax exempt status to certain aspects of the operations of international air transport;

The Assembly:

1. *Urges* Contracting States to follow the resolution of the Council as contained in Doc 8632, *ICAO's Policies on Taxation in the Field of International Air Transport*; and
2. *Requests* the Council to ensure that the guidance and advice contained in Doc 8632 are current and responsive to the requirements of Contracting States.

APPENDIX F

Airports and air navigation services

Section I. Charging policy

Whereas ICAO policies in Doc 9082, *ICAO's Policies on Charges for Airports and Air Navigation Services* make a conceptual distinction between a charge and a tax in that “a charge is a levy that is designed and applied specifically to recover the costs of providing facilities and services for civil aviation, and a tax is a levy that is designed to raise national or local government revenues which are generally not applied to civil aviation in their entirety or on a cost-specific basis”;

Whereas the matter of aircraft engine emission-related levies and market-based options is addressed separately in Assembly Resolution A36-22, *Consolidated statement of continuing ICAO policies and practices related to environmental protection*;

Whereas Article 15 of the Convention establishes the basis for the application and disclosure of charges for airports and air navigation services;

Whereas the Council has been directed to formulate recommendations for the guidance of Contracting States with regard to the principles on which providers of airports and air navigation services for international civil aviation may charge to recover the costs of their provision and derive other revenue therefrom, and with regard to the methods that may be employed to that effect; and

Whereas the Council has adopted and revised, as necessary, and published in Doc 9082, *ICAO's Policies on Charges for Airports and Air Navigation Services*;

The Assembly:

1. *Urges* Contracting States to ensure that Article 15 of the Convention is fully respected;
2. *Urges* Contracting States to base the recovery of the costs of the airports and air navigation services they provide or share in providing for international civil aviation on the principles set forth in Article 15 of the Convention and additionally in Doc 9082, *ICAO's Policies on Charges for Airports and Air Navigation Services*, regardless of the organizational structure under which the airports and air navigation services are operated;
3. *Urges* Contracting States to ensure that airport and air navigation services charges only be applied towards defraying the costs of providing facilities and services for civil aviation;
4. *Urges* Contracting States to make every effort pursuant to Article 15 of the Convention to publish and communicate to the Organization any charges that may be imposed or permitted to be imposed by a Contracting State for the use of air navigation facilities and airports by the aircraft of any other Contracting State; and
5. *Requests* the Council to ensure that the guidance and advice contained in Doc 9082 are current and responsive to the requirements of Contracting States.

Section II. Economics and management

Whereas in handling growing volumes of traffic the global costs of providing airports and air navigation services continue to rise;

Whereas Contracting States are placing increased emphasis on improving financial efficiency in the provision of airports and air navigation services;

Whereas a balance should be maintained between the respective financial interests of providers of airports and air navigation services on the one hand and air carriers and other users on the other and which should be based on promoting cooperation between providers and users;

Whereas Contracting States have called on the Organization to provide advice and guidance aimed at promoting equitable recovery of airport and air navigation services costs;

Whereas Contracting States are increasingly assigning the operation of airports and air navigation services to commercialized and privatized entities, which may have less awareness and knowledge of States' obligations specified in the Convention and its Annexes and of ICAO's policies and guidance material in the economic field, and are using multinational facilities and services to meet the commitments they have assumed under Article 28 of the Convention; and

Whereas the Council has adopted provisional policy guidance on the allocation of Global Navigation Satellite System (GNSS) costs to ensure an equitable treatment of all users;

The Assembly:

1. *Reminds* Contracting States that with regard to airports and air navigation services they alone remain responsible for the commitments they have assumed under Article 28 of the Convention regardless of what entity or entities operate the airports or air navigation services concerned;
2. *Urges* Contracting States to cooperate in the recovery of costs of multinational air navigation facilities and services and to consider the use of the provisional Council policy guidance on the allocation of GNSS costs;

3. *Requests* the Council to continue to develop ICAO's policy and guidance material with a view to contributing to increased efficiency and improved cost-effectiveness in the provision and operation of airports and air navigation services, including the foundation for a sound cooperation between providers and users;
4. *Requests* the Council to continue its refinement of its policy guidance on the allocation of GNSS costs and the coordination of technical, legal and economic aspects, including cost-efficient interoperability;
5. *Requests* the Council to promote ICAO's policies on user charges and related guidance material, including organizational and managerial advice, in order to increase the awareness and knowledge of them among States and commercialized and privatized airports and air navigation services entities;
6. *Requests* the Council to keep the economic situation of airports and air navigation services under review and make reports thereon to Contracting States at appropriate intervals; and
7. *Urges* Contracting States to make every effort to provide with the least possible delay the financial data relating to their airports and air navigation services to enable Council to provide such advice and prepare such reports.

APPENDIX G

Air carrier economics

Whereas there is a continuing interest among users, including international organizations with interests in tourism, aviation and trade, in the level of international air carrier costs of operation, fares, rates and appropriate revenue yields;

Whereas the objective studies by ICAO on international air transport costs and revenues are widely used by Contracting States and other international organizations, have promoted neutrality and have resulted in a more equitable system of revenue sharing; and

Whereas ICAO requires air carrier revenue, cost and operational data to assist the Council in assessment of the effectiveness of measures proposed for the implementation of the Strategic Objectives of the Organization, and for environmental planning, investment studies and other purposes;

The Assembly:

1. *Requests* the Council to instruct the Secretary General to issue periodically a study on regional differences in the level of international air transport operating costs, analysing how differences in operations and input prices may affect their levels and the impact that changes in costs may have on air transport tariffs; and
2. *Urges* Contracting States to make every effort to obtain from their international air carriers with the least possible delay the cost, revenue and other data requested by ICAO.

APPENDIX H

Air mail

Whereas the Assembly has given ongoing directions with regard to ICAO's work in the field of international air mail;

The Assembly:

1. *Urges* Contracting States to take into account the effects on international civil aviation whenever policy is being formulated in the field of international air mail, and particularly at meetings of the Universal Postal Union (UPU); and
2. *Directs* the Secretary General to furnish to the UPU, on request, information of a factual character which may be readily available.

— END —

ISBN 978-92-9231-200-8



9 7 8 9 2 9 2 3 1 2 0 0 8