International Civil Aviation Organization

WORKING PAPER

WORLDWIDE AIR TRANSPORT CONFERENCE (ATCONF)

SIXTH MEETING

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Agenda Item 2: **Examination of key issues and related regulatory framework**
  2.1: Market access
  2.2: Air carrier ownership and control
  2.4: Fair competition
  2.6: Taxation of and other levies on international air transport
  2.7: Economics of airports and air navigation services
  2.8: Implementation of ICAO policies and guidance

THE NEED FOR A STRATEGY TO ADDRESS THE NEGATIVE CONSEQUENCES OF CONTINUED LIBERALIZATION: WOULD MARITIME STYLE "FLAGS OF CONVENIENCE" CONTRIBUTE TO SUSTAINABLE AVIATION?

(Presented by the International Transport Workers Federation (ITF))

REVISED

EXECUTIVE SUMMARY
The paper reviews the major effects of aviation deregulation and liberalisation since 2000, with particular attention to civil aviation transportation workers and the growing emergence of "flag of convenience" scenarios in the airline sector of the industry. It further examines the principal lessons of ATConf/5 in this regard, and notes the significant absence of two important principles from the background for this ATConf/6: namely, the implementation of basic safeguards for safety and security and aviation workers. Finally, the paper offers a number of conclusions and recommendations to correct these identified serious shortcomings in order to lay the basis for the development of an effective and comprehensive strategy to address the negative consequences of continued deregulation and liberalisation under review at this ATConf/6.
Action: The Conference is invited to agree to the recommendations presented in paragraph 7.
References: ATConf/6 reference material is available at www.icao.int/meetings/atconf6.

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[1] Arabic, French and Spanish versions provided by ITF.

1.   **INTRODUCTION**

1.1   The International Transport Workers' Federation ("ITF") was founded in 1896 and today represents 4.5 million workers in all transport modes around the world, including civil aviation. ITF-affiliated unions represent 650,000 civil aviation transportation workers in 147 countries.

1.2   The purpose of this paper is to review the lessons of aviation deregulation and liberalisation to date; identify the key principles that should guide the work of this Sixth Worldwide Air Transport Conference (ATConf/6); and to make concrete and practical recommendations to respond to the needs and interests of an important group of stakeholders in the international air transportation industry who are all too often forgotten or ignored in debates about extending deregulation and liberalisation – namely, civil aviation transportation workers.

2.   **THE LESSONS OF AVIATION DEREGULATION AND LIBERALIZATION**

2.1   After three decades, deregulation and liberalization have failed to deliver on many of their promises: service standards have not improved and certain sectors of the market champion themselves as offering lesser service. In addition, despite liberalization, the margin of profit and return on capital has shown no improvement, remaining at levels that simply are not conducive to attracting capital.

2.2   There is a growing consolidation in all parts of the aviation industry. In some countries, the industry has assumed a deregulated oligopolistic structure. Deregulation and liberalisation have also made the industry more vulnerable to external shocks and the cyclical and unexpected downturns have become more ruinous.

2.3   As part of this overall trend, the development of the "low cost" model of airline operation has further disrupted the industry and impacted significantly and detrimentally on all workers within the industry. The "low cost" is counterposed to the "low fare" model particularly in respect of its approach to labour.

2.4   Air transport workers have been used repeatedly and increasingly since 2000 as the primary shock absorbers for managing the effects of deregulation, liberalisation, the periodic business cycles and external shocks in the industry. Many ground staff, engineers, air traffic management staff, technicians, catering staff, pilots and cabin crew have seen their jobs eliminated. For those workers who remain, they have experienced wage cuts, cutbacks in pensions, rising workloads, deterioration in working conditions, and live under the constant threat of spectacular company collapses, bankruptcies or mergers.

2.5   The ITF Civil Aviation Section undertook a global study through all of its affiliated trade unions in 116 countries in all regions around the globe to examine stress and fatigue for cabin crew, ground staff workers, and air traffic service workers. The findings of this investigation were disturbing: a steady decline in conditions faced by these three occupational groups in all regions of the world between 2000 and 2007. Stress and fatigue among civil aviation workers became global in nature between 2000 and 2007, and have worsened progressively since 2000.

2.6   Employers have expressed their concern about the difficulties to attract the "new generation" of aviation workers. Worsening the working conditions will not help and will bring more problems to the sustainability of the industry.

2.7   There is also growing evidence that airlines under liberalisation are increasingly re-structuring their operations to reflect classic maritime "flags of convenience" scenarios.

2.8   The ITF, as a multi-modal organisation, has intimate experience with the consequences of "flagging out" in the maritime sector. In fact, the ITF invented the term "flags of convenience" back in 1958. In that sector, the "unbundling" of ownership, nationality and safety oversight and standards have allowed some ship-owners to impose the lowest possible employment standards and conditions for their workers and the most relaxed safety standards and oversight for their operations.

2.9   In the maritime sector, ships and fleets can be "flagged out" to countries (including land-locked nations with no maritime tradition, like Mongolia) that offer tax avoidance, lower-cost safety and labour standards and conditions, and inadequate safety supervisory and inspection structures. "Flagging out" is generally driven by the desire to save costs (including paying lower taxes) or to escape effective regulatory control by the State in which the vessel or fleet is beneficially owned. It is the ultimate privatisation of regulation. If a ship-owner does not like what the regulator is doing, it quits the flag and find a more convenient or compliant one.

2.10   The ITF has played a key role in reducing the negative effects on seafarers of the system including the fact that over 11,500 ships are now covered by internationally negotiated collective agreements.

2.11   The growing number of parallels in today's civil aviation to traditional maritime "flagging out" scenarios is striking. Offshore registries for civil aviation aircraft exist and are growing in Aruba, Bermuda, Ireland, Malta, Georgia and Lithuania. Offshore registries for private aircraft also exist in the Cayman Islands, the Isle of Man, and San Marino. The rationale for such offshore registration is related to lower direct and indirect taxes (e.g. Europe VAT is 20.5 per cent compared to none in some registries), lower insurance costs and less bureaucracy.

2.12   Airlines are using "open skies" agreements to choose creatively whether to be regulated and supervised by local or home-based regulation, opening the civil aviation sector to the risk of social dumping, safety dumping, and reduced oversight as regulators should not be "competing" for registering aircraft.

2.13   As a result, the sustainability of the air transport industry is now in jeopardy with increasing turmoil and worker resistance to such employer tactics.

3.   **LIBERALIZATION IN AIRPORTS AND AIR
          NAVIGATION SERVICES PROVIDERS**

3.1   In recent years the ITF has been highlighting the problems facing workers in both airports and air navigation services providers (ANSPs). In 2008 at the Conference on the Economics of Airports and Air Navigation Services (CEANS) the ITF noted that there were increasing problems facing ANSPs workers and their ability to negotiate freely. The ITF also noted that airport workers were seeing constant attacks on their terms and conditions as a result of liberalisation and privatisation. At the ICAO 2010 Assembly the ITF also noted that the deteriorating economics of the aviation industry was having an impact on the ability of workers to negotiate terms and conditions. The ITF also noted that the International Labour Organization (ILO) had recognised that employers and governments were breeching the fundamental rights. Since the last Assembly the situation has got worse. Industrial action at airports and ANSPs is increasing with an increasing number of complaints to the ILO. Workers at airports and ANSPs recognise that they have a role to play in reducing costs. However, this should be balanced by a

recognition of the rights of workers to negotiate and to be consulted, similarly to what is done with other stakeholders on charging regimes, pricing structures and economic oversight. Without a change in the approach, industrial action is likely to continue increasing, thus adding to the problems facing the industry described above.

4.   **THE CONCLUSIONS OF ATCONF/5**

4.1   Based on this history of aviation deregulation and liberalisation, one of the ITF's priorities has been to mitigate the worst effects of the negative safety and economic consequences for aviation workers and passengers.

4.2   The Fifth Worldwide Air Transport Conference (ATConf/5) held in 2003 was a landmark event in the evolution of the global economic regulation of air transport. The Conference wove together a number of interconnected themes, including the recognition of the safety and security aspects of liberalisation and the need for the participation of all stakeholders in the evolution of the economic regulation of the industry.

4.3   The extraordinary degree of consensus reached at ATConf/5 is reflected in the Declaration of Global Principles for the Liberalization of International Air Transport, adopted by 145 States and 26 organizations, including the ITF. In particular, two noteworthy basic safeguard principles were developed at ATConf/5.

4.4   The first was the primacy given to safety and security. The ITF was not alone in expressing concerns about "flags of convenience" entering the air transport industry, or in raising questions about the capacity of the nationally based regulatory structures to provide effective safety oversight of globalizing air transport operators and multinational enterprises (ATConf/5 2003, Doc. 9819, sections 1.2.2 and 2.1.1).

4.5   As a result, the Conference concluded that "economic liberalization has implications for safety and security regulation" (1.2.3.1(a)) and "when introducing economic liberalization, States should ensure that safety and security not be compromised by commercial considerations" (1.2.3.1(c)). To this end, "Measures to ensure compliance with applicable safety and security standards and enhance regulatory oversight should form an integral part of the safeguards for liberalization" (1.2.3.1(b)). This has now become a more pressing matter as some of the worst features of "flags of convenience" operations have become increasingly prevalent in aviation in the last ten years as noted above.

4.6   The second important basic safeguard principle was recognition that on matters of economic and industrial change, aviation labour is an important stakeholder. In particular, the acknowledgment of labour as an industry stakeholder, which had been first agreed at ATConf/4 in 1994, was reinforced through a number of specific references in the texts that were adopted.

4.7   The Conference Declaration states that an overall principle should be that "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: […] has due regard for the interests of all stakeholders, including air carriers and other operators, users, airports, communities, labour, and tourism and travel service providers" (1.1(l)). The Declaration also included the following: "The objective of on-going 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" (4.1).

4.8   The Conclusions of ATFConf/5 were even more specific in relation to both the impact of liberalisation on aviation labour, and the importance of participation by labour in the evolution of economic regulation:

>"(L)iberalization 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 <u>Declaration on Fundamental Principles and Rights at Work</u>, 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." (1.1.3.1(f)

>and

>"(I)n 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 …." (2.1.3.1(e)).

5.   THE KEY PRINCIPLES THAT SHOULD GUIDE THE WORK OF ATCONF/6

5.1   The ITF sees no reason to abandon these two basic safeguard principles and associated conclusions of ATConf/5 in the work of this ATConf/6. In fact, they should form the basis for all of the work at ATConf/6.

5.2   The ICAO Secretariat has produced 23 papers (Working Papers 3 to 24 and Information Paper 1) as background to ATConf/6. Unfortunately, these two basic safeguard principles are absent from much of the Secretariat's background to this Conference, including ATConf/6-WP/3 entitled "Safeguard Measures for Air Transport Liberalization".

5.3   The Secretariat's Working Papers present an optimistic and largely uncritical review of the results and prospects for aviation deregulation and liberalisation. ATConf/6 WP/4, 12, 13, 22 and 24 in particular promote an agenda of continuing industry liberalisation and implicit support for the International Air Transport Association's (IATA) 2009 "Agenda for Freedom" initiative.

5.4   There are two significant omissions in the Secretariat's Working Papers, however.

5.5   Firstly, in terms of the consequences of liberalisation for safety and security, the Secretariat does acknowledge that "liberalisation also carries certain risks which may be causes of concern, such as: the potential emergence of "flags of convenience" in the absence of effective regulatory measures to prevent them; potential deterioration of safety and security standards with increasing emphasis on commercial outcomes; and possible flight of foreign capital which could lead to less stable operations" (ATConf/6-WP/12, Appendix, 1.5). In addition, ATConf/6-WP/17 reports on the ICAO study on the safety and security aspects of economic liberalisation (3.1).

5.6   The ITF believes more information should have been provided to ATConf/6 to discuss this important issue. For example, at the December 8 to 11, 2009 Twenty Second Meeting of Directors of Civil Aviation of the Eastern Caribbean, the ICAO Secretariat presented a progress report on measures being taken by ICAO to "reduce the potential safety risks associated with the abuse of flags of convenience" (E/CAR/DCA/22-IP/09). While the ITF welcomes ICAO's work to date to counter the negative consequences of aviation "flags of convenience", more still needs to be done.

5.7   Secondly, if ICAO's vision of itself is to "Achieve the <u>sustainable</u> growth of the <u>global</u> civil aviation system" (ATConf/6-WP/24, paragraph 1.1), it cannot do so without due regard for all of its stakeholders, including civil air transport workers, and other United Nations agencies, particularly the ILO.

5.8   What is truly remarkable is that ATConf/6-WP/22 reviews the "sustainability and economic development of air transport" without referring to aviation workers (other than telling us how many there are in the industry, paragraph. 3.1). The Working Paper then concludes its analysis by recommending that "ICAO should be the <u>only</u> forum for initiating global solutions for the development of a sustainable air transport system for all interested parties".

5.9   The ITF believes that there is a better way. After a period of aviation deregulation and liberalisation, it is now time for a new approach that combines a healthy civil air transport industry capable of offering the necessary safe services for society and business <u>and</u> that offers fair and acceptable working conditions to its employees. There should be global consensus on the principle that there should not be competition on social matters neither between countries nor between business models.

5.10   This requires that ICAO work co-operatively with other United Nations agencies on issues of mutual interest, particularly with the ILO, and not exclusively or unilaterally as proposed by ATConf/6-WP/22. Some of that co-operative work has already begun at the February 20-22, 2013 ILO Global Dialogue Forum on the Effects of the Global Economic Crisis on the Civil Aviation Industry. Governments, employers and workers achieved remarkable unanimity in a series of points of consensus that will be introduced by the ILO in this Conference. Some of those state that: "liberalisation (…) has increased competitive pressure and this could have led to enhanced challenges for decent and competitive work" and that "social dialogue is an essential element to improve sustainability and decent and productive work in civil aviation…" Further, these points of consensus state that "fair competition and the observance of the right to work as stipulated in the ILO Declaration on the fundamental principles of rights to work should be applied by all actors in the civil aviation industry regardless of their business model." Finally, the forum recommended, among other issues, that the ILO and ICAO should consult on ways of strengthening cooperation between the two bodies. It is important to note that ICAO participated as an observer organisation.

5.11   The ITF believes that in any future work program developed by ICAO there should be an explicit recognition that airline workers are one of the stakeholders whose interests must be considered in evaluating any proposed recommendations or guidelines. To ensure proper identification and consideration of such interests, the mechanism for any such future work program should provide for the participation of the ITF, the ILO and the professional associations representing aviation workers that already have observer status in the ILO.

6.   **CONCLUSIONS**

6.1   In light of the discussion above, the following conclusions may be drawn:

    a) air transport workers have been used repeatedly and increasingly since 2000 as the primary shock absorbers for managing the effects of deregulation, liberalisation, the periodic business cycles and external shocks in the industry, often with devastating social consequences; and

b) there is growing evidence that airlines under liberalisation are increasingly re-structuring their operations to reflect classic maritime "flags of convenience" scenarios.

7.   **RECOMMENDATIONS**

7.1   The Conference is invited to:

7.2   recognize the safety and security aspects of liberalisation and the need for the participation of all stakeholders in the evolution of the economic regulation of the industry. ATConf/5 established two important basic safeguard principles that should guide the work of ATConf/6. These two basic safeguard principles should be evident in the conclusions of ATConf/6;

7.3   adopt a more balanced view of the social, safety and security aspects of aviation deregulation and liberalisation. The background material to ATConf/6 does not adequately examine the impact of liberalisation on civil aviation workers and the safety and security risks of aviation "flags of convenience";

7.4   urge ICAO to develop in any future work program an explicit recognition that airline workers are one of the stakeholders whose interests must be considered in evaluating any proposed recommendations or guidelines; and

7.5   urge ICAO to work in co-operation with other United Nations agencies, particularly the ILO, in order to give a proper follow up to the conclusions of the recent ILO Global Dialogue Forum on the Effects of the Global Economic Crisis on the Civil Aviation Industry.

— END —