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**REGULATORY POLICY SEMINAR ON
“LIBERALIZATION POLICY AND IMPLEMENTATION”**

(Beirut, 20 – 22 October 2003)

SUMMARY REPORT

INTRODUCTION

1. A regulatory policy seminar with the theme “Liberalization Policy and Implementation” was held in Beirut from 20–22 October 2003. The seminar was hosted by the National Civil Aviation Administration (NCAA) of Lebanon. Dr. Hamdi Chaouk, Director General of Civil Aviation, opened the seminar with a welcoming address on behalf of the Minister of Public Works and Transport, Mr. Najib Mikati. Mr. Ahmed Zerhouni, ICAO Regional Director, Middle East, responded to the Minister’s welcoming address on behalf of ICAO.

2. The meeting elected Dr. Chaouk as Chairman of the Seminar and Mr. Rashid El Kiyumi (Oman) as Vice-Chairman. Mr. John Gunther, Chief, Economic Policy Section, ICAO, served as Secretary of the meeting supported by Mr. Amin Zarroug, ICAO Regional Officer, Air Transport.

3. The meeting noted that this was the first ICAO regional seminar following the fifth Worldwide Air Transport Conference (ATConf/5). The interest and theme of that Conference, “Challenges and Opportunities of Liberalization”, had been to focus on the practical aspects of liberalization. Accordingly, as a follow-up to the outcome of the Conference, this seminar was directed at the implementation aspects of liberalization, in particular through the exchange of advice and experience. In order to obtain and share a wide cross section of such experiences, additional presentations were invited from a number of organizations and States.

4. A total of 49 participants attended the seminar from 12 States and 4 international and regional organizations. A list of participants is contained in **Appendix A**.

5. The seminar conducted its discussions in English and Arabic. The principal background documents used were the *Policy and Guidance Material on the Regulation of International Air Transport* (Doc 9587); *Manual on the Regulation of International Air Transport, Provisional Second Edition* (Doc 9626); and *Report of the Worldwide Air Transport Conference* (Doc 9819, ATConf/5 2003). In addition, ten working papers covering each of the agenda items were prepared by the Secretariat. State letters pertaining to the Conference outcome were also made available. Most of the presentations were also distributed to participants in hard copy¹. A list of the documentation, including presentations, is provided in **Appendix B**.

6. The Agenda for the seminar was as follows:

1. Regulatory overview – global and regional
2. Outcome of ATConf/5 and key regulatory issues
3. Regional liberalization perspectives and experiences
4. National liberalization perspectives and experiences
5. Use of the Template Air Services Agreements (TASAs) as liberalization tools.

¹ Electronic copies of the presentations are available on the ICAO Web site (www.icao.int), accessible via the ICAO Secretariat link.

DISCUSSION

Agenda Item 1: Regulatory overview – global and regional

7. Discussion on this item was based on two Secretariat papers, WP/2 and WP/3 and several presentations. A presentation by the Secretary gave an overview of significant global and regional trends and developments in recent years covering both the industry and economic regulation. A presentation by the representative of the International Air Transport Association (IATA) covered the State of the airline industry, including passenger forecasts and industry outlook and an IATA air travel survey. A presentation was also given by an official of Middle East Airlines on challenges to liberalization by safety and security issues. The presentation explained the safety and security implications of various consequences of liberalization, how to meet the challenges posed by these implications and the IATA Operational Safety Audit (IOSA) programme and expansion of the ICAO Safety Oversight Programme.

8. A general discussion of liberalization followed these presentations. Points touched on included: the nature of and factors governing the national interest; liberalization, not as an end in itself but as a tool to serve the national interest; and liberalization that leads to increasing rather than less regulation. Discussion on the presentation on safety, security and liberalization focussed on the primacy of safety and security measures and the impact on the credibility of the industry of such measures. In addition, the Arab Civil Aviation Commission's (ACAC) training activities on security and plans to establish an audit committee for safety and certification were mentioned.

9. Finally, under this agenda item, attention was drawn to the tables attached to WP/3 in Appendix B which identified all the bilateral air services registered with ICAO agreements and between States in the region and with all States outside; and to **Appendix C**, a summary, and categorization by volume of frequencies, of all the third and fourth freedom links between States in the region and with all States outside. By comparing the two spreadsheets, the ICAO Secretariat had been able to identify where links existed but no bilateral agreement had been registered with ICAO. This provided a possible list of all the agreements that existed involving Arab States which should be registered with ICAO. A list summarizing this situation was provided to each State present and they were requested to follow up to ensure registration, in accordance with their obligations under Article 83 of the Chicago Convention. At a practical level, the registration of outstanding agreements was also necessary in order to optimize the existing ICAO bilateral agreements data base. The meeting was advised that plans existed to greatly expand and enhance this data base and for its issuance soon in CD-ROM format.

Agenda Item 2: Outcome of ATConf/5 and key regulatory issues

10. **Outcome of ATConf/5.** This topic was considered on the basis of a presentation by the Secretary on the outcome and results of the fifth Worldwide Air Transport Conference held in Montreal in March 2003. The presentation focussed attention, in particular, on the State follow-up action items proposed by the Conference, a list of which was attached to the State letter (SC 5/1-03/71 dated 25 July 2003) informing States of the outcome. The Conference results continue to be available on the Conference Web page, accessible through the meetings link on the ICAO Web site www.icao.int. The presentation also outlined follow-up action by the ICAO Secretariat, including separate State letters on a number of topics dealt with by the Conference and the establishment of a range of data bases to be also accessible through the ICAO Web site. The meeting noted that the Conference had provided a range of policy guidance and practical tools to assist States in the liberalization process. It was now up to States to use this material.

11. **Liberalizing air carrier ownership and control.** WP/4 reproduced the principal submission to and results of ATConf/5 on this subject. It was considered to be a key regulatory issue at the Conference and for States in this region. The Secretary also circulated and encouraged States present to respond to an ICAO

survey on States' policies, practices and positions with regard to air carrier ownership and control. The responses would form the basis of a data base on this subject to be established by ICAO as an informational aid for States in the liberalization of ownership and control.

12. **Competition laws at national and regional levels.** A key regulatory issue at ATConf/5 and for States in the region, this topic was introduced on the basis of WP/5 which examined competition laws at national and regional levels and the development and application to third parties of the competition law regimes in the United States and the European Union (EU). The European Commission's recent request for authority to apply EU competition laws to third parties was highlighted. In the discussion on this issue, attention was drawn to the impact of competition laws on the multilateral airline industry cooperation arrangements and industry standards and procedures, particularly interlining.

13. **Consumer interests.** This key regulatory issue at ATConf/5 and for States in the region was presented on the basis of WP/6, which reproduced the key Conference documentation and results. Legislative developments on consumer interests in the European Union, in particular, were brought to the attention of the seminar, as was the industry perspective through IATA, of the cost and administrative burden of consumer legislation.

Agenda Item 3: Regional liberalization perspectives and experiences

14. Discussions on this item were based on WP/7, a comparative table of the main elements of existing regional air services agreements, WP/8 containing background documentation from the European Commission on its new negotiating mandate for air services agreements and several presentations. A scheduled presentation by a representative from the European Commission had to be cancelled and was replaced by a presentation from the Secretary providing the background, including the European Court of Justice decision on the "open skies" case in November 2002 and the Council of Ministers grant of a mandate to the Commission to negotiate certain agreements and aspects of agreements where EU law has precedence. A presentation on the same issues addressing some of the legal implications from the negotiating mandate was made by a legal expert from Gulf Air. With respect to intra-Arab liberalization arrangements, presentations were made on behalf of the Arab Civil Aviation Commission (ACAC) and by the Arab Civil Aviation Organization (AACO). These presentations focussed respectively on the first draft of a regional air services agreement, to replace the current ACAC liberalization programme, and a review of the current liberalization programme and what is needed to make it succeed.

15. Extensive discussions followed on all these topics. On the European Commission's negotiating mandate, differing views were advanced on the urgency of the situation for Arab States. However, there was general recognition of the need to prepare for this new negotiating environment and for ACAC, together with AACO, to take a leadership role in developing a common policy towards an eventual supra-national EU approach to all air services agreements. The seminar was also informed of recent meetings by some Arab States with EC officials in Brussels and a meeting of some Arab States in Amman to plan strategy in response to the negotiating mandate. Other issues raised included: the lack of legal and institutional framework among Arab States in developing a similar basis as Europe for a bloc approach to negotiating; the possibility that the EC would be primarily interested initially in Arab States willing to agree to liberalized arrangements; the potential for action by a smaller group of like-minded Arab States; the wider economic implications of the EC negotiating mandate; the impact on existing fifth freedom routes within the EU currently held by Arab States; negotiating strategies on "fifth freedom", designation criteria and how to respond to EC or EU member States' requests to renegotiate air service agreements or elements thereof; and some practical, legal and operational problems associated with airline operations into a supra-national market, such as the EU.

16. On pan-Arab liberalization, the discussions explored some of the specific difficulties underlying implementation of the current liberalization programme; the need for political will to adopt a liberalization agenda

on a regional basis; the relevance of legal and institutional frameworks and liberalization in the movement of persons and capital in order for regional liberalization to work; the industry's concerns over regulatory obstacles to liberalization, such as continued governmental ownership of most national airlines in the region; the use of a smaller group to achieve the critical mass for regional liberalization; and the need for a pragmatic approach to liberalization. The draft of an ACAC regional air services agreement drew comments on its process and time frame; the need for detailed review of its provisions; its consistency with and use of the guidance in ICAO's Template Air Services Agreement for regional/plurilateral situations; and matters not covered by the current draft.

Agenda Item 4: National liberalization perspectives and experiences

17. This item was considered on the basis of WP/9 which explained the use of case studies of national liberalization experiences and plans by ICAO to develop a data base of such studies. The meeting was referred to State letter SC 5/1-03/89 dated 26 September 2003, which explained the ATConf/5 consideration of this issue and of the modalities of the case study exercise. All States present were urged to develop and submit to ICAO, for posting on the ICAO Web site, liberalization case studies. Four national presentations on liberalization were made. A presentation by Pakistan expressed a preference for a cautious bilateral approach to liberalization and the retention of two basic concepts — reciprocity and equal opportunity — when moving to multilateralism. A presentation by Bahrain explained that States' approach to liberalization, its adoption of an "open skies" policy since 2001, its development of the necessary legislative and implementation framework for a competitive liberalized environment and the positive tangible results achieved thus far from this approach. Jordan gave a presentation along similar lines and explained the need for liberalization to be part of a national transport strategy, which in the case of Jordan, included a new legal framework, privatization and private investment and training. Finally, a presentation by Oman also referred to its recent actions to move to a liberalized environment, including amended legislation and airport commercialization. The presentation also explored the low-cost airline concept in the Gulf sub-region. It reviewed the characteristics and features of the low-cost airline model and the experience of this phenomenon in Europe and the United States, including comparisons with the traditional network airline model. The presentation finally reviewed a survey of customer and industry views and expectations and the relevance of the low-cost model in the sub-region.

18. In the discussion which followed on this agenda item, some of the issues covered included: the national interest and "open skies"; the need for a structured approach and the preparations and timing required when liberalizing; the continued existence in the Arab environment of certain obstacles to national (as well as regional) liberalization, such as movement of labour, visa requirements and laws on investment; continuing problems of protectionism and of national discriminatory actions and practices, even in a liberalized environment; and the need to eliminate subsidization when a competitive airline environment exists. The meeting was also informed of Lebanon's "open skies" policy and of the factors which motivated this approach to traffic rights, trade and communications. On the issue of case studies, the above presentations on national liberalization experiences were recognized as useful examples of material which could be posted in the proposed case study data base on the ICAO Web site.

Agenda Item 5: Use of the Template Air Services Agreements (TASAs) as liberalization tools

19. This agenda item was considered on the basis of a presentation by the Secretary and WP/10, which explained the concept of the TASAs, the support for them in ATConf/5, their use as a negotiating and liberalization tool and ICAO's plans for their continued future development. States present were encouraged to use the TASAs when preparing for their air services agreement negotiations and to provide feedback to ICAO on that use.

20. In the discussion which followed, the TASAs were seen to be comprehensive and practical tools for regulators. Also in the context of this discussion, it was stressed that each State was responsible for ensuring consistency and the absence of contradictions among its different air services agreement obligations.

Closing formalities

21. At the conclusion of the seminar, participants received certificates of attendance. Dr. Hamdi Chaouk, as Chairman, formally closed the meeting and the ICAO Regional Director, Vice-Chairman, Representative of ACAC and Secretary all made closing remarks thanking the participants, the host State for its excellent support, arrangements and hospitality, and referring to the positive and useful discussions the seminar had made possible. The hope was expressed for more such meetings.

APPENDIX A

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APPENDIX B

LIST OF ICAO DOCUMENTATION

A. WORKING PAPERS

RPS - WP/1	Agenda
RPS - WP/2	Global Trends
RPS - WP/3	Regulatory Overview — Global and Regional
RPS - WP/4	Liberalizing Air Carrier Ownership and Control
RPS - WP/5	Competition Laws at National and Regional Levels
RPS - WP/6	Consumer Interests
RPS - WP/7	Liberalization at the Regional Level
RPS - WP/8	European Commission Negotiating Mandate
RPS - WP/9	Case Studies on Liberalization
RPS - WP/10	Template Air Services Agreements (TASAs)

B. ICAO PUBLICATIONS

Doc 9587	Policy and Guidance Material on the Regulation of International Air Transport
Doc 9626	Manual on the Regulation of International Air Transport, Provisional Second Edition
Doc 9819	Report of the Worldwide air Transport Conference (ATConf/5, 2003)

C. STATE LETTERS

SC 5/1-03/71	Fifth Worldwide Air Transport Conference (ATConf/5)
SC 5/6-03/89	Case studies on liberalization experiences
SC 5/6-03/88	States' policies, positions and practices on air carrier ownership and control
SP 38/4.1-03/90	Dispute resolution mechanism and the list of experts for mediation on dispute resolution

SEMINAR PRESENTATIONS

Bahrain	Liberalization of air transport services in Bahrain*
Jordan	Jordanian experience in the field of air transport*
Oman	The low-cost carrier model*
Pakistan	Pakistan's perspective on liberalization
AACO	Liberalization among Arab States
ACAC	Regulatory arrangements for the liberalization of air transport among Arab States*
IATA	State of the airline industry*
Gulf Air	Legal perspective on the EU negotiating mandate
Middle East Airlines	Challenges to liberalization safety and security issues

*electronically available on the ICAO Web site

— END —