



ICAO

Doc 9587

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

Fourth Edition, 2017



Approved by and published under the authority of the Secretary General

INTERNATIONAL CIVIL AVIATION ORGANIZATION



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AMENDMENTS

Amendments are announced in the supplements to the *Products and Services Catalogue*; the Catalogue and its supplements are available on the ICAO website at www.icao.int. The space below is provided to keep a record of such amendments.

RECORD OF AMENDMENTS AND CORRIGENDA

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FOREWORD

1. This is the fourth edition of Doc 9587, a compendium of the conclusions, decisions and guidance material developed by ICAO for its Member 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 document was subsequently updated in 1999 (second edition) and in 2008 (third edition). The present edition incorporates new policy guidance developed by ICAO since 2008, and is made available in printed copy as well as in electronic format.

Content and structure

2. The material included in the main text are those conclusions, decisions and guidance 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. While it has incorporated some new policy guidance since the last edition, several parts of the last edition were removed as their contents have become outdated or have been incorporated into the updated material. These included the former parts on capacity and tariff regulation, as well as computer reservation systems.

3. This document also includes four appendices to provide additional guidance material, namely: Appendix 1 — ICAO Template Air Services Agreements (TASAs), Appendix 2 — Guidance material on the avoidance or resolution of conflicts over the application of competition laws to international air transport, Appendix 3 — Preferential measures for developing countries in the economic regulation of international air transport, and Appendix 4 — Guidelines for non-scheduled air services.

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 various relevant Assembly resolutions and Council decisions. 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 A39-15.

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; conclusions and recommendations adopted by ICAO's worldwide Air Transport Conferences (1977, 1980, 1985, 1994, 2003 and 2013) that have been approved by the Council; and relevant recommendations developed by a panel of experts, such as the Air Transport Regulation Panel (ATRP) that have been endorsed by the Council.

6. The following publications provide background for the contents included in the present document, along with additional guidance material:

Convention on International Civil Aviation (Doc 7300)
Assembly Resolutions in Force (as of 6 October 2016) (Doc 10075)
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 Fourth Worldwide Air Transport Conference (ATConf/4 – 1994) (Doc 9644)
Report of the Fifth Worldwide Air Transport Conference (ATConf/5 – 2003) (Doc 9819)
Report of the Sixth Worldwide Air Transport Conference (ATConf/6 – 2013) (Doc 10009)

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 processes and structures at the national, bilateral and multilateral levels, as well as regulatory content and key issues.

8. ICAO policies and guidance material concerning some 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)
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 (ANSSConf 2000) (Doc 9764)
Report of the Conference on the Economics of Airports and Air Navigation Services (CEANS 2008) (Doc 9908)

Facilitation

Annex 9 — Facilitation
Machine Readable Travel Documents (Doc 9303)
International Signs to Provide Guidance to Persons at Airports and Marine Terminals (Doc 9636)
Manual on Access to Air Transport by Persons with Disabilities (Doc 9984)
Guidelines on Passenger Name Record (PNR) Data (Doc 9944)
The Facilitation Manual (Doc 9957)
Model National Air Transport Facilitation Programme (Doc 10042)

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)

Assembly Resolution A39-1: Consolidated statement of continuing ICAO policies and practices related to environmental protection — General provisions, noise and local air quality

Future revision

9. The present edition contains policies and guidance material adopted or endorsed by the Assembly and the Council as of October 2016. Pursuant to Assembly Resolution A39-15, which, inter alia, directs the Council to keep the ICAO policies and guidance material in the air transport field current and responsive to the requirements of the Member States, this publication 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. Chicago Convention and other relevant agreements.....	1-1
A. Relevant Articles of the Chicago Convention	1-1
B. International Air Services Transit Agreement.....	1-4
C. International Air Transport Agreement.....	1-8
D. Definition of a Scheduled International Air Service	1-12
Part 2. ICAO Policies in the Air Transport Field.....	2-1
A. Assembly Resolutions.....	2-1
B. Conclusions, Recommendations and Declaration of Air Transport Conferences.....	2-13
C. Aviation Safety and Security	2-41
Part 3. Market Access	3-1
A. ICAO Long-term Vision for International Air Transport Liberalization	3-1
B. Liberalization of Market Access	3-1
C. Liberalization of Air Cargo Service.....	3-4
D. Participation and Safeguards.....	3-6
Part 4. Airline Ownership and Control, Joint Operations	4-1
A. Airline Ownership and Control	4-1
B. Joint Operating Organizations and Pooled Services.....	4-5
C. Aircraft Operated by International Operating Agencies.....	4-6
Part 5. Consumer Protection	5-1
A. ICAO Core Principles on Consumer Protection	5-1
B. ATConf/5 Conclusions on Consumer Interests	5-3
C. Consumer Aspects of Code-sharing	5-3

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 Issues	7-1
A. Trade in Services	7-1
B. Competition Laws	7-2
C. Environmental Protection.....	7-4
D. Taxation	7-10
Part 8. Other Regulatory Issues	8-1
A. Slot Allocation and Night Flight Restrictions	8-1
B. Lease, Charter and Interchange of Aircraft.....	8-3
C. Airport and Air Navigation Services Charges.....	8-4
D. International Air Mail	8-7
Appendix 1. ICAO Template Air Services Agreements	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. Guidelines for Non-scheduled Air Services.....	A4-1

Part 1

CHICAGO CONVENTION AND RELEVANT AGREEMENTS

A. RELEVANT ARTICLES OF THE 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.

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 service" means an air service which passes through the air space over the territory of more than one State.
- c) "Airline" means any air transport enterprise offering or operating an international air service.
- d) "Stop for non-traffic purposes" means a landing for any purpose other than taking on or discharging passengers, cargo or mail.

1.2 Article 44 of the Convention sets out the aims and objectives of the International Civil Aviation Organization (ICAO), some covering the economic aspects of international air transport regulation. The text of the Article is reproduced below.

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 flight in international air navigation;
- i) Promote generally the development of all aspects of international civil aeronautics.

1.3 Articles 81 and 83 of the Convention deal with the registration by Contracting States of agreements and arrangements, the text of which are reproduced below. The ICAO Assembly, through its resolutions, has repeatedly urged States to comply with Article 83 by registering their agreements with ICAO. Relevant clauses can be found in Assembly Resolution A39-15 under Part 2, ICAO Policies in the Air Transport Field of this publication.

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 82

Abrogation of inconsistent arrangements

The contracting States accept this Convention 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, before becoming a member of the Organization has undertaken any obligations toward a non-contracting State or a national of a contracting State or of a non-contracting State inconsistent with the terms of this Convention, 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 Convention.

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.

B. INTERNATIONAL AIR SERVICES TRANSIT AGREEMENT

1.4 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 June 2017, 131 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.

1.5 The Assembly has urged States to ratify the Transit Agreement now as part of continuing ICAO policies in the air transport field contained in Resolution A39-15. 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

A39-15: Appendix A, Section I (excerpts)

...

Whereas the compliance of Member States with provisions of the Convention and the universal adherence to the *International Air Services Transit Agreement* (IATA) and other ICAO instruments governing international air transport can facilitate and contribute to the achievement of the objectives of the Organization;

...

The Assembly:

...

4. Urges Member States that have not yet become parties to the *International Air Services Transit Agreement* (IATA), the Montréal Convention of 1999 and other ICAO instruments governing international air transport to give urgent consideration to so doing;

...

ATConf/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*;

...

ATConf/5 Recommendation
(excerpts)

The Conference concluded that:

...

- 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;

...

1.6 The Third Air Transport Conference (ATConf/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.

ATConf/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.

ATConf/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

1.7 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 July 2016, 11 States remain 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 ICAO. (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

1.8 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 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 fulfilled 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.
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Part 2

ICAO POLICIES IN THE AIR TRANSPORT FIELD

A. ASSEMBLY RESOLUTIONS

2.1 In addition to the relevant Articles of the Chicago Convention which Contracting States have an obligation to comply with, the ICAO Assembly over the years also adopted various resolutions addressing air transport related matters. These resolutions were incorporated into one single resolution adopted by the 32nd Session of the Assembly (Resolution A32-17) in 1998, which constitutes the consolidated statement of continuing ICAO policies in the air transport field. Since then, the resolution is reviewed and updated by each session of the Assembly. The latest version is Assembly Resolution A39-15, which is reproduced below. The full text of the Resolution may also be found in Doc 10075 — *Assembly Resolutions in Force (as of 6 October 2016)*.

A39-15: Consolidated statement of continuing ICAO policies in the air transport field

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, harmonious and sustainable 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 sustainable economic development at national as well as international levels;

Whereas it is 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 Member States on a continuing basis and these should be kept current, focused and relevant and should be disseminated to Member States through the most effective means;

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

Whereas the Organization is moving toward management by objective with more focus on implementation over standard setting of policies, in line with the *No Country Left Behind* (NCLB) initiative;

Whereas guidance developed by the Organization, and action taken by the Organization in implementing its Strategic Objectives, should assist Member States in developing policies and practices that facilitate the globalization, commercialization and liberalization, as well as the creation of a favourable environment for the sustainable development of, international air transport; and

Whereas it is important for Member 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 39th Session of the Assembly:

Appendix A — Economic regulation of international air transport

Appendix B — Taxation

Appendix C — Airports and air navigation services

Appendix D — Aviation data and statistics

Appendix E — Forecasting, planning and economic analyses

2. *Urges* Member States to have regard to these policies and their continuing elaboration by the Council and by the Secretary General in the relevant ICAO documents;

3. *Urges* Member States to make every effort to fulfil their obligations, arising from the Convention and Assembly resolutions, to support the work of the Organization in the air transport field, and, in particular, to provide complete and prompt statistical and other information requested by the Organization for its air transport work;

4. *Urges* Member 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 Economic Regulation of International Air Transport*;

5. *Requests* the Council to attach particular importance to the challenge 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 Member States, especially developing countries;

6. *Requests* the Council, when it considers it of benefit to the work on any air transport issue, to consult expert representatives from Member States by the most appropriate means, including the establishment of panels or Secretariat study groups of such qualified experts, who would meet or work by correspondence and subsequently report to the Air Transport Committee;

7. *Requests* the Council to convene Conferences or Divisional meetings, in which all Member 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;

8. *Requests* the Council and the Secretary General to disseminate and promote ICAO's air transport policies and associated guidance to and amongst Member States;

9. *Requests* the Council and the Secretary General to take necessary action to implement Assembly resolutions and decisions concerning the Organization's air transport activities, and to monitor and assist the implementation by States of ICAO's policies in the air transport field;
10. *Requests* the Council to keep the consolidated statement of ICAO's air transport policies under review and advise the Assembly when changes are required to the statement;
11. *Requests* the Council to keep ICAO's policies and guidance material in the air transport field current and responsive to changes and the needs of Member States while preserving the core principles on which they are based; and
12. *Declares* that this resolution supersedes Resolution A38-14.

APPENDIX A

Economic regulation of international air transport

Section I. Basic principles and long-term vision

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 and contribute to 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, Member 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 there is a need to adapt to the changing regulatory and operating environment in the air transport field and the Organization has accordingly developed policy guidance for the regulation of international air transport, including model clauses and template air services agreements;

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

Whereas the Organization has adopted the long-term vision for international air transport liberalization which states: *We, the Member States of the International Civil Aviation Organization, resolve to actively pursue the continuous liberalization of international air transport to the benefit of all stakeholders and the economy at large. We will be guided by the need to ensure respect for the highest levels of safety and security and the principle of fair and equal opportunity for all States and their stakeholders;*

Whereas the compliance of Member States with provisions of the Convention and the universal adherence to the *International Air Services Transit Agreement* (IASTA) and other ICAO instruments governing international air transport can facilitate and contribute to the achievement of the objectives of the Organization; and

Whereas consumer interest should be given due regard in the development of policy and regulation of international air transport;

The Assembly:

1. *Urges* all Member States to give regard to, and apply, the ICAO long-term vision for international air transport liberalization in policy-making and regulatory practices;
2. *Encourages* Member States to pursue liberalization of market access at a pace and in a manner appropriate to needs and circumstances, giving due regard to the interests of all stakeholders, the changing business environment and infrastructure requirements, as well as to the principles pertaining to safeguard measures designed to ensure the sustained and effective participation of all States, including the principle of giving special consideration to the interests and needs of developing countries;
3. *Urges* Member States to avoid adopting unilateral and extraterritorial measures that may affect the orderly, sustainable 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;
4. *Urges* Member States that have not yet become parties to the *International Air Services Transit Agreement* (IATA), the Montréal Convention of 1999 and other ICAO instruments governing international air transport to give urgent consideration to so doing;
5. *Urges* all Member States to register all 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*, to enhance transparency;
6. *Urges* Member States to keep the Council fully informed of serious problems arising from the application of air services agreements or arrangements and of any significant developments in the liberalization process;
7. *Urges* Member States to give due regard to the distinct features of air cargo services when exchanging market access rights in the framework of air service agreements and grant appropriate rights and operational flexibility so as to promote the development of these services;
8. *Urges* Member States, in dealing with the issues related to slot allocation and night flight restrictions, to give due consideration to the needs and concerns of other States and make every effort to resolve any concerns through consultation between the parties concerned, in a transparent and non-discriminatory manner, and to respect and follow the ICAO Balanced Approach principle in regulatory action on aircraft noise management at airports;
9. *Urges* Member States and concerned stakeholders to give regard to, and apply, the ICAO high-level, non-binding, non-prescriptive core principles on consumer protection in policy-making and regulatory and operational practices, and to keep ICAO informed of the experiences gained or issues encountered in their application;
10. *Encourages* Member States to make use of and benefit from the ICAO Air Services Negotiation (ICAN) facility, which facilitates and improves the efficiency of their air services negotiations and consultations;
11. *Requests* the Council to complete the examination of an international agreement by which States could liberalize market access, and continue the development of an international agreement to liberalize air carrier ownership and control and a specific international agreement to facilitate further liberalization of air cargo services, taking into account the goals of the ICAO long-term vision for international air transport liberalization, and the past experience and achievements of States, including existing market access liberalization agreements concluded at bilateral, regional and multilateral levels, as well as the various proposals presented during the Sixth Worldwide Air Transport Conference (ATConf/6);
12. *Requests* the Council to continue to cooperate with regional and subregional bodies in the 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 Member States for application on a wider basis; and

13. *Requests* the Council to continue the comparative and analytical study of the policies and practices of Member States in the regulation of international air transport, including the provisions of air services agreements, and to share such information with Member States.

Section II. Air carrier ownership and control

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 many States a fair and equal opportunity to operate international air services and to optimize the benefits to be derived therefrom;

Whereas airline 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; and

Whereas the realization of developmental objectives among 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;

The Assembly:

1. *Urges* Member States to continue to liberalize air carrier ownership and control, according to needs and circumstances, through various existing measures such as waivers of ownership and control restrictions in bilateral air services agreements or designation provisions recognizing the concept of community of interest within regional or subregional economic groupings, and those recommended by ICAO;

2. *Urges* Member 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* Member States to recognize the concept of community of interest within regional or subregional economic groupings as a valid basis for the designation by one State or States of an airline of another State or States within the same regional economic grouping where such airline is substantially owned and effectively controlled by such other State or States or its or their nationals;

4. *Urges* Member 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 efforts to liberalize air carrier ownership and control without compromising safety and security;

5. *Invites* Member States with experience in various forms of joint operation of international air services to submit to the Council, on a continuing basis, information concerning their experience, so that the Organization may have information that might be of assistance to Member States;

6. *Requests* the Council, when approached, to render all feasible assistance to Member 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 Member 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. Cooperation in regulatory arrangements and competition

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; and

Whereas the Organization has developed policy guidance for States to foster harmonization and compatibility of regulatory approaches and practices for international air transport, including on competition matters;

The Assembly:

1. *Urges* Member States to take into consideration that fair competition is an important general principle in the operation of international air transport services;
2. *Urges* Member States to develop competition laws and policies that apply to air transport, taking into account national sovereignty and to consider ICAO guidance on competition;
3. *Urges* Member States to encourage cooperation among regional and/or national competition authorities when dealing with matters relating to international air transport, including in the context of approval of alliances and mergers;
4. *Encourages* Member States to incorporate the basic principles of fair and equal opportunity to compete, non-discrimination, transparency, harmonization, compatibility and cooperation set out in the Convention and embodied in ICAO's policies and guidance in national legislation, rules and regulations, and in air services agreements;
5. *Requests* the Council to develop tools such as an exchange forum to enhance cooperation, dialogue and exchange of information on fair competition between States with a view to promoting compatible regulatory approaches towards international air transport; and
6. *Requests* the Council to continue to monitor developments in the area of competition in international air transport and update, as necessary, its policies and guidance on fair competition.

Section IV. Trade in services

Whereas the General Agreement on Trade in Services (GATS) adopted by the World Trade Organization (WTO) has included certain aspects of international air transport; and

Whereas 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 Member 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* Member States that participate in trade negotiations, agreements and arrangements relating to international air transport to:
 - a) ensure internal coordination in national administrations and, in particular, the direct involvement of aeronautical authorities and the aviation industry in the negotiations;
 - b) ensure that 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 rights and obligations vis-à-vis those of ICAO Member States which are not members of the WTO;
 - 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 WTO, 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 Member States accordingly; and
 - c) promote continued effective communication, cooperation and coordination between ICAO, the WTO, and other intergovernmental and non-governmental organizations dealing with trade in services.

APPENDIX B**Taxation**

Whereas the imposition of taxes on international air transport, such as on aircraft, fuel, and consumable technical supplies, on the income of international air transport enterprises, and on the sale or use of such services, may have an adverse economic and competitive impact on international air transport operations;

Whereas ICAO's Policies on Taxation in the Field of International Air Transport as contained in Doc 8632 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 Member States in respect of certain aspects of international air transport and that levies imposed 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 A39-1, *Consolidated statement of continuing ICAO policies and practices related to environmental protection — General provisions, noise and local air quality* (Appendix H, *Aviation impact on local air quality*); and

Whereas the ICAO policies on taxation in Doc 8632 supplement Article 24 of the Convention and are designed to recognize the nature 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* Member States to follow the *ICAO's Policies on Taxation in the Field of International Air Transport* as contained in Doc 8632, and to avoid imposing discriminatory taxes on international aviation;
2. *Urges* Member States to avoid double taxation in the field of air transport; and
3. *Requests* the Council to continue to promote ICAO's policies on taxation, monitor developments, and update its policies as required.

APPENDIX C**Airports and air navigation services****Section I. Charging policy**

Whereas Article 15 of the Convention establishes the basis for the application and disclosure of charges for airports and air navigation services;

Whereas ICAO's Policies on Charges for Airports and Air Navigation Services as contained in Doc 9082 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 measures is addressed separately in Assembly Resolution A39-1, *Consolidated statement of continuing ICAO policies and practices related to environmental protection — General provisions, noise and local air quality* (Appendix H, *Aviation impact on local air quality*), and in Assembly Resolution A39-2, *Consolidated statement of continuing ICAO policies and practices related to environmental protection — Climate change*;

Whereas the Council has been directed to formulate recommendations for the guidance of Member 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 reasonable revenue therefrom, and with regard to the methods that may be employed to that effect; and

Whereas the development of air transport infrastructure and the global plan for Aviation System Block Upgrades (ASBUs) requires necessary business case justification to secure funding and financing to support implementation;

The Assembly:

1. *Urges* Member States to ensure that Article 15 of the Convention is fully respected;
2. *Urges* Member 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 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* Member States to ensure that airport and air navigation services charges are applied towards defraying the costs of providing facilities and services for civil aviation;
4. *Urges* Member 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 Member State for the use of air navigation facilities and airports by the aircraft of any other Member State;
5. *Urges* Member States to adopt the principles of non-discrimination, cost-relatedness, transparency and consultation, as set out in Doc 9082, in national legislation, regulation or policies, as well as in air services agreements, to ensure compliance by airports and air navigation services providers;
6. *Urges* Member States to ensure that the current ICAO policies for cost recovery of security measures and functions at airports and by air navigation services providers, as set out in Doc 9082, are implemented so that security user charges are reasonable, cost-effective and foster harmonization worldwide; and
7. *Requests* the Council to continue to develop or refine, as required, guidance on funding of air transport infrastructure, appropriate oversight functions and financing of the air transport system, including mechanisms to support operational improvements as described in the ASBU modules.

Section II. Economics and management of aviation infrastructure

Whereas the global costs of providing airports and air navigation services may continue to rise in order to handle growing volumes of traffic;

Whereas Member States are placing increased emphasis on improving efficiency and cost-effectiveness 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 Member States have called on the Organization to provide advice and guidance aimed at promoting equitable recovery of airport and air navigation services costs;

Whereas Member 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 policy guidance on the allocation of Global Navigation Satellite System (GNSS) costs to ensure an equitable treatment of all users;

The Assembly:

1. *Reminds* Member States that with regard to airports and air navigation services they 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. *Encourages* Member States to consider the establishment of autonomous entities to operate airports and air navigation services providers, taking into account economic viability as well as the interests of the users and other interested parties;
3. *Urges* Member States to promote quality air navigation services performance through good governance;
4. *Urges* Member States to cooperate in the recovery of costs of multinational air navigation facilities and services and to consider the use of the ICAO policy guidance on the allocation of GNSS costs;
5. *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;
6. *Requests* the Council to continue, as required, refinement of its policy guidance on the allocation of GNSS costs and the coordination of technical, legal and economic aspects, including cost-efficient interoperability; and
7. *Requests* the Council to promote ICAO's policies on user charges and related guidance material in order to increase the awareness of, and implementation by, Member States and their airports and air navigation services entities.

APPENDIX D

Aviation data and statistics

Whereas ICAO's Aviation Data and Statistics Programme provides an independent and global foundation for the purpose of fostering the planning and sustainable development of international air transport;

Whereas each Member State has undertaken that its international airlines shall file the data and statistics requested by the Council in accordance with Article 67 of the Convention;

Whereas the Council has also laid down requirements for data and 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 and statistics collection on civil aircraft on register pursuant to Article 21 of the Convention;

Whereas there is a need for the Organization to collect data and statistics from States on annual aviation fuel consumption to monitor and report the potential impact of economic measures linked to the operational aspects of the international aviation services and related infrastructure;

Whereas the Council has adopted a policy of management by objective which requires collection of pertinent data, statistics and analysis to measure the performance of the Organization as a whole and of its constituent parts in meeting the Strategic Objectives of the Organization;

Whereas cooperation amongst international organizations active in the area of collection and distribution of aviation data and statistics may enable expansion of scope, coverage and quality of data, avoidance of duplication of efforts and reduction in the burden on States;

Whereas ICAO's role in processing and disseminating aviation data and statistics allows States to use it as a significant tool for the safe and orderly growth of international civil aviation services that are operated soundly and economically; and

Whereas ICAO has continued its effort to make the processes involving aviation data and statistics efficient and effective through the development of a set of electronic tools in order to answer to the evolving needs of Member States;

The Assembly:

1. *Urges* Member States to nominate focal points for aviation data and statistics, and to make every effort to provide it to ICAO on time and electronically whenever possible;
2. *Encourages* Member States to use the available electronic tools when providing and accessing aviation data and statistics and actively participate in the development of such tools by providing support and by sharing relevant knowledge and experience;
3. *Requests* the Council, calling on national experts in the relevant disciplines as required, to examine on a regular basis the data and statistics collected by ICAO in order to meet more effectively the needs of the Organization and its Member 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 data and statistics, the completeness and timeliness of reporting by Member States, and the form and content of analyses; and
4. *Requests* the Council to:
 - a) continue to explore ways of closer cooperation with the United Nations (UN), its agencies and other international organizations in the collection and distribution of aviation data, statistics and analysis;
 - b) make arrangements, on an appropriate basis, for assistance to be given upon request to Member States by ICAO for the improvement of aviation data, statistics and analysis and statistical reporting to the Organization;

- c) develop a process by which to enable harmonization of aviation data and statistics from different sources in order to facilitate the provision of accurate, reliable and consistent data required for informed decision-making by States; and
- d) create, host, and manage a platform where the aviation community can share and promote its data, statistics and electronic tools in accordance with the principles and provisions as contained in the Convention and relevant decisions of the Organization.

APPENDIX E

Forecasting, planning and economic analyses

Section I. Forecasting and planning

Whereas Member States require global and regional forecasts of future civil aviation developments for various planning and implementation purposes;

Whereas the Council, in carrying out its continuing functions in the air transport 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 its Strategic Objectives with particular focus on safety, air navigation capacity and efficiency, security and facilitation, economic development of air transport and environmental protection; and

Whereas the Organization requires specific forecasts for airports and air navigation systems planning and environmental monitoring and planning purposes;

The Assembly:

1. *Requests* the Council to develop and update forecasts of future trends and developments in civil aviation, and to make these available to Member States;
2. *Requests* the Council to develop and update one single set of long-term traffic forecast, from which customized or more detailed forecasts can be produced for various purposes, such as air navigation systems planning and environmental analysis; and
3. *Requests* the Council to keep forecasting methodologies and procedures reviewed and improved.

Section II. Economic analysis

Whereas there is a continuing interest among Member States, international organizations, financial institutions, as well as aviation, tourism, and trade industries, in the economic analysis of air transport, including aviation's contribution to global, regional and national economies;

Whereas there is an acute shortage of information on the increasingly important role of aviation in national economies worldwide;

Whereas the economic studies conducted by ICAO on international air transport costs and revenues have promoted neutrality and have resulted in a more equitable system of revenue sharing of airlines; and

Whereas ICAO requires economic analyses 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 develop a methodological framework for the economic measurement of aviation activity, including aviation's contribution to Gross Domestic Product (GDP), the number of jobs created by aviation, aviation consumption, and the impact of aviation on balance of payments;
2. *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;
3. *Requests* the Council to develop methodologies and procedures for the assessment of economic impact of new measures, the analyses 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 other activities of the Organization; and
4. *Requests* the Council to monitor developments, conduct studies on major issues of global importance, and share its analyses with States, international organizations and the industry.

Section III. Air mail

Whereas air mail is an integral component of international air transport, which is increasingly affected by e-commerce;

The Assembly:

1. *Urges* Member 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 and as stipulated in relevant cooperation arrangements between UPU and ICAO, information of a factual character which may be readily available.

B. CONCLUSIONS, RECOMMENDATIONS AND DECLARATION OF AIR TRANSPORT CONFERENCES

2.2 In 1994, the Fourth Worldwide Air Transport Conference (ATConf/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.

2.3 The Fifth Worldwide Air Transport Conference (ATConf/5), held in Montréal 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).

The Declaration adopted by ATConf/5 is reproduced below.

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 code-sharing 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 (IASTA) 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.

2.4 Presented below are the Conclusions, Model clauses and Recommendations produced by ATConf/5 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 1).

Conclusions, Model clauses and Recommendations of ATConf/5

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,