

COMISSÃO LATINO-AMERICANA
DE AVIAÇÃO CIVIL



LATIN AMERICAN CIVIL
AVIATION COMMISSION

COMISIÓN LATINOAMERICANA DE AVIACIÓN CIVIL

SECRETARÍA
APARTADO 27032
LIMA, PERÚ

CLAC/GEPEJTA-33/-NE/13
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**TRIGÉSIMA TERCERA REUNIÓN DEL GRUPO DE ESPECIALISTAS EN ASUNTOS
POLÍTICOS, ECONÓMICOS Y JURÍDICOS DEL TRANSPORTE AÉREO (GEPEJTA/33)**

(Lima, Perú, 2 al 4 de julio de 2014)

**Cuestión 1 del
Orden del Día:**

Transporte y Política Aérea

**Cuestión 1.6 del
Orden del Día:**

Proyecto de Acuerdo Multilateral de Cielos Abiertos CLAC/CAFAC

(Nota de estudio presentada por Brasil)

Consideraciones iniciales

1. En seguimiento a la Nota de Estudios 23 presentada por Brasil durante la trigésima segunda edición del GEPEJTA, realizada en la Habana en los días 08, 09 y 10 de abril de 2014, se presenta a continuación los comentarios recibidos de los Estados Miembros sobre el texto inicial y las consideraciones sobre dichos comentarios.

Comentarios recibidos

2. La Autoridad de la República Oriental del Uruguay, en correspondencia con fecha 28 de mayo de 2014 (adjunto), manifestó entender que “es necesario aunar esfuerzos que permitan implementar y aprovechar las potencialidades de las regiones, lo que también otorgará la posibilidad de generar lazos más amplios y apoyo mutuo entre ambas Comisiones”.

3. La Autoridad el Perú presentó comentarios sobre el Proyecto de Acuerdo inicial, según Oficio 554-2014-MTC/12, que se adjunta a la presente N/E.

Consideraciones sobre los comentarios de la Autoridad Peruana

4. A continuación, se presenta las consideraciones sobre los comentarios de la Autoridad peruana, para la evaluación del Comité Ejecutivo.

5. Sobre la cuestión de los derechos de tráfico, cabe señalar que la idea es tener un acuerdo de cielos abiertos para que sea posible la realización de servicios entre los dos continentes,

llevándose en cuenta que normalmente habría que involucrar más de un mercado (país) para que los servicios sean viables. Los derechos de primera a sexta libertad están en línea con el concepto de cielos abiertos.

6. Siguen las consideraciones sobre los demás ítems comentados por Perú:
- a) El texto del Art. 2 “Otorgamiento de Derechos” refiere a derechos de ofrecer servicios internacionales **regulares** y no regulares de pasajeros, carga y correo. Por lo tanto, no se considera que hay contradicción con el término frecuencias. Por supuesto que para servicios no regulares, el término no es aplicable. En el inciso 2 del Artículo 2, que trata de flexibilidad operacional, se establece que las líneas aéreas pueden operar servicios desde y hacia puntos localizados anteriores al territorio de su Estado, con o sin cambio de aeronave o número de vuelo, y ofrecer y publicitar dichos servicios al público como servicios directos, **tomando, en todos los casos, las medidas necesarias para que el consumidor sea totalmente informado**. El texto está conforme con el ejercicio de la sexta libertad, considerada en el concepto de cielos abiertos y tiene la salvaguardia (destacada arriba), sobre la información adecuada al pasajero, como exige la letra a) del Artículo 91 de la Ley mencionada en el comentario peruano.
 - b) Aún se considere una simplificación interesante la designación de empresas solamente por las autoridades aeronáuticas, ha que se llevar en cuenta que muchos países siguen exigiendo que la designación se haga por canales diplomáticos. Por lo tanto, se recomienda que se mantenga el texto original.
 - c) El Artículo 18 es idéntico al texto del Artículo 18 del MASA que, a su vez, está basado en el *template* de la OACI. No se considera que las disposiciones de dicho artículo limitan o condicionan el ejercicio de la soberanía de los Estados de aplicar sus propias leyes en su territorio. Dichas disposiciones establecen que las autoridades se consultarán sobre posibles acciones relacionadas con las leyes de competencia y, siempre que posible, buscarán resolver la cuestión por medio de acuerdos.
 - d) El Art. 21 establece que cada Parte permitirá que líneas aéreas de otra Parte traigan y mantengan personal no nacional para ejercer actividades pertinentes a sus trabajos, **in cumplimiento de las leyes y reglamentos aplicables a la entrada, residencia y empleo de dicho Estado**. Por lo tanto, se considera que el tema ya está debidamente cubierto.
 - e) El artículo sobre consultas es idéntico al Art. 31 del MASA. El *template* de la OACI también excluye la expresión “autoridades aeronáuticas”. Se considera que queda subentendido que las consultas se harán entre dichas autoridades.
 - f) La observación del Perú es pertinente. El texto fue emendado a la conformidad.
 - g) Se reitera la consideración del párrafo 7 de esta Nota de Estudios.
 - h) Exigir 50% de adhesión de los Estados de cada Comisión Regional como mínimo, puede retrasar demasiado la entrada en vigencia del Acuerdo y afectar los objetivos iniciales propuestos, así como el pleno desarrollo de la cooperación en servicios aéreos entre continentes.

Medidas propuestas al Grupo de Expertos

7. Por lo expuesto, se invita al GEPEJTA a:
 - a) Tomar nota de las informaciones presentadas e intercambiar puntos de vista acerca del texto adjunto del Proyecto de Acuerdo Multilateral de Cielos Abiertos entre los Estados Miembros de la CLAC y los de la CAFAC; y,
 - b) En caso de ser juzgado oportuno, se propone llevar el Proyecto de Acuerdo a la consideración del Comité Ejecutivo de la CLAC.

MULTILATERAL OPEN SKIES AGREEMENT FOR MEMBER STATES
OF
THE LATIN AMERICAN CIVIL AVIATION COMMISSION
AND OF
THE AFRICAN CIVIL AVIATION COMMISSION

Preamble

The undersigned Governments, hereinafter called “the States Parties” or “the Parties”;

BEING PARTIES to the Convention on International Civil Aviation, opened for signature in Chicago on 7 December 1944;

CONSIDERING that the conclusion of a multilateral agreement on international air transport will promote cooperation and the development of Latin American and African countries;

WISHING to facilitate the expansion of opportunities for international air services of the countries in both Regions;

CONVINCED of the advisability of optimising aeronautical resources and the infrastructure of both Regions;

AWARE of the need to develop the aeronautical industry and to take into account the rights and interests of users;

EXPRESSING their desire to coordinate their aeronautical policies in their mutual relations and with third countries and integration systems; and

ASSERTING their commitment to the safety of aircraft, passengers, infrastructure and third parties, as well as to facilitation and environment protection;

HAVE AGREED the following:

Article 1
Definitions

For purposes of this Agreement:

- “Aeronautical Authority” is the government entity designated in each of the States Parties to regulate international air transport or its successor organisation(s);
- “Agreement” means this Agreement, any annexes to it, and the corresponding amendments;
- “Air service”, “international air service”, “airline” and “non-traffic stop” have the meaning assigned in Article 96 of the Convention; and
- “Capacity” is the number of services provided under the Agreement, usually measured by the

number of frequencies or tonnes of cargo offered in a market on a weekly basis or during any other given period;

- “Convention” designates the Convention on International Civil Aviation opened for signature in Chicago on 7 December 1944, including the Annexes adopted under Article 90 of said Convention, and the amendments to the Annexes or the Convention under Articles 90 and 94, to the extent the Annexes and amendments are applicable to the States Parties;
- “Designated airline” means an airline that has been designated and authorised in accordance with Article 3 of this Agreement;
- “Tariffs” means the price to be paid for the transport of passengers, baggage and cargo, and the conditions under which such price applies, including the prices and commissions of agencies and other ancillary services;
- “Territory”, in relation to a State, designates the land areas and adjacent territorial waters and the airspace above them, under the sovereignty of said State;
- “AFCAC” designates the African Civil Aviation Commission; and
- “LACAC” designates the Latin American Civil Aviation Commission.

Article 2

Granting of Rights

1. Each Party grants the other Parties the following rights for the provision of international air transport services by the airlines of the other Parties:
 - The right to fly across its territory without landing;
 - The right to make non-traffic stops in its territory;
 - The right to provide scheduled and non-scheduled international passenger, cargo and mail air transport services, either separately or in combination, from points behind the territory of the Party designating the airline, across the territory of that Party and intermediate points, to any point in the territory of the Party that has granted the right and beyond, with full third, fourth, fifth, and sixth freedom traffic rights, with the number of frequencies and the flight equipment they deem appropriate;
 - All other rights specified in this Agreement.
2. Each designated airline may, in any or all of its flights and at its own discretion:
 - Operate flights in either or both directions;
 - Combine different flight numbers in one aircraft operation;
 - Operate services to previous, intermediate and subsequent points, and points in the territory of the Parties along the routes, in any combination or in any order;
 - Exclude stops at any point or points;
 - Transfer traffic from any of its aircraft to any of its other aircraft at any point along the routes;
 - Operate services to and from points located behind any point in its territory, with or without change of aircraft or flight number, and offer and advertise such services to the public as direct services, in all cases taking the necessary steps to ensure that consumers are fully informed;
 - Make a stop at any point inside or outside the territory of any of the Parties;
 - Carry in-transit traffic through the territory of any of the other Parties; and
 - Combine traffic on the same aircraft, regardless of its point of origin; without any

geographical or direction restrictions and without losing any right to carry traffic granted under this Agreement.

3. The provisions of paragraph 1 and 2 of this Article shall apply subject to the requirements that the transportation is part of a service that serves a point in the territory of the Member State that designates the airline.

Article 3 Designation and Authorisation

1. Each Party shall have the right to designate as many airlines as it sees fit to operate the agreed services in accordance with this Agreement and to withdraw or modify such designations. The notifications will be communicated in writing to the other Parties through diplomatic channels and to the Depositary, as defined in Article 35 of this Agreement.
2. Upon receiving the corresponding designation and the request from the designated airline, in the manner and in accordance with the prescribed requirements for the operation approval, each Party will grant the appropriate operation permit as promptly as possible, provided:
 - The airline is incorporated in the territory of a State Party that designates it and it is headquartered in the territory of that Party.
 - The airline is under the effective regulatory control of the State Party that designates it;
 - The Party designating the airline complies with the provisions set forth in Article 8 (Safety) and Article 9 (Security); and
 - The designated airline is qualified to meet all other conditions established by law and in the regulations normally applied to the operation of international air transport services by the Party that reviews the request(s).
3. Upon receiving the operation approval mentioned in paragraph 2, a designated airline may begin operation of the agreed services for which it has been designated, provided it complies with the applicable provisions of this Agreement and with the standards required by the Party that has granted the authorisation.

Article 4 Refusal, Revocation and Limitation of Authorisation

1. The aeronautical authorities of each Party will have the right to refuse to grant the authorisations referred to in Article 3 (Designation and Authorisation) of this Agreement with respect to an airline designated by any of the other Parties, and to revoke and suspend said authorisations, or to impose temporary or permanent conditions on them:
 - In case they consider that the airline has not been incorporated in the territory of the Party designating the airline and is not headquartered in the territory of that Party;
 - In case they consider that the airline is not under effective regulatory control of the State Party designating it;
 - In case the Party designating the airline does not comply with the provisions of Article 8 on Safety and Article 9 on Security, and
 - In case such designated airline is not qualified to meet the other requirements prescribed based on the laws and regulations normally applied to the operation of international air transport services by the Party receiving the designation.

2. Unless immediate measures are required to prevent the violation of the aforementioned laws and regulations or unless safety or security requires measures according to the provisions of Article 8 on Safety or Article 9 on Security, the rights listed in paragraph 1 of this Article will be exercised only after consultation by the aeronautical authorities in accordance with Article 31 (Consultations) of this Agreement.

Article 5 Law Enforcement

The laws and regulations of any of the Parties that govern the entry to, and exit from, its territory of aircraft used in international air services, or that govern the operation and navigation of such aircraft while in their territory, will be applicable to the aircraft of the designated airlines of the other Parties.

Article 6 Direct Transit

Passengers, baggage, cargo and mail in direct transit will be subject only to a simplified inspection. Baggage and cargo in direct transit will be exempt from customs duties and other similar rights.

Article 7 Recognition of Certificates

1. The certificates of airworthiness, certificates of aptitude and licences issued or validated by any of the Parties and which are valid will be recognised as valid by the other Parties for the operation of the agreed services, provided the conditions under which such certificates and licences were issued or validated are equal to or higher than the minimum standards established pursuant to the Convention.
2. In case the privileges or conditions of licences and certificates mentioned in paragraph 1 above, issued by the aeronautical authorities of any of the Parties to an individual or designated airline, or in respect of an aircraft used in the operation of the agreed services, allow for a deviation from the minimum standards established pursuant to the Convention and this deviation has been notified to the International Civil Aviation Organization (ICAO), the other Parties may request consultations between the aeronautical authorities to clarify the practice in question.
3. However, each Party reserves the right not to recognise, with respect to flights over its territory or landing in the same, the certificates of aptitude and the licences granted to its nationals by the other Parties.

Article 8 Safety

1. Each party may at any time request consultations on the safety standards applied by other Parties on aspects related to aeronautical facilities, flight crews, aircraft and aircraft operations. Said consultations will be held within thirty (30) days of submitting the request.
2. If, following such consultations any of the Parties concludes that the other Party does not maintain and manage effectively, with respect to the aspects mentioned in paragraph 1, safety standards that are in compliance with the current standards pursuant to the Convention, said Party will be informed of such conclusions and the measures deemed necessary to comply with ICAO standards. The other Party shall then take appropriate corrective action within an agreed timeframe.
3. In accordance with Article 16 of the Convention, it is further agreed that any aircraft operated by or on

behalf of an airline of any of the Parties for the provision of services to or from the territory of other Parties, may, when in the territory of any of the latter, be subject to inspection by the authorised representatives of that Party, provided this does not cause undue delay to the operation of the aircraft. Notwithstanding the obligations mentioned in Article 33 of the Chicago Agreement, the purpose of this inspection is to check the validity of the relevant aircraft documentation, the licences of its crew, and that the aircraft equipment and the condition of the aircraft comply with the current standards established in the Convention.

4. When it is absolutely necessary to take urgent action to ensure the safety of the operations of an airline, each Party reserves the right to immediately suspend or modify the operation permit of one or more airlines of any of the other Parties.
5. Any action taken by any of the Parties in accordance with paragraph 4 above will be discontinued once the reasons that gave rise to such action cease to exist.
6. If it is determined that any of the Parties is still not meeting the ICAO standards once the agreed period referred to in paragraph 2 above has expired, this fact shall be notified to the Secretary General of ICAO, who will also be notified of the satisfactory resolution of said situation.

Article 9 Security

1. In accordance with the rights and obligations under international law, the Parties ratify that their mutual obligation to protect the security of civil aviation against acts of unlawful interference is an integral part of this Agreement. Without limiting the generality of their rights and obligations under international law, the Parties will act particularly in accordance with the provisions of the Convention on Offences and Certain Other acts Committed on Board Aircraft, signed in Tokyo on 14 September, 1963, the Convention for the Suppression of Unlawful Seizure of Aircraft, signed in The Hague on 16 December, 1970, and the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed in Montreal on 23 September, 1971, its supplementary Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, signed in Montreal on 24 February, 1988, as well as any other convention or protocol on civil aviation security to which the Parties have adhered.
2. The Parties will provide each other with all necessary assistance requested to prevent acts of unlawful seizure of civil aircraft and other unlawful acts against the security of such aircraft, their passengers and crew, airports and air navigation facilities, and any other threat to the security of civil aviation.
3. The Parties will act, in their mutual relations, in accordance with the provisions on security established by ICAO and which are designated as Annexes to the Convention; they will require that operators of aircraft under their registry or operators who are headquartered or have their permanent residence in their territory, and operators of airports located in their territory, act in accordance with such provisions on security. Each Party will notify the other Parties of any difference between its national regulations and practices and the security standards contained in the Annexes. Any of the Parties may at any time request immediate consultations with other Parties on such differences.
4. Each Party agrees that aircraft operators may be required to comply with the security provisions mentioned in paragraph 3) above, for the entry to, exit from, or stay in their territory. Each Party will ensure that appropriate measures to protect aircraft and to inspect passengers, crew, personal belongings, baggage, cargo and aircraft supplies are effectively applied in its territory before and during boarding or loading. Each Party will also consider favourably any request of any other Party to take reasonable special security measures to address a particular threat.

5. When an incident or threat of an incident of unlawful seizure of civil aircraft or other unlawful act against the security of such aircraft, their passengers and crew, airports or air navigation facilities occurs, the Parties will assist each other by facilitating communications and other appropriate measures intended to terminate such incident or threat quickly and safely.
6. Each Party may request that its aeronautical authorities be allowed to assess the security measures that aircraft operators apply, or intend to apply, in the territory of another Party in respect of flights arriving from, or departing to, the territory of the first Party. Administrative arrangements for conducting such assessments will be agreed between the aeronautical authorities and implemented without delay to ensure that assessments are conducted promptly.
7. When any of the Parties has reasonable grounds to believe that another Party has deviated from the provisions of this Article, that Party may request consultations. Such consultations will begin within fifteen (15) days of receipt of the request of any of the Parties. If a satisfactory agreement is not reached within fifteen (15) days from the start of consultations, this will be grounds to refuse, revoke or suspend the approval of the airline or airlines designated by another Party or to impose conditions on them. When warranted by an emergency or for the purpose of preventing further infringements of the provisions of this Article, the first Party may adopt provisional measures at any time.

Article 10 **Security of Travel Documents**

1. Each Party agrees to take measures to ensure the security of its passports and other travel documents.
2. In this respect, each Party agrees to establish controls over the legitimate creation, issuance, verification and use of passports and other travel documents and identity documents issued by it or on its behalf.
3. Each Party also agrees to establish or improve the procedures to ensure that travel documents issued by it are of such quality that they will not be easily misused and, furthermore, will not be easily tampered with, cloned or unduly issued.
4. In order to meet the aforementioned objectives, each Party will issue its passports and other travel documents in accordance with the standards and recommendations of the ICAO document in force on this matter.
5. Each Party further agrees to exchange operational information on tampered or cloned travel documents and to cooperate with the other Parties to strengthen the protection against travel document fraud, including tampering or cloning, the use of tampered or cloned travel documents, the use of valid travel documents by impostors, the misuse of genuine travel documents by their right holders with the purpose of committing a crime, the use of expired or revoked travel documents and the use of travel documents obtained in a fraudulent manner.

Article 11 **Inadmissible and Improperly Documented Passengers and Deportees**

1. The Parties agree to establish effective border controls.
2. In this regard, each Party agrees to apply the standards and recommended practices of Annex 9 (Facilitation) to the Convention, on inadmissible and improperly documented passengers and deportees, in order to strengthen cooperation to fight illegal migration.

Article 12
User Charges

1. None of the Parties will impose or permit the imposition on the designated airlines of the other Parties, of charges or rights that are greater than those it imposes on its own airlines operating similar international services.
2. User charges imposed by the appropriate bodies of each Party to the airlines of the other Parties will be fair, reasonable and non-discriminatory.
3. Each Party will encourage consultations between the appropriate bodies in its territory and the airlines that use its facilities, and will encourage both of them to exchange the information required to permit a thorough analysis to determine whether charges are reasonable.

Article 13
Customs Duties

1. Each Party, based on reciprocity, will exempt one or more designated airlines of another Party, to the greatest extent possible under its national laws, from import restrictions, customs duties, indirect taxes, inspection fees and other domestic fees and charges that are not based on the cost of services provided on arrival, levied on, or affecting aircraft, fuel, lubricating oils, non-durable technical supplies and parts, including engines, standard aircraft equipment, onboard supplies and other products such as ticket booking and printed air waybills, and any printed material with the company logo and regular advertising material distributed without charge by said designated airline for the operation or servicing of aircraft of the airline designated by another Party, and which operates the agreed services.
2. The exemptions granted in this Article will apply to the products listed in paragraph 1:
 - Which are introduced into the territory of a Party by or on behalf of the designated airlines of another Party;
 - Which are on board the designated airlines of one Party on arrival in the territory of another Party or when leaving it;
 - Carried on board aircraft of the designated airlines of one Party into the territory of another Party and that are intended for use in the operation of the agreed services; or
 - Which are used or consumed, in whole or in part, within the territory of the Party granting the exemption, provided their ownership is not transferred within the territory of that Party.
3. The standard aircraft equipment, as well as materials and supplies normally carried on board the aircraft of a designated airline of any of the Parties, can only be unloaded in the territory of another Party with the approval of the customs authorities of said territory. In that case, they may be kept under the surveillance of said authorities until they are re-exported or other action is taken in accordance with customs regulations.

Article 14
Taxes

1. Profit resulting from the operation of aircraft of a designated airline in international air services, as well as the goods and services supplied thereto, will be taxed in accordance with the laws of each Party.
2. When there is a special agreement between the Parties to avoid double taxation on income and capital, the provisions contained therein will prevail.

Article 15
Non-Discrimination

Each designated airline will receive non-discriminatory treatment in an environment of healthy and fair competition for the operation of routes under this Agreement, within the framework of the competition laws of the Parties.

Article 16
Capacity

1. Each Party will allow each designated airline of another Party to determine the frequency and capacity of international air transport services it offers, based on commercial market considerations.
2. None of the Parties will unilaterally limit the volume of traffic, the frequency or regularity of the service, or the types of aircraft used by the designated airlines of any of the other Parties, except when necessary for customs, technical, operational or environmental reasons under uniform conditions consistent with Article 15 of the Convention.
3. None of the Parties will impose on the designated airlines of another Party a preference fee, a balance ratio, non-objection fees, or any other requirement concerning capacity, frequency or traffic that is inconsistent with the purpose of this Agreement.
4. In order to enforce the uniform conditions foreseen in paragraph 2) of this Article, none of the Parties will require the airlines of another Party to submit schedules, non-scheduled service programmes, or operation plans for approval, unless so required by the internal rules and on a non-discriminatory basis. If a Party requires the submission of such data, it will reduce, inasmuch as possible, the submission requirements and procedures applicable to the airlines designated by the other Party.

Article 17
Tariffs

Each designated airline will set its air transport tariffs based on commercial market considerations, with no need to submit such tariffs for approval. The intervention of the States Parties will be limited to:

- Preventing discriminatory practices or tariffs;
- Protecting consumers from excessively high or restrictive tariffs resulting from abuse of a dominant position;
- Protecting airlines from artificially low tariffs resulting from a direct or indirect government subsidy; and
- Requiring, if deemed useful, that the rates to be charged by airlines of the other Parties to or from their territory, be registered with their aeronautical authorities.

Article 18
Competition Laws

1. The Parties will exchange information about their competition laws, policies and practices and their amendments, and about any specific objectives that they pursue, and which may affect the operation of air transport services under this Agreement. They will also identify the authorities responsible for their enforcement.

2. To the extent permitted by their own laws and regulations, the Parties will provide assistance to the airlines of the other Parties, indicating whether a given practice that an airline intends to apply is compatible with its competition laws, policies and practices.
3. The Parties will notify each other if they believe there may be incompatibility between the application of their competition laws, policies and practices and the implementation of this Agreement. The consultation procedure foreseen in this Agreement will be used, if so requested by any of the Parties, to determine whether such conflict exists and to seek ways to resolve it or minimise it.
4. The Parties will notify each other if they intend to sue the airline(s) of another Party, or about the initiation of any legal action between individuals under their competition laws.
5. The Parties will try to reach an agreement during the consultations, taking due account of the relevant interests of each Party.
6. If no agreement is reached, each Party, when applying its competition laws, policies and practices, will take into account the views expressed by the other Party and international courtesy and restraint.
7. The Party under whose competition laws a legal action between individuals has been initiated will provide the other Parties access to the relevant judicial body and, if appropriate, will provide information to said body. Such information may include its own interests in terms of foreign affairs, the interests of the other Party that has been notified and, if possible, the results of any consultation with the other Parties in connection with such action.
8. The Parties, to the extent permitted by their laws, national policies and international obligations, will authorise their airlines and nationals to disclose information about actions concerning competition laws to the appropriate authorities of any of the Parties, provided such cooperation or disclosure is not contrary to their most important national interests.

Article 19 **Currency Conversion and Transfer of Profits**

Each Party, in accordance with its laws, will allow the designated airlines of another Party, upon request, to convert and transfer abroad all local revenues from the sale of air transport services and other directly related activities, in excess of the amounts spent locally, allowing for their prompt conversion and transfer without restrictions or discrimination, at the exchange rate applicable on the date of the conversion and transfer request.

Article 20 **Sale and Marketing of Air Transport Services**

Each Party shall grant to the designated airlines of another Party the right to sell and market, in its territory, international air transport services, either directly or through agents or other intermediaries, at the discretion of the airline, including the right to establish offices in the network or outside of it.

Article 21 **Non-National Personnel and Access to Local Services**

Each Party will allow the designated airlines of another Party:

- To bring to its territory and maintain non-national employees to perform managerial, commercial, technical, operational and other specialised functions required for the provision of air transport services in compliance with the applicable entry, residence and employment laws and regulations

of the State Party that receives them; and

- To use the services and staff of any organisation, company or airline working in its territory and that is authorised to provide such services, subject to the laws and regulations of the Party where these services are rendered.

Article 22 Change of Gauge

A designated airline that conducts international air transport operations may at any point of any segment of the agreed routes, change, without limitation, the type or number of aircraft used, provided that the transport beyond such point is a continuation of a transport from the territory of the Party that designated the airline and, in the return direction, the transport to the territory of the designating Party is a continuation of a transport from beyond that point.

Article 23 Ground Handling

1. Subject to the applicable safety provisions, including ICAO standards and recommended practices (SARPs) contained in Annex 6, each Party, subject to its national laws and regulations, will allow the designated airlines of the other Parties, at the discretion of each airline, to:
 - Carry out their own ground handling;
 - Provide services to one or more airlines;
 - Partner with others to create a service-providing entity; and
 - Choose from competing service providers.
2. When the internal regulations of one Party limit or prevent the exercise of the aforementioned rights, each designated airline shall be treated in a non-discriminatory manner with respect to the ground assistance services offered by a duly authorised supplier(s).

Article 24 Code Sharing and Cooperation Arrangements

1. In order to operate or maintain the authorised services on the agreed routes, any designated airline of any of the Parties may enter into marketing arrangements such as joint operations, capacity reservation, or code-sharing agreements with:

- One or several airlines of any of the Parties;
- One or several airlines of a third country; and
- A provider of surface transport of any country;

provided all airlines in such arrangements 1) have the necessary authorisation and 2) meet the requirements normally applied to such arrangements. Code-share arrangements may be subject to prior approval of the appropriate authorities before implementation.

2. The Parties agree to adopt the necessary measures to ensure that consumers are fully informed and protected with regard to code-sharing flights to or from their territory, and, at least, passengers are provided with the necessary information in the following ways:

- Orally and, if possible, in writing at the time of booking;

- In written form in the itinerary that accompanies the electronic ticket, or on any other document that replaces the latter, as written confirmation, including information about the individuals to be contacted if problems arise, and clearly indicating which airline is liable for damages or accidents; and
- Orally by the airline ground personnel during all the stages of the trip.

Article 25 Leasing

The designated airlines of each of the Parties may use aircraft leased with or without crew, rented by the hour ("interchange" or "lease for hours) from another company, subject to the laws and regulations of the Parties involved, provided all the airlines participating in such arrangements have the appropriate authorisation and comply with the provisions of Article 8 (Safety) and Article 9 (Security). The aeronautical authorities of the Parties involved in interchange shall conclude a specific agreement establishing the conditions of transfer of responsibility for safety, as provided by the International Civil Aviation Organization.

Article 26 Multimodal Services

Each designated airline may use surface transport modes together with the international air transport of passengers and cargo, subject to the laws and regulations of the Parties involved, especially regarding customs rules.

Article 27 Computer Reservation Systems (CRS)

Each Party will apply in its territory the criteria and principles of the ICAO Code of Conduct, for the regulation and operation of computer reservation systems.

Article 28 Smoking Ban

1. Each Party will prohibit or cause their airlines to prohibit smoking on all passenger flights operated by its airlines between the territories of the Parties. This prohibition will be applied in all areas within the aircraft and will apply from the moment the aircraft starts boarding passengers until it completes their disembarkation.
2. Each Party will take all measures it deems reasonable to ensure compliance by its airlines, passengers and crew members, of the provisions of this Article, including the application of appropriate penalties for noncompliance.

Article 29 Environmental Protection

The Parties endorse the need to protect the environment by promoting the sustainable development of aviation. With respect to operations between their respective territories, the Parties agree to comply with the standards and recommended practices (SARPs) of the Annexes to the Convention and ICAO policies and guidelines on environmental protection.

Article 30 Statistics

At the request of the aeronautical authorities, the Parties will share periodic statistics or similar information on traffic carried on the agreed services. The aeronautical authorities of each Party shall provide or cause its designated airline or airlines to provide the aeronautical authorities of the other Party, upon request, periodic or other statements of statistics as may be reasonably required.

Article 31 Consultations

1. Any of the Parties may at any time request consultations on the interpretation, application, implementation, amendment or enforcement of this Agreement.
2. Such consultations will begin within thirty (30) days from the date in which the other Party receives a written request, unless the Parties agree otherwise.

Article 32 Dispute resolution

1. If a dispute arises between the Parties concerning the interpretation or application of this Agreement, except those that may arise in relation to Article 8 (Safety) and Article 9 (Security), the aeronautical authorities will attempt to solve it first through consultations and negotiations between them.
2. If the Parties fail to reach an agreement through consultations and negotiations between the aeronautical authorities, they will try to resolve the dispute through diplomatic channels.
3. If the dispute cannot be settled through diplomatic channels, the dispute shall, at the request of either Contracting Party, be referred to AFCAC, to LACAC or to a person or body for decision by agreement of the Parties (Mediation).

Article 33 Amendments

Any Party may propose to the Depositary one or more amendments to the provisions of this Agreement. If negotiations are needed, the Party proposing the amendment will host such meetings and the Depositary will advise the Parties about the time and place of the meeting, at least sixty (60) days in advance. All Parties may participate in the negotiations. The amendment(s) will enter into force only after being accepted by all the Parties. The acceptance of the Parties shall be made through writing notification to the Depositary.

Article 34 Registration with ICAO

The Depositary will register this Agreement and any amendment thereto before the International Civil Aviation Organization.

Article 35 Withdrawal

1. Any Party may withdraw from this Agreement by giving written notice of withdrawal to the

Depository who shall within fifteen (15) days of receipt of the notification of withdrawal notify the other Parties.

2. The withdrawal shall be effective twelve (12) months after receipt of the notice by the Depository, unless the Party withdraws its notice by written communication to the Depository within the 12-month period.

Article 36 Depository

1. The original of this Agreement will be deposited with the Latin American Civil Aviation Commission (LACAC), which shall be the Depository of this Agreement.
2. The Depository will send certified copies of the Agreement to all the Parties of the Agreement and to all the States that might subsequently adhere to it, that is, to all LACAC and AFCAC States.

After the entry into force of this Agreement, the Depository will send to the Secretary General of the United Nations a certified copy of this Agreement for purposes of registration and publication pursuant to Article 102 of the Charter of the United Nations; and to the Secretary General of the International Civil Aviation Organization, in accordance with Article 83 of the Convention. The Depository shall also send to the cited international officials a certified copy of every amendment that enters into force.

The Depository will make available to the Parties a copy of any relevant decision issued in accordance with Article 32 (Dispute Resolution) of this Agreement.

Article 37 Reservations

This agreement does not accept reservations.

Article 38 Signature and Ratification

1. This Agreement will be open for signature by the Governments of the States of the Latin American Civil Aviation Commission and by the Government of the States of the African Civil Aviation Commission.
2. This Agreement will be subject to ratification. The instruments of ratification will be deposited with the Depository.

Article 39 Accession

Once this Agreement enters into force, any member State of the Latin American Civil Aviation Commission and of the African Civil Aviation Commission may accede to this Agreement by depositing an instrument of accession with the Depository.

Article 40
Entry into force

1. This Agreement will need to be ractified by at least three (3) Member States of LACAC and three (3) Member States of AFCA to be in force. The entry into force will be thirty (30) days from the date of deposit of the ractification which completes that miminum required.
2. The Depositary will inform each Party of the date of entry into force of this Agreement.
3. Upon entry into force this Agreement will superseed existing bilateral agreements between any Parties, except more favourable provisions of such agreements, which shall prevail.

DRAFTED in,, on 20....., in Spanish, Portuguese,English, and French languages and signed on this date, by the following Member States:



REPUBLICA ORIENTAL
DEL URUGUAY

MINISTERIO
DE TRANSPORTE
Y OBRAS PÚBLICAS

SECRETARÍA

Montevideo, 28 de mayo de 2014.

SEÑOR SECRETARIO DE LA COMISION LATINOAMERICANA DE AVIACION
CIVIL

Ec. Marcos Ospina Yopez

P R E S E N T E.

En nombre de la Junta Nacional de Aeronáutica Civil de Uruguay, tengo a bien informar que este Organismo ha entendido beneficioso para la Región que componen los Estados de la Comisión Latinoamericana de Aviación Civil (CLAC), la iniciativa de negociar un Acuerdo Multilateral de Cielos Abiertos con los Estados Miembros de la Comisión Africana de Aviación Civil (CAFAC).-

Uruguay como integrante del Grupo Ad Hoc encargado de examinar el texto de la propuesta, junto con Brasil y Chile, brindará su aporte al referido Grupo, en el entendido de que es necesario aunar esfuerzos que permitan implementar y aprovechar las potencialidades de las regiones, lo que también otorgará la posibilidad de generar lazos más amplios y apoyo mutuo entre ambas Comisiones.

Aprovecho la oportunidad para saludarle con mi más alta consideración.

ENRIQUE PINTADO
MINISTRO DE TRANSPORTE Y OBRAS PÚBLICAS
PRESIDENTE DE LA JUNTA NACIONAL DE
AERONÁUTICA CIVIL



"Decenio de las Personas con Discapacidad en el Perú"
"Año de la Promoción de la Industria Responsable y del Compromiso Climático"

Lima, 29 MAYO 2014

OFICIO N° 534 2014-MTC/12

Señor
MARCO OSPINA YÉPEZ
Secretario de la CLAC
Presente.-

Ref.: Carta CLAC 1.5.3.32/103

Tengo a bien dirigirme a usted, con relación al documento de la referencia, mediante el cual se solicita emitir comentarios respecto al Proyecto de Acuerdo Multilateral de Cielos Abiertos entre los Estados Miembros de la CLAC y la CAFAC."

Sobre el particular, esta Dirección General adjunta un anexo en el cual se encontrarán las observaciones y/o sugerencias al texto antes mencionado.

Sin otro particular, quedo a su disposición.

Atentamente,

Javier Hurtado Gutiérrez
Director General de Aeronáutica Civil (e)



ANEXO

COMENTARIOS AL PROYECTO DE ACUERDO MULTILATERAL DE CIELOS ABIERTOS ENTRE LOS ESTADOS MIEMBROS DE LA CLAC Y CAFAC

- El texto propuesto no permite a los eventuales Estados Parte formular "Reservas" (ver Art. 37) y habida cuenta que con su suscripción las aerolíneas designadas de todos los Estados Miembros de CLAC y CAFAC podrían ejercer derechos de 3ª, 4ª, 5ª y 6ª libertad del aire en todas sus rutas aéreas, sin ninguna limitación geográfica –como lo señala el Art. 2 del proyecto (en ninguna parte se distingue entre servicios "intrarregionales" y "extrarregionales"); en dichos términos, el proyecto de acuerdo resultaría inconveniente a los intereses aeropolíticos del Perú.
- Con respecto al proyecto en sí, cabe indicar lo siguiente:
 - a) El Art. 2 "Otorgamiento de Derechos", inciso 1 al referirse exclusivamente al "derecho a proporcionar servicios no regulares, esta frase no se condice con el resto del párrafo que alude a "frecuencias" ni con todo el resto del proyecto de acuerdo, por lo que se sugiere el análisis de dicha posible contradicción.
En el inciso 2 del mismo artículo –como ya se ha observado en otros acuerdos suscritos por el Perú- se autoriza a publicitar como "servicios directos", aquellos que se realizan con cambio de avión, con o sin conexión. Este texto no es acorde a lo establecido en el Artículo 91º inciso a) de la Ley 27261, Ley de Aeronáutica Civil del Perú.
 - b) El Art. 3 "designación y Autorización", inciso 1, reitera la costumbre consignada en muchos ASAs, en el sentido de que la comunicación de las designaciones de las aerolíneas, debe hacerse por "canales diplomáticos". En posición facilitadora rescatable ya manifestada por nuestra Cancillería, resultaría innecesario usar "canales diplomáticos" para este fin, siendo suficiente que tal comunicación sea hecha entre Autoridades Aeronáuticas, directamente por escrito.
 - c) En el Art. 18 "Leyes sobre la competencia", no resultan pertinentes los incisos 4, 5, 6, 7 y 8, por cuanto limitan o condicionan el ejercicio del derecho soberano de los Estados a aplicar sus propias leyes dentro de su territorio, así como el ejercicio de la autonomía, funciones y atribuciones jurisdiccionales de nuestros tribunales.
 - d) En el Art. 21 "Personal no nacional y acceso a los servicios locales", se recomienda ajustarlo al texto del primer párrafo, en el sentido que quede claro que la admisión de trabajadores extranjeros, queda sujeta y subordinada a las leyes y reglamentos laborales vigentes en cada Estado.
 - e) El Art. 31 "Consultas" debería precisar que dichas consultas serán hechas entre Autoridades Aeronáuticas.
 - f) El Art. 36 "Depositario", no guarda relación o conexión con el texto del Art. 39 "Adhesión". Adicionalmente se hace notar que se hace referencia a la eventual adhesión –solo de estados CLAC-, cuando dicha materia ya se encuentra regulada en el Art. 39.
 - g) Se reitera lo señalado en el primer párrafo del anexo con respecto a lo establecido en el artículo 37.
 - h) Finalmente, se recomienda que no menos del 50% de los Estados de cada organismo debiera ser un mínimo aceptable para la entrada en vigencia del referido acuerdo (Art. 40 "Entrada en vigencia").