

**MULTILATERAL TRADE  
NEGOTIATIONS  
THE URUGUAY ROUND**

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Group of Negotiations on Services

WORKING GROUP ON TRANSPORT SERVICES  
(Air Transport Services)

Note on the Meeting 5-6 July 1990

1. The Chairman welcomed delegations to the first meeting of the working group on air transport services in the context of the GNS. He recalled that the purpose of the meeting was to arrive at a better understanding of the specificities of the air transport sector and any elements that might need to be taken into account in the application of the general framework on trade in services. To set the stage for the working group's discussions, he asked the secretariat to briefly recall the various stages of GNS deliberations so as to allow sectoral experts to gain a better understanding of the reasons which have led the GNS to focus now more specifically on sectoral consultations.

2. The Chairman said that he intended to first open the floor to a general discussion of delegations' perceptions of the main issues that may need to be addressed by the working group and of any ideas on the possible results which group members might want to achieve in their work. He would then proceed to an examination in the air transport sector of each of the concepts, principles and rules agreed to by Ministers at the Montreal Mid-Term Review. These were: transparency, progressive liberalization, national treatment, m.f.n./non-discrimination, market access, increasing participation of developing countries, safeguards and exceptions, and regulatory situation.

3. The representative of the United States recalled that his delegation had in MTN.GNS/W/64 examined the implications and applicability for the transportation sector of the concepts, principles and rules contained in the Montreal Declaration. He said that the transport sector was one which posed particular problems for many countries, problems which his delegation's submission had attempted to explore. He noted that his delegation was interested in liberalization in the air transport sector. His country had deregulated its domestic market and had fought hard for more liberal bilateral agreements. He indicated that his delegation had addressed a number of difficult market access issues through bilateral agreements and felt that such an approach had yielded beneficial results. He noted that the air services sector was often characterized in countries' domestic markets by national security considerations and that flag carriers were often the expression of national sovereignty. The principle of sovereign control over a country's airspace posed particular difficulties for the application of some of the Montreal concepts, among which national treatment, market access and m.f.n./non-discrimination. His delegation had

indicated in its earlier submission the need to consider carefully existing international arrangements, in particular the International Civil Aviation Organization (ICAO) Convention. He felt that the July 1989 sectoral testing exercise had shown that many countries were concerned by the difficulties of applying the Montreal concepts to the current bilateral regime. Delegations would have to consider the precise scope of the bilateral system, in particular whether it covered merely hard rights or whether it encompassed soft rights. As well, the definitional question of where to draw the line between hard and soft rights needed further consideration. The core of the latter issue related in his view to that of dispute settlement, which was a central feature of bilateral agreements but whose contents in a future GATS had yet to be agreed. He noted that in spite of the various difficulties which he had just singled out, the United States had not taken a decision on the coverage of the sector under a future framework on trade in services.

4. The representative of Sweden, on behalf of the Nordic countries, said that although group members did not yet have a draft framework, on, he was quite convinced that there would be need for an annotation on air transport services. The discussion at this first meeting on air transportation should concentrate on an examination of aspects that were particular to this sector, noting that when the draft framework became available at the end of July 1990 all delegations would have an opportunity to compare the issues raised at the current meeting with the framework text in order to determine what specific provisions were needed in an air transport annotation. He said that the Nordic countries, in line with the Montreal Ministerial decision were working on the assumption that all tradeable services in all sectors should be covered by the framework. He recognized that air transportation and related services were at present regulated in various ways. Special arrangements would therefore be needed to ensure that a liberalization of air transport services did not create disruptive effects on air traffic. For example, in regard to congestion, he noted that liberalization would contribute to the establishment of new and expanded air services. Consequently, there should be mechanisms to ensure that sufficient air space and airport capacity was available to accommodate increased traffic volumes. Mechanisms should also be instituted to ensure that a liberalization of air transport services did not lead to lower safety and security standards. The importance of noise and environmental regulations was likely to increase and must not be neglected. Non-discriminatory access to computer reservation systems (CRS) would as well require the observance of an internationally agreed CRS code of conduct. He recognized each country's right to regulate on a non-discriminatory basis and noted that in some cases the harmonization or recognition of standards might be a pre-requisite for liberalization. He noted in addition that a possibility for airlines to take care of ground handling for their own passengers and cargo services, when circumstances so allowed, would be an important factor when assessing the value of other liberalization measures. The Nordic countries suggested therefore that the working group explore ways to approach liberalization in this sector. Mention had been made, for example, about Canadian ideas on a formula approach. A first step could be to aim for liberalization commitments in certain auxiliary air transport services to be defined, noting that other

means of pursuing liberalization could of course be envisaged in the sector.

5. The representative of Korea said that his delegation broadly endorsed the Montreal Ministerial Declaration that no service sector should be excluded on an a priori basis from the coverage. However, considering the unique feature of bilaterally-determined traffic rights in the air transport sector, his delegation felt that it was more desirable that the application of some provisions of the multilateral framework, such as m.f.n., should be reserved on for the time being. His delegations felt nonetheless that the liberalization of ancillary services, such as access to computer reservation systems, ground handling, etc., should be pursued in a progressive manner depending on the level of development of individual countries' air transport sector, airport capacity as well as national security considerations.

6. The representative of Switzerland said that his delegation favoured an agreement on trade in services with the broadest possible coverage and with strong rules. The agreement, indeed, should apply to all sectors, including air transport, and encompass all forms of market access. His delegation felt nonetheless that the specificities of the air transport sector would no doubt require a sectoral annotation. A progressive approach to liberalization in the sector seemed appropriate, starting with so-called "soft rights", where the application of the m.f.n. principle raised fewer difficulties. The progressive liberalization of air transport services was a trend which his delegation endorsed so long as all countries were engaged in the same process. Liberalization had to be multilateral and universal. Due attention would need to be given in the context of liberalization to the physical and/or infrastructural constraints encountered in the sector: airport capacity, slot allocation, environmental concerns, etc.

7. The representative of Japan recalled that the Chicago regime in civil aviation, which consisted of the Chicago Convention and the web of bilateral agreements between countries, had worked effectively and equitably for more than forty years on a worldwide basis. He felt that the existing regime was most appropriate to the development of the international civil aviation industry as it catered well to both the technical complexities and the differences in countries' capacities in the sector. He indicated that his delegation had come to no conclusion in regard to the possible inclusion of air transport services under the multilateral framework. His delegation felt nonetheless that principles such as m.f.n. and national treatment were incompatible with the ways in which the civil aviation sector operated.

8. The representative of the European Communities said that his delegation had been examining the scope for multilateralism in the air transport sector in the wake of the Montreal Ministerial Declaration and by taking due account of the aero-political environment currently applying in the international civil aviation sector. A trend towards more globalization was clearly visible in the air transport sector and provided another reason to examine carefully the scope that might exist for a

multilateral approach to certain economic and commercial issues in the sector. His delegation was of the view that many of the concepts under discussion in the GNS were partly or fully applicable to air transport and related activities. At the same time, his delegation felt that sectoral annotations might be necessary to handle some of the more difficult issues encountered in the sector, such as the allocation of air traffic rights and its link to the m.f.n. principle.

9. The representative of Egypt said that the absence as yet of an agreed multilateral framework complicated the work of the group. For this reason, there would be a need in the view of his delegation for the working group to hold further meetings once the framework was in place. A second difficulty stemmed from the fact that the air transport sector was already covered by a complex web of international and bilateral agreements. A member of the Egyptian delegation recalled that the air transport sector was governed by a strict regulatory framework under the auspices of the ICAO. He noted that the current bilateral system had prevailed since the Chicago Convention was signed in 1944. Egypt, for example, had concluded ninety bilateral agreements with countries from around the world. He noted that the Chicago Convention, which remained virtually unchanged after forty six years, established the structure of the ICAO and laid out a set of public international rules and principles covering the technical aspects of air navigation as well as some economic aspects of the international air transport system. One of the main tasks of ICAO's Council was to adopt standards and recommended practices in all technical aspects of international civil aviation. He recalled that the eighteen annexes to the Convention which had been adopted during ICAO's life span ensured the standardization and unification necessary for the conduct of international civil aviation operations. These detailed and flexible technical annexes had accommodated to date the dynamic technological changes which had marked the development of international civil aviation through the years. The liberalization policy initiated by some countries during the latter part of the 1970's had had some effect on the activities of the IATA as a rate-fixing machinery. The crisis faced by IATA had prompted ICAO to fill a gap and to take on certain economic and commercial functions as envisaged in the Chicago Convention. ICAO had to date convened three air transport conferences to deal with the evolving regulatory environment, in 1977, 1980 and 1985. ICAO's latest Assembly in October 1989 had called for the convening of a fourth conference to address, inter alia, the current GNS negotiations on trade in air transport services. He felt that the preceding activities revealed that ICAO was progressing in the direction of liberalization, noting that one of the main questions to address in the working group was that of the coordination of activities between ICAO and a future GATS. He recalled, as well, the efforts made by a number of regional civil aviation bodies, such as European Civil Aviation Conference, the African Civil Aviation Commission, as well as the Arab Civil Aviation Council, noting that the work of these organizations would also need to be coordinated with the results of the group's work.

10. The representative of Canada said that his delegation believed that all services should be covered by the multilateral framework and that no service activities, whether current or future, should be excluded. His

delegation's conclusion from last year's sectoral testing exercise was that air transport services could be brought under a framework and be considered for progressive liberalization. The framework should provide the needed disciplines and provide the mechanism with which to liberalize the air transport sector. His delegation recognized at the same time that air transport was highly regulated and governed at the international level by an existing set of bilateral agreements. Such features gave rise to the need for some annotations in a general framework and some derogations from basic obligations. These, however, should be kept to an absolute minimum. As to areas for future liberalization, he indicated that so-called hard and soft rights had no clearly understood definition. His delegation saw merit in concentrating on so-called auxiliary services and agreed with the Nordic countries' delegation that a formula approach could be applied to some segments of the air transport sector. There could thus be a commitment by all parties to an agreed level of liberalization in one or more sectors.

11. The representative of Australia said that her delegation's objective for this meeting was to ensure that as many areas of aviation services as possible be covered by the multilateral framework; in particular doing business/ancillary services. Her delegation hoped that provision could be made for scheduled international airline services to be exempt from the m.f.n. and market access provisions of the framework, either by the preferred means of reservations or, if necessary, by use of a sectoral annotation providing for a derogation from m.f.n. treatment. She also hoped that provision be made for any sectoral annotation to be periodically reviewed. She recalled that it was the view of her delegation in the GNS that reservations could be lodged against the m.f.n. principle, noting that such an approach had considerable merit so long as reservations were used in extremely limited circumstances. Her delegation was also seeking a dynamic framework for expanding trade in services under conditions of progressive liberalization. The participation of developing countries would, under this approach, be negotiated on a flexible basis in accordance with each countries' development situation. She did not believe that advanced developing countries with highly developed aviation sectors should be accorded treatment any more favourable than that accorded to developed countries. Her delegation's preferred route to progressive liberalization was through a negative list/reservation approach to national schedules, one which Australia had adopted in the context of its bilateral agreement with New Zealand. Her delegation did however accept that sectoral annotations might be necessary in some areas, among which civil aviation. The need for any such annotations should be kept to a minimum and take the form of clarifying or elaborating the framework's provisions.

12. The representative of Hungary recalled that her country enjoyed all the benefits - as well as the drawbacks - of being a centrally-located country. As such, the country's transit role differed from one transport mode to another. While her country did not suffer from air transport congestion, access problems were nonetheless encountered in view of the lack of technical facilities and associated infrastructural shortcomings. Due account should be taken of differences in countries' available facilities when discussing the scope for air transport liberalization. Not all countries had the infrastructural base required for adopting and

profiting from a more liberal air transport regime. Her country nonetheless welcomed the opportunity of introducing more competition in the civil aviation sector. Her delegation's belief was that a framework should cover all service sectors in principle. She recalled that earlier attempts at pursuing a multilateral approach to air transport liberalization had encountered significant difficulties and hoped that the working group could help in shedding light of the possible ways of overcoming such difficulties. The working group would need to take due account in its deliberations of the body of knowledge and expertise found in organizations such as ECAC and ICAO.

13. The representative of Singapore said that his delegation shared the aspiration of seeing as many of the GNS principles apply to air transport as possible. Singapore was very encouraged by the commitment of the major developed countries to make progress in the air transport sector using these principles. While a lot had been achieved in the past through international organizations such as ICAO, his delegation felt that the civil aviation sector was still very much constrained by the existing bilateral system. Numerous restrictions applied on a bilateral basis and the system was not entirely conducive towards the global expansion of civil aviation services trade. He felt that the working group had to recognize the fundamental structural changes that had taken place in the aviation industry since the initiation in 1978 of the deregulation of the United States' domestic airline market as well as in the wake of the considerable impetus given to air transport liberalization within the European Community during the last few years. The commitment of the EC to the creation of a single aviation market by the end of 1992 was testimony to the fact that, notwithstanding the existing bilateral regime, the progressive liberalization of air transport services could be achieved. The trend toward the privatization of airlines implied a reduced role for governments and the trend toward cross-border or transnational alliances among airlines would accelerate in the future. Fundamental shifts were also taking place in regard to distribution systems, particularly in view of the development of ever more sophisticated computer reservation systems. All these changes were diluting the efficacy of the current bilateral regime. He urged that countries participating in the working group not be enslaved by the current international regime. Flexibility and creativity would be required to adopt to these changing realities. He recognized that there were difficulties with the application of some GNS principles but felt that they could be resolved in the working group during the coming months or years. There should, however, be a clear commitment to a process of maximum liberalization in the air transport sector. He felt that existing international organizations such as ICAO had an obvious role to play in a more liberal environment and hoped that cooperative arrangements could be envisaged between a future GATS, ICAO and other relevant civil aviation bodies. He said that the ICAO had served a very useful purpose for multilateral arrangements, particularly with regard to legal, safety and other technical issues. The ICAO had not however been as effective as his delegation would have liked in regard to economic issues. For this reason, his delegation saw the current process as offering a unique opportunity for investigating the means to set in motion a process of progressive air

transport liberalization which would be of benefit to the world economy in the years ahead.

14. The representative of China felt that air transport was not a traded service in the normal sense of the word, noting that the particularity of the sector was brought out in Articles 1 and 7 of the Chicago Convention. He recalled that Article 1 stipulated that every country had complete and exclusive sovereignty over the airspace above its territory. Article 7 for its part stipulated that every country had the right to refuse permission to the aircraft of other countries 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 country undertook by virtue of Article 7 not to enter into any arrangements which specifically granted any such privilege on an exclusive basis to another country or an airline of any other country. International air transport played a vital role in maintaining and enhancing relations among countries and in promoting world trade and the movement of personnel. The air transport sector involved not only national commercial interests but was also a key component of countries' political and diplomatic relations. He recalled that there were some two thousand bilateral air transport agreements and noted that the move to a multilaterally-based system would pose a number of legal and sovereignty-related difficulties which might prove impossible to resolve were the sector to be treated like other areas of trade in services. The development and utilization of territorial airspace was for many countries subject to national security considerations. ICAO was the U.N. specialized agency with 162 contracting states. It was an efficient international body whose role was highly recognized on a worldwide basis. A series of multilateral agreements and conventions had been established in the civil aviation field under the auspices of ICAO. Adherence to such instruments had entailed unified air transport technical standards, harmonious legal coordination, and the development of civil aviation in a safe, efficient and regular manner. A number of ICAO member countries had expressed at the organization's latest Assembly in October 1989 their serious concern over the inclusion of the civil aviation industry in a trade in services framework. His delegation shared this concern, and it was premature to include a sector as complex as civil aviation under the coverage of such a framework. Further study by the relevant experts and organizations would be required on the potential conflicts between a future framework on trade in services and the existing regime governing civil aviation at the bilateral and multilateral levels.

15. The representative of Brazil said that the examination of the applicability of GNS concepts, principles and rules took on a different perspective in the air transport sector given the complexity of the current regulatory regime. He saw a need for caution when examining the scope for an annotation in the sector, particularly in view of the fact that an agreed multilateral framework had yet to emerge from GNS deliberations. Despite its great complexity, the current international regime governing civil aviation was functional. He expressed a strong desire for seeing existing agreements respected in the sector and felt that it was essential to ensure that the current process did not undermine the obligations that existed under the current bilateral regime. It might be possible under a

positive list approach to liberalization for some countries to show a readiness to make some concessions in the air transport sector. He recognized however that this might prove difficult for a large number of countries for quite some time and noted that even countries willing to undertake commitments in the sector might have difficulties in pursuing liberalization on an m.f.n. basis. Such difficulties, nonetheless, should not be an excuse to modify the m.f.n. clause in a future GATS, and work on sectoral annotations should not result in modifications to the obligations of the framework. He said that the need for an annotation in the air transport sector would depend to some extent on the modalities of liberalization that are agreed under the framework.

16. The representative of Mexico felt that the ongoing discussion had revealed the great complexity - in regulatory, technical and legal terms - of the air transport sector and agreed that group members should exercise caution in drawing up an annotation for the sector. His delegation favoured an approach which excluded no service sectors from the scope of coverage of the multilateral framework. He agreed that the existing international regime functioned well and that the application of principles such as m.f.n. or national treatment would pose real difficulties in the sector. He emphasized the importance both of respecting existing international agreements and ensuring a proper coordination between a future trade in services framework and the activities of existing international aviation bodies. It would be important for the group to take up the questions of definition and scope in its discussions since the air transport sector involved many related areas of activity which needed to be clearly delineated.

17. The representative of the ICAO noted that the issue of trade in services was one of the main items on the current work agenda. He said that ICAO had an open mind on the issues of trade in services and the liberalization of air transport. He admitted however that these issues raised widespread concerns. The major preoccupation of ICAO was of ensuring that the existing air transport system was not disrupted, a preoccupation which related to issues such as safety and security, airport and air traffic congestion, noise restrictions, etc. The overall spectrum of issues which ICAO was looking after consisted of technical, regulatory and economic matters. He noted that the deliberations of the group would probably not deal with technical issues such as future air navigation systems, microwave landing systems, collision avoidance systems, etc. He noted that the working group would inevitably address regulatory and economic matters. In doing so, it would confront the issue of so-called hard and soft rights, in regard to which it was most difficult to draw clear distinctions. He fully subscribed to the calls for caution and prudence in regard to the application to air transport services of trade liberalizing concepts, principles and rules.

18. The Chairman opened the floor to a discussion of the concepts, principles and rules agreed upon by Ministers at the Montreal Mid-Term Review, starting with the concept of transparency.

19. The representative of the European Communities said that full transparency was required, noting that it was one of the main ingredients of a successful multilateral approach. It was perhaps premature to decide whether or not transparency provisions which were specific to the air transport sector would need to be developed in an annotation covering the sector. This question needed to be examined further in the light of a clearer understanding of the contents and structure of sectoral annotations.

20. The representative of the United States said that his delegation favoured the adoption of strong transparency obligations. The practice in the United States in civil aviation not only met, but probably went further, than any transparency obligations envisaged in the GATS. The US operated a system which allowed foreign service providers with an opportunity to comment on -and affect the outcome of- rule making. Even a concept as simple as transparency might pose difficulties to some countries. He recalled that a number of countries had not filed their bilateral agreements with ICAO. There was as well the issue of confidential side agreements in the sector. Transparency concerns were relevant when considering matters relating to computer reservation systems as well as the sensitive issue of state subsidies for national airlines.

21. The representative of Switzerland recalled that his delegation's submission on a draft multilateral framework (MTN.GNS/W/102) addressed the issue of transparency in of Article 7. His delegation strongly supported the quest for real transparency in the services area and felt that transparency provisions should be extended to all that was contained in existing bilateral agreements. There was a need for being somewhat more guarded in regard to arrangements of a private nature between designated international airlines.

22. The representative of Australia said that her delegation had no difficulty with transparency provisions which required the publication by governments of all laws and regulations governing services trade in the aviation or other sectors. Her delegation nonetheless strongly preferred that there not be a requirement that all information be sent to all parties of the framework. Information should rather be made available upon request through national enquiry points. As the wishes of other governments had to be respected, it might not be possible at this stage to undertake the firm commitment of applying transparency provisions in full to confidential arrangements. She was interested in knowing whether other delegations had concerns on this matter and whether there would be a need for a confidentiality provision in the framework's transparency clause.

23. The representative of Egypt said that his delegation had no objections in regard to the concept of transparency, but was concerned by the fact that the air transport sector was both complex and highly regulated, impacting on such areas as customs, immigration, security, financial regulations, criminal law, labour organizations, etc. There was as well a cost element to the issue of transparency which required further consideration. He wondered who would serve as the depository organization in regard to the implementation of a transparency provision applying to the

sector. He felt that the issue of confidential side agreements raised a number of questions which were far from being resolved.

24. The representative of ICAO said that Article 83 of the Chicago Convention dealt with transparency by requiring contracting states to register new agreements and arrangements with ICAO. He indicated that some two thousand bilateral agreements among ICAO members had been notified to the organization. ICAO had developed a data bank of codified bilateral agreements which was available to member states. ICAO had also developed models of bilateral tariff and other clauses which provided guidance for member states. ICAO had also developed some guidance material on the regulation of computer reservation systems which might soon be transformed into a code of conduct that would increase transparency in the sector.

25. The Chairman opened the floor to a discussion of the concept of progressive liberalization.

26. The representative of the United States pointed out that the bilateral system had been used by his country to achieve a progressively higher level of liberalization with as many countries as possible in the air transport sector and had allowed for developing country needs in the sector to be taken into account. It had also allowed the United States to seek liberalized market conditions in the areas of ground handling and other soft right areas. He felt that the key questions to address related to the extent to which progressive liberalization in the GATS context would proceed, what it would evolve into, how fast it would occur and how it might compare to the existing system. Returning to transparency, he felt that it bore mentioning that many countries had concerns regarding the protection of air transport against unlawful acts. He felt that these were measures of state sovereignty which most countries would acknowledge as being outside the purview of transparency provisions.

27. The representative of the European Communities felt that progressive liberalization could be considered at various levels. It could for instance be looked upon at the domestic level, recalling that the EC had initiated in 1987 some form of progressive liberalization, a process which the Council of Transport Ministers had recently agreed to carry further with a view to achieving by 1993 a single aviation market within the Community. A second level related to negotiations between bilateral trading partners. He noted that the bilateral regime showed a mixed record as regarded the achievement of progressive liberalization. What was essential in his delegation's view, was to look at the concept of progressive liberalization in a multilateral context, noting however that the precise meaning of the concept in such a setting was not clear enough. It would be necessary to establish guidelines on this matter.

28. The representative of Hungary said that her delegation favoured a truly multilateral approach to the progressive liberalization of air transport services, as opposed to one which involved only a limited number of countries on a plurilateral basis. She emphasized that progressivity was of the essence and hoped that the liberalization process could encompass all fields of civil aviation, including cabotage and fifth

freedom rights. The progressive liberalization of third and fourth freedom traffic rights should also be envisaged, as well as interregional air transport.

29. The representatives of Japan and Thailand felt that a multilateral approach to the progressive liberalization of air transport services was not defined clearly enough. Air transport was subject to sovereignty considerations and bilateral negotiations on the allocation of international air routes depended on a variety of supply and demand considerations as well as on the capacity of airports and air routes which varied among countries. It was unclear whether a multilateral approach to liberalization was a feasible or practical option to pursue in the sector at this stage.

30. The representative of Sweden, on behalf of the Nordic countries, said that his delegation was studying with great interest the liberalization process currently underway in the European Community and shared the views expressed earlier by the EC delegate on the need for a multilateral approach to progressive liberalization in the air transport sector.

31. The representative of Egypt wondered how progressive liberalization could be pursued on a multilateral basis in regard to third and fourth freedom traffic rights given that both were exchanged on a bilateral basis between two given countries. He noted that fifth and sixth freedom rights were exchanged on a multilateral basis. He asked whether there would be a need for the working group to redefine the basic freedoms of the air in light of the introduction of a multilateral approach to progressive liberalization, suggesting that further study was required on this matter.

32. The representative of Singapore felt that group members should not be constrained by infrastructural difficulties when addressing progressive liberalization. What was important in his view was the commitment of participants to the principle of progressive liberalization, whatever the immediate congestion or facilities problems might be. The latter problems could be solved by appropriate governmental measures aimed at improving existing infrastructural situations. It was important that the working group endeavour to identify specific areas of civil aviation where an impetus to progressive liberalization could be given with a view to making the process multilaterally operational. He sought further clarifications on the European Community's process of progressive liberalization in the aviation field.

33. The representative of the European Communities noted that the EC's internal move towards a more liberal approach to market access issues such as capacity, fares and routes was not fully comparable with the approach that the working group had to have in mind in addressing liberalization matters in a multilateral context. He was doubtful whether the approach taken within the Community could be simply copied in a multilateral context. A number of neighbouring countries had expressed an interest reaching bilateral agreements with the EC on the application of its internal aviation policy. In discussing a multilateral approach to progressive liberalization, it was important to ensure that the work of the

group did not make it more difficult to pursue liberalization on a regional basis. There should not, in other words, be a conflict between regional and multilateral liberalization. He said that the practical means of achieving progressive liberalization on a multilateral basis were still in his view not entirely clear. The idea of setting up a list of issues in regard to which progressive liberalization undertakings might be envisaged was worthy of pursuit. It was essential that the working group gain a common understanding of what the progressive liberalization of the air transport sector would mean in a multilateral setting.

34. The Chairman opened the floor to a discussion of the concept of national treatment.

35. The representative of the United States recalled that national treatment was one of the fundamental principles agreed upon at the Mid-Term Review and therefore needed to be examined carefully in the air transport sector. He noted that the application of national treatment in civil aviation raised a number of problems, both domestically and internationally. Domestic air transport services were restricted - in the United States as in many other countries - to the flag carriers of countries, a situation which was totally incompatible with national treatment. The reservation of domestic transport to the national flag carriers was in many countries, including the United States, linked with certain essential national security requirements. There was a civil reserve air fleet in the United States which was required to be mobilized in times of military or other emergencies. Effective control over airline companies was therefore required to this end. He noted, however, that citizenship requirements for pilots were not demanded in the United States nor were any restrictions applied to the products used by airlines. Another aspect that needed to be considered in the context of domestic air transport was that of sovereignty of airspace as well as the first and second freedoms of the air. One of the few instances where national treatment was provided on a multilateral basis was in the International Air Services Transit Agreement, with certain exceptions for the security requirements of countries. He noted that not all countries participating in the GNS were parties to this agreement. He said that under the Chicago Convention, flag state jurisdiction of the airline was recognized in terms of environmental and safety standards. While a strict application of national treatment would interfere with flag state jurisdiction, he was unsure whether it was the intention of the GNS to apply its disciplines to issues relating to safety and environmental matters. In the context of international air transport, the difficulty of national treatment was twofold. There was, firstly, the definitional question of whether the bilateral system was a derogation of m.f.n. and national treatment. Secondly, it could be that in regard to market access/ground handling issues, national treatment might not in itself be a sufficiently powerful liberalizing tool. The right of carriers from very liberal countries to self handle their operations could be denied in foreign markets under conditions of national treatment. He felt that the preceding examples highlighted the fact that what could appear as relatively simple GNS principles revealed great complexities when examined in the air transport sector.

36. The representative of Japan said that the sovereignty of countries over their airspace was a long established principle in the field of international civil aviation, a principle he saw no need to abandon. The establishment of airline companies or cabotage should be reserved for nationals. His delegation felt that the concept of national treatment was basically incompatible with the operation of the civil aviation sector.

37. The representative of Australia said that her delegation regarded the obligation to provide national treatment as only applying once market access had been granted. Her delegation would have no difficulty in complying with the requirement to treat foreign suppliers no less favourably than domestic suppliers.

38. The representative of the European Communities agreed to the need for distinguishing domestic from international air transport services when analysing the meaning of national treatment provisions in the sector. The strict application of national treatment to domestic air transport services would mean that countries would have to grant cabotage rights to foreign airlines. His delegation had some reservations as to the feasibility and reasonableness of such an objective at this stage. Turning to international aviation, he agreed that the application of national treatment might not, per se, yield effective results in market access terms. The application of national treatment also raised problems in regard to the allocation of traffic rights. He urged group members to develop a clearer understanding of the precise meaning of national treatment when applied to the aviation sector on a multilateral basis.

39. The representative of India said that national treatment was not an obligation but was dependent on the prior granting of market access. He noted as well that market access would be available through negotiations and be subject to conditions of entry and operation. If all three factors were taken into consideration, then the application of national treatment may not pose any inherent contradiction with the framework.

40. The Chairman invited comments on the concept of m.f.n./non-discrimination.

41. The representative of the European Communities said that national treatment and m.f.n./non-discrimination were probably the most important principles to be established in a General Agreement on Trade in Services. The application of non-discrimination in international aviation would be difficult, because international aviation was regulated through a bilateral system almost entirely based on reciprocity. Bilateral agreements could exist between liberal partners, or between liberal partners and those with other priorities. Bilateral air services agreements did not lend themselves to immediate and unconditional application of non-discrimination. Therefore, his delegation had reservations regarding the possibility of applying the non-discrimination principle immediately and unconditionally to commercial traffic rights. On the other hand, its application could be envisaged to a number of related activities which were essential for doing business.

42. The representative of the United States agreed with the Community regarding the application of m.f.n. and the bilateral system to hard rights. However, questions arose as to where the line should be drawn between hard rights, soft rights and something called "doing business", or "ancillary services". The United States had pointed out (MTN.GNS/W/54) that its bilateral agreements contained provisions on all aspects of aviation services: ground site handling, access to airports, slots and computer vendors, and so on. He was not sure whether it made sense logically or as a means of liberalization to separate two essential parts of the aviation world. One could ask, for example, where the line lay between hard and soft rights. What good was a route or a gateway if the aircraft had no landing slot when it arrived? What good was a landing slot if an airline had no counter space to handle passengers, or if it had only discriminatory cargo and baggage handling services available to it? What good was non-discriminatory or even reciprocal access to ground services if the airline could only sell tickets through its local national competitor's agents and if it could not publish schedules, purchase advertising, open offices, market and operate transportation services, and spend or repatriate its earnings? In some of their public documents the Community recognized the fact that there might be times when soft and hard rights needed to be linked and times when they did not. If an annotation with a derogation from m.f.n. was going to be sought for hard rights he was not certain why soft rights should be dealt with separately. These were questions he wished to put on the table.

43. The representative of Japan agreed that it was difficult to distinguish between hard and soft rights. Hard rights came from bilateral agreements and provided for capacity and frequency; after these rights were established so-called soft elements would follow. Even if the group clearly succeeded in distinguishing the two elements in a clearcut manner, it would be hard to apply the distinction.

44. The representative of Egypt sought clarification concerning the meaning of hard and soft rights. The Chairman doubted that there was any definition at this stage. Instead of trying to define hard and soft rights he wondered whether it might not be better to list the issues that were being talked about. For instance, instead of calling freedoms of the air hard rights, call them freedoms of the air and list them in one column. In another column one could list issues like ground handling, sale of tickets and access to CRS. One could simply identify the issues to discuss rather than try to spell out what were hard rights, what were soft rights and what were rights that were in between. He welcomed comments on this proposal.

45. The representative of Canada found the Chairman's proposal attractive. Earlier, the Nordic and Canadian delegations had suggested that the group might examine specific areas where liberalization might occur. It seemed to him that in so doing the group might be able to determine whether these were areas that needed to be considered as part of a bilateral system, or whether they could not be made part of a multilateral system of trade liberalization.

46. The representative of Singapore said that there was an opportunity before the group, notwithstanding the definitional problems, to make progress by focusing on the "doing business" or ancillary services issues. All knew what was meant by these terms, although there were undoubtedly grey areas which could be addressed subsequently.

47. The representative of Australia said that there was much merit in the Chairman's suggestion. One started off with the actual grant of rights, and then considered what happened after in terms of how services operated. The group could identify the various ancillary aspects starting off from the grant of rights. The implications of this list could then be assessed in terms of the m.f.n. principle.

48. The representative of Egypt recalled that the principle of non-discrimination could be found in the 1944 Chicago Convention, Article 15, sub-paragraph 2, concerning airport and similar charges. The Article stated that "any charges that may be imposed or permitted to be imposed by a contracting state for the use of such airports and air navigation facilities by the aircraft of any other contracting State shall not be higher, (a) as to aircraft not engaged in scheduled international air services than those that would be paid by its national aircraft of the same class engaged in similar operations; and (b) as to aircraft engaged in scheduled international air services, than those that would be paid by its national aircraft engaged in similar international air services". This was a clear expression of the m.f.n. clause. In bilateral air transport agreements, similar principles were reflected in many articles. For example, provision was sometimes made in a bilateral agreement that if the right to a certain point was denied to the other party but given subsequently to a third party, the other party would then enjoy it automatically. In both the Chicago Convention and in bilateral agreements the principle of non-discrimination had often been applied. His delegation's position concerning this particular principle was reflected in MTN.GNS/W/101. Article 12 of this document mentioned some exceptions concerning regional integration agreements. Regional integration agreements would not constitute a violation to the non-discrimination principle, nor would preferential agreements among developing countries.

49. The representative of ICAO said that he was attracted by the proposal to examine the list of soft rights. He thought it desirable to add to this list the implications if these rights were included in a services agreement. If this proposal were accepted, then history would be repeating itself. In 1944, ICAO had considered concepts which the group was presently studying, in particular m.f.n. treatment, non-discrimination and national treatment. At that time, the draft Chicago Convention contained items on landing fees, airport access, charges and customs duties on spare parts, fuel, etc. These were then analyzed to determine which rights should remain in the convention and which should not. As a result most were dropped. One which remained has already been mentioned: airport and fuel charges (Article 15). Other provisions concerned prohibited areas (Article 9) and a general statement on the objectives of the organization: "... it will ensure that rights of the contracting states are fully

respected and that every contracting state has a fair opportunity to operate airlines" (Article 44).

50. The representative of Hungary said that caution should be exercised in characterising activities as soft or hard rights. Rights that were considered hard for certain countries might be considered soft by others.

51. The Chairman recalled, as had the representative of ICAO, that the list approach was attempted in 1944. At that time the terms hard or soft rights were not used. If these terms now caused difficulties perhaps it was better to forget about them altogether and just work on a list.

52. The representative of the European Communities said that it was difficult to make a proposal for such a list without having clearly reflected on what exactly it could include. Some of the points covered by the European Community in its statement on m.f.n. could be the beginning of such a list: ground handling, ticket selling, publicity, repatriation of benefits and, in general, all matters connected with doing business. The secretariat could take up the points raised by delegations and draw up a list. No delegation would, of course, be committing itself to a such list. It would be an indicative list which could allow the group to make progress.

53. The representative of Cuba commented that the GNS had no definition of trade in services, yet it was trying to go forward in discussions on a framework agreement. For some countries construction was a service; for others not. Once there was a draft framework, delegations could carry out concrete negotiations. Negotiations would not be helped through this exercise.

54. The representative of Sweden, on behalf of the Nordic countries, supported the Chairman's proposal. In fact in his initial statement when he had talked about the possibility of defining air transport services, he had meant to include the possibility of defining soft rights.

55. The Chairman then invited comments on the concept of market access.

56. The representative of Egypt said that access to the market was highly regulated under the existing system and was negotiated in the context of bilateral agreements. The existing status prevailing in bilateral agreements should be maintained under whatever arrangement the group arrived at. Article 14 of MTN.GNS/W/101 expressly mentioned that in fulfilling the obligation of long-term progressive liberalization a party should negotiate market access concessions. Whatever conditions were agreed upon would be inserted in the final agreement.

57. The representative of the European Communities said that market access could be achieved by granting traffic rights, an issue touched upon when discussing national treatment and non-discrimination. But market access and effective market access could also take place by establishment. The right to establish a commercial presence meant distinguishing clearly

between two quite different things. The simpler aspect of commercial presence involved, for example, the right to establish a sales office, to sell tickets and to undertake advertising campaigns with one's own employees. On that aspect one could imagine the full application of the draft framework provisions. At present he did not feel that there was a need for sectoral annotations. The more complex aspect was the right of establishment as it related to air carriers, including traffic rights. It made no sense to separate the right of establishment of air carriers from traffic rights. The delegate from Egypt had correctly pointed out that it was a common practice in international aviation to require proof of substantial ownership when designating air carriers. This was a common practice in international aviation and it would be too ambitious to eliminate this requirement in one step. On the other hand there was room for improvement. What was lacking at present was a common understanding of what national control effectively meant. Practice in different states showed that this concept was applied in quite different ways. There were countries without any possibility of buying shares in an air carrier. There were, on the other hand, countries which did not object to foreign ownership of up to 49 per cent without any negative implications for traffic rights. There obviously was some room for discriminatory use of this rule, and it was important to develop a common multilateral understanding on what national control meant. This would be a reasonable objective which would not run the risk of upsetting the existing system.

58. The representative of the United States said that with respect to market access, most of the points had been made in MTN.GNS/W/64 or referred to in the secretariat paper (MTN.GNS/W/60). As for domestic transportation or "cabotage" there were obvious restrictions common in many countries to market access, to the right of establishment and to the permanent movement of labour. International transport or aviation services raised a definitional problem about soft and hard rights. One could argue that market access was only awarded through the grant of route rights, or that market access was only obtained once the carrier which had been awarded the route right had also obtained the right to set up an office, to sell tickets, handle cargo and passengers, advertise, remit currency, and so on. He mentioned paragraph 39 of MTN.GNS/W/60, where the secretariat had drawn up a list of the so-called ancillary issues. MTN.GNS/W/64 also listed a number of these. The United States and its service providers maintained a very high standard in "doing business" and establishment of market access issues. This was defined as the ability to obtain the same kind of treatment which was accorded in the United States' market to foreign service providers; e.g. to obtain rapid currency remittance, unrestricted access to CRS systems, and so on.

59. The representative of ICAO informed the group that market access in international air transport was governed, in the first instance, by the Chicago Convention, more specifically by the provisions in Article I on national sovereignty over air space. This element, market access, was one of the most important in the work of the group, and he believed that it was closely linked with m.f.n./non-discrimination and progressive liberalization. He also believed that the extent to which agreement could be reached on market access in a services agreement would be an indication

of its potential effectiveness and of the degree of liberalization that was possible in trade in services. He recalled that during the Chicago Conference in 1944 there was an attempt to establish such a multilateral exchange of traffic rights through an agreement called the International Air Transport Agreement. Acceptance of this agreement was low - only eleven out of 162 contracting states of ICAO had signed it. This could usefully be taken into account during the group's deliberations.

60. The representative of Mexico said that his delegation supported complete coverage and wide definitions so that liberalization of air transport, including all services connected with air transport, could truly benefit all participants. On a general level one could speak of a balance of rights and obligations, a balance of interests, in the services field. The Chairman had suggested that a list be drawn up of operations which could be governed by general principles. In order to achieve this liberalization in an effective manner, the group should also take up matters linked to these services; in particular, maintenance, and repairs of aircraft and all equipment connected with aircraft. If the Chairman's proposal for a list were adopted the group could work more effectively.

61. The Chairman invited comments on the concept of increasing participation of developing countries.

62. The representative of Japan said that he had no firm position on this issue. As far as Japan was concerned, bilateral agreements provided, without exception, equal opportunities for both contracting parties. In the case of Japan, carriers from developing countries had provided much more capacity than had those from Japan.

63. The representative of Australia noted that the Australian situation was very similar to the Japanese in terms of the way current bilateral arrangements and agreements were administered. Quite a number of developing countries had secured considerable benefits under the existing bilateral framework. He would be very interested to hear views of other delegations on current practices in this area. In the ancillary services he did not see any major difficulties, despite definitional problems that had been pointed out in the meeting.

64. The representative of ICAO indicated that in the experience of ICAO there were virtually no aviation agreements which would allow any preferences for developing countries. However, the bilateral agreements which developing countries negotiated with their partners did allow for preferences or flexibility. He mentioned that in ICAO there was a recognition of the special status of the developing countries and that assistance in different forms was offered when required. For instance, ICAO was presently considering the economic implications of noise restrictions, an item which would be discussed in the autumn during the next Assembly. Special treatment would be discussed for those airlines which came from the developing countries and which had difficulty in either replacing their fleet or bringing it up to the strict standards. This was one example of ICAO recognition of their difficulties. Also, there were technical and other forms of assistance offered through ICAO which helped

developing countries to achieve technical and safety standards, develop their airports and air space for international operations, and minimise their disadvantages in resources - human, financial and other.

65. The representative of Egypt considered that increasing participation of developing countries was one of the crucial points which the group had to take into consideration. The statistical tables in document MTN.GNS/W/60, prepared by the secretariat, indicated that developing countries had only a small share of international air traffic. The Montreal Decision, agreed by Ministers, provided valuable guidance to the group for the principle of increasing participation of developing countries. Particular attention should be given to the strengthening of domestic service capacity.

66. The representative of Mexico agreed with the representative of Egypt that the basis for the concept was to be found in the text agreed upon by Ministers in Montreal. This text was characterized by three essential factors: first, that developing countries would have the necessary flexibility to open their markets less in terms of sectors and transactions; second, sectors of interest to the developing countries should be negotiated in this and future rounds on a priority basis; third, there should be strengthening of the domestic service industry. Two points here were of fundamental importance. First, there had to be participation which later would be developed. In this connection, most developing countries did not have a wide participation in air transport at the international level. In order to achieve that they would have to strengthen their national capacity. To this end the point made by the representative of ICAO was very important, namely, that there were ICAO technical cooperation projects and programmes for such countries. The strengthening of that kind of cooperation was very important. The second factor was the priorities in the negotiations. Developing countries were competitive within some forms of service such as repair and maintenance services. It was obvious that those countries which had the means of providing such services had an advantage over other participants and would therefore have wider participation within the sector. In conclusion, he said that the group would have to devise some means of making the Montreal text operative.

67. The representative of Canada said that MTN.GNS/W/60 illustrated that the ten fastest-growing developing country airlines had increased their share of the world market for scheduled services by over 25 per cent during the last decade. Canada could envisage transitional arrangements aimed at helping individual developing countries increase their participation in transport services as in other services. Greater technical assistance should also be considered, provided bilaterally as well as through international agencies which could, of course, include ICAO.

68. The representative of the United States said that technical assistance, was characterized by a great deal of cooperation. Those who had worked in the technical aviation area knew that world trade in aviation increased only to the extent that the infrastructure available to it was standardized and interconnected. Much effort, though still insufficient,

was expended on this through ICAO, or bilaterally. The United States was a major contributor in this area through the Federal Aviation Administration, which had completed a number of projects, funded either by the U.S. or by multilateral lending institutions, to further strengthen the domestic capacity of developing countries. Although not a subject for trade negotiations, it was a good model for the group to keep in mind when dealing with the subject matter. As concerned the section in the Montreal Declaration that spoke of effective market access for services exports in developing countries the United States paper, MTN.GNS/W/64, mentioned in paragraph 29 that while such improved access would be of benefit to developing countries, improved access was related to distribution channels and information networks as well as infrastructure. Finally, he wished to point out the inherent advantages in the bilateral mechanism, where two sovereign states entered into a regime or an agreement. Both states maintained some control over their destiny, whether they were developed or developing. They had an opportunity to deal with problems in a flexible manner. Experience showed that liberalization undertaken in bilateral agreements provided a better match between existing transport resources and shippers and receivers. This applied also to trades between developing and developed countries, as Japan and others had mentioned. While it was true that the developing country share of transport was not as great as those of developed countries, there was no reason to assume this would remain the same. Efforts were underway to expand trade through the technical assistance mentioned earlier, and also through bilateral agreements.

69. The representative of Japan fully supported the comments made by the representatives of Canada and the United States with respect to the strengthening of economic cooperation between countries. Cooperation should take place not only on a bilateral but also on a multilateral basis, including the function of ICAO. ICAO had so far done an excellent job not only of technical assistance concerning safety and other areas, but also on economic matters such as pricing or capacity arrangements, by providing materials or experts. He therefore hoped that ICAO could further expand these areas of cooperation.

70. The Chairman then invited comments on the concept of safeguards and exceptions.

71. The representative of Canada said that in his view the safeguards issue was not confined to transport and did not need any special treatment. With respect to general exceptions his views were similar; something along the lines of Article XXI of the GATT would be sufficient for the purposes of air transport services.

72. The representative of ICAO stated that provisions similar to Article XXI of the GATT existed in the Chicago Convention. The main safeguard-type provision in the Chicago Convention was Article 89 which provided that in the case of war or a state of national emergency notified to the Council of ICAO the provisions of the Convention should not affect the freedom of action of the contracting states involved. Exception-type clauses in the Convention related to prohibited areas (Article 9), recognition of certificates of competency and licences (Article 32), and departures from

international standards and recommended practices or procedures in ICAO annexes (Article 38).

73. The Chairman invited comments on issues relating to the regulatory situation.

74. Regarding domestic and international regulation and standards, the representative of the European Communities understood that in the general framework there must be an option for domestic regulation; that, wherever appropriate, reference or recourse should be made to international standards; and that there should not be abuse of this provision. Safety, security and technical standards were very important for properly organizing international aviation. Many international standards were in place, and in certain countries and regions there were also regional or domestic standards. The group should carefully analyse the need for sectoral annotations. He did not see a basic contradiction between the general framework principle and its application in international aviation. The only difference was that it was a very specific issue in aviation and the group had to take that into account.

75. The representative of the United States said as the representative of the European Communities had pointed out, that there was a need in civil aviation for a strict set of regulations concerning safety based on international agreement. As he had pointed out, under national treatment the regimes that characterised international civil aviation were based on the recognition of flag state jurisdiction. That would be incompatible with an application of national treatment to certain aspects of air transport, particularly the domestic market. He did not, however, see this as particularly troublesome; it was just as important to have international standards that were as high as possible.

76. The representative of Mexico agreed with the European Community and the United States that this subject involved many international rules and regulations, and national regulations which derived from international ones. Therefore, any result that might be reached in this sector, would have to take account of these regulations. Sectoral annotations would thus be necessary and should be drawn up in close cooperation with all those organizations specialized in this field, especially ICAO. Coordination should be close and continuous in order to avoid inconsistencies with multilateral or bilateral arrangements.

77. The representative of Hungary said that the group should separate international and domestic regulations. In Hungary, regulations were lacking a proper legal basis. Therefore Hungary had less of a regulatory framework for civil aviation than, for example, the United States. Therefore it was very important that all the countries should have the right to introduce new non-discriminatory regulations in civil aviation.

78. The representative of Australia supported the right of countries, particularly developing ones, to introduce new regulations. However, Australia firmly held the view that new regulations should not be used by

countries as a way to circumvent their obligations under the framework. Safety and security standards should not be compromised.

79. The Chairman said that as concerned an agenda for the next meeting three points could be noted. First, most delegations had expressed a wish for liberalization and considered that air transport services should be included in a multilateral framework. There should, however, be provisions for some kind of sectoral annotation because of the peculiarities of the air transport sector. There should also be no disruption to the existing system. Second, a number of delegations felt that it should be possible to include certain less-controversial issues - the so-called soft rights - in the multilateral agreement, leaving the more difficult issues - the so-called hard rights - aside at this stage. Concern had also been expressed over the difficulties of defining hard and soft rights. In this connection, a possible approach was to avoid terms such as soft rights and hard rights, and instead work out two separate lists of items. Typically, all domestic and international operating rights would be on the first list. The second would contain items which prima facie might be included in a multilateral agreement. Examples would be computer reservation systems (CRS), commercial sales and distribution, fund transfers and aircraft maintenance. Further, a number of delegations had expressed difficulties in understanding the meaning of some of the GNS concepts when applied to the air transport sector. This could be due to the fact that the group was talking a new language and grappling with new concepts which previously had not been addressed. Hopefully, the difficulties over interpretation and definitions could be overcome. For the next meeting the group would have to move away from the general concepts of the first meeting. The group would need to examine and determine how exactly air transport services were to be covered, which specific items in the air transport industry could be included initially, and what sort of sectoral annotations were necessary. Also, taking into account the views expressed by some delegations, it would be useful to discuss and recommend the kind of role which institutions like ICAO could play.

80. The representative of Canada agreed with the Chairman's summing up. However, he thought that some clarification would be useful. The aim of the group was not to consider activities in the air sector that might be excluded from a general services agreement. With this in mind, he supported the Chairman's proposal on drawing up lists. However, he emphasized that these lists would merely allow the group to come to conclusions that some derogations might be required from obligations, for example, of national treatment, m.f.n. treatment, perhaps transparency and other areas where the full discipline of the framework would apply. This would also include progressive liberalization, some of which might take place in the current round of negotiations, and some in future negotiations.

81. The representative of the European Communities largely shared the views expressed by the representative of Canada. The intention should not be to exclude certain elements of the sector but rather to examine to what extent the principles and concepts of a general agreement in the field of

services could be applied. Account should be taken of the framework text to be agreed by the end of July.

82. The representative of Australia agreed with the approach suggested by the Chairman for the next meeting. He also agreed with the comments by Canada about discussing annotations, not exclusions. Australia was very concerned that derogations could be used to exclude the entire aviation sector from m.f.n. and other principles, and therefore might militate against prospects of future liberalization in the air transport sector.

83. The representative of Japan reserved his position regarding the Chairman's summary. While many delegations agreed that civil aviation services should be included in the framework, the group was not supposed to take a decision in this matter. In addition, he wished to refer to the difference between hard and soft rights, adding that many delegations had expressed difficulty in defining hard and soft rights.

84. The representative of the United States said that he had some problems with the Chairman's summary. While his country had made it clear that it was interested in liberalization in this sector, the United States had not made any decision on whether this sector should be covered. The United States position on exclusions was already cited in MTN.GNS/W/75. On the issue of soft rights, he wished to echo what the delegation of Japan had said. He and a number of others were very uncomfortable with what seemed to be a very convenient distinction between so-called hard and soft rights - terms which he believed were coined in the United States. He, among others, believed that the line was extremely hard to draw. Accordingly, he was not sure that the Chairman's summing up gave adequate weight to those having concerns in that area. On the question of lists, he pointed out that these lists had already been drawn up in a secretariat paper. With regard to market access, both hard and soft rights were closely linked. It was premature to conclude that all delegations believed that the sector should be included in a services agreement at this point. He was concerned that there was a certain element of conclusion in the Chairman's summary. He pointed to the secretariat note of 11 May 1990, stating that it was understood that participants should remain flexible on the possible inclusion of other services sectors in the consultations, and that the choice of sectors for consultations in the working groups had no bearing on the question of coverage for the framework on trade in services. The Chairman's statement, which he understood to be a statement of consensus, raised questions about whether it reflected the mandate of the group. It seemed premature and he could not concur in it.

85. The Chairman said that most delegations had expressed a desire for liberalization of air transport services and had stated the view that this sector could be covered by the framework. He was well aware of the position taken by the United States and Japan and certainly did not mean to imply that either had agreed to the inclusion of this sector.

86. The representative of Hungary said he supported the statement by the Chairman and the delegations of Canada and the European Community. If any agreement on civil aviation or on the liberalization of civil aviation

should come into being, it was very important that it be multilateral and not restricted only to a few countries. The working group provided a very good opportunity to see whether such a multilateral agreement could be achieved. He believed that it might be possible to agree on the broad terms of more liberal conditions of civil aviation in the future. Many considerations and exchanges of view were needed before it could be seen how certain agreements could be reached. Hungary considered the framework should cover all transportation sectors and sub-sectors and reflect all the peculiarities of the civil aviation industry. Since it was very difficult to distinguish between hard or soft rights, he was in favour of listing activities without categorising them. It was sufficient to say that such activities, because they were closely linked with each other, should be looked at to see whether some concepts of a GATS could be applied and, if so, in what timeframe. As well, some progressivity, some phasing-in was very much needed since total liberalization could not be achieved at once. Different countries needed different levels of liberalization and different timescales to achieve it.

87. The representative of Sweden, on behalf of the Nordic countries, had difficulty with the suggestion for two lists. It was preferable for the secretariat to make one listing of all activities and transactions related to air transport services. The list previously drawn up by the secretariat was not sufficiently disaggregated. It would therefore be very useful for the working group to have at or before its next meeting, a listing that was fairly disaggregated, containing all relevant activities but without separating them into two types. It could be possible to find, in going through such a listing, that there were certain specific activities that could be discussed further in the working group.

88. The representative of Egypt thought it useful to include in the agenda of the next meeting an item dealing with ways and means of coordinating the group's work with that done by ICAO. The representative of Cuba and China agreed with the suggestion.

89. The representative of Brazil believed, based on the comments that had been made, that two different issues were being discussed. One issue concerned the possible annotations to of the framework, and the other was the coverage of the framework, i.e. whether air transport should be covered by the framework. The working group was not mandated to discuss or negotiate coverage of specific activities. This discussion was still going on in the GNS. The GNS expected from the group an indication of what areas in air transport services would require, vis-à-vis the provisions of the framework, some kind of annotation. The agenda for the next meeting therefore had to relate to the basic concepts of the framework. The group could select or organize them in a way that identified specific problems, such as the possibility of making an annotation to the principles of m.f.n., market access and national treatment. Under market access and its related concept of national treatment, the group could discuss the possibility of making concessions for a certain kind of activity in air transport services. But he could not consider as an element of the agenda a discussion of lists of those activities. He suggested to concentrate on

some of the concepts, breaking them down into some sub-elements so that the group could progress.

90. The representative of Singapore expressed concern that if the GNS framework were applied to air transport, the existing experience and expertise in the sector might be impaired. He believed that certain GNS principles and disciplines could be applied to civil aviation but their implementation would, to a large extent, be left to civil aviation entities. Currently, there was no evidence in the Chicago Convention of a commitment to liberalize. The agreement on services could offer that opportunity. He suggested that the agenda should include discussion on the role of aviation organizations such as ICAO. The group should also allow for further discussion and consideration of the nature and extent of application of GNS principles to civil aviation issues.

91. The representative of Mexico said that coordination with appropriate air transport bodies was very important and would enable the group to make progress. An exchange of views should take place with ICAO concerning the question of financial resources and other assistance given by ICAO. The group should not discuss the question of coverage of the framework. Nevertheless, the preferences of the various countries on this subject matter could be noted. He believed the lists suggested by the Chairman should be drawn up. One could also envisage a single complete list.

92. The representative of the United States agreed with the comments made by the Brazilian representative. In his view there was no need for a list of hard and soft rights. At the next meeting, the group obviously needed to look at the framework text resulting from the deliberations in July. The group would have to consider the possibility of annotations without prejudice to the question of inclusion or exclusion of the sector. He suggested also that the questions of subsidies, government procurement, dispute settlement and the role of other international arrangements could be addressed.

93. The representative of India said that to a large extent he shared the views expressed by the delegation of Brazil. However, in the sectoral annex exercise, the objective was not to draw up lists and to attempt to exclude a priori certain service sectors, but to test the basic principles of a general agreement for services against peculiarities of particular service sectors. Which services would be included or excluded could be decided later during the market access negotiations. There was agreement to examine relationships with existing international agreements or arrangements. In the sector of air transport services there were well-established international arrangements and agreements. A question to be addressed in future meetings was how rights and obligations in a GNS agreement would interface with the rights and obligations in existing international arrangements and agreements.

94. The representative of ICAO, referring to the statements made by the delegations of Egypt, Cuba, China, Singapore, Mexico and others who had mentioned ICAO, said that in ICAO there were work programmes which included a number of items relevant to the current discussion and possibly to the

agenda for the next meeting. ICAO maintained sections on economic policy, economic analysis and regulations. Subject areas which were being examined included: computer reservation systems, code-sharing and other joint marketing arrangements, access to distribution channels, and regulation of charter flights. ICAO was supposed to collaborate with other international organizations involved in trade in services, and to study the applicability of trade in service concepts and principles to air transport. ICAO could convene an air transport conference to examine the possible inclusion of the air transport sector in a multilateral agreement on trade in services. The range of possible activities of ICAO was wide and he believed that it might be complementary to the group's activity. He cited the example of ICAO cooperation with the International Standards Organization as concerned the replacement of conventional passports by machine-readable ones and where the ISO had adopted ICAO recommendations as their standard. He believed that something similar could be contemplated in cooperation between GATT and ICAO and he offered ICAO's full cooperation.

95. The representative of the European Communities said that there was an important link between the work of the group and the ICAO. As concerned subjects such as CRS, computerized information and all efforts made towards standardization, it would be very useful for the group to be able to refer to the standards, rules and regulations adopted in ICAO.

96. The Chairman suggested that the role of ICAO could be a subject for more detailed discussion at the next meeting.

97. The representative of Hungary said that ICAO was the most experienced body in the field of civil aviation and it could not be expected that the GNS would develop as high a level of expertise. ICAO should continue to deal with all the characteristics and peculiarities of civil aviation that would never be touched upon in the services framework. Accordingly, there was a need for close cooperation on both sides.

98. The representative of Egypt said that there was nothing in the Chicago Convention which prevented ICAO from proceeding with the liberalization of international air transport. As a result of the Chicago Conference of 1944 an agreement dealing with the complete liberalization of international air transport was opened for signature; only eleven states adhered to this Convention and it never came into force. Similarly, the International Air Transit Agreement of 1944 liberalized the first and second freedoms of the air - the freedom of overflight and technical landing for scheduled services. More than 100 states were signatories. The first and second ICAO Assemblies, starting in 1947, prepared a multilateral air transport agreement dealing with scheduled services. However, the project did not succeed because the degree of development of international air transport at this early stage did not warrant the liberalization of international scheduled services. There was nothing in the Convention and in the functions assigned to the ICAO Council and the Assembly which prevented a liberalization of international air transport if the states parties to the Chicago Convention, of which there were 162, wished to do so.

99. The representative of Canada noted that references to the provisions in the Chicago Convention for the conclusion of multilateral agreements and arrangements were correct but related to air services only. The group was, however, working on a general agreement on services which was to cover all services. He also expressed his agreement with the United States suggestion that subsidies and government procurement be considered at the next meeting. In his view, that was part of the group's mandate.

100. The Chairman noted that at this stage of the discussion there seemed to be consensus on certain items which should be included in the agenda for the next meeting. One could be a discussion on the framework text expected to be finalized by the end of July. There also seemed to be a lot of interest in the role of ICAO and there seemed to be agreement that the examination of existing international arrangements should include the role of ICAO. He thought there was also general consensus that the nature and extent of application of the GNS principles to civil aviation or air transport services should be considered. He also considered that the subject of subsidies, raised by the United States and supported by Canada, should be put on the agenda. It seemed unclear at this stage how the question of a possible list of specific items should be dealt with.

101. The representative of the European Communities said that on the basis of the study of the draft framework text to be available in July the group would be able to see whether there was a need for a sectoral annotation. There would be an article on subsidies and government procurement in the text and it would be best to deal with these matters in that context.

102. The representative of Australia said that he thought any discussion of clarification, annotation or special provisions which would apply to air transport would in fact need to define which activities those special rules should apply to. He believed that from the discussion a de facto list would emerge. The group needed a list before it could decide what the special rules would be.

103. The representative of Mexico said that the proposal for two lists arose from a differentiation between soft and hard rights. However, because of the lack of a definition of these terms, it was more sensible to draw up lists of activities which the concepts might or might not be applied to.

104. The representative of the European Communities said that his delegation was not in favour of having a list. He believed, however, that the proposal made by the Australian delegation was reasonable. At a certain stage a list would come out of the discussion.

105. The representative of Singapore wondered whether in view of differences of opinion, an additional item could be put on the agenda called "Achieving Progressive Liberalization" and which would include a list of aviation issues. In that way the list would be neutral because it would not involve sensitive issues such as hard and soft rights. That would give freedom to the delegates at the next meeting to explore possibilities.

106. The representative of the United States, highlighting the complexity of the issue, pointed out that in the secretariat list of sectors under the topic of communications services on page 5 of MTN.GNS/W/50, there was an item called courier services. Courier services were understood within the United States to be transportation services. He believed that they are not understood in the European Community to be transport services but rather a telecommunication or communication service. He was not saying which definition was right, but simply pointing to an item of transportation activity which would be a subject of definitional disagreement. Another example that could be given concerned computer reservation systems. Ten or twenty years into the future no one would know what they would look like - would it be a telecommunications service or would it be a transport service? The agenda for the next meeting should be simple. As the Australian and European Community delegates mentioned, there would be a draft framework by that time, and there would be the need to see whether sectoral annotations should be developed.

107. The Chairman proposed, based on the discussion so far, that the agenda for the next meeting be simply three items, i.e. consideration of the draft framework text, the existing international arrangements including the role of ICAO, and consideration of the nature and extent of the application of GNS principles to civil aviation or to air transport services. Issues like progressive liberalization and subsidies would be covered in the discussion of the draft framework text.

108. The representative of the United States, referring to the secretariat reference list in MTN.GNS/W/50, and that a subject which possibly needed special treatment was space launching and freight, including satellites. This was a universal service characterized by, among other things, large amounts of government assistance, capital-intensive investment, government or mixed government-private ownership and an emerging set of international, mainly bilateral arrangements. The group should be aware of the fact that this subject came under air transport, and that certain rules, concepts and principles of Montreal would require special treatment in terms of space launch services.

109. The representative of Egypt thought that as concerned meeting dates the group should have some coordination with the International Civil Aviation Organization. He understood that there was an extraordinary session of the ICAO Assembly in the last quarter of the year.

110. The representative of ICAO confirmed that a major meeting would take place at the end of October - starting 22 October and lasting for five days. This could perhaps be taken into account when scheduling the next meeting.

111. The Chairman said that there seemed to be some preference that the next meeting of the air transport working group would be held in the last week of September 1990.

112. The representative of the secretariat said that there were ten sectoral working groups that had been formed under the auspices of the GNS, and it was the responsibility of the Chairman of the GNS to assign precise dates to different meeting.