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ECONOMIC COMMISSION

Agenda Item 27: Regulation of international air transport services, and outcome of the fifth Worldwide Air Transport Conference

RIGHTS AND OBLIGATIONS OF USERS OF AERONAUTICAL SERVICES

(Presented by Colombia on behalf of Members of the Latin American Civil Aviation Commission (LACAC)²)

SUMMARY

This working paper describes some worldwide and Latin American advances related to the rights and obligations of users of aeronautical services and it presents some pertinent recommendations.

1. INTRODUCTION

1.1 The interests of the consumers of air transport services and other related services are increasingly drawing the attention of governments, airlines and other organizations connected with air transport.

¹ Spanish version provided by LACAC

² Presented by 21 Members (Argentina, Aruba, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, the Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay and Venezuela)

1.2 ICAO has been developing guidance material on aspects related to the interests of consumers,³ at the same time as it continuously monitors the evolution of this matter⁴. This topic was the subject of extensive analysis⁵ and discussion during the fifth Worldwide Air Transport Conference (ATConf/5) in 2003; it was noted that different approaches existed with respect to the rights and protection of consumers and it was suggested that ICAO should prepare guidance material on the obligations of air carriers in relation to consumers⁶.

1.3 As a conclusion to those discussions, the Conference recommended that States should seek an appropriate balance between voluntary commitments and regulatory measures, it invited States to seek the best degree of uniformity in the measures adopted and it recommended that ICAO should continue monitoring the evolution of this matter⁷.

1.4 The concern to satisfy the air transport user is each day a matter of greater importance for the airlines since it directly affects continuity and stability in markets that are highly competed for and affected by a generalized crisis in recent years. Although some associations and authorities have given preference to the practices that involve the adoption of voluntary commitments on the part of the airlines⁸, the growing dissatisfaction of groups of passengers with the quality of the services or of the voluntary measures offered by the airlines has created political pressure for a more complete series of rights to be provided for air transport service users⁹.

1.5 Other countries have adopted a series of mandatory regulatory measures to protect the interests of air passengers in matters such as compensation for denied boarding, cancellation of or major delays in flights¹⁰. However, this approach has been the subject of extensive discussion because of the possible legal uncertainty that could result from the extraterritorial application of these regulations and because of the possible financial repercussions and operational complications that could arise from the application of these measures.

³ As examples, we can mention the guidance material included in Doc 9587, *Policy and Guidance Material on the Economic Regulation of International Air Transport*, Appendix 5 to Doc 9626, *Manual on the Regulation of International Air Transport*, Annex 9 to the Chicago Convention and Doc 9587 which contains aspects of consumer protection in code sharing, among others.

⁴ For example, during the 33rd Session of the Assembly held in 2001, the Economic Commission agreed that the Council of ICAO would monitor the evolution of this matter. This subject was also addressed during the fifth Worldwide Air Transport Conference (ATConf/5) in 2003.

⁵ Working papers WP/13, WP/41, WP/53, WP/57, WP/63, WP/99, WP/95, WP/33 and WP/69 were presented and discussed with respect to this topic.

⁶ In this respect, see ATConf/5-WP/111 which contains the report on Agenda Item 2.4.

⁷ Ibid.

⁸ In this respect, see IATA Resolution 724 and Recommended Practice 1724.

⁹ An overview of the recent evolution of this matter can be found in ATConf/5-WP/13 presented by the ICAO Secretariat.

¹⁰ For example, on 17 February 2004, the Official Journal of the European Union published Regulation (EC) No. 261/2004 of the European Parliament and of the Council of 11 February 2004, establishing common standards on compensation and assistance to air passengers in case of denied boarding and cancellation of or major delays in flights, which will enter into force on 17 February 2005, at which time the Regulation (EEC) No. 295/91 of 4 February 1991 which is now in force will be repealed.

1.6 The international airlines through the International Air Transport Association (IATA) have expressed their preference for the adoption of measures that favour voluntary commitments of airlines over mandatory regulatory measures¹¹. With respect to these types of measures, although they agree with the advisability of compensation inasmuch as it corresponds to areas under their control, they have questioned the legality of the regulations that seek to make the airlines responsible for delays that occur outside of their control, with legal actions being brought against them¹².

1.7 Consideration must be given to the complexity of the aeronautical activity which requires coordination of international air transport policies, as well as the adoption of a framework that meets the needs of users and the reality and interests of the aeronautical industry in general.

2. REGULATORY DEVELOPMENTS IN LATIN AMERICA

2.1 LACAC has considered that States must play a preponderant role to provide users with some minimum guarantees in terms of protection, service and information. For this purpose, it promulgated Recommendation A14-2 on the “User Rights”, which in addition to recommending that its Member States adopt some minimum standards on this matter, included guidance material entitled “Charter of rights of air transport users”¹³.

2.2 Similarly, LACAC promulgated Resolution A15-7 entitled “Customer service and total quality criteria and guidelines” which in addition to recommending that a series of guarantees and rights be recognized for passengers, establishes a series of obligations on their part and recommends the implementation of user service systems on the part of the airlines, favouring direct arrangement mechanisms¹⁴.

2.3 A major advance in Resolution A15-7 was the inclusion of a chapter on the rights and obligations of users and operators of airport services, seeking a more balanced overview that gives due attention to the interests of the different players in the market.

2.4 Furthermore, the Andean Committee of Aeronautical Authorities of the Andean Community (CAN) has continuously monitored this subject in order to comply with the mandate contained in Article 24 and a transitory provision of CAN Decision 582 on “Air Transport in the Andean Community”¹⁵, according to which “Before 30 June 2005, the Secretariat General shall present to the Commission of the Andean Community, after prior consultation of the Andean Committee of Aeronautical Authorities (CAAA), a proposal for the adoption of a community standard that establishes the rights and obligations of the users of the services provided by the airlines of the Andean Community”.

¹¹ In this respect, see for example the document IATA Comments on Air Passengers Rights in the European Union of March 2000.

¹² In this respect, see working paper CLAC/GEPEJJA/14-NE/18 presented by IATA at the XIV Meeting of the Group of Experts on Policies, Economics and Legal Matters in Air Transport, Caracas, Venezuela, 14 to 26 August 2004.

¹³ The text of the LACAC decisions can be consulted on the web page <http://clacsec.lima.icao.net>

¹⁴ Ibid.

¹⁵ The complete text of CAN Decision 582 can be found at <http://comunidadandina.org/normativa/dec/D582.htm>

2.5 In addition and in accordance with the recommendations and mandates mentioned above, different countries of the Latin American region have adopted measures relating to the protection of the interests of air transport users. Some of them are described below as examples.

2.6 **Bolivia:** The Superintendence of Transport is the regulatory body which arose as a result of privatization to address the faults in the market and in whose management, there has been created the office of consumer service to deal with claims and a ‘User’s Guide’ has been published which provides guidance to passengers and users of the infrastructure about their rights and obligations¹⁶. Furthermore, in accordance with the arrangements made by the Superintendence¹⁷, all operators of air transport, railroad transport and airport services must have their own Consumer or User Service Offices (ODECO) so that users have more expeditious channels for their claims to be dealt with.

2.7 **Brazil:** The main tool to support passengers is Ministerial Resolution 676/C5 of 13 November 2000 which addresses the general conditions of air transport. It contains rights and obligations of passengers and airlines. In addition, 11 Ministerial Resolutions have been issued on this subject¹⁸.

2.7.1 Furthermore, a passenger’s guide has been published and distributed at the airports in Brazil and it is available at the Internet portal of the Directorate of Civil Aviation of Brazil¹⁹. In addition to the information on their rights and obligations, users can register their claims on an online form²⁰.

2.8 **Chile:** The regulations relating to the rights and obligations of users are disseminated in different texts such as the Aeronautical Code, Decree Act 2.564, Decree No. 113 of the Ministry of Transport, DFL 241 of 1960, among others. In addition, the Web page of the DCA of Chile has published the Charter of Users’ Rights²¹ and has established links that allow the submission of claims on line²².

2.9 **Colombia:** The Aeronautical Authority of Colombia incorporated in the third part of the country’s Aeronautical Regulations the aspects relating to the Rights and Obligations of the Users of Scheduled Passenger Air Transport, while these regulations were issued through Resolution No. 04498 of 15 November 2001. In addition a ‘Passengers’ Guide’ was published and since November 2001, the Web page of the DCA includes a place for users’ complaints²³. A scheme of automatic compensation has also been established for passengers for special cases and there is a procedure for penalties applicable to the airlines.

¹⁶ See <http://www.suptrans.gov.bo/usuarios.html>

¹⁷ See R.A. 0003/2001 of 24 January 2001, developed in accordance with D.S. No. 24505.

¹⁸ See <http://www.dac.gov.br/legislacao/legemp.asp>

¹⁹ See <http://www.dac.gov.br/passageiros/passageiros2.asp>

²⁰ See <http://www.dac.gov.br/sugestoes/reclamacoes.asp>

²¹ see http://www.dgac.cl/pasajeros/carta/carta_final_ciu.pdf

²² See http://www.dgac.cl/pasajeros/dd_reclamos.asp

²³ See <http://www.aerocivil.gov.co/FrameQ.htm>

2.10 **Costa Rica:** The criteria and guidelines contained in Resolution A15-7 have been implemented mainly with regard to airport services.

2.11 **Cuba:** The Instituto de Aeronáutica Civil de Cuba (IAAC) has been given the responsibility to progress a quality management project in the national field through the ISO 9000 Standards. A document called CACSA has also been structured which includes the aspects that must be taken into consideration by each of the Cuban enterprises in order to establish, document, implement and maintain their own system of consumer protection.

2.12 **Ecuador:** Resolution No. 002 of 2004 establishes the instructions that must be generally observed for the contracts of carriage of passengers by air, where the flight originates in Ecuador, regardless of the place of issuance or payment. This Resolution implements some aspects relating to the rights of users and it is available on the Web page of the Directorate of Civil Aviation of that country²⁴.

2.13 **Peru:** Aspects relating to the rights and obligations of the users of air transport services are included in the Civil Aeronautics Act 27261 and their respective regulations²⁵.

2.14 **Uruguay:** The Directorate General of Civil Aviation issued Resolution No. 165/97 by which it implemented the User's Charter which can be consulted on the Web page of the aeronautical authority²⁶.

2.15 **Venezuela:** The National Institute of Civil Aviation (INAC) is developing material relating to the Rights and Obligations of Users and Air Operators contained in Chapter II of the Civil Aviation Act in force, as well as through the joint Resolution of the Ministers of Transport and Communications and the Ministry of Development No. 079 and 0839 respectively, which establishes the procedures that regulate reservations and the space granted by the airlines.

3. ACTION BY THE ASSEMBLY

3.1 The Assembly is invited to:

- a) note the evolution of the subject of the rights and obligations of the users of aeronautical services at the global level and in particular in the Latin American region;
- b) agree that ICAO continue monitoring the global evolution of this matter with a view to guaranteeing the uniformity and harmony of the measures adopted; and
- c) decide whether it is viable or necessary to have some form of multilateral involvement, such as the possible development of a worldwide code of conduct on this matter.

— END —

²⁴ See www.dgac.gov.ec

²⁵ See http://www.mtc.gob.pe/dgac/normas_legales/principales_normas/ley/27261.pdf

²⁶ See http://www.dinacia.gub.uy/espanol/download/CARTILLA_USUARIO/doc