



A35-WP/311  
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## **ASSEMBLY — 35TH SESSION**

### **DRAFT TEXT FOR THE REPORT ON AGENDA ITEM 27**

The attached material on Agenda Item 27 is submitted for consideration by the Commission.

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

27:1 For ease of consideration, the Commission divided this agenda item into the following topics: Report by the Council on the outcome of the fifth Worldwide Air Transport Conference (ATConf/5) and trade in services developments; air carrier ownership and control; other regulatory issues and exogenous factors affecting civil aviation.

**Report by the Council on the Outcome of the fifth Worldwide Air Transport Conference and Trade in Services**

27:2 In the first part of WP/9, the Council reported to the Assembly on the preparations, results and follow-up work regarding the fifth Worldwide Air Transport Conference (ATConf/5) held in March 2003. Addendum No.1 to this paper provided an update of some recent follow-up activities by the Secretariat. The Assembly was invited to note the report and review suggested amendments to the relevant section of Resolution A33-19 relating to “cooperation in regulatory arrangements” with a view to adoption of the text under Agenda Item 31. In the second part of WP/9, the Council reported on trade in services developments since the 33rd Session of the Assembly and invited the Assembly to note the report and to review suggested amendments to the relevant section of Resolution A33-19 relating to “trade in services” with a view to adoption of the text under Agenda Item 31.

27:3 In WP/214, Jordan on behalf of the Members of the Arab Civil Aviation Commission (ACAC) provided an overview of the evolution of air transport regulation in the region and highlighted some challenges faced by States in the liberalization process. They called for continued cooperation between ICAO and all organizations involved in air transport to provide assistance, advice and guidance to developing States in the area of establishing rules for the economic regulation of air transport.

27:4 In WP/217, Oman, on behalf of the Members of ACAC, provided information on their experience in the field of air transport liberalization and requested ICAO’s assistance in implementing the liberalization of air transport in the Arab States in accordance with the recommendations of ATConf/5.

27:5 In WP/219, the Airports Council International (ACI) expressed its support to the progressive liberalization of international air transport and endorsed ICAO’s global leadership role and its framework for the liberalization process. It believed that airport capacity constraints and long term infrastructure requirements should be taken into account when considering liberalization, and urged States to include airports in the process of liberalization and in air services negotiations.

27:6 In WP/119, the Latin American Association of Air and Space Law (ALADA) presented its views and suggestions on a number of regulatory issues which mostly affect air transport relations between Latin American States. It called for strong support to ICAO as the body to address all issues affecting the health of the industry for the benefit of the air transport community.

27:7 In WP/136, the International Transport Workers Federation (ITF) highlighted some of the outcomes of ATConf/5, particularly relating to the need for safeguards in economic liberalization and participation of all stakeholders, including labour, in the process. It presented some proposals regarding follow-up action by States and by ICAO, including a draft amendment to Assembly Resolution A33-19.

27:8 In WP/201, The World Tourism Organization (WTO-OMT) described the concept of “Essential Tourism Development Routes” (ETDR) it had developed with a view to boosting air services to poor countries. To advance the concept of targeted use of air transport and tourism as a development tool, it called for early completion and progressive implementation of the study by ICAO on ETDR.

27:9 Through its information paper, WP/47, Cuba explained its recent experiences in the gradual development of air transport, highlighting its air transport policy, liberalization of air services agreements, growth of air traffic demands and the improvement of airport infrastructure. In an information paper, WP/196, Members of the Latin American Civil Aviation Commission (LACAC) provided an overview of the progress achieved in the process of liberalization in the Latin American and Caribbean region, including various sub-regional agreements. Also in an information paper, WP/253, the Economic and Monetary Union of West Africa (UEMOA) provided a summary of the implementation of a common programme on air transport for its Member States, including projects relating to the economic regulation of air transport, the legal framework of civil aviation administrations and the strengthening of aviation safety and security.

27:10 In WP/45 and Corr. No. 1, Members of LACAC presented their views and experience with regard to the consequences and impact on the inclusion of air transport services in the GATS. They stressed ICAO’s leading role and competence in matters related to air transport services and invited the Assembly to recognize and reaffirm ICAO’s role in international air transport regulation and liberalization within the framework of ICAO.

27:11 In the discussion on the outcome of the fifth Worldwide Air Transport Conference and trade in services developments, attention focused on certain of the Conference results, the role of ICAO and proposed amendments to the Consolidated Statement of Continued ICAO Policies in the Air Transport Field, as appended to WP/9.

27:12 The Commission noted that among the Conference follow-up work were studies that had been initiated on the safety and security implications of liberalization and the essential air service concept, the latter of which would encompass the essential tourism route development concept promoted by the World Tourism Organization.

27:13 One of the Conference results, concerning the accelerated liberalization of air cargo was singled out for particular emphasis and support. The Commission agreed that States be urged to consider the separate and rapid liberalization of this sector, in order that its clear benefits of trade and economic development might be attained. While the Model Annex on air cargo services adopted by the Conference was felt to be a useful means to such liberalization, support was also expressed for a unilateral approach to the liberalization of air cargo, particularly all-cargo operations.

27:14 There was considerable discussion on the role of ICAO in developing policy guidance for liberalization, a role addressed in Section IV on trade in services in the Consolidated Statement, as appended to WP/9. Many delegates supported ICAO’s continuing leadership, considering ICAO to be the global organization with the expertise and knowledge, and the one best placed to develop, promote and facilitate liberalization, while taking account of safety, security and environmental considerations. Other delegates considered that this should not be seen as a role exclusively granted to ICAO and that other organizations, including the World Trade Organization and the Asia Pacific Economic Cooperation forum, may have a role to play. A view was expressed that, notwithstanding differing views on the most appropriate fora for liberalization, the reality was that ICAO’s leading role would continue for the foreseeable future. Nevertheless, some delegations indicated their intention to promote liberalization through such other fora and proposed to

replace the phrase “the global leadership role” in Resolving clause 6 a) of Section IV of the Appendix to WP/9 concerning trade in services to “a global leadership role”. The Commission accepted the change proposed.

27:15 With regard to Resolving clause 2 of Section II of the Appendix to WP/9, concerning cooperation in regulatory arrangements, the Commission also agreed to amend the phrase “any developing State or States” to read “a State or States, in particular developing States”. The change would enable the formula to be used by a State from a grouping of other than developing States, in line with policy guidance developed by the fourth World-wide Air Transport Conference in 1994.

27:16 A proposal in WP/136 to include an amendment to the Consolidated Statement which would refer to the role of stakeholders was not supported. Moreover, the Commission considered that with respect to the inclusion of labour in air services negotiations and in ICAO fora in air transport matters, a pragmatic case-by-case approach would be preferable to adopting a blanket policy on its inclusion.

### **Air carrier ownership and control**

27:17 In WP/96, the Netherlands, on behalf of the European Community (EC) and its Member States, described recent policy developments in the European Community relating to ownership and control and designation of air carriers. Legal developments had led to a new Community approach to international air services agreements, which *inter alia* called for greater flexibility at the international level on the issue of air carrier ownership and control, and airline designation. The EC and its Member States were seeking recognition of the EC’s new policy in their bilateral relations with other ICAO States and requested partners to show flexibility in their position in line with the final conclusions of ATConf/5.

27:18 In WP/244 and Corr. No. 1, Argentina, Brazil, Fiji, India, Japan, Mongolia, Pakistan, Philippines, Republic of Korea, Saudi Arabia and Viet Nam presented their views on the issue of liberalization of air carrier ownership and control. They believed that ICAO should be cautious in addressing this issue and that the regulatory approach to this matter should be left to each State to decide at its own choice.

27:19 In WP/156, Singapore urged States to liberalize air carrier ownership and control criteria and emphasized the importance of an open and consultative approach by States to understand and identify solutions to their unique concerns. Such an approach would pave the way for States to find common middle ground for adapting existing frameworks for liberalization without compromising their interests.

27:20 In WP/64, the International Air Transport Association (IATA) considered the liberalization of ownership and control rules to be a major step towards creating a global aviation industry. It highlighted the progress in this area since ATConf/5 and some significant regulatory developments such as those in the European Union. IATA welcomed new catalysts for change and called on States to advance liberalization in this area.

27:21 In WP/259, Members of LACAC acknowledged the role of ICAO as a worldwide forum with extensive experience in providing appropriate guidance to its Members in the economic regulation of air transport for the benefit of the entire international aviation community. They proposed that States consider using the model clause on airline designation and authorization developed by ICAO in their air service agreements.

27:22 In the discussion that followed the presentation of the working papers, there was broad support expressed for the results of ATConf/5 with respect to air carrier ownership and control. Attention was drawn to the progress made since ATConf/5, including the pragmatic approach taken by many States towards

ownership and control. The Commission also noted the work done by ICAO including the Database of States' policies, positions and practices on air carrier ownership and control, which had been developed by the Secretariat and which provided useful information on States' policies, practices and positions on this subject.

27:23 The Commission noted that some delegations called for advancing liberalization in this area to take into account new developments such as those in the EU and its proposal to amend its air services agreements with third parties, in order to accommodate the community ownership and control concept. Other delegations believed that the regulatory approach to this matter should be decided by each State, given the sensitive nature of the issue and the disparity in States' situation and needs.

27:24 The Commission felt that the consensus reached at ATConf/5 on this issue, particularly regarding respect for a State's sovereignty and the need for flexibility and cooperation, represented a practical and balanced regulatory framework. It reaffirmed that the objective of the ongoing regulatory evolution, including on air carrier ownership and control, is to create an operating environment in which international air transport may develop and flourish in a stable, efficient and economical manner without compromising safety and security. Each State would determine its own path and own pace of regulatory change, in a flexible way and using unilateral, bilateral, regional, plurilateral or global avenues according to circumstances. The guidance produced by ICAO is intended to facilitate States in the liberalization process and is for optional use by States at their own discretion and choice.

27:25 With respect to the developments in the EU, several delegates requested further clarification from the EU on its new policy. Furthermore, the suggestion was made and supported that ICAO should study what technical, economic and legal implications this change may have on aviation relations between States, and provide necessary guidance to States (e.g. on air service negotiations involving a group of States).

### **Other regulatory issues**

27:26 In WP 212, Colombia, on behalf of the Members of LACAC, provided information on some recent advances related to the rights and obligations of users of air transport services in the world and in the Latin American region. It suggested that ICAO continue to monitor evolution in this area and examine the viability of some form of multilateral involvement such as the possible development of a global code of conduct.

27:27 In an information paper, WP/87, the European Commission described the new legislation adopted on 21 April 2004 by the European Parliament and the EU Council of Ministers which sets out minimum insurance requirements for air transport operations to/from, within or over the territory of EU Member States.

27:28 In another information paper, WP/90, the European Commission described the regulation adopted by the European Community in early 2004, establishing new common rules on compensation and assistance to passengers in the event of denied boarding and cancellation or long delay of flights.

27:29 In the discussion, the Commission noted that the issue of the protection of consumer interests was becoming important at the global level. However, with respect to multilateral approaches, while there was some support for seeking uniformity of existing regimes to avoid the potential risk of extra-territorial application and conflict, it was recalled that ATConf/5 had not requested ICAO to undertake the development of a global code of conduct. The view was expressed that it would be desirable to leave it to each State or region to decide the appropriate measures, taking into account different situations and consumer expectations. It was also pointed out that no real conflicts have occurred between different regulatory requirements, because the existing

regulatory measures are normally applied in practice on a country-of-origin basis. The Commission noted these comments and agreed that ICAO should continue to monitor developments regarding voluntary commitments to and government regulation of consumer interests and should disseminate the information to States in an appropriate manner.

### **Exogenous factors affecting civil aviation**

27:30 In WP/251, Cuba drew attention to its analysis of the financial and safety consequences for Cuban civil aviation of certain actions arising from the United States' economic, trade and commercial embargo of Cuba. Cuba invited the Assembly to acknowledge that such actions constituted a violation of the principles of the Chicago Convention, and for ICAO to inform the United Nations of the impacts and for an annual report to be made to the Council.

27:31 In WP/297, the Islamic Republic of Iran drew attention to the trade embargo imposed by the United States on some Contracting States, including Iran, in regard to aircraft, spare parts and post-sale services and some CNS equipment, which it considered discriminatory and against the aims and objectives set out in Article 44 of the Chicago Convention. It requested the Assembly to consider the issues raised and take necessary measures, in order to prepare the ground for the lifting of the embargo so that affected States might have equal opportunities and be able to improve their safety and security standards.

27:32 In the discussion that followed, a number of delegations stated their support for the positions taken by Cuba and Iran, and for actions proposed in their papers. In their view, the trade embargo was considered to have an adverse safety and security impact on the participation of these States in international air transport. It also affected their ability to fulfil their safety obligations under the Chicago Convention. It was also felt that a fair opportunity to operate, and a proper competitive balance, were not possible when access to new technology for fleet renewal, spare parts and safety-related aviation equipment is denied. While the issue was one with political origins, it was considered by the sponsors of the two papers to be essentially a safety and technical issue and, therefore, one within the ambit of ICAO as a multilateral technical agency. They also felt that it should be examined by ICAO because the principles and provisions of the Chicago Convention were at issue.

27:33 The United States' position was that this is a sensitive bilateral matter between the parties concerned, one with wider foreign policy origins and ramifications. The United States therefore considered that the matter should not be analysed or reported on by ICAO, as was requested in both papers. The United States also drew attention to the origins and objectives of the two bilateral disputes and pointed out, with respect to the safety aspect of the issue, that the United States had in the past approved the export of some aviation equipment to Iran on a case-by-case basis when safety was at issue. Some support was expressed for the United States' view that this was essentially a bilateral matter.

27:34 On a point of order, both Cuba and Iran expressed objections to certain political elements that had been raised in the course of the Commission's discussions of the issue. Moreover, Cuba objected to the introduction of external factors which, it believed, impinged on its internal affairs. Both Cuba and Iran reiterated their contention that the embargoes raised safety issues which the Assembly should address.

27:35 The Commission recognized that this was a complex, delicate and sensitive issue which had generated strong views on each side but was one which the Economic Commission, in particular, could not resolve. It was therefore decided that, in the course of the Assembly, the Chairman would bring this matter,

A35-WP/311  
EC/48

27-6

Report on Agenda Item 27

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including the views expressed in the Commission, to the attention of the President of the Council, whose “good offices” had been involved in this issue on previous occasions.

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