



ASSEMBLY — 39TH SESSION

EXECUTIVE COMMITTEE

Agenda Item 22: Environmental Protection – International Aviation and Climate Change – Policy, Standardization and Implementation Support

INCREASED TRANSPARENCY IN ICAO DECISION MAKING

(Presented by International Coalition for Sustainable Aviation (ICSA))

EXECUTIVE SUMMARY

Greenhouse gas emissions from aviation have major global climate change implications. Their environmental impact and ICAO's work to address them therefore demand public scrutiny and openness. ICAO transparency and process lags significantly behind longstanding practices in other UN bodies. Contracting States have commitments in this respect under the original Agenda 21 agreed at Rio de Janeiro in 1992, as well as the Rio+20 Declaration adopted last year. Article 13 of the Paris Agreement recognises that enhanced transparency is required to ensure effective implementation of the Agreement. The commitment of 46 ICAO contracting states to the Aarhus Convention also requires civil society access and participation. The International Coalition for Sustainable Aviation (ICSA) calls for a more open, effective committee-based decision-making process generally and particularly with regard to ICAO measures to address greenhouse gas emissions from aviation.

Action: The Assembly is invited to:

- a) request Council to continue and expand stakeholder participation and transparency after the 39th Assembly through a more effective, formalized committee-based decision-making approach on environmental issues and regulations that is fully open, transparent and accessible to Observers and to the greatest extent possible members of the wider public, consistent with international obligations and practices observed in other international organisations.
- b) request the ICAO Secretariat to enable effective stakeholder participation by establishing inclusive and uniformly-applied rules for access to technical documents within CAEP that allow for the broadest participation of experts.

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| <i>Strategic Objectives:</i> | This working paper relates to Strategic Objective E – <i>Environmental Protection</i> |
| <i>Financial implications:</i> | |
| <i>References:</i> | |

1. INTRODUCTION

1.1 If aviation were a country, its emissions would be ranked 7th. After taking into account non-CO₂ impacts, aviation accounted for an estimated 4.9% of anthropogenic global warming in 2007. Without action, emissions from the sector are expected to quadruple by 2050. Aviation also contributes significantly to local and regional air pollution and noise nuisance. Given this significant and rapidly growing sector, this paper underscores the stake that mankind has in seeing the sector's climate impacts reduced as soon as possible and the importance therefore that ICAO afford civil society active involvement in ICAO's work on climate and environmental issues. There is a clear need for transparency in ICAO processes addressing the environmental impact of international aviation, so as to facilitate a full and open discussion about developing measures to address the environmental effects of international aviation. ICSA welcomes the constructive efforts of the ICAO President to allow observer access to political gatherings such as the Friends of the President meeting and the increased availability of documentation online, and hopes that participation and openness will become more formalized.

1.2 The Rio+20 'Future we want' Resolution adopted by the UN General Assembly on 27 July 2012 strongly supports the full participation of civil society in all environmental decision-making. It also re-endorsed the 1992 Rio Declaration Principle 10, stating the importance of citizen participation and access to environmental information. Article 13 of the Paris Agreement recognises that inseparable connection between transparency and the adoption of effective mitigation measures. In addition, 46 Member States of ICAO are Parties to the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (the Aarhus Convention). It is clear that ICAO processes do not fully respect these requirements.

1.3 This paper calls on member states of ICAO to take action to maximize opportunity for civil society to interact and engage with ICAO with regard to measures to address climate change and other environmental issues. Firstly, ICSA believes that a structure that brings representatives of member states together with Observers in an open system where decisions and documents are freely available is a necessity. With responsibility for policy decision residing, in the first instance, with Council, and thence with the Assembly, Council must firstly provide for adequate civil society participation when these issues are being considered. This is currently not the case. While ICSA acknowledges and appreciates the steps taken to integrate civil society into political discussions, opportunities for civil society to provide views to, and to interact with, Council and Assembly can be expanded. As an Observer and significant contributor to CAEP's work, ICSA believes that full participation in the technical discussions, through uniformly applied rules for access to technical documents, is an imperative for a broad and informed discussion on environmental issues.

2. ADDRESSING THE ISSUE

2.1 Council sessions are generally open to the public to observe (but not speak) yet there is no public access to Council documentation or opportunity to make submissions. Consistent with the aforementioned UN agreements, we urge ICAO to provide civil society access to contribute, participate and engage in discussions on environmental issues. Such provisions should apply to Council as well as to ad hoc meetings. For instance, ICSA's application to participate in ICAO's Environmental Advisory Group (EAG) has never even been acknowledged, despite our longstanding contribution to the technical work of the Committee for Aviation Environmental Protection (CAEP). Other Observers were included by default without the need for an invitation. Meeting behind closed doors to discuss climate issues contravenes the international commitments mentioned above.

2.2 It is not only good governance, but an obligation to afford all civil society observers the same opportunity to engage regarding climate issues. Given the complex nature of addressing aviation's climate impact, through standards, MBMs or other measures, it is helpful to engage the broadest possible range of experts. Civil society has a considerable body of expertise built up over decades of work which can contribute to more successful outcomes at ICAO. However, this cannot be fully availed of while ICAO continues its restrictive access to information. Openness will, as a general rule, make Council more productive and transparent, and therefore enhance the legitimacy of its decision-making.

2.3 ICSA participates in CAEP working groups and plenary sessions. Access to CAEP documents is granted upon acceptance of the terms of use of the CAEP secure portal. Where commercial confidence information is concerned, ICSA acknowledges the right and need to maintain proper confidentiality procedures. However, Article 6 in the terms of use concerning the unlimited liability of portal users is unnecessarily obstructive to the participation of many groups, as individuals and organisations are held liable if information is disclosed regardless if that disclosure was inadvertent or required by law. Furthermore, this language is particularly prohibitive for the participation of non-profit organisations, which includes all members of ICSA, representatives of which are not in the position to determine the liability of their respective organisations. This led to the acceptance and subsequent rejection of many ICSA members from the CAEP portal disrupted participation at the Eighth Meeting of CAEP's Global Market-Based Measure Task Force (GMTF/8). Addressing a legitimate concern, such as the protection of commercially confidential information, should not be done by applying a blanket provision to all documents produced or retained by ICAO.

2.4 Few CAEP papers contain commercially sensitive information, yet the CAEP portal confidentiality rules are applied to all CAEP papers. To ensure an adequately broad representation of experts, the confidentiality rules should be modified to commensurately reflect the relative commercial sensitivity of different documents within the CAEP portal. For example, the onus could be placed on the author of the document to classify their paper as "restricted access" or "suitable for public audience", with a justification required for "restricted access". In the interests of all concerned, the vast bulk of CAEP documentation that is not commercial in confidence should be available publicly after the fact. For example, all International Maritime Organisation Marine Environmental Protection Committee (IMO MEPC) documentation is free to be made available to the public straight after MEPC meetings. An audio recording of all MEPC plenary sessions is also available to members and observers.

3. DECISION MAKING

3.1 It will be important to ensure that the process to establish provisions for a global MBM is able to complete both the technical and policy work needed in a timely manner. As Parties meet only triennially at Assembly, to as large an extent as possible, decisions are prepared and agreed in Council prior to the meeting. This detailed MBM development process needs to be undertaken in a consultative way that allows and encourages the work to be completed in time for the MBM to be implemented starting in 2018. CAEP's consideration of market-based measures to address CO₂ emissions from aircraft has been limited to "technical issues only", with "political" issues being taken at Council or referred to high level groups (GIACC, DGCA, HGCC) where civil society and indeed industry participation has been extremely limited. Splitting the process introduces delay: it is evident that "political" issues are sometimes taken up by Council before the appropriate technical advice is made available, or alternatively, Council is unable to make a decision because "political" issues are in fact rather technical as well. Permanent Representatives to ICAO have a large range of responsibilities and can only function effectively if decisions are properly examined and recommendations agreed and prepared at the expert working level. If the work is to be done in CAEP, as ICSA has suggested, full consideration should be

given to proposals submitted by Australia in a paper to the 2009 CAEP Steering Group towards increasing the committee's responsiveness.

4. TRANSPARENCY AND DOCUMENTATION

4.1 The legitimacy of the process would be enhanced if essential information is made public especially with regard to emission forecasts and climate impact assessments. Often the information made available, is only available for purchase. For example, the only public versions of the Forecast and Economic Analysis Support Group (FESG) and Modelling and Database Group (MDG) forecasts lack the granularity of the original data, depriving non-privileged users of their scientific basis and of a valuable resource to help further the debate. Rather than encourage the use of ICAO statistics and material, this has the opposite effect, pushing states and organisations to use publicly available but mostly inferior data sets from other sources. Good governance would require as much transparency as possible including with working documents; further, ICAO has an obligation to publicly publish documents once decisions have been made. There is no reason that the CAEP/10 report should not be in the public domain.

4.2 It is clear that CAEP documents fall within the remit of the Aarhus Convention and should be available at the national level, but preferably at the international level as well. This would be in keeping with the spirit of the UN Rio+20 Resolution. At a minimum, all official documents concerning climate change issues should be in the public domain. All research on aviation and climate change commissioned by ICAO should be freely published (or made available on the website) either by ICAO, by the authors or preferably both.

4.3 Any reading of ICAO's program of action and work on the basket of measures reveals an almost exclusive focus on measures to address CO₂ emissions despite the ongoing work to clarify the non-CO₂ impacts. In February 2014, the Impacts and Science Group (ISG) co-rapporteur informed CAEP of the estimated 4.9% radiative forcing estimate in 2005, but that figure has yet to find its way into any of the ICAO published literature. The ISG work is impressive and while these papers are the intellectual property of the authors it has been agreed that they could be used for reporting the outcome of CAEP, for the ICAO Environmental Report and in an ICAO saleable document (the CAEP/10 report). ICSA believes that restricting important information on aviation's climate impact to publications costing up to \$900 greatly limits the public's ability to review and evaluate this information and is unacceptable.

5. CONCLUSION

5.1 ICAO contracting states have an obligation under international commitments to involve civil society in its deliberation of climate change issues but in practice, this is often not the case. ICSA has observer status in CAEP but has seen its ability to participate stunted by dissuasive and unnecessary rules for access to documentation. ICSA can observe Council sessions but not participate. Infrequent and ad hoc invitations to present NGO views briefly to Council are not the full solution. Participation in political meetings is offered spontaneously, yet ICSA was effectively excluded from direct participation in the High Level Group meeting this spring. Both the UNFCCC and the IMO afford civil society access honouring the international treaty obligations mentioned above. There is also a clear need for ICAO to review and design a more effective, committee-based and transparent decision-making process on environmental issues.