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## **ASSEMBLY — 40TH SESSION**

### **REPORT OF THE ECONOMIC COMMISSION ON GENERAL SECTION AND AGENDA ITEMS 31 AND 32**

(Presented by the Chairman of the Economic Commission)

The attached report on General Section and Agenda Items 31 and 32 has been approved by the Economic Commission.

*Note.— After removal of this covering sheet, this paper should be inserted in the appropriate place in the report folder.*

(9 pages)

## **REPORT OF THE ECONOMIC COMMISSION TO THE ASSEMBLY**

### **General**

1. The Economic Commission held three meetings between 24 September and 4 October 2019.
2. Mr. Marc Rioux (Canada) was elected Chairperson of the Commission at the first Plenary meeting of the Assembly. The Commission, at its first meeting, elected Captain Gustavo Perez Morales (Panama) and Ms. Iryna Shevchuk (Ukraine) as First and Second Vice-Chairpersons, respectively.
3. The Secretary of the Commission was Mr. B. Djibo, Director of the Air Transport Bureau (ATB). The Deputy Secretary was Mr. T. Hasegawa, Deputy Director, Economic Development, ATB. The Assistant Secretaries, all staff of ATB, were Mr. P. Alawani, Ms. N. Bastug, Ms. S. Chen, Mr. A. Combes, Ms. J. Diaz de Leon, Mr. M. Gergely, Mr. C. Robinson, Mr. A. Sainarayan, Ms. X. Wang with Mr. C. Mustapha, as the Liaison Officer.

### **Agenda and working arrangements**

4. Agenda Items 31, 32, 33, 34, 35, and 36 referred to the Commission by the Plenary were considered:

Item 31: Annual Reports of the Council to the Assembly for 2016, 2017 and 2018

Item 32: Economic Regulation of International Air Transport — Policy

Item 33: Economics of Airports and Air Navigation Services — Policy

Item 34: Aviation Data — Monitoring and Analysis

Item 35: Economic Development of Air Transport

Item 36: Other issues to be considered by the Economic Commission

5. The documentation considered by the Commission is available on the ICAO website (<http://www.icao.int/Meetings/a40/Pages/default.aspx>). The Commission carried out all of its work in full session. The action taken by the Commission in respect of each item is reported on separately in the paragraphs which follow.

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**Agenda Item 31: Annual Reports of the Council to the Assembly for 2016, 2017 and 2018**

31.1 The Economic Commission at its first meeting considered relevant sections of the Annual Reports of the Council for 2016, 2017 and 2018.

31.2 The sections included “The World of Air Transport”, which highlights the principal trends and developments in the aviation industry and the economy in general, as well as the sections related to air transport work programmes for the years 2016, 2017 and 2018 that covered the Strategic Objective — *Economic Development of Air Transport*. The section on Economic facts and figures was also considered as a relevant section.

31.3 The Commission noted ICAO’s air transport activities including on-going work on air transport policies and regulation, economics of airports and air navigation services, aviation data and economic analysis, and joint financing administration.

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**Agenda Item 32: Economic Regulation of International Air Transport — Policy**

***Liberalization and ICAO international agreements***

32.1 In WP/16, the Council presented a progress report on the examination of an international agreement by which States could liberalize market access; the development of an international agreement to liberalize air carrier ownership and control; and the development of a specific international agreement to facilitate further liberalization of air cargo services. The Assembly was invited to endorse the Organization's work programme for advancing the liberalization of international air transport.

32.2 Through WP/278, Brazil and Chile, shared the experience of Brazil in the deregulation of its air transport industry and benefits of liberalizing air cargo up to 7th Freedom traffic right. The paper advocated for ICAO to continue the work on the development of a flexible and pragmatic international agreement to facilitate further liberalization of air cargo services.

32.3 In WP/279, Brazil and Chile with the support of the Latin American Civil Aviation Commission (LACAC)<sup>1</sup> Member States highlighted the efforts made by the Air Transport Regulation Panel (ATRP) to examine the possibility of developing a multilateral agreement to liberalize market access. The paper expressed support for ICAO to continue to work on achieving the highest possible level of liberalization of market access in line with its Long-Term Vision for International Air Transport Liberalization.

32.4 WP/420, presented by Colombia, recalled ICAO's efforts on the development of international agreements on the liberalization of market access, air cargo services and air carrier ownership and control during the past triennium. The paper called for further work to be undertaken on the development of global frameworks for economic regulation in the area of international air transport and that this should be included as priority work in the ICAO Business Plan 2020-2022.

32.5 In WP/330, the Dominican Republic reported on the results, including the benefits, of liberal air transport policies in Latin American States, particularly in the Dominican Republic. The paper urged ICAO to include activities in its work programme for the next triennium that will continue to encourage the development of public air transport policies and to promote air transport liberalization.

32.6 WP/470, presented by Peru and supported by LACAC Member States, reported on the Open Skies Multilateral Agreement for LACAC Member States, which entered into effect this year and brought significant advances in the liberalization of international air transport in the Latin America Region. The paper called on Member States to promote multilateralism in air services agreements with a view to optimising and developing air routes and the international air transport system.

32.7 In WP/181, Qatar presented its views and suggestions on the need to increase the momentum and support the future development of a multilateral agreement on market access among Member States. The paper highlighted the current challenges in the on-going effort by the ATRP to

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<sup>1</sup> Belize, Colombia, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, Paraguay, Perú, and Venezuela.

achieve the development of an agreement and advised that ICAO should conduct a comprehensive review of the efforts of various States and regional blocs to liberalize air transport.

32.8 WP/182, presented by Qatar, examined issues and a possible option in the development of an international treaty to liberalize air carrier ownership and control, taking into account the outcome of the work of the ATRP, ICAO's future work programme, and the continuation of the development of a Multilateral Convention on Foreign Investment in Airlines. The paper proposed five tiers for the liberalization of the traditional "ownership and control" requirements and proposed a draft text for consideration by the ATRP.

32.9 WP/249, presented by Singapore and co-sponsored by Brunei Darussalam, Cambodia, Indonesia, Lao People's Democratic Republic, Marshall Islands, Nauru, New Zealand, North Macedonia, Palau, Thailand and Trinidad and Tobago, highlighted a series of successful multilateral air transport agreements concluded in the Caribbean, Europe, Latin America and Asia Pacific, which also encouraged wider collaboration on capacity-building, aviation safety and doing business issues. The paper urged States to adopt a smaller scale multi-party liberalization approach as a stepping-stone to achieving a global multilateral agreement on market access liberalization.

32.10 In WP/192, the United Arab Emirates highlighted the efforts and progress made by the ATRP on the examination and development of multilateral agreements on the liberalization of market access and air cargo services, as well as the decision of the Air Transport Committee on the work of the panel. The paper advised that the ATRP should continue its work on the development of an international agreement to facilitate further liberalization of air cargo services and that the *International Air Transport Agreement* of 1944 be used as an interim solution for advance the liberalization of all-cargo services.

32.11 While recognizing that much work remains to address concerns expressed by some States – notably regarding so-called "free-riders"–, the United Kingdom expressed, in WP/252, strong support for the on-going efforts of the ATRP to develop a Convention on Foreign Investment in Airlines. The United Kingdom sought a broad international consensus on the relaxation of nationality-based airline ownership and control restrictions. The paper emphasized that an airline's safety, security, financial soundness, regulation and credibility of the individuals running it was more important than the nationality of who owns and controls the airline.

32.12 Through WP/186, Togo, on behalf of the 54 Member States and Members of the African Civil Aviation Commission (AFCAC)<sup>2</sup>, provided information on the liberalization of air transport in Africa through the Single African Air Transport Market (SAATM) initiative, a flagship of the African Union Agenda 2063, which seeks to create one single air transport market in Africa and to drive economic integration. The paper called on ICAO to enhance collaboration with AFCAC, the Executing Agency of SAATM, on the implementation of the Joint Prioritized Action Plan for the sustainable development of air transport in Africa.

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<sup>2</sup> Algeria, Angola, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Cabo Verde, Central African Republic, Chad, Comoros, Côte d'Ivoire, Democratic Republic of the Congo, Republic of the Congo, Djibouti, Egypt, Equatorial Guinea, Eritrea, Eswatini, Ethiopia, Gabon, Gambia, Ghana, Guinea, Guinea-Bissau, Kenya, Lesotho, Liberia, Libya, Madagascar, Malawi, Mali, Mauritania, Mauritius, Morocco, Mozambique, Namibia, Niger, Nigeria, Rwanda, São Tomé and Príncipe, Sénégal, Seychelles, Sierra Leone, Somalia, South Africa, South Sudan, Sudan, Tanzania, Togo, Tunisia, Uganda, Zambia, and Zimbabwe.

32.13 In its information paper WP/486, China presented the development and positive results of liberalization of regional air transport between China and Association of Southeast Asian Nations (ASEAN) States since the signing of the Air Transport Agreement in 2010 and its Protocols I and II which respectively opened up third and fourth freedom traffic rights and, partially, fifth freedom traffic rights. It was highlighted that China had taken measures to enhance the efficiency of its foreign airline permit system.

32.14 Through its information paper WP/388, the Republic of Korea informed on the need to have fair competition, safeguards and equal opportunity for air carriers in the liberalization of international air transport for a sustainable and sound development of the industry. The paper explained that government subsidies for some State-owned airlines, as well as mergers and acquisitions achieved through government grant, could distort the market and impede sound development of air transport.

32.15 In information paper WP/241, the Arab Civil Aviation Organization (ACAO) highlighted the need for Member States to respect the principle of States' sovereignty over their airspace as enshrined in the Chicago Convention, by avoiding taking unilateral decisions that may affect international air transport such as the EU Emission Trading Scheme and regulation on fair competition. The paper advised States to use dialogue and consultations to reach consensus on issues that may be included in their air services agreement.

32.16 Information paper WP/415 presented by Hermes Air Transport Organization underscored the need for decision-makers to create an environment, including relaxing ownership and control restrictions, which will allow airlines to access the capital necessary for effective competitiveness. The paper explained that carriers pursuing cost leadership and/or revenue generation models extending beyond national boundaries would dominate the industry in future.

32.17 Considering the report of the Council in WP/16, the Commission, while noting the progress of the tasks by the ATRP, endorsed in principle the proposed work programme of the Organization aiming to move forward the liberalization of international air transport. There was overwhelming support to build a better understanding of the benefits of liberalization and barriers to opening market access, enhance dialogue and exchange of information with States and industry through the existing tools, as well as promote multilateral air law treaties already developed by the Organization. In this regard, concern was expressed on the use of the *International Air Transport Agreement of 1944* to liberalize market access, in particular air cargo services, and to devote ICAO resources into this task. As to the work to finalize the draft Convention on Foreign Investment in Airlines, there was broad support for the continuation of this work; at the same time, some concerns were expressed that a number of outstanding issues would need to be resolved in order to progress this matter. Some States considered that these outstanding issues include fair competition, regulatory oversight, concerns on free-riders, as well as social and labour considerations, while other States were of the view that these issues of concern should not be listed in the report.

32.18 With respect to the proposals put forward in WPs/279 and 420, it was recalled that the Council made a decision to conclude the work related to the examination of an international agreement by which States could liberalize market access and to cease the work related to the development of an international agreement to facilitate further liberalization of air cargo services (WP/16 refers). Based on this, the Commission did not support to continue these two tasks; instead, it was reiterated that the Organization should focus on building a better understanding of the benefits and challenges of

liberalization and barriers to opening market access, both in terms of passenger and cargo services, and, in particular, to identify what States need to assist them in pursuing liberalization.

32.19 The Commission welcomed the information provided in WPs/181, 186, 249, 330 and 470 concerning the progress of air transport liberalization at bilateral and regional levels, which, in addition to providing benefits on its own right, can contribute to building capacity for States. The Commission also recognized that States could adopt a smaller scale multi-party approach as a stepping-stone to achieving a multilateral agreement on market access liberalization at the highest possible level. In addition, support was expressed for ICAO to collaborate with AFCAC on air transport matters, especially the implementation of SAATM and the Prioritized Joint Action Plan on the sustainable development of air transport in Africa.

32.20 The Commission did not support the proposals as set out in WPs/192 and 278, especially to continue the work on the development of an international agreement to facilitate further liberalization of air cargo services. In this regard, the Commission was reminded of the Council's decision as reported in WP/16.

32.21 In reviewing WPs/182 and 252, the Commission reached consensus that the work on the development of a Convention on Foreign Investment in Airlines should continue through the ATRP, taking into account the outstanding issues. A view was expressed that any such Convention should be made available to Member States that wish to waive the traditional ownership and control criteria but shall not be binding on non-signatory States. States that do not agree to waive ownership and control criteria through the Convention are entitled to rely upon the existing criteria that are included in their air services agreements and may elect to waive such criteria on a case-by-case basis.

### ***Consumer protection***

32.22 Through WP/349, Dominican Republic highlighted the background and objective of the ICAO Core Principles on Consumer Protection, which is a living document, and the need to continue to work on the core principle. The paper proposed for consideration having an instrument or international convention that would set out for States the compensation amounts for passengers with respect to flight delays, cancellations, denied boarding and the damage or loss of checked baggage.

32.23 WP/92, presented by Finland on behalf of the European Union (EU) and its Member States<sup>3</sup> and other Member States of the European Civil Aviation Conference (ECAC)<sup>4</sup>, focused on the application of the ICAO Core Principles on Consumer Protection since its adoption in 2015 and the evolution of the passenger experience and expectations when using air transport. The paper underscored the importance for ICAO to facilitate the exchange of views and experiences, as well as to create a knowledge base that enables and fosters the development of guidance materials on passenger rights.

32.24 WP/234, presented by Guyana, explained some key issues affecting both airlines and aviation consumers due to lack of global uniformity in the application of consumer protection principles.

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<sup>3</sup> Austria, Belgium, Bulgaria, Croatia, Cyprus, Czechia, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxemburg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, and United Kingdom.

<sup>4</sup> Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Georgia, Iceland, Republic of Moldova, Monaco, Montenegro, North Macedonia, Norway, San Marino, Serbia, Switzerland, Turkey, and Ukraine.

The paper advocated for a unified global system through consensus and commonalities among States by developing a global consumer protection regulatory framework.

32.25 As regards WPs/92, 234 and 349, the Commission agreed to encourage States to apply the ICAO Core Principles on consumer protection in their regulatory practices, and urge States that are yet to be parties to the Montreal Convention of 1999 to sign and ratify the Convention. It was also agreed that ICAO should facilitate an exchange of views and good practices regarding the application of the ICAO Core Principles. However, the Commission considered it premature to go beyond the sharing of State experiences or discuss a legally-binding instrument. The harmonization of regulatory regimes at the global level was not supported, considering the needs of States for flexibility given their differences in social, political and economic characteristics.

32.26 The Commission also took note of pro-active industry-led initiatives in the field, notably the Airports Council International (ACI) Airport Service Quality (ASQ) programme as a mean to monitor and oversee service quality provided by airport operators to their customers.

### ***Taxation and slot allocation***

32.27 WP/321, presented by the ACI, expressed concerns on the proliferation and negative impact of various taxes on air transport, which goes beyond the scope of ICAO's policies on taxation contained in Doc 8632 – *ICAO's Policies on Taxation in the Field of International Air Transport*. The paper urged ICAO with the appropriate support of the aviation industry, to engage more on the dialogue with tax authorities to enhance State awareness of ICAO policies on taxation.

32.28 Information paper WP/275, prepared by ACI, the International Air Transport Association (IATA) and the Worldwide Airport Coordination Group (WWACG), reported on the progress made regarding their joint Strategic Review of the Worldwide Slot Guidelines (WSG), and on the reform of its governance that now includes on an equal basis airport operators, airlines and facilitators/slot coordinators. The paper informed that it would result in a significant evolution of the WSG to keep pace with the rapidly evolving aviation industry.

32.29 Recognizing that ICAO's policies on taxation are not standards but policy recommendations, each State reserves the right to determine its tax policies. The Commission agreed to urge States to clearly distinguish taxes and charges in accordance with ICAO's policies and conduct appropriate cost-benefit analysis before the introduction of taxes on air transport, given the potential risks and negative impact on aviation activities.

### ***Economic regulation of unmanned aircrafts***

32.30 In information paper WP/468, Japan stated the need to consider developing economic policies regarding the operations of unmanned aircraft, with the increasing use of drones for delivery services and the fact that unmanned scheduled international air services may commence in the near future. The paper explained that while ICAO is addressing the technical, security, environment and legal aspects of the operations of unmanned aircraft, economic consideration has not been given to the operations of unmanned aircraft.

32.31 An intervention was made to request the ATRP to explore the issues raised in WP/468 and share information with other ICAO panels that are working on unmanned aircraft systems (usually referred to as remotely-piloted aircraft systems). Some States supported the suggestion to refer the matter to the ATRP while one State was of the view that this matter was premature to be discussed in the ATRP and should not be raised in this meeting because it was presented as an information paper. The Commission noted this discussion.

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