



**ASSEMBLY — 40TH SESSION**

**ECONOMIC COMMISSION**

**Agenda Item 32: Economic Development of Air Transport – Policy**

**COMPETITION IN INTERNATIONAL AIR TRANSPORT AND THE SUBSTANCE OF THE CHICAGO TREATY**

(Presented by the Arab Civil Aviation Organization)

**EXECUTIVE SUMMARY**

The *Convention on International Civil Aviation* (Chicago Convention) of 1944 contains a provision, which allows equal and fair opportunities for Member States to operate international airlines. The ICAO Template Air Services Agreements (TASA) also include some general provisions on fair competition. One of the most important pillars of the Chicago Treaty and the model conventions developed under this Treaty is that States have every right to exercise their sovereignty over their airspace, over air transport freedom rights granted to others, and issues related to engaging in air transport activities in their countries. Any new economic regulation issued by some countries and affecting other countries must achieve consensus with those countries.

The role of global organizations such as ICAO is more effective in developing standard and model procedures that relate primarily to technical issues and constitute a common, non-controversial ground for all countries of the world such as safety, security, facilitation, air navigation and environment issues and their subsidiary issues.

<i>Strategic Objectives:</i>	This working paper relates to Strategic Objective – <i>Economic Development of Air Transport</i> .
<i>Financial implications:</i>	No additional resources are required.
<i>References:</i>	Doc 7300, <i>Convention on International Civil Aviation</i> (Chicago Convention) Assembly Resolution A39-15, <i>Consolidated statement of continuing ICAO policies in the air transport field</i>

<sup>1</sup> English and Arabic versions provided by ACAO.

## 1. INTRODUCTION

1.1 The *Convention on International Civil Aviation* (Chicago Convention) of 1944 contains a provision, which allows equal and fair opportunities for Member States to operate international airlines.

1.2 ICAO has also developed some general provisions on fair competition based on the level of liberalization of air transport in its template guidelines of international air transport services agreements. The provision on fair competition in ICAO Template Air Services Agreements (TASA) states that “each designated airline shall have a fair and equal opportunity to compete in providing the international air transportation governed by the agreement”.

1.3 The Chicago Treaty and the Model Conventions were built on the principle of the sovereignty of States over their airspace, on the traffic rights granted to others, and on the issues related to performing air transport activities in their countries.

1.4 The evolution of air transport has been based, in the past 75 years, on the above-mentioned rules regardless of the policy adopted in the finalization of air transport services agreements whether bilateral agreements between two countries or bilateral agreements between a State and a bloc, with a mandate from its constituent countries to negotiate on its behalf, or in the case of agreements concluded between two blocs, with the required mandate, or even a policy adopted by a State regarding unilateral entry to its market.

1.5 The principle of sovereignty gives States the opportunity to negotiate, consult and dialogue with one another to develop mutually beneficial air transport relations through which the parties can reach a formula in those conventions that takes into account the differences between States in terms of economic development and their legal frameworks.

1.6 The various air transport freedoms set forth in the Chicago Convention and in the model conventions adopted by world's States later, have shaped a global air transport system that includes different and varied transport freedoms that have established the existing global air transport network and the air transport sector has become one of the most important economic pillars of sustainable development.

1.7 In some cases, some countries or blocs have adopted unilateral initiatives on some issues related to air transport that have exceeded the sovereignty of other countries and their economic and legal frameworks for air transport.

## 2. DISCUSSION

2.1 Experience has shown that unilateral initiatives, which include in their application interference with the policies of other countries in contravention of the above basic concepts, are such initiatives that lead to harmful civil aviation and air transport disputes, particularly for travellers and air transport users. This was the case with the European Union (EU) emissions trading scheme, which in its first version included the flights of airlines to and from the EU beyond the sovereign borders of the EU, affecting the sovereign rights of other countries and leading to the opposition of the world' States to this system and provoking trade and other conflicts that could have led to a flaw in international relations if the EU had not retracted the implementation of this regime outside the sovereign sphere of the Union.

2.2 A similar recent development has taken place in the EU, whereby the Union adopted the regulation EU 2019/712 on Fair Competition in International Air Transport between the EU and non-European countries. European law reflects the European view of fair competition in international air transport, and imposes it on other countries without taking into account the specificities, sovereignty and legal and economic structures of other States, nor does it take into account the differences between countries in terms of social and economic standards and different levels of non-European airlines in terms of maturity and cost and ownership structure. The law therefore contradicts the above-mentioned principles and may lead to disputes with other States that harm international air transport and thus international air transport users and the economy of States.

2.3 In the past 75 years, ICAO has demonstrated its effectiveness in technical matters through the development of international rules and recommendations in the areas of safety, security, facilitation, the environment and the crosscutting issues that have brought significant benefits to international civil aviation. Engaging the Organization into issues related to the substance of the Chicago Convention, sovereign rights of states would be of no use, and could lead to conflicts like those related to the European emissions trading scheme in its first version.

#### 4. CONCLUSIONS

4.1 The Assembly is invited to note the following:

- a) ICAO Member States should abide by the principles set forth in the Chicago Convention and the bilateral agreements that have established the international air transport network, in particular the principle of the sovereignty of States over their airspace and the freedoms of air transport granted to others and issues relating to the conduct of air traffic in their countries;
- b) the provisions of 39th General Assembly ICAO Resolution No. 15, which urged Member States to avoid unilateral actions that may adversely affect the orderly and sustainable growth of international air transport and to ensure that domestic policies and legislation are not applied to international air transport without taking account their characteristics; and
- c) Member States should resort to dialogue and consultation to reach consensus on any issues that may be included into their air transport services agreements.

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