



**WORKING PAPER**

**ASSEMBLY — 40TH SESSION**

**ECONOMIC COMMISSION**

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

**PROGRESS REPORT ON THE DEVELOPMENT OF INTERNATIONAL AGREEMENTS ON  
THE LIBERALIZATION OF MARKET ACCESS, AIR CARGO AND  
AIR CARRIER OWNERSHIP AND CONTROL**

(Presented by the Council of ICAO)

**EXECUTIVE SUMMARY**

This working paper reports on the progress made regarding 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. Taking into account the outcome of the work of the Air Transport Regulation Panel (ATRP), the Organization's work programme is presented to move forward the liberalization of international air transport; inter alia, by building a better understanding of the benefits of liberalization and barriers to opening market access; enhancing dialogue and exchange of information with States and industry through the existing tools; promoting multilateral air law treaties already developed by the Organization; and the continuation of the development of the draft Convention on Foreign Investment in Airlines.

**Action:** The Assembly is invited to:

- a) review the work accomplished by ICAO in paragraph 2;
- b) endorse the Organization's work programme as presented in paragraph 3; and
- c) consider the information contained in this paper for the update of Assembly Resolution A39-15, Consolidated statement of continuing ICAO policies in the air transport field.

<i>Strategic Objectives:</i>	This working paper relates to Strategic Objective — <i>Economic Development of Air Transport</i> .
<i>Financial implications:</i>	The activities referred to in this paper will be undertaken subject to the resources available in the 2020–2022 Regular Programme Budget and/or from extra budgetary contributions, including the Voluntary Air Transport Fund (TRAF).
<i>References:</i>	Doc 10075, <i>Assembly Resolutions in Force</i> (as of 6 October 2016) Doc 10078, <i>Report of the Economic Commission of the 39th Session of the Assembly</i> A40-WP/22-EC/7, Consolidated statement of continuing ICAO policies in the air transport field AT-WP/2169, Report on the Fifteenth Meeting of the Air Transport Regulation Panel (ATRP/15) ICAO Business Plan 2020–2022

## 1. INTRODUCTION

1.1 The Assembly Resolution A39-15 requested the Council, inter alia, “to complete the examination of an international agreement by which States could liberalize market access, and continue the development of an international agreement to liberalize air carrier ownership and control and a specific international agreement to facilitate further liberalization of air cargo services, taking into account the goals of the ICAO long-term vision for international air transport liberalization, and the past experience and achievements of States, including existing market access air cargo liberalization agreements concluded at bilateral, regional and multilateral levels, as well as the various proposals presented during the Sixth Worldwide Air Transport Conference (ATConf/6)”.

1.2 The work arising from the above-mentioned Resolution has been assigned to the Air Transport Regulation Panel (ATRP) under the Air Transport Committee (ATC) since 2014. This paper reports on the progress of the work by the ATRP, and presents the Organization’s plan for future work in this area.

## 2. PROGRESS MADE ON THE TASKS

2.1 The ATRP had two Panel meetings, in July 2017 and in April 2019, as well as two Working Group meetings, to conduct assigned tasks. The outcome of the work of the ATRP is summarized below.

2.2 **Examination of an international agreement by which States could liberalize market access.** Divergent views remained on key issues of, inter alia, traffic rights, safeguards/reassurances, labour and social matters. The ATRP concluded its examination with the limited prospect to reach consensus on the way forward in the short-term. Nevertheless, it was decided to conduct further work to build a better understanding of the benefits of liberalization and barriers to opening market access.

2.3 **Development of an international agreement to liberalize air carrier ownership and control.** The Panel examined a draft Convention on Foreign Investment in Airlines, which provides for a “waiver” as an instrument to allow for airlines of the parties to the Convention to be “majority owned and effectively controlled” by nationals of any other party to the Convention. There remained issues of concern on “free riders” and regulatory oversight.

2.4 **Development of a specific international agreement to facilitate further liberalization of air cargo services.** The views of the Panel were divided on a draft Supplemental Agreement on the Liberalization of Air Cargo Services in International Air Transport, which provides for a liberal regime in relation to traffic rights up to the *7th Freedom of the Air*, capacity and operational flexibility. In light of the divergent views, the draft Supplemental Agreement could not be finalized at this stage.

2.5 At the 217th Session of the Council, the ATC reviewed the report of the Fifteenth Meeting of the ATRP on the assigned tasks (AT-WP/2169 refers). The Committee acknowledged that extensive work has been done by the ATRP on the examination and/or development of international agreements related to liberalization on market access, air cargo services and air carrier ownership and control. It, however, expressed concern that apart from the development of a draft Convention on Foreign Investment in Airlines, the Panel remained divided on the issue of market access and air cargo services with no prospects of making significant progress in the short term. The Committee, therefore, decided that the Panel:

- a) continues the work to finalize the development of the draft Convention on Foreign Investment on Airlines;

- b) ceases the work related to the development of an international agreement to facilitate further liberalization of air cargo services; and
- c) builds 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.

### 3. FUTURE WORK

3.1 Considering the progress of the work presented above, efforts by the Organization in this respect will focus on the establishment and promotion of good regulatory practices and governance for international air transport, including the modernization and harmonization of regulatory approaches of Member States. In moving forward, the Organization needs to accommodate and reconcile negotiation and political positions of each State.

3.2 The multilateral approach to international air transport liberalization, especially the exchange of traffic rights on a multilateral basis, remains an ambition of the Organization in the process of implementing the *ICAO Long-Term Vision for International Air Transport Liberalization*. In this regard, there is need to further increase the momentum and support for the future development of a modern and more ambitious multilateral agreement among Member States by building the case and understanding for liberalization and the benefits which flow from it to States and barriers to opening market access.

3.3 The Organization's existing tools, including the ICAO Air Services Negotiation (ICAN) events, the ICAO Air Transport Symposium and other exchange fora, will continue to be deployed to enhance dialogue and exchange of information with States and industry. These fora will also be used to promote and exchange experiences on the development and implementation of regional and/or plurilateral liberal air services agreements, for example, the Multilateral Agreement on the Liberalization of International Air Transportation (MALIAT), the European Common Aviation Area (ECAA) Agreement, the Agreement on Liberalization of Air Transport between the Arab States, the Yamoussoukro Decision (YD) and Single African Air Transport Market (SAATM), the Air Transport Agreement of the Association of Caribbean States, and the ASEAN Single Aviation Market (ASEAN-SAM).

3.4 Existing multilateral air law treaties may also help move forward with the process of liberalization on a multilateral basis. It is to be recalled that in 1944, when the *Convention on International Civil Aviation* was adopted in Chicago, *International Air Services Transit Agreement* and an *International Air Transport Agreement of 1944*<sup>1</sup> were also opened for signature. This year marks the 75th Anniversary of not only the Convention but also these two multilateral agreements.

3.5 The International Air Transport Agreement is currently in force among the 11 States that are signatories to it<sup>2</sup>. The main feature of this 1944 Agreement is to allow the parties to exercise traffic rights on a multilateral basis for passenger and cargo services up to *5th Freedom of the Air*, and to use "substantially owned and effectively controlled" as airline designation criteria. Although the provisions of this Agreement are rather simple, compared to modern air services agreements concluded on a bilateral or regional basis, it could still be used by the "willing and ready" States for the liberalization of passenger and/or air cargo services until a more comprehensive multilateral agreement is developed. In order to accommodate different interests of States in relation to the pace and scope of liberalization, States, upon signing the Agreement, could make reservations, for example, in relation to passenger services and thus

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<sup>1</sup> <https://treaties.un.org/doc/Publication/UNTS/Volume%20171/v171.pdf>

<sup>2</sup> [https://www.icao.int/secretariat/legal/List%20of%20Parties/Transport\\_EN.pdf](https://www.icao.int/secretariat/legal/List%20of%20Parties/Transport_EN.pdf)

restrict the scope of the application of the Agreement only to air cargo services as far as they are concerned.

3.6 The future development of a modern and more ambitious multilateral agreement on the liberalization of market access will need a flexible and pragmatic approach which allows for reservations, so as to secure a high number of States acceding to the agreement.

3.7 Building upon the progress made on the development of a draft Convention on Foreign Investment in Airlines, work should continue to address the remaining issues of concern on “free riders” and regulatory oversight with a view to finalizing this draft Convention. Once the draft Convention is approved by the Council, the preparation of the instrument for signature will be undertaken in accordance with the relevant process and procedures, including the need to go through a review process by the Legal Committee. Concluding work on this draft Convention would be an important step forward in the process of the liberalization of international air transport.

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