



WORKING PAPER

ASSEMBLY — 41ST SESSION

ECONOMIC COMMISSION

Agenda Item 35: Economic Regulation of International Air Transport —Policy

**PROGRESS REPORT ON ECONOMIC REGULATION OF INTERNATIONAL AIR
TRANSPORT**

(Presented by the Council of ICAO)

EXECUTIVE SUMMARY

This paper reports on the progress made regarding the ICAO work in the field of economic regulation of international air transport since the 40th Session of the Assembly. It provides updates on the work to address the remaining issues of concern to be able to progress towards a Convention on Foreign Investment in Airlines and on emerging issues regarding air cargo services and the increasing international operations of unmanned aircraft. Information on the efforts of the organization to build a better understanding of the benefits of liberalization and barriers to opening market access, is also provided. Taking into account the outcome of the on-going work of the Air Transport Regulation Panel (ATRP), the Organization's plan for future work is focused, inter alia, on: finalizing the development of the Convention on Foreign Investment in Airlines, examining the need for the development of a standalone international agreement for the liberalization of air cargo services; and conducting an in-depth assessment on the need to develop the economic regulation of international operations of unmanned aircraft systems.

Action: The Assembly is invited to:

- a) endorse the Organization's plan of work as presented in paragraph 3; and
- b) consider the information contained in this paper for the update of Assembly Resolution A40-9, *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 ICAO activities referred to in this paper are expected to be undertaken within the resources available in the 2023–2025 Regular Budget and/or from extra-budgetary contributions, including the Voluntary Air Transport Fund (TRAF), as guided by the ICAO Business Plan 2023–2025.
<i>References:</i>	Doc 10140, <i>Assembly Resolutions in Force (as of 4 October 2019)</i> Doc 10139, <i>Assembly 40th Session. Montréal, 24 September – 4 October 2019</i> <i>Economic Commission Report</i> A41-WP/17-EC/7, <i>Consolidated Statement of Continuing ICAO Policies in the Air Transport Field</i> ICAO Business Plan 2023–2025

1. INTRODUCTION

1.1 The Assembly Resolution A40-9 requested the Council, inter alia, “to address the remaining issues of concern to be able to make progress towards a Convention on Foreign Investment in Airlines, which aims to liberalize air carrier ownership and control on a multilateral basis in line with the *ICAO Long-term Vision for International Air Transport Liberalization*¹”; and “to undertake further work to build a better understanding of the benefits and challenges of liberalization and barriers to opening market access, so that further consideration could be given to the development of a multilateral approach at the appropriate time”.

1.2 The work arising from the Resolution on the Convention on Foreign Investment in Airlines was assigned to the Air Transport Regulation Panel (ATRP) under the Air Transport Committee (ATC), while the task on building a better understanding of the benefits and challenges of liberalization and barriers to opening market access, was undertaken by the ICAO Secretariat. This paper reports on the progress of the work by the ATRP and the ICAO Secretariat, and presents the Organization’s plan for future work in the area of the economic regulation of international air transport.

2. PROGRESS MADE ON THE TASKS

2.1 **Draft Convention on Foreign Investment in Airlines (draft Convention).** The ATRP had two informal virtual meetings on 29 June and 7 October 2021 to discuss outstanding issues of concern in progressing work on developing a draft Convention on Foreign Investment in Airlines. In order to ensure efficiency and effective deliberations, the Panel created five small, regionally-based, discussion groups, which considered: i) pros and cons (feasibility/appetite) of having a Convention on Foreign Investment in Airlines; ii) “free riders” and “bad actors”; iii) labour and social issues; iv) fair competition and associated issues; and v) regulatory oversight. The outcomes of the informal meetings and the small discussion groups provided a good basis for the Panel discussions at its Sixteenth Meeting.

2.2 At its Sixteenth Meeting held virtually (11 to 14 April, 2022), the ATRP focused its discussion on the draft Convention and reviewed the document. The Panel thereafter agreed that there was a need for further in-depth discussions on the issues of concern and concluded that it intends to sustain the engagement and enthusiasm already generated by continuing discussions on the work, through a working group, in order to resolve the remaining issues of concern, with a view to further progress the tasks.

2.3 **Build a better understanding of the benefits and challenges of liberalization and barriers to opening market access.** Pursuant to Resolution A40-9, ICAO embarked on enhancing dialogue and exchange of information amongst States and industry, on liberalization of market access for passenger and cargo air services, using different fora including the ICAO Air Services Negotiation (ICAN) Event and other air transport events. These efforts assisted in building better understanding of the benefits and challenges of liberalization of market access, especially in the area of air cargo services. Views were continuously expressed that, given the distinct features of air cargo operations and the increasing number of global operators in the express delivery sector, with hubs in different countries, air cargo services require more commercial freedom and business oriented treatment, to be able to meet the needs of the global air cargo industry.

2.4 The experience of air cargo operations during the COVID-19 pandemic, supports the views expressed in paragraph 2.3 above. Consequently, the ATRP at its Sixteenth Meeting considered this issue and recognized the critical role of all-cargo services during the COVID-19 pandemic and the fact that the demand for air cargo services will continue to grow in view of the increasing expansion of e-commerce business. The Panel decided to establish a Working Group to examine whether there is enough justification

¹ [ICAO long-term vision](#)

to recommend to the ATC to consider the development of a specific international agreement to facilitate further liberalization of air cargo services.

2.5 **Economic regulation on international operations of unmanned aircraft:** The increasing use of unmanned aircraft across borders has become an emerging issue, which has drawn the Organization's interest, especially the need to examine whether economic guidance would be required for such operations in the nearest future. The issue was discussed at the last meeting of the ATRP and many members expressed support for advancing this task, bearing in mind that operations of unmanned aircraft in commercial international air transport is still relatively new and technical regulations on its operations are yet to be fully developed.

3. FUTURE WORK

3.1 The Organization intends to continue to work with Member States 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; while promoting the implementation of the *ICAO Long-Term Vision for International Air Transport Liberalization*, as the industry recovers from the unprecedented impact of the COVID-19 pandemic. In view of the on-going work of the ATRP and the ICAO Business Plan 2023-2025, the future work of the Organization will focus on the underlisted tasks.

3.2 **Liberalization of air carrier ownership and control.** Building upon the engagement and enthusiasm already generated by the ATRP on the development of a draft Convention on Foreign Investment in Airlines, work should continue to address the remaining issues of concern on "labour and social considerations, fair competition and associated issues, and regulatory oversight", with a view to finalizing this draft Convention. Once the Council approves the draft Convention, 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.

3.3 **Build a better understanding of the benefits and challenges of liberalization and barriers to opening market access.** The Organization will continue its effort to build a better understanding of the benefits and challenges of liberalization of market access, so that further consideration could be given to the development of a multilateral approach at the appropriate time. The support of the ATRP would be sought to ensure that the task is carried out in a more structured manner to optimize and facilitate its accomplishment. A multilateral approach to international air transport liberalization, especially the exchange of traffic rights on a multilateral basis, remains an ambition of the Organization.

3.4 Considering that one of the conclusions of the Sixteenth Meeting of the ATRP was that there *is a need to examine whether there is enough justification to recommend to the Air Transport Committee the development of a specific international agreement to facilitate further liberalization of air cargo services*, the Organization would examine whether there is enough justification for this task to be pursued.

3.5 **Economic regulation on international operations of unmanned aircraft:** Considering the fact that economic guidance may be required for international operations of unmanned aircraft in the nearest future, the Organization would undertake the task of conducting in-depth assessments and analysis on whether there is a need to develop guidance material on economic regulation for international operations of unmanned aircraft and share information and best practices on economic regulatory issues on unmanned aircraft amongst Member States.

3.6 **A model clause on health related measures for Air Services Agreements:** Recommendation 14 of the ICAO Council's Aviation Recovery Task Force (CART) Report encouraged States to implement Public Health Corridors (PHCs) to address the problem of COVID-19 border closures by States. In order to replace the provisions on the PHCs, and create a more resilient bilateral and multilateral framework to align health requirements, the Organization would undertake the task of developing a model clause on health related measures/protocols in bilateral or multilateral air services agreements.

3.7 **Economic policies on aviation sustainability:** As efforts are being made on the recovery of the aviation industry from the unprecedented impact of the COVID-19 pandemic, there are increased discussions on the need for aviation to improve the sustainability of its operations. The Organization would explore the possibility of developing economic policy on the improvement of aviation sustainability.

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