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ASSEMBLY — 37TH SESSION

REPORT OF THE ECONOMIC COMMISSION ON AGENDA ITEMS 49 AND 50

(Presented by the Chairman of the Economic Commission)

The attached report on Agenda Items 49 and 50 has been approved by the Economic Commission

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(6 pages)

Agenda Item 49: Liberalization of international air transport services

49.1 The Commission considered this agenda under the following two topics: Report by the Council and future work, and other regulatory issues.

Report of the Council and future work

49.2 In WP/5, the Council reported to the Assembly on the major work accomplished by ICAO since the last Assembly under its economic policy programme, and provided a brief overview of significant industry and regulatory developments in the field of economic regulation and liberalization of international air transport. In addition, the paper identified the challenges faced by ICAO in this field, and presented the Organization's plan of action for the next triennium. The plan included, inter alia, cooperation with States, international organizations and other aviation stakeholders to address issues of common interest, consideration of convening of a worldwide air transport conference, continued provision of the ICAO Air Services Negotiation Conference (ICAN) facility, and assistance to States in air transport regulation matters. The Assembly was invited to endorse the plan.

49.3 In WP/242, 53 African States, Members of the African Civil Aviation Commission (AFCAC), reported on their efforts and the achievements being made in liberalizing air transport services in Africa. The paper also presented the African position on liberalization worldwide and discussed some barriers that could unduly disadvantage developing countries. African States therefore urged States and regional blocs to refrain from taking unilateral measures that could negatively affect international air transport and supported ICAO as the only final determinant for all issues of air transport, including liberalization. They called on the Council to assist African States in the implementation of the Yamoussoukro Decision, as appropriate, and suggested that ICAO develop guidelines on liberalization for worldwide uniformity and applicability, including those related to dispute settlement mechanisms.

49.4 In WP/190, the United States expressed the view that ICAO should continue to foster consideration of options for facilitating airlines' access to international capital markets as a means of increasing the contributions of international air transport to trade, tourism, job creation, and economic growth. It provided a draft convention for a multilateral instrument on this subject by which ICAO members, if they so choose, may enter into reciprocal obligations to lift barriers to cross-border investment by pledging to forgo recourse to the nationality clause. The United States proposed that the Council add the topic "Facilitating Airline Access to International Capital Markets" to the work programmes of the Organization and consider the development of a legally binding multilateral agreement or instrument open to accession by States.

49.5 In WP/303, Venezuela outlined the objectives of the Chicago Convention as they constitute the conceptual and legal framework on the basis of which ICAO continues to maintain its leadership role in the field of air transport and, in particular, provides guidance material on the regulation of air transport policies. It drew attention to the need for ICAO to provide States with the necessary tools to gradually implement liberalization of international air transport and to progressively move from a bilateral to a multilateral negotiation system in accordance with States' interests. Venezuela supported ICAO's activities in the field of air transport and proposed the convening of an ICAO international air transport conference.

49.6 In WP/129, the World Tourism Organization (UNWTO) drew attention to the need to foster liberalization of international air transport regulation, particularly on air carrier ownership and control rules. It believed that ICAO could play a role to provide the necessary stimulus to liberalization, and suggested some possible approaches, including using the ICAN facility to promote plurilateral or multilateral liberalization. The UNWTO considered that there would be substantial value in the convening of an ICAO worldwide air transport conference focussed on implementation of ICAO policy guidance on liberalization and on air carrier designation beyond national or regional ownership and control.

49.7 In its information paper WP/172, India highlighted the initiatives it has taken in recent years to enhance air connectivity to various international destinations by following a liberal policy in the bilateral air services negotiations, easing the requirements for operation of tourist charter flights and deregulation of legal regime on filing and approval of tariffs.

49.8 Through its information paper WP/211, South Africa provided an overview of the progress made in relation to the liberalization of air services, supporting the common African position on liberalization and the implementation of the Yamoussoukro Decision. It encouraged African States to strengthen the Regional Economic Commissions in order to establish the single African aviation market. It also urged them to liberalize air services through regional cooperation and to take the lead in the development of the aviation industry.

49.9 In an information paper WP/261, 22 member States of the Latin American Civil Aviation Commission (LACAC) provided an overview of the progress made in air transport liberalization in the Latin-American Region within the framework of LACAC, including work undertaken for the development of a draft Regional Multilateral Free Skies Agreement, in line with the ICAO multilateral Template Air Services Agreement.

49.10 In consideration of the report of the Council in WP/5, the Commission expressed its appreciation for the work undertaken and accomplished by ICAO since the last Assembly. In reviewing the trends and developments, the Commission noted that considerable progress had been made by States in liberalization, and many States had used the policy and guidance material developed by ICAO, such as the Template Air Services Agreements. However, some felt that many challenges remain and that ICAO's work needs to be continued and strengthened where appropriate.

49.11 With respect to future work of the Organization, there was strong support for ICAO to continue to play a leadership role in liberalization, as mandated by Assembly Resolution A36-15. Support was also expressed to the view that liberalization of air transport should be made as one of the strategic objectives of the Organization, and that ICAO should remain the sole global body dealing with air transport matters.

49.12 There was also broad support for the Council's plan to consider the convening of another air transport conference during the next triennium. It was suggested that unlike the conference held in 2003 which had a comprehensive coverage, this conference should focus more on new or key issues, such as liberalization of market access and air carrier ownership and control. Some believed that the conference should review the current situation and address issues of global importance, taking into account the changes taken place, the needs of States and the basic principles laid down by the Chicago Convention for the development of international air transport.

49.13 There was broad support for the proposal in WP/190 that the Council should add the topic of facilitating airline access to international capital markets to the work programme of the Organization and consider the possibility of developing a binding legal instrument on the subject. However, a view was expressed that it might be premature at this stage for a binding legal instrument. The Commission agreed that Council should further consider this proposal as well as that in WP/129, in the context of its consideration of future work and the convening of the air transport conference.

49.14 Some concern was expressed regarding the implications of liberalization, particularly for developing countries, given the disparity in development stages and the competitive strength of their airlines. It was suggested that ICAO should continue to provide guidance and assistance to these States in the liberalization process. It was also suggested that ICAO should consider undertaking further work to develop additional indicators that could help measure the range and progress of liberalization worldwide, for example, an indicator of air traffic freedoms on a country-by-country basis.

49.15 In concluding its discussion, the Commission endorsed the future work of the Organization in this field, and requested that the Council give due consideration to the proposals made and the views expressed for the implementation of its work programme. The Commission noted the information contained in WPs 172, 211 and 261.

Other regulatory issues

49.16 In WP/151, Brazil drew attention to a pricing transparency problem where airline practices differ in showing their airfares, surcharges and taxes. It believed that such practices may create distortions which hamper consumer welfare and economic efficiency. Brazil has adopted a regulation to address this problem and suggested that similar regulation be adopted by other States.

49.17 In the ensuing discussion of this paper, there was general agreement on the importance of transparency, and the need for its improvement, including on airline pricing, for the benefit of the travelling public. It was accordingly suggested that ICAO should assist States in promoting transparency. The Commission agreed that the Council should consider this issue in its future work, noting that there exist regulations in the European Union comparable to that in Brazil.

Agenda Item 50: Economics of airports and air navigation services

50.1 At its first meeting, the Commission considered economic and management aspects of airports and air navigation services on the basis of a report by the Council (WP/6). In addition, one working paper was presented by the International Transport Workers Federation (ITF) (WP/260) and an information paper was presented by India (WP/171).

50.2 In WP/6, the Council reported on major work accomplished by ICAO since the last Assembly in assisting States to operate airports and provide air navigation services in an efficient and cost-effective manner. It also provided a brief overview of developments in the economic aspects of airports and air navigation services' and presented the Organization's plan of action for the next triennium.

50.3 The most important event since the 36th Session of the Assembly was the convening of the Conference on the Economics of Airports and Air Navigation Services (CEANS), held in September 2008. The Conference adopted 15 Recommendations, 10 of which were made to strengthen *ICAO's Policies on Charges for Airports and Air Navigation Services* (Doc 9082). The Conference recommendations were endorsed by the Council on 17 November 2008 (C-DEC 185/11), and the revised Doc 9082 was published in January 2009 as its eighth edition. State letter SD 38/1-09/2 dated 30 January 2009 was circulated to Member States informing them of the outcome of the Conference.

50.4 Based on the Conference recommendations, the Secretariat is in the process of updating relevant ICAO guidance material (i.e. *Airport Economics Manual* (Doc 9562), *Manual on Air Navigation Services Economics* (Doc 9161)) with the assistance of the Airport Economics Panel (AEP) and the Air Navigation Services Economics Panel (ANSEP).

50.5 The Council also provided a brief overview of the regulatory and industry trends and developments in the management of airports and air navigation services entities, with the identification of certain key issues.

50.6 Based on the Conference recommendations, the assessment of key issues, and the Strategic Objectives and the Business Plan of the Organization, the Council presented the Organization's plan of action for the next triennium in the field of economic aspects of infrastructure management. It would include the following elements: cooperation and engagement by ICAO with Member States, the industry, interested international organizations and other stakeholders on issues of common interest in the field of airport and air navigation services economics; dissemination and promotion of the policies on charges; finalization of the revision of Doc 9082 and the two economics manuals; regional workshops on a cost-recovery basis and training on airport charges on a commercial basis; development of new guidance on emerging issues; monitoring the financial situation of airports and air navigation services and the consequential impact on charges; and development of an online database for ICAO's *Tariffs for Airports and Air Navigation Services* (Doc 7100).

50.7 In WP/260, the International Transport Workers Federation (ITF) proposed that worker and professional representatives be included in the consultation process and that this be included in Doc 9082. ITF also commented on ICAO's policies on charges in Doc 9082 and called for a review of the

current charging formula for air navigation services (ANS). The paper expressed the view that while airlines should share in the costs of provision of ANS, the fundamental role of the State needs to be recognized (i.e. financing of the system should come not only from users but also from the State), and that the lack of public support and pressure to reduce staff could have a potentially adverse effect on performance targets for safety, efficiency and regularity. It also proposed the establishment of reserve funds by air navigation service providers (ANSPs), which would require some revision to ICAO's policies in Doc 9082.

50.8 In an information paper (WP/171), India described the steps taken by the government to establish an economic regulator for airports (AERA – Airports Economic Regulatory Authority) and its powers, functions and modus operandi.

50.9 In consideration of the report of the Council, the Commission expressed satisfaction for the work undertaken and accomplished by ICAO since the last Assembly. The Commission also expressed strong support for the future work on the economic aspects of airports and air navigation services as presented by the Council. The work being done by ICAO with industry, in particular concerning the dissemination of ICAO's policies on charges, was noted and it was agreed that any revision or update of Doc 9082 should be consistent with the recommendations of the Conference and should first be reviewed by the AEP and ANSEP. In addition, the Commission agreed that a study on non-economically viable airports should be conducted and that guidance on funding of oversight functions should be developed. This work should be carried out with the assistance of the two economics panels. It was suggested that monitoring the financial situation of airports and air navigation services providers could be accomplished by using existing ICAO data gathering vehicles.

50.10 The Commission noted the views expressed by ITF and advised that ICAO's current charging policies on the use of aircraft weight and distance flown reflect the Conference recommendations and provide sufficient flexibility. Regarding ITF's request that worker and professional representatives be part of the consultation process and that this be included in Doc 9082, the Commission emphasized that any revision of policies and guidance material should be consistent with the Conference recommendations and, therefore, did not endorse the ITF proposal.

50.11 The Commission noted the information contained in WP/171.