



INTERNATIONAL CIVIL AVIATION ORGANIZATION

A35-WP/136
EC/20
9/9/04
English, French
and Spanish
only¹

ASSEMBLY — 35TH SESSION

ECONOMIC COMMISSION

Agenda Item 27: Regulation of international air transport services, and outcome of the fifth Worldwide Air Transport Conference

SAFEGUARDS IN ECONOMIC LIBERALIZATION AND THE ROLE OF AVIATION LABOUR

(Presented by the International Transport Workers' Federation (ITF))

SUMMARY

In this Working Paper the ITF highlights some of the outcomes of the fifth Worldwide Air Transport Conference and makes specific recommendations regarding follow-up action by States and by ICAO.

Action by the Assembly is in paragraph 6.

1. INTRODUCTION

1.1 The fifth Worldwide Air Transport Conference (ATConf/5) was a landmark event in the evolution of the global economic regulation of air transport. The Conference wove together a number of interconnected themes, amongst which were a) the recognition of the safety and security aspects of liberalization; b) the need for the participation of all stakeholders in the evolution of economic regulation; c) the adoption of a number of liberalization tools to be applied flexibly at States' own pace and discretion; and d) the continuing central role for ICAO in market access and trade in air transport services.

1.2 The ITF is generally sceptical about the supposed benefits of deregulation and liberalization in air transport. At the Worldwide Air Transport Conference we asked, in particular, whether one feature of liberalization might be that it deepens the downturns in the economic cycle and limits the capacity of States to take crisis action in their economic strategic interests.

¹ English, French and Spanish versions provided by ITF.

1.3 Nevertheless, with liberalization and its consequences now a reality, one priority from our perspective is to mitigate the worst effects of safety dumping and social dumping that could arise. It is also important in a globalizing world to ensure that economic relations and arrangements, whether liberalized or not, remain under the broad regulatory umbrella of ICAO. To the extent that liberalized approaches have been implemented by some States, we consider it appropriate that ICAO address these, permissively rather than by prescription, by providing a framework that gives due regard to the Organisation's mandate for safety and security and its respect for national sovereignty.

1.4 The ITF was an active participant at the Conference. We focused on safeguard principles and measures. We submitted working papers on Air Carrier Ownership and Control, on Aircraft Leasing and Jurisdictional Aspects of Nationality of Aircraft Registration, and on Market Access, which concentrated on safety and social risks and safeguards. Our concerns were generally well recognised and were specifically addressed amongst the 67 conclusions adopted.

1.5 The extraordinary degree of consensus reached at ATConf/5 is reflected in the Declaration of Global Principles for the Liberalization of International Air Transport, adopted by 145 States and 26 organisations, including the ITF. We welcomed the emphasis within it on the effective, sustainable and beneficial participation in international air transport by all States; the respect for national sovereignty; provision for preferential measures for developing countries; the recognition of public service needs; and the due regard to the interests of all stakeholders.

1.6 The Report by the Council contained in Secretariat paper A35-WP/9 identifies a number of the decisions arising from the Conference, and proposes amendments to Appendix A of Assembly Resolution A33-19 to update the *Consolidated Statement of Continuing ICAO Policies in the Air Transport Field* in light of the conclusions, model clauses recommendations and declaration of the Conference.

1.7 However, the ITF believes that the results of the Conference need to be viewed in a unitary fashion, and in particular, that the recommendations encouraging States to consider liberalization need to be considered in the context of the overall principles and safeguard measures also agreed upon by the Conference. It was the combination of outcomes that permitted a consensus to emerge between States with very differing individual approaches to economic liberalization.

1.8 Amongst the safeguard principles developed at the Conference, the ITF considers three to be particularly noteworthy.

2. SAFETY AND SECURITY

2.1 The first was the primacy given to safety and security. The Conference concluded that *economic liberalization has implications for safety and security regulation...*(1.2, a) *...In a liberalized economic environment safety and security regulation must not only be maintained but should also be strengthened...*(1.2, b) *...when introducing economic liberalization, States should ensure that safety and security not be compromised by commercial considerations...*(1.2, c) The ITF was not alone in expressing concerns about flags of convenience entering the air transport industry, or in raising questions about the capacity of the nationally based regulatory structures to provide effective safety oversight of globalizing air transport operators and multinational enterprises.

2.2 This was well recognised in the conclusions: *...The changing regulatory and operating environment in international air transport calls for the development of new regulatory devices capable of adapting to the changes...Meeting this challenge requires seamless international cooperation and concerted efforts from all Contracting States, regional aviation bodies, the industry and all other stakeholders in aviation* (1.2, d). The ITF will certainly contribute to the cooperation and concerted efforts called for.

3. **PERMISSIVE RATHER THAN PRESCRIPTIVE LIBERALIZATION**

3.1 The second safeguard principle concerns the permissive nature of the conclusions. In facilitating further liberalization for those States that had already embarked on that route or were considering doing so, due regard was paid to sovereignty: *there is a consequential need for flexibility in associated regulatory arrangements to enable all States to follow the approach of their own choice at their own pace while accommodating the approaches chosen by others* (2.1, c). Phrases such as *"should give consideration to..."* and *"States may chose to..."* and *"use as an option at their discretion and in a flexible manner..."* appear regularly in the conclusions, especially when referencing the tools elaborated to facilitate liberalised arrangements. In particular the Declaration affirmed that *Each State will determine its own path and own pace of change in international air transport regulation, in a flexible way and using bilateral, sub-regional, regional, plurilateral or global avenues according to circumstances* (4.4).

3.2 The first *whereas* clause proposed by the Secretariat for inclusion in the revision of A33-19 reflects this approach. The ITF supports this.

4. **LABOUR AS STAKEHOLDERS**

4.1 The third area of progress on safeguard principles was the agreement that on matters of economic and industrial change, aviation labour is an important stakeholder.

4.2 The fifth Worldwide Air Transport Conference took place against the backdrop of the most severe economic crisis to have ever affected the industry. Many airlines were in extreme financial difficulties and some had gone bankrupt. Service providers in air traffic control, maintenance, handling and catering were also experiencing acute cash flow problems. Passenger confidence needed to be restored through fundamental changes to security and operating procedures. Just as the Conference convened, the problems of SARs and the start of war in Iraq were magnifying the pressures being experienced by the industry.

4.3 The positive role played by labour unions, professional associations, and aviation workers in responding to these unprecedented economic and industrial challenges was highlighted by the International Labour Organization in a working paper to the Conference. In their submission, they drew attention to the global tripartite aviation meeting convened by the ILO in February 2002 to address the economic crisis. At this meeting, the first such sectoral event for over a decade, employers' and workers' organisations acted in partnership with governments to develop an action plan to address the crisis.

4.4 States at the fifth Conference, together with international organisations, recognised the contribution made by aviation employees to support and sustain their industry. In particular, the acknowledgement of labour as an industry stakeholder, which had been first agreed at the fourth Worldwide

Air Transport Conference in 1994, was reinforced through a number of specific references in the texts that were adopted.

4.5 The Declaration includes the following: *The objective of ongoing regulatory evolution is to create an environment in which international air transport may develop and flourish in a stable, efficient and economical manner, without compromising safety and security and while respecting social and labour standards* (4.1). As an overall principle, it was declared that *ICAO and its Contracting States, together with the air transport industry and other stakeholders in civil aviation, will work to ensure that international air transport continues to develop in a way that: [...] has due regard for the interests of all stakeholders, including air carriers and other operators, users, airports, communities, labour, and tourism and travel services providers* (1.1,l).

4.6 The Conclusions of the Conference were even more specific in relation to both the impact of liberalization on aviation labour, and the importance of participation by labour in the evolution of economic regulation:

liberalization may have various implications for labour, which should continue to participate as an important stakeholder for the development of the air transport industry. States should observe and respect the ILO Declaration on Fundamental Principles and Rights at Work, and take the necessary measures to promote social dialogue with the active participation of labour as a way to find innovative and socially responsible solutions. (1.1,f).

in liberalizing the conditions for air carrier designation and authorization, States should ensure that the economic and social impact, including the concerns of labour, are properly addressed... (2.1,e).

5. FOLLOW-UP ACTION

5.1 On the question of safety dumping the Conference reaffirmed important principles and raised new challenges that States and stakeholders will need to address collectively. The ITF stands ready to make its contribution.

5.2 On the question of social dumping and the need for respect for social and labour standards, the Conference took a significant step forward by formally recognising these issues. It is our view that the best safeguard against social dumping is the active participation of aviation workers and their unions in the development of economic, industrial and enterprise policy. The Conference's conclusions on the role of labour as stakeholders, on the importance of participation, and on the benefits of social dialogue represent a positive and pragmatic response to the challenge of social dumping.

5.3 However, WP/9 by the Secretariat is silent on the question of how these conclusions of the Conference might be advanced in practice. We therefore recommend Action by the Assembly to address these deficiencies.

5.4 With regard to action by States, we would encourage the development of social dialogue and the inclusion of labour representatives in the national delegations engaged in negotiating international air

service agreements, as is the practice by some States at present, as well as a broader participation by labour in the development of national aviation policies and regulations.

5.5 With regard to action by ICAO, we would urge greater efforts to incorporate labour within the organisation's economic decision-making structures, particularly with regard to the Air Transport Regulation Panel (ATRP), and the future regional and global seminars proposed within WP/9.

5.6 The proposed revision of A33-19 to update the *Consolidated Statement of Continuing ICAO Policies in the Air Transport Field* in light of the outcomes of the Conference also omits reference to some of the safeguard dimensions of the results. For instance, there is only one peripheral reference to safety in the current text, and none at all to the role of stakeholders. We believe this could be addressed by the addition of a further *whereas* clause to Section II taken from the full text of paragraph 4.1 of the Declaration, adopted unanimously by the participating States and organisations at the Conference, and including reference to stakeholders taken from the text in 1.1, 1 of the conclusions of the Conference. This reads:

Whereas the objective of ongoing regulatory evolution is to create an environment in which international air transport may develop and flourish in a stable, efficient and economical manner, without compromising safety and security and while respecting social and labour standards, and with due regard for the interests of all stakeholders;

5.7 Although some of the words above are also found within the second proposed *whereas* in the Appendix to WP/9, the intent is quite different. We support both texts.

6. ACTION BY THE ASSEMBLY

6.1 The Assembly is invited to:

- a) note this report on some of the outcomes and follow-up work to the fifth Worldwide Air Transport Conference;
- b) urge all Contracting States to take necessary measures to promote social dialogue with the active participation of labour as a way to find innovative and socially responsible solutions;
- c) invite the Council to ensure appropriate opportunities for the participation of labour, as an important recognised stakeholder, in its work in the air transport field; and
- d) review the proposed amendment to Appendix A of Assembly Resolution A33-19, in paragraph 5 above, with a view to its adoption under Agenda Item 31.