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## ASSEMBLY — 35TH SESSION

### ECONOMIC COMMISSION

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

#### ECONOMIC REGULATION OF AIR TRANSPORT

(Presented by Jordan on behalf of the Members of the Arab Civil Aviation Commission (ACAC)<sup>2</sup>)

#### SUMMARY

This paper summarizes the evolution of the oversight and regulatory role of civil aviation authorities following the adoption by most Contracting States of a policy of progressive liberalization and deregulation of air transport to remove the restrictions impeding its growth. It also examines the implementation by several states of restructuring and privatization programmes and the resulting reassignment of the roles of the policy maker, the regulator and the operator with emphasis on empowering such authorities to assume their regulatory responsibilities and determine the main components of economic regulation. It discusses means of helping States to devise a system that is appropriate to the economic conditions and to policies pursued in those States in the field of air transport.

Action by the Assembly is in paragraph 4.

<sup>1</sup> Arabic version provided by ACAC

<sup>2</sup> Bahrain, Egypt, Iraq, Jordan, Lebanon, Libyan Arab Jamahiriya, Morocco, Oman, Qatar, Saudi Arabia, Sudan, Syrian Arab Republic, Tunisia, United Arab Emirates, Yemen and Palestine

## 1. AIR TRANSPORT REGULATION EVOLUTION – AN OVERVIEW

1.1 The adoption of liberalization policies in general and the deregulation of air transport in particular, constitute an important mainstay of economic and social development, and has a positive spillover effect represented by the rise of solid, competitive airlines capable of addressing new challenges, and situations. Liberalization also enhances the flow of tourism and the creation of new jobs, reducing unemployment as a result.

1.2 The fragility and peculiarities of the air transport sector make it prone to the impact of new and unexpected situations, developments and events. A case in point have been the events of the 11th of September 2001, and the enormous hardships they created for aviation and the air transport industry as well as for airlines operations. These events demonstrated that airlines need to receive direct State subsidies and compensations, or guarantees and mandatory insurance for continuing to operate flights to the more congested airports, and the necessity of consolidating these airlines to cut down on their losses. This requires civil aviation authorities to develop regional and international cooperation policies in favor of airlines, and to allow them to consolidate their efforts under these policies to benefit from each other and to ensure fair competition.

1.3 It is noteworthy to emphasize the step taken by the Arab Civil Aviation Commission (ACAC), in the Arab area, in developing a programme of liberalization between the Arab States based on the progressive deregulation of traffic rights. Hence, the Draft Agreement on the Liberalization of Air Transport between the Arab States which has the objective of activating the economic and tourist endeavors as well as air transport among Arab States. It is considered a first step toward establishing a large Arab transport market and a greater free trade area so as to address economic challenges and the complex international conditions. To avoid conflict over the interpretation of the text of the Draft Agreement and possible conflicting views among the States Parties, and in order to simplify procedures for the implementation of the Agreement and its Annexes, it is necessary to develop model provisions for standards and regulations to serve as guide to Arab States as they develop regulations for air transport.

1.4 It should be noted that against the background of the Draft Agreement on the Liberalization of Arab Air Transport between Arab States and their relations with Europe a serious dialogue will take place among Arab civil aviation authorities and airlines over the “*choices between consideration of economic interests and the protection of the national carrier*”. The Arab States must resolve whether they prefer the interests of their economies or the interests of their airlines, especially in light of the fact that most of these airlines are owned by governments, and many of them are undergoing restructuring and privatization. Currently, we are witnessing discussions and deliberations among the Arab civil aviation authorities and airlines over the objectives and priorities.

1.5 Civil aviation authorities maintain that **priority** should be given to the application of open skies policy among the Arab States which would be advantageous to all parties like the successful achievements of the European grouping. Aviation authorities firmly believe that the Arab national carriers will also benefit from this open policy. The airlines, however, emphasize that a wholesale implementation of the open skies policy without controls, safeguards, or specific compensation will harm them, and possibly lead to their bankruptcy.

1.6 No doubt, the vision of the civil aviation authorities emanates from the strategic objectives they are pursuing, the responsibilities they have to assume in strengthening their oversight and regulatory

role in the field of air transport, in activating the greater Arab Free Trade Area, enhancing the capabilities of Arab airlines for competition, marketing, operation and cooperation, while encouraging them to introduce up-to-date operational techniques for entering such international markets as strategic marketing alliances, code-sharing and other forms of cooperation.

1.7 Arab States are also endeavoring to accelerate their bid for restructuring and privatization while applying the rules of a free economy to air transport, services, airport services and management. This is in keeping with appropriate commercial approaches ensuring efficient performance, and quality, reducing costs so as to serve the interests of the parties. This requires the determination and definition of the elements of fair competition, developing guarantees and banning cartel practices that restrict market access and violate laws of competition, to ensure the continuous operation of Arab airlines on a commercial basis and to ensure their participation in the international air transport market efficiently and effectively.

1.8 The concerns and preoccupations of Arab airlines have their source in the radical changes that have taken place in the air transport sector that will have a direct economic impact. Some of these concerns include:

- a) the complete removal of protection of Arab airline or airlines in the State concerned;
- b) withdrawing financial support from the national airline except for subsidies given for one time only for the purpose of restructuring;
- c) deregulation of ground handling services and aviation support service;
- d) competition laws and consumer protection;
- e) amendment of the bilateral agreements with European States to bring them in line with European laws and the fact that Arab airlines do not enjoy the same flexibility as European airlines.

1.9 It should be emphasized that opening the door for private investment in an airline or in the Arab aviation sector in the country concerned, may have a positive impact if an Arab government wanted to privatize its airline. In such a case, consideration should be given to the risks relating to the national identity of the airline concerned.

1.10 These considerations, therefore, emphasize the oversight and regulatory role of civil aviation authorities in the field of air transport and the need to adopt ICAO guidelines so as to realize the paramount objective of civil aviation, namely, ensuring safety and security. The authorities also have new responsibilities in the area of economic regulation through the conclusion of agreements and conducting bilateral negotiations as a result of the current economic conditions. Such conditions are characterized by drastic structural changes and fast paced global developments dictated by such components of the new world order as globalization, regional blocs, technology, deregulation of the trade in services, restructuring, privatization, commercialization, marketing alliances, airline mergers and other new developments. The latter changes have led to the conclusion of "open skies" agreements, unconditional access to markets with no restrictions on the designation of airlines, the rights to use air routes, capacity, the frequency of flights and code-sharing and tariffs.

1.11 The Contracting States, including Arab States, are facing immense challenges and regional blocs which could not be addressed save through the activation of cooperation and integration between Arab States so as to continue participating in international air transport efficiently and effectively.

1.12 If we take these developments into consideration, we, as a regional grouping in the Middle East region in general, and as Arab States in particular, have to coordinate collectively our steps and actions with regard to issues requiring such coordination. The more deregulation spreads, the more the emphasis on how to maintain fair competition in international air transport, to develop laws and rules for competition in order to devise means of dealing with anti-competitive practices. Now that the liberalization of air transport industry has become an irreversible **trend**, and that the majority of States signatory to the *Convention on International Civil Aviation* are committed to some form of liberalization, this gives a strong impetus to air transport and trade among States.

1.13 Progressive liberalization requires the availability of experts capable of evaluating and analyzing the certification applications by airlines economically, monitoring their activities and assessing their operational performance according to international standards.

1.14 The need for the determination of duties and the establishment of the rules of economic regulation of air transport as well as the expected benefits therefrom is not confined to a certain State or a group of States, whether small or large. All civil aviation authorities in the world need to exchange information and take advantage of the experience of more developed and more advanced nations to meet the various regulatory needs in the conviction that all States are members of the international civil aviation family.

1.15 Herein lies the specificity and difficulty of developing the regulations and rules of economic regulation. The specificity is due to the fact that such rules are directly related to the regulatory policies and procedures applied by each State in the field of air transport. They are related to the degree the State concerned is pursuing liberalization and to its pursuit of an approach ranging from protection of the national carrier, or the liberalizing approach which aims at the overall development of the national economy. States therefore, seek to make their legislation and regulations conform to the liberalizing approach in the field of air transport, and to prepare standards and regulations in tandem with the air transport liberalization process.

1.16 The development of rules and standards of economic regulation is the main preoccupation of civil aviation authorities in the Contracting States. It represents a great challenge for ICAO whose mandate in this area is contested by the World Trade Organization. On the other hand, the difference in regulation and economic policies, and the varying degrees of liberalization and the special circumstances of each State, make it difficult to adopt a uniform global model. The situation for aviation safety and security standards could be easier because international standards in this area are well-established and because of the collective universal consensus to apply the most stringent safety and security criteria, and the technical nature of these criteria, consensus regarding them is greater among States.

1.17 The duties of civil aviation authorities include the provision of analytical economic studies to governments, which lay down general policies, thus helping them to adopt appropriate decisions when formulating air transport policies to upgrade the civil aviation sector. This calls for activating the regulatory role of the civil aviation authority and preparing trained staff to carry out these duties and tasks. The objective is to effect a qualitative shift in the air transport sector and attracting the private sector to invest in air transport and airports.

1.18 Considering its effective role in the economic regulation of air transport, ICAO should perhaps provide assistance to States and regional groupings in the economic regulation of air transport, either through staff training or establishing rules and regulations concerning this matter.

1.19 The question of determining the obligations of States in air transport economic regulation is of great benefit to all the parties involved in this sector, whether within civil aviation authorities or persons

connected with airlines, as well as airports, international organizations and communities seeking to obtain advanced, safe and economic services. It is also beneficial to other parties involved in air transport financing, development of tourism and other different business activities.

## 2. **COMPONENTS OF ECONOMIC REGULATION OF AIR TRANSPORT POSE THE GREATER CHALLENGE**

2.1 The obligations and tasks of economic regulation of air transport constitute one of the necessary requirements for the realization of general national strategy for air transport including the reinforcement of the oversight and regulatory role of the civil aviation authority, and effecting a progressive liberalization of air transport to keep up with the global developments in this field.

2.2 In light of the documents issued by ICAO and international air transport conferences together with the European experience in liberalization, we can summarize the issues relating to the components of economic regulation of air transport which in one way or another are related to the global liberalization trends, as follows:

- a) the economic regulation and operation of airports on commercial basis;
- b) ownership and effective control of air carriers;
- c) access to markets, and release of market forces and granting of traffic;
- d) facilities provided at airports;
- e) fair competition, and safeguards and rules of competition;
- f) consumer interests and rights;
- g) sale of, distribution and marketing of air services;
- h) settlement of disputes;
- i) transparency;
- j) State subsidies and aid to airlines;
- k) taxation, charges and pricing of service;
- l) ground handling services;
- m) currency exchange and transfer of revenues;
- n) employment of foreign nationals in airlines;
- o) licenses and certificates;
- p) restructuring of air route networks;
- q) capacity recovery and adjustment; and

- r) criteria of operational performance of airlines.

2.3 These transformations and the new components that have been introduced in the air transport industry have led civil aviation authorities in the Arab States to consider with increasing interest the reorganization of the Arab air transport market. The aim is to realize an advanced level of performance and raising its efficiency, while controlling the rhythm of its activities and strengthening the oversight and regulatory of these authorities against a policy of progressive liberalization and deregulation of air transport. This is in recognition of the importance of making legislation and regulations compatible with the requirements and provisions of the Draft Agreement on the Liberalization of Air Transport, and the need to develop standards aiming at enhancing the economic aspects of the Draft Agreement that would assist in its implementation.

2.4 In this context, the member States of ACAC wish to benefit from the experiences of other regional groupings such as the European Community, which has accomplished, by means of a balanced approach, an integrated and successful liberalization of the air transport market among its members. Such liberalization reached its peak in 1993 after launching the third phase of liberalization culminating in the liberalization of domestic transport since 1997.

2.5 Member States of ACAC wish and seek to provide the appropriate framework to promote cooperation, coordination and integration among the Arab States to serve the interests of Arab civil aviation and participate effectively in international air transport. The Arab civil authorities and airlines have an urgent need to deal with the issues and difficulties facing them so as to meet the increasing demands in international air transport industry.

### **3. CONCLUSION**

3.1 ICAO, the regional organizations and all the organizations involved in air transport are invited to continue their cooperation to provide assistance, advice and guidance to developing nations to assist them in the establishment of the regulations and standards related to the economic regulation of air transport, taking into consideration the circumstances of these countries in terms of the degrees of development of their activities and level of their economic and regulatory legislation, and the need for these countries to strike a balance between developing the infrastructure of airports and air navigation facilities on one hand, and meeting environmental standards, while enhancing the level of economic regulation to cope with the process of progressive liberalization of air transport, restructuring and privatization, on the other hand.

### **4. ACTION BY THE ASSEMBLY**

4.1 The Assembly is invited to:

- a) request ICAO to provide assistance to developing States in the area of establishing rules for the economic regulation of air transport; and
- b) invite regional organizations which have experience in this fields, to cooperate with other organizations in the area of establishing rules for the economic regulation of air transport.