



ASSEMBLY — 36TH SESSION

ECONOMIC COMMISSION

Agenda Item 40: Regulation of international air transport services

TOURISM AND AIR TRANSPORT LIBERALIZATION

(Presented by the World Tourism Organization)

EXECUTIVE SUMMARY

The World Tourism Organization (UNWTO) supports and fosters the liberalization of travel and tourism regulation in a responsible way because experience has demonstrated that this contributes significantly to economic and social development. “Responsible” in this context may be equated with achieving a balance among environmental, economic and socio-cultural aspects of sustainable tourism development. The disjunct arising from an open tourism market and the arcane approach to the regulation of air transport, unique to the sector, is a constraint to both development and balance. Tourism and aviation policy should go hand in hand for optimum benefits.

Action: The Assembly is invited to agree that States and ICAO should promote:

- a) the evolution of economic regulatory regimes for air transport, nationally, regionally and globally, which go beyond narrow sectoral interests and provide the optimum overall benefits for the economy, protection of consumer interests and enhancement of competition;
- b) liberalization of air carrier designation beyond national or regional ownership and control; and
- c) a studied and positive approach within the framework of the World Trade Organization to further liberalization in the air transport sector.

Reference: A36-WP/16, EC/2

1. INTRODUCTION

1.1 Tourism and air transport are mutually dependent. Over 40 per cent of the 840 million international tourists worldwide in 2006 arrived at their destinations by air. In many countries the proportion was much higher, reaching over 90 per cent for some long-haul island or landlocked destinations. International tourism receipts reached 735 billion dollars in 2006, almost 900 billion including air tickets, making tourism not only a socio-economic driver but one of the largest categories of international trade. Conversely, the vast majority of the 931 million international passengers estimated by ICAO for 2006 are defined as international tourists (any traveller staying overnight in a foreign country, thus including the majority of international business travellers)¹. Many air routes have been initiated and

¹ Including 91 million passengers on non-scheduled services. ICAO records passengers in terms of numbers on each flight; thus an international tourist travelling by air will count as at least two international passengers (inbound and outbound at destination, plus any connecting international flights).

are sustained by the demands of growing leisure markets. Conversely, other air routes, notably those with charter and low-cost carrier operations, have created new tourism streams.

1.2 Travel and tourism are the same game, but the air transport component of the game is still played under different, outdated rules, restricting social and economic development. The present constraints on air transport are magnified when they are translated to tourism, with major economic ramifications. For many of the world's poorest countries, tourism often is — or has the potential to be — their major export, and offers the one common competitive advantage these countries share in the services-dominated global marketplace. But without attractive air services, the benefits of tourism for these countries are limited at best.

2. RECENT DEVELOPMENTS

2.1 UNWTO fully endorses the results of the ICAO Air Transport Conference in March 2003, which was successful in developing a range of guidance material on how to liberalize international air transport. In addition to a comprehensive *Declaration of Global Principles for the Liberalization of International Air Transport*, the Conference recommended follow-up studies which are now effectively complete:

- the ICAO Secretariat conducted a study on *Safety and Security Aspects of Liberalization*, which was disseminated to ICAO States for information and appropriate action (State letter EC 2/93, AN 11/41-05-83 of 12 August 2005) and is available on the ICAO website. Based on the findings of the study, ICAO has subsequently taken a number of concrete steps to improve the global safety and security regulatory system.
- on the initiative of UNWTO at the Air Transport Conference and subsequently at the 35th Session of the ICAO Assembly (A35-WP/201, EC/32) the ICAO and UNWTO Secretariats jointly prepared a study on *Essential Service and Tourism Development Routes*. This important liberalization safeguard takes existing concepts such as Essential Air Services in the United States, Remote Air Services in Australia, and Public Service Obligations in the European Union, and applies them to routes to and from the Least Developed Countries. The joint study showed that the concept was viable and provided guidance as to its implementation. Having been reviewed in UNWTO and by the ICAO Air Transport Committee, the study was posted on the ICAO website and brought to the attention of ICAO Contracting States. A joint support mechanism was established, including a programme of training courses to assist States that wish to apply such a scheme. UNWTO also signed a Memorandum of Understanding with “Routes”² and has participated in meetings convened by Routes to promote the concept.

2.2 When taken together, along with ICAO's wide-ranging *Template Air Services Agreements* and earlier work on *Preferential Measures for Developing Countries*, both also posted on the ICAO website, ICAO has provided a comprehensive framework for the liberalization of international air transport worldwide, requiring “only” implementation.

2.3 However, while there have been some encouraging signs in recent years, with an additional sprinkling of “open skies” bilateral air services agreements, some other lifting of restrictions on third and fourth freedom traffic rights and some efforts at intra-regional liberalization, implementation has

² The world and regional route development forum for airports and airlines to promote route network expansion.

in practice been limited. The European Commission has been active in negotiating “horizontal” agreements with a number of States to bring specific provisions in existing bilateral agreements into line with European Community law. The Commission has also negotiated “open skies” agreements with Morocco and the United States, but even the much-vaunted EU-US agreement remains heavily constrained. The agreement, which will go into effect in March 2008, will undoubtedly have a significant impact because of the large size of the market concerned, but it falls well short of full liberalization. There is no right of establishment of a carrier by EU parties in the US or vice-versa, and air carrier ownership and control is required to remain in the hands of EU or US entities for designation by one or the other party. Cabotage, that is carriage of traffic within an EU State by a US carrier, or within the US by an EU carrier, is also excluded. These and other issues will be the subject of a “second phase” of negotiations.

2.4 The EU-US type of agreement is in any event hardly exportable to the rest of the world, where liberalization progress is slow at best. Realistically an EU-US agreement, a bloc to bloc arrangement or a bloc to single small State agreement would not be applicable much beyond the present geography:

- in some regions there are few, if any, blocs, and those that do exist lack the backing of a powerful institutional authority such as the EU
- the EU multi-State commonality, and in particular the community air carrier ownership provision, gives a unacceptable one-sided advantage, particularly where a single State is expected to be the partner
- many countries do not have generic competition law (or consumer protection provisions) comparable to that of the EU or US, which is a necessary part of a liberalized arrangement.

2.5 New and innovative approaches are required in a globalized environment.

3. ISSUES AND CHALLENGES

3.1 A key regulatory issue is that of air carrier ownership and control vested in the citizens of a single State, which still prevails worldwide with the exception of the European Union and, intra-regionally, in parts of Africa and the Caribbean. This is an anachronism in the global economy and is circumvented mainly by major airlines through code-sharing and alliances, in which airlines of developing countries find barriers to participation. Multilateral provisions on air carrier ownership and control could reduce the need for indirect means of obtaining market access, improve safety and security regulation, limit uncertainty regarding liability, produce substantial economic benefits for air transport, tourism and the economy at large, and remove the inhibitions of developing countries regarding liberalization. The ICAO Air Transport Conference of 2003 adopted a recommendation to encourage progress towards loosening the controls, but implementation is not yet in progress.

3.2 Another fundamental issue, not addressed by the ICAO Conference, which focused on the *content* of air transport regulation, is that of the outdated *process*, that is the mechanisms used. The world is long overdue for an overhaul of the 60 year old bilateral process, unique to the air transport sector, which, albeit with some limited regional flavour today, seriously constrains the sustainable development of tourism as well as international air transport.

3.3 International air transport is by its very nature multilateral, but while multilateral regulation is slowly evolving within some regions, bilateralism and nationalism still prevail on routes between regions. This is an unsatisfactory compromise for the airlines involved, creates barriers to

participation and market access by other carriers, and does not resolve the key issue of access to capital. It can have negative connotations for developing countries in particular. For example, there are now a number of “open skies” bilateral agreements between developing and developed countries that inhibit cooperation by preventing the developing countries from obtaining economies of scale through combining the small markets concerned. This is a particular hindrance in the evolution of *Essential Service and Tourism Development Routes* which could be the lifeblood of the economies of some nations. Through code-sharing provisions, these agreements can also foster the carriage of passengers to the developing countries by airlines of other countries, by indirect and often inconvenient routings that are to the detriment of passengers.

4. A WAY FORWARD

4.1 The guidance emerging from ICAO’s Air Transport Conference in 2003 provides an extensive and valuable framework for regulatory liberalization, but can only be implemented by individual States which may not achieve the anticipated benefits if they act unilaterally. One means of achieving harmonized, multilateral implementation of the framework would be to work closely with the World Trade Organization (WTO) to add further elements to the existing Annex on Air Transport Services to the General Agreement on Trade in Services (GATS), which currently covers only business aspects such as selling and marketing, computer reservation systems and aircraft repair and maintenance.

4.2 WTO is currently undertaking a review of the Annex with a view to possible expansion and clarification of its coverage. Some members of WTO’s Council for Trade in Services have already called for extension of coverage to include such additional “soft” rights as ground handling and airport operation services. These and other proposals will be taken up at the next meeting of the Council in October this year. UNWTO believes that there would be considerable benefits from further extension to include some so-called “hard rights”, notably air carrier ownership and control provisions, under the GATS.

4.3 There may be some natural apprehension in aviation circles regarding the GATS and its potential benefits for air transport. But the objective of the GATS is not to deregulate services, many of which are regulated for very good reason, it is to liberalize services trade. The right to regulate is one of the fundamental premises of the GATS. Also, concern regarding the application of “Most Favoured Nation” and “national treatment” rules may be misplaced. Negotiations reflecting these principles are first and foremost bilateral and exemptions to MFN may be taken for ten years, or possibly even longer. There is no obligation on any WTO Member to allow foreign supply of any particular service – nor even to guarantee domestic competition, since it is possible to maintain a monopoly supplier, whether public or private, of any service.

4.4 One important factor is that, unlike air service agreements, the process of liberalization through the GATS accords due respect for the level of development by Members. There is provision for developing Member countries for “liberalizing fewer types of transactions, [and] progressively extending market access in line with their development situation”. Moreover, the GATS offers a channel for cooperative participation by developing countries, a process that can produce greater equity than individual bilateral air services negotiations. Progressive and controlled liberalization can be achieved by the system of commitments and exemptions. Inclusion of further air transport elements under the GATS should therefore be seriously explored as an option, with the guidance of, and in close cooperation with, ICAO.