



International Civil Aviation Organization

WORKING PAPER

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**English and
Spanish only¹**

ASSEMBLY — 36TH SESSION

ECONOMIC COMMISSION

Agenda Item 40: Regulation of international air transport services

EFFECTIVE FLEXIBILIZATION IN THE AIR MARKET ACCESS

(Presented by Panama)

EXECUTIVE SUMMARY

Despite the universal tendency of getting the liberalization of the air market access, there are certain obstacles that limit the benefits which brings such aerocommercial policy specially for the underdeveloped countries. For this reason, and taking into special consideration the ICAO'S international role of leadership, we are asking to call the Contractor States to eliminate the restrictions which represent the restrictive administration of the traffic rights, excepting the cabotage as well as to apply a nationality concept for the air businesses in accordance with the need of capital investment, all these matters together in agreement with the recommendations of the Fifth World Conference of International Air Transport of 2003.

Action: The Assembly is invited to:

- a) give instructions to the Council for reforming the action courses related to the administration flexibilization of the aerocommercial rights with the exception of the exercise of the cabotage right which is reserved to the sovereign ambit of the States, and
- b) at the same time to require from the Contractors States a new vision in the traditional concept of nationality of the air business, recognizing as the only limitation the protection of the security.

<i>Strategic Objectives:</i>	This working paper relates to Strategic Objective D.
<i>Financial implications:</i>	Not applicable.
<i>References:</i>	

1. INTRODUCTION

1.1 On December 7, 1944 at the city of Chicago, United States of America, it was held the Convention on International Civil Aviation.

¹ English and Spanish versions provided by Panama.

1.2 It is well known that in that time, the scenery was uncertain as a result of the demobilization of equipment and tripulation during the Second World War, for moving troops, which brought a high impact because it affected this leftover resource with the conquest of the air market, and the urgent need of regulation of such process to take advantage in times of peace.

1.3 This is the origin of the transportation of passengers, freight and mail by the air way and the need of its regulation as it is conceived at present, as a formidable element of intercommunication among the countries of the world and a peace instrument.

1.4 This confraternity born under the protection of the Convention of Chicago in 1944, today has 190 contractor states which have the freedom to regulate the development of the international air transportation system within the parameters in effect at the time of its adoption and with a content of principles which are applicable at present. Since then, the air industry has been developing satisfactorily and has become one of the most effective activities with a catalyst factor on the national economies. In this evolutive process, the ICAO has had an orienting role and effective help in those countries with economical needs for the development of their air services that are a basic factor to improve their levels of life.

1.5 It is unquestionable that since that time, it was warned the importance of the air transportation system as a tool of the economical development of the countries, for this reason, it should be considered that the orientations of the governments in the aerocommercial field should respond to this basic feature that offers the air transportation development. Even, the processes of economical integration that many countries of the world began, looking for the expansion of the commerce and the growing of the economies, has being evident the needs of air transport as an essential way to improve such processes and this increase in these jointing blocks, true scheme of multilateral open skies, where the traffics rights were liberalized to make the flowing commerce and tourism more dynamic.

1.6 It is evident that they could be maintained at present because of the experience of years applying air transportation policies at the entity for its economical, financial, and social growing giving the air transportation a good service exploitation. The countries that had followed this orientation, at present have a notable improvement with a national development and with air transport enterprises which participate on a respectable competition in the international system of civil aviation.

1.7 This good choice is being applied in different regions of the world with a diverse grade of evolution and each day the global opening in the participation of the aerocommercial rights is the most marked tendency. That's why we consider that the evolution in the administration of the traffic rights leads to the consideration on the possibility of the reversion on the restrictions that even exists in such field and which are represented by the keeping of air transportation policies conceived in times when the industry required the designer state protection to compensate the vulnerability of all the incipient activity. At present, it is handled by the private entities with the transference operated by the State in the processes called "privatization".

1.8 This Fact indicates us the need, convenience, and utility of reverting all the aerocommercial policies which are interpreted as false protectionisms, avoiding the chance of a country for growing and improving its economical level of life with an adequate exploitation of the air transport activity as the force of its development. This implies a new vision in the administration of the traffic rights. Also, it is important to enlarge the traditional concept on substantial property and airlines control but keeping the values of operational security and protection of the aviation as well as the sources of work.

1.9 It is true that all the states are sovereign to exercise their rights for accessing to the air market, but it is not less true that in a globalize world there is a legitimate right for the countries to ask the government to participate in an international air transportation system without frontiers imposed by reasons, which are not those of its economical development, for which there aren't more limits than those resulting from the protection of the security in all its dimensions.

1.10 Since its establishment in 1947, the International Civil Aviation Organization, responding to the objectives of its creation and mission enunciated in the Preamble, in particular in the article 44 of the Convention, as guiding organism of enormous transcendence in the assistance of all the 190 member states, emphasizing as a goal to get a development of the world air transportation system on the basis of more consolidated levels of security the equality of opportunities in order to all the states be able to participate of the benefits of the air mode this way conceived.

1.11 Within the Strategic Objectives adopted by the Council to be fulfilled by this organism during the period 2005-2010, the liberalization-flexibilization in the administration of traffic rights in a gradual way, has a singular rank. In total concordance with this strategic objective, there must be for the year 2010, an environment of flexibilization of traffic rights, demolishing the restrictive barriers that at present are an obstacle for its implementation.

2. AT PRESENT SITUATION

2.1 Due to the situation of policies which are transformed in obstacles for the free growing of the air services in a reasonable game of free supply and demand, it is given in Fact the proliferation of business practices by the part of airlines which are the exploiters of these given traffic rights to improve in some way the imposed obstacles, and this brings a fictitious situation which is far from the transparency that should rule in the commercial competition.

2.2 An example of this is the use of operations in nodal centers of traffic transference (hubs and spokes), business joints, practices that in many cases don't benefit the users, who are the reason of being of the air services, and they are the ones who have to tolerate the delays in the services, confusions selecting the transportation, etc.

2.3 This important change which is claimed with the protection of the Strategic Objectives of the ICAO, should always be interpreted at the light of the effective principles of the article 44 of the Covenant of Chicago, that are claiming for a secure, ordered, and efficient development of the air transportation.

2.4 Nowadays, a critical mass of bilateral agreements of air transportation registered at ICAO, and the last and very singular that was subscribed by the United States of America and the European Union in the month of March, 2007, are showing an unquestionable fact, a clear tendency to the liberalization of the traffic rights, keeping certain restriction for the exercise of the cabotage as a clear expression of the sovereignty right of each state. But even in the last example, it is warned restrictions for the admission of a modern concept about the nationality of the designated air businesses.

2.5 The limitations that even subsists are equivalent to the reduction of the world countries opportunities to get an equitable development of their resources, with the possibilities of the essential features of the air mode.

2.6 The order of the present and future moment should be to face the challenge of getting an unrestrictive access to the air market and in this way to contribute in some way to the mobilization of the economy specially for those countries which are postponed in its legitimate right to the development.

2.7 As it is known, the World Trade Organization is interested in the matters related to the commerce of the air transportation services and constantly evaluate the happenings in matter of liberalization. The ICAO keeps and should continue keeping its role of leading organism in the facilitation of the liberalization process and in the air transportation regulation.

2.8 In this labor the ICAO Council performs a primordial function. It is of vital importance that results be given in matter of the liberalization of the air transportation due to ICAO'S effort or we will take the risk that other international organisms could take the commerce of these services in a more interested and participative way, affecting the leading role that ICAO has by mandate in the economical regulations including the liberalization of air transportation, the operational security, the aviation protection, and the protection of the environment.

3. ACTION

3.1 Having in high consideration ICAO's Strategic Objectives, in particular the one which refers to the efficiency in the air services, it is suggested that the Assembly, give instructions to the Council for reforming the action courses related to the administration flexibilization of the aerocommercial rights with the exception of the exercise of the cabotage right which is reserved to the sovereign ambit of the States, and at the same time to require from the Contractors States a new vision in the traditional concept of nationality of the air business, recognizing as the only limitation the protection of the security.

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