



A36-WP/319  
EC/40  
25/9/07

**ASSEMBLY — 36TH SESSION**  
**ECONOMIC COMMISSION**

**DRAFT TEXT FOR THE REPORT**  
**ON**  
**AGENDA ITEM 40**

The attached material on Agenda Item 40 is submitted for consideration by  
the Economic Commission

**Agenda Item 40: Regulation of international air transport services**

40.1 For ease of consideration, the Commission divided this agenda item into the following three topics: Report by the Council and key issues; other regulatory issues; and exogenous factors affecting civil aviation.

**Report by the Council and key issues**

40.2 In WP/16, the Council reported to the Assembly on the major work accomplished by ICAO since the last Assembly in the field of economic regulation of international air transport, and provided a brief overview of the regulatory and industry trends and developments. In assessing the future, the paper identified seven key issues that would require attention, namely: trade in services, air service negotiations involving a group of States, safety and security aspects of liberalization, airline ownership and control, participation and fair competition, consumer interests and taxation. It then presented the Organization's plan of action for the next triennium and invited the Assembly to endorse the plan and to request Contracting States to cooperate with and support ICAO's work in this field.

40.3 In WP/281, Cuba discussed the issue of trade in services by analysing the proposed amendment of the Annex on Air Transport Services of the General Agreement on Trade in Services (GATS) presently being discussed within the framework of the World Trade Organization (WTO) and its implications for the developing countries. It expressed the view that ICAO should continue to be the intergovernmental organization to deal with all aspects of civil aviation and that the proposed extension of the GATS Annex on Air Transport Services is not in the interest of the Contracting States.

40.4 In WP/267, Egypt on behalf of Members of the Arab Civil Aviation Commission (ACAC) raised the issue of taxation of aircraft fuel for international air services and its concern over the impact of such taxation for the growth of air transport. ACAC called for ICAO to address the issue and urged States to comply with relevant provisions of the Chicago Convention and follow ICAO's policies on taxation.

40.5 In WP/194, Panama noted the global trend of liberalization of market access as well as certain obstacles that could limit the benefits for underdeveloped countries. It called for States to remove restrictions on traffic rights except for cabotage, adopt a more flexible approach in treating ownership requirements for national airlines and their business, and pursue liberalization in line with the recommendations of ICAO fifth Worldwide Air Transport Conference (ATConf/5).

40.6 In WP/227, Saudi Arabia drew attention to the changes taking place along with the trend of liberalization and discussed some possible ways to implement competition rules and safeguards in a liberalized environment.

40.7 In WP/228, Saudi Arabia outlined the progress achieved in liberalization since ATConf/5, including the emergence of some regional blocs. It believed that a realistic option now exists for developing a multilateral regulatory framework at the global level to replace the bilateral system.

40.8 In WP/104, the International Transport Workers' Federation (ITF) discussed the subject of a framework for civil aviation in Africa. The paper acknowledged the need for the consideration of

regional aspects in the development of a strong aviation industry, analyzed the challenges for aviation in Africa and made some recommendations for growth of the air transport sector in that region.

40.9 In WP/107, ITF argued that the benefits of liberalization of ownership and control regulation are questionable, and that the economic problems that could arise are insufficiently addressed. It felt that liberalization risks weakening the connection between aircraft operations and their safety and economic supervision by formalizing a variety of differing designation and authorization standards. Additionally, reservations about its impact on sovereignty and the ability to defend the national interest would need to be addressed.

40.10 In WP/102, the World Tourism Organization (UNWTO) drew attention to the relationship between air transport liberalization and tourism development. It fostered the liberalization of travel and tourism regulation in a “responsible” way, with a view to achieving a balance among environmental, economic and socio-cultural aspects of sustainable tourism development. UNWTO expressed the view that the disjunction arising from an open tourism market and the arcane approach to the regulation of air transport is a constraint to both development and balance. Tourism and aviation policy should go hand in hand for optimum benefits. It called for States and ICAO to promote the evolution of economic regulatory regimes that may go beyond narrow sectoral interests, liberalize air carrier ownership and control, and work within the framework of the World Trade Organization to further liberalization in the air transport sector.

40.11 In its information paper WP/177, China described the development and achievements of China’s international air transport, as well as some of the challenges it is facing, including the impact of fast growth on safety, infrastructure, human resources and legal framework. Responding to the challenges, the Chinese government would continue to pursue the opening of its international air traffic market in an active, gradual, orderly and safeguarded manner.

40.12 In an information paper WP/142, India highlighted the initiatives taken by the government in recent years for enhancing air connectivity to various international destinations, including following a liberal policy in the bilateral air services negotiations, easing the requirements for operation of tourist charter flights, and deregulating the tariff regime.

40.13 Through its information paper WP/79, Pakistan shared its experience of liberalization and its aviation policy. The results of its liberalization has been mixed. While competition on domestic and international routes has lowered the prices and increased connectivity, the policy of allowing unrestricted wet-leased operations of foreign registered aircraft has resulted in safety and social dumping besides stunting the growth of aviation industry. Pakistan believed that liberalization initiatives by contracting States should be guided by the considerations of aviation safety, security and human resource development in the country.

40.14 In an information paper WP/282, the Latin American Civil Aviation Commission (LACAC) provided an overview of the progress made in air transport liberalization in the Latin-American region in line with the Declaration and results of ATConf/5 and the ICAO’s strategic objectives, as well as the work undertaken by LACAC.

40.15 In consideration of the report of the Council in WP/16, the Commission expressed its satisfaction for the work undertaken and accomplished by ICAO since the last Assembly. There was

broad support for the need to address the key issues identified in the report and to the Organization's future plan of action for the next triennium. The Commission approved the proposed action by the Council.

40.16 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, many challenges remain ahead. There was strong support for ICAO to continue to play a leadership role in liberalization. It was stressed that it is important for States to implement the existing ICAO framework on liberalization. In the meantime, States should be encouraged to share with the aviation community their liberalization experience, including new or innovative approaches in addressing regulatory issues (such as on codesharing).

40.17 In the discussion on the subject of trade in services, there was strong support for ICAO to continue its leadership role in laying down the roadmap for liberalization, as outlined in Assembly Resolution A35-18 on ICAO's policies in the air transport field. As to the review of the GATS' Annex on Air Transport Services, while a majority indicated that it was premature to extend the Annex as proposed by some members of the WTO, some felt that such an extension of the Annex to include certain other air transport services, e.g. ground handling, might be of value in the future. It was suggested that ICAO should undertake a study to explore the pros and cons of the different avenues for liberalization, including the extension of the Annex, for the benefit of ICAO Contracting States.

40.18 With regard to a proposal in WP/228 for consideration of developing a global multilateral air service agreement, there was some support for the pursuit of liberalization beyond the bilateral or regional approach given that widespread liberalization had occurred in many parts of the world. However, while recognizing this could be a laudable objective in the long run, others expressed the view that given the different speed and degree of liberalization by various States, conditions are not yet ripe at this stage for a global agreement. Nevertheless, it was suggested that it might be worthwhile for ICAO to develop some kind of global quantitative indicators for evaluating the degree of liberalization, which could be useful for fostering and facilitating the liberalization process.

40.19 On the subject of liberalization of air carrier ownership and control, the Commission noted the different views expressed in the working papers. Recognizing ICAO's work and guidance in this respect, there was strong support for the view that States should take a flexible approach in dealing with this issue, taking into account the need for improved access to foreign capital, particularly for developing countries, the need to ensure safety standards for air transport operations, and the broader interest of national development. At the same time, some new or alternative approaches had been introduced in some States and regions, which could be useful for others to consider. The Commission concluded that liberalization in this area should be up to States to determine according to their specific needs and circumstances, giving due regard to the relevant ICAO guidance and the paramount importance of ensuring aviation safety and security.

40.20 With regard to the issue of fair competition, there was some support for the proposal in WP/227 which called for the development of global common rules on competition as this had become increasingly important for ensuring participation, sustainable development and fair competition in a liberalized operating environment. While recognizing this as an important issue, some felt that due to the different legal systems and competition regimes applied in States, it would be difficult at this time to

achieve a set of global common rules for competition. Noting that ICAO had some guidance and there existed some options for addressing the issue, it was suggested that this be dealt with by States in a manner as they deemed appropriate, such as through harmonization at regional level or cooperative arrangements between States.

40.21 There was broad support for WP/267 which called for exemption of taxes on aviation fuel for international air services in accordance with the ICAO policies on taxation in the field of international air transport.

### **Other regulatory issues**

40.22 In WP/99, Australia highlighted the importance of pursuing transparency in air services arrangements. It believed that access to air services agreement information will foster greater engagement by the air transport sector and the broader community in air services, facilitate trade and the development of the sector. Australia outlined several proposals seeking commitment by States and ICAO to improve transparency in air services.

40.23 Through its paper WP/105, ITF expressed the view that States should approach the issue of further liberalization of the air cargo sector with caution in order to avoid the creation of competitive disadvantages for air carriers operating combined passenger-cargo services. It also raised concerns about a possible transfer of air cargo into the portfolio of the WTO and rejected any further extension of the role of the WTO in this sector. In addition, ITF cautioned against laissez-faire liberalization of traffic rights and supported the approach that changes in such rights should evolve through sovereign agreements at the bilateral, regional or multilateral levels, based on reciprocity, balance of benefit, protection of public interest and policies to promote the participation of all States in the provision of air transport services.

40.24 In WP/106, ITF pointed out that a well trained, professional workforce is the core component for a safe and secure aviation industry. However many aviation workers have suffered from detrimental effects of their terms and conditions of service and job security during the liberalization process. It drew attention to the implications of such developments on the performance of the industry, and suggested some ways to improve the regulatory framework, including a pro-active involvement of all stakeholders.

40.25 In an information paper WP/65, Azerbaijan provided its view and experience in the area of airline codesharing arrangements, including a standard transitional provision proposed for inclusion in the bilateral air services agreements.

40.26 In their information paper WP/159, Airports Council International (ACI), the International Air Cargo Association (TIACA), and the International Federation of Freight Forwarders Associations (FIATA) expressed the view that air cargo is a dynamic force in the interdependent global economy because of its vital role in underpinning global trade and the global supply chain. Air cargo traffic rights should be liberalized to take account of the imperative for speedy delivery times and should be separated from passenger rights, since they involve different markets and different issues. They believed that cargo's pivotal role in the global economy is best served by a fully liberalized market access.

40.27 In consideration of the issue of transparency, there was broad support to the need for information sharing and transparency for air services. The Secretariat provided information on the work that has been done by ICAO in this area and possible future improvements subject, however, to the available resources within the Budget. With respect to the proposals in WP/99, the view was expressed that when considering other means of improving transparency, it would be of importance to first attain States' commitment to fulfilling their obligations under Articles 81 and 83 of the Chicago Convention for filing their air service agreements with ICAO.

40.28 In the discussion on air cargo liberalization, the Commission noted the views in WP/105. Many stressed the need for flexibility in treating the liberalization of air service operations, giving due regard to the special characteristics of different types of services such as air cargo, but leaving it to the States to determine the choice and pace of liberalization.

40.29 The Commission also took note of the views expressed in WP/106 with respect to the involvement of stakeholders including labour in the liberalization process.

#### **Exogenous factors affecting civil aviation**

40.30 In WP/280, Cuba drew attention to its up-to-date information and evidence of the economic, trade and financial embargo imposed by the United States on Cuba, and the impact of these sanctions on the development of its civil aviation. Cuba invited the Assembly to acknowledge that such unilateral sanctions constituted a violation of the principles of the Chicago Convention, and for ICAO to inform the United Nations of the impacts and for an annual report to be made to the Council.

40.31 In WP/275, the Islamic Republic of Iran presented information on the history as well as recent development of the sanctions imposed by the United States against Iran, and drew attention to the effects of such sanctions on the safety of its civil aviation. It considered the trade embargo inconsistent with the Chicago Convention and detrimental to the safety of civil aviation. Iran requested the Assembly to address the issue and take necessary measures in order that such sanctions be lifted.

40.32 In WP/283, the Syrian Arab Republic drew attention to the consequences of restrictions imposed by some States against Syria on the purchase or lease of civilian aircraft and their spare parts, which it considered a violation of the Chicago Convention. Syria called for all Contracting States to conform with the spirit of the Chicago Convention and not to resort to imposition of restrictions that could have negative effects on the safety and security of passengers and aircraft.

40.33 The Commission noted the information contained in WP/283 by Syria. In the discussion that followed, a number of delegations stated their support for the positions taken by Cuba and Iran, and for the actions proposed in their papers. In their view, the US embargoes had an adverse safety and security impact on the civil aviation of the two countries. These embargoes affected their ability to fulfil certain safety obligations under the Chicago Convention when they were denied access to aircraft, spare parts and safety-related aviation equipment, as well as technical support to maintain continued airworthiness. While the issue was one with political origins, it was considered to be essentially a safety and technical issue and, therefore, one within the ambit of ICAO as a multilateral technical agency. They also felt that it should be examined by ICAO because the principles and provisions of the Chicago Convention were at issue. Highlighting the lack of progress since the last Assembly when the same issue was raised, they called for more effective action by the Assembly and the Council to address this matter.

40.34 The United States' position was that this is a sensitive bilateral and political matter between the parties concerned, and it has the right to decide its own foreign and trade policies. While it considered that the Assembly is not the time and place to deal with the matter, the United States believed that the best channel to address the concerns raised in the papers is through the good offices of the President of the Council. In commenting on WP/275 by Iran, the United States pointed out that the so-called "ICAO report" referred to in the paper contained information that was not accurate. The said report reflected the opinion of a consultant and not an evaluation approved by ICAO.

40.35 In supporting the papers of Cuba and Iran, the delegate of Sudan also described the negative impact it had suffered from the sanctions imposed by the United States in respect of its civil aviation. It expressed the view that this was not just a bilateral matter, but one that could have a wider effect on the safe operation of international air transport. Sudan requested intervention by ICAO or any other appropriate body in order to ensure the safety of air transport and air navigation.

40.36 The Commission recognized that this was a complex, delicate and sensitive issue which had generated strong views on each side but was one which the Economic Commission, in particular, could not resolve. It was therefore decided that, in the course of the Assembly, the Chairman would bring this matter, including the views expressed in the Commission and the concerns over the lack of progress, to the attention of the President of the Council, whose "good offices" had been involved in this issue on previous occasions.

— END —