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ASSEMBLY — 36TH SESSION

EXECUTIVE COMMITTEE

Agenda Item 17: Environmental protection

CHILE'S POSITION ON THE INCLUSION OF CIVIL AVIATION IN EMISSIONS TRADING

(Presented by Chile)

EXECUTIVE SUMMARY

This working paper presents Chile's position on emissions allowances and the European proposal.

Chile deems that the situation should be framed within the context of International Law and that it is important to adopt approaches which have been taken in other multilateral forums which have addressed environmental issues, such as establishing common but differentiated responsibilities, and distinguishing the treatment given to highly vulnerable countries. This means that in the adoption of measures, it should be taken into account that nations with differently developed industries should assume other kinds of responsibilities, and that the contribution to reduction measures is different for more vulnerable States.

It is also important to point out the geographic isolation of countries such as Chile, for whose economic development and international connectivity air transport is of vital importance. The European scheme could significantly increase aviation operations costs, thereby harming our country's economic development.

Action: The Assembly is invited to:

- a) take note of the background indicated in this Working paper;
- b) support the activities carried out by the Committee on Aviation Environmental Protection (CAEP); and
- c) support the activities carried out by ICAO with regard to the Emissions Trading Scheme.

<i>Strategic Objectives:</i>	This working paper relates to Strategic Objectives C (<i>Environmental Protection – Minimize the adverse effect of global civil aviation on the Environment</i>).
<i>Financial implications:</i>	Not applicable.
<i>References:</i>	

1. INTRODUCTION

1.1 Chile is aware of the problems related to the issues under discussion; it considers that the measures taken in their regard are important and it supports these measures. It has made this clear in the different forums in which it participates. For this reason, Chile supports initiatives on the matter, including those discussed within the framework of ICAO, which contribute to furthering the objectives of the Convention on Climate Change and Sustainable Development, so long as said initiatives are in keeping with both the relevant international agreements to which it is a party, and with International Law.

1.2 The great debate raised some years ago with respect to climate change and its effects and possible solutions has brought to the international stage technical, legal, economic, and, especially, political questions which must be carefully studied so as not to lose sight of the true character and scope of the problem.

1.3 Aviation has become a contributing factor in climate change, and even when its effect is minor, it does not disavow its responsibility. In light of this responsibility, ICAO has been carrying out the mandate conferred upon it by the Kyoto Protocol.

2. THE ENVIRONMENT

2.1 **a) Common but differentiated responsibilities.** Our country's policy emphasizes that developed nations must be the ones to make the greatest effort to reduce the problem of global warming by effectively and fully complying with the obligations established in this respect by the United Nations Framework Convention on Climate Change and the Kyoto Protocol.

2.2 The Convention on Climate Change states that "the largest share of historical and current global emissions of greenhouse gases has originated in developed countries", and it is these countries which must lead the way in the fight against climate change. The Convention notes the need for the international community to make a joint effort which is in accordance with the principle of "common but differentiated responsibilities". The Kyoto Protocol thus establishes that in the first stage, only developed countries must reduce their greenhouse gas emissions by at least 5% below 1990 levels. They must also provide financial resources and technology to aid the developing world in fulfilling its commitments to establish emissions inventories and formulate plans for the reduction of and adaptation to climate change. The States Parties have the right to promote their own sustainable development, and their economic growth is essential to solving the problem of climate change.

2.3 By not taking this principle into account, the European Union initiative establishes broader requirements than those provided for in the Kyoto Protocol for developing countries with respect to certain gas emissions such as carbon dioxide. In establishing emissions reduction commitments, the Kyoto Protocol makes a distinction, based on economic development, between Annex I countries and non-Annex I countries. Countries which are part of the latter group – that is to say, developing economies – have no emissions reduction commitments. This principle is also a cornerstone of the Convention on Climate Change, appearing in both the Preamble and in Articles 3 and 4.

2.4 **b) Highly vulnerable country.** With respect to the condition of vulnerability contemplated in Article 4, paragraphs 8 and 9 of the Convention on Climate Change, our country meets the majority of the descriptions listed therein, namely, Article 4, *Commitments*, paragraph 8:

“In the implementation of the commitments in this Article, the Parties shall give full consideration to what actions are necessary under the Convention, including actions related to funding, insurance and the transfer of technology, to meet the specific needs and concerns of developing country Parties arising from the adverse effects of climate change and/or the impact of the implementation of response measures, especially on:

- “(a) Small island countries;
- “(b) Countries with low-lying coastal areas;
- “(c) Countries with arid and semi-arid areas, forested areas and areas liable to forest decay;
- “(d) Countries with areas prone to natural disasters;
- “(e) Countries with areas liable to drought and desertification;
- “(f) Countries with areas of high urban atmospheric pollution;
- “(g) Countries with areas with fragile ecosystems, including mountainous ecosystems;
- “(h) Countries whose economies are highly dependent on income generated from the production, processing and export, and/or on consumption of fossil fuels and associated energy-intensive products; and
- “(i) Landlocked and transit countries.

“Further, the Conference of the Parties may take actions, as appropriate, with respect to this paragraph.”

According to this Article, because of its geography, Chile qualifies as a highly vulnerable country; as such, Chile should receive special treatment. It is contradictory to ask that our country make the same contribution to aviation emissions reduction as non-vulnerable countries.

2.5 **c) Kyoto Protocol, Article 2.3.** This Article states as follows: “The Parties included in Annex I shall strive to implement policies and measures under this Article in such a way as to minimize adverse effects, including the adverse effects of climate change, effects on international trade, and social, environmental and economic impacts on other Parties, especially developing country Parties and in particular those identified in Article 4, paragraphs 8 and 9, of the Convention, taking into account Article 3 of the Convention. The Conference of the Parties serving as the meeting of the Parties to this Protocol may take further action, as appropriate, to promote the implementation of the provisions of this paragraph.”

2.6 **d) Carbon credits (Clean Development Mechanism, CDM).** Although Chile has no greenhouse gas reduction commitments for greenhouse gases not controlled by the Montreal Protocol, it has actively made use of one of the options established by the Kyoto Protocol and has a solid presence on the global carbon credit market (Clean Development Mechanism, CDM), which is based on an effective institutional system and an active public-private alliance.

3. ECONOMIC AND COMMERCIAL ASPECTS

3.1 **a) Status as a geographically isolated country.** Because Chile is far from the hubs of development and important export markets, air transport and its shortened distances are of vital importance. The European scheme could significantly increase the costs of aviation operations. It could affect the prices of passenger transport and cause passenger and cargo demand to turn to other destinations, increasing the final price of export products and bringing on the subsequent loss of market competitiveness, and possibly forcing Chilean products into markets less profitable than those of the EU. If emissions are to be charged from the point of origin, operators taking off from our country will suffer. Because Chile is a distant country, there are no alternatives to air transport. The scheme could seriously impair the national economy, since Chile is far from its business partners and from the destination of its main exports.

3.2 **b) Costs for air operators.** Those directly affected by the proposed scheme will be air operators, particularly those which are not part of the EU, because no distinction is made between countries and air operators. Several studies have shown that it would not be possible to transfer the bulk of the cost to consumers, and thus these measures would financially affect operators. The cost could not be absorbed by the industry. New operators and airlines from developing countries would be greatly affected, which would in turn affect competition in a market which tends toward concentration and in which it is increasingly necessary to reduce entry barriers for new operators. For these reasons, the scheme should consider the necessary measures to lessen the possible negative consequences for the industry. It should also regulate the possibility for market entry by new airlines so as not to discourage competition in air transport.

3.3 **c) Connectivity.** It is important to encourage air transport connectivity between Chile and other countries, among them those of the EU. A scheme such as the one proposed would hinder the development of aviation policies and international agreements which promote connectivity, since it would discourage operators from flying to the EU.

3.4 **d) Transparency.** In whichever area of civil aviation, and with regard to whichever measure is to be implemented, standards of maximum transparency must always be applied when approving measures aimed at reducing aircraft emissions. Such standards must also be applied to the methods of imposing charges and, particularly, the destination of the funds obtained through such charges.

4. TECHNICAL ASPECTS

4.1 **a) Emissions reduction through the improvement of air traffic management.** Within the framework of air traffic management, air traffic flow management (ATFM) can be pointed out as an activity which will make States' aeronautical systems more efficient, both as regards aviation activity and air navigation service provider management. ATFM is currently being developed on the CAR/SAM (Caribbean and South American) regional level by the ATFM Working Group of the Caribbean/South American Regional Planning and Implementation Group (GREPECAS) of the ICAO Lima Regional Office. Its short-term (2009) objective is to bring into line and establish the Flow Units of the region's States, while in the medium term (2012) it intends to establish the Centralized Regional Air Traffic Flow Control Unit. This will enable lower fuel consumption and, concomitantly, reduce emissions by eliminating both take-off and landing delays, which will benefit operations users; it will implement actions benefiting reduced fuel consumption; it will reduce separation in terminal areas, allowing arrival and departure delays to be eliminated; it will reduce en-route separation, enabling users to maintain flight

levels which are more suitable in terms of fuel consumption; it will establish direct routes using satellite navigation technology, enabling more efficient flight through shortening of distances flown and reducing of flight time; and it will establish area navigation (RNAV) arrival and departure procedures in terminal areas, making for more efficient approaches and departures. Our country has been carrying out this control work with the region for two years, and the region has decided to create a working group to establish, between now and 2012, national and regional air traffic flow control units and one centralized unit to reduce emissions.

4.2 **b) Aeroplanes which pollute less.** It is common knowledge that Chile's national airline, LAN, is taking significant steps to renew its fleet, replacing its older aircraft with aeroplanes which are more modern and less polluting.

5. **INTERNATIONAL LAW**

5.1 **a) Principle of international consent; exclusion of unilaterality.** Consensus is fundamental to the establishment of new obligations. It would be acceptable to implement the emissions trading system for international civil aviation only through agreements between States. This excludes unilateral measures. Consensual obligations between States are rooted in sovereignty and are always based on consent and free will. This principle is applied, for example, in Article 34 of the Vienna Convention on the Law of Treaties. International Law does not allow unilateral imposition of obligations.

5.2 **b) Principle 12 of the Rio Declaration.** The unilaterality of the EU scheme separates it from Article 2.2 of the Kyoto Protocol, which stipulates that the Parties shall work through ICAO, which is the appropriate forum in which to discuss these matters. Said matters must be approved in this multilateral forum, and must not be adopted by only one of the Parties, as is the case for the EU proposal. Principle 12 of the Rio Declaration proclaims the following: "Unilateral actions to deal with environmental challenges outside the jurisdiction of the importing country should be avoided. Environmental measures addressing transboundary or global environmental problems should, as far as possible, be based on an international consensus." ICAO has made significant progress in the limitation or reduction of emissions from international aviation through the promotion and establishment of voluntary mechanisms.

5.3 **c) Objection to the extraterritorial nature of the European scheme.** This initiative would be implemented both within and beyond the boundaries of the European Union, since it contemplates imposing charges from a flight's point of origin. It is inconceivable that a standard decided upon abroad by third States be applied within the national territory of a State which is not party to the mechanism in question. States possess sovereign power to issue standards which are applicable within their borders; if these boundaries are trespassed, the rights of the other are affected and territorial and airspace sovereignty are violated.

5.4 **d) Article 2.2 of the Kyoto Protocol (1997) confers operational jurisdiction upon ICAO.** This Article provides that developed States "shall pursue limitation or reduction of emissions of greenhouse gases [...] working *through* the International Civil Aviation Organization". It follows from this that ICAO is the authority called upon to resolve environmental issues related to said gases. Because of this, ICAO's authority in the matter must be recognized, as must be the importance of a multilateral approach to solving the problem. For its part, Article 17 of the Rio Convention on Climate Change (1992) states that these issues are to be governed by protocols, as has been the case in the matter. In accordance with the principle of *pacta sunt servanda* ("agreements must be carried out"), the international agreements entered

into by States must be complied with in good faith, and as Parties to the aforementioned Protocol, the States of the European Union must respect this principle.

5.5 **e) Article 15 of the Chicago Convention (1944) prohibits charges.** Said Article states that no charges “shall be imposed by any Contracting State in respect solely of the right of transit over or entry into or exit from its territory of any aircraft of a Contracting State”. As such, it is unacceptable to limit this freedom by imposing charges on third parties which affect the exercise of this right of transit.

5.6 **f) International treaties.** Civil aviation, as an eminently international endeavour, particularly as regards commercial air transport, is regulated by a range of international agreements. Said already existing agreements must not be violated by implementing the proposed scheme.

6. **CONCLUSION**

6.1 It is essential that ICAO develop a work programme coordinated with the support of the States and all the interested parties in order to establish environmental protection initiatives. These matters must continue to be handled by the Committee on Aviation Environmental Protection (CAEP) so that suitable solutions may be worked out as soon as possible, and so that the necessary resources for this may be provided.

6.2 It is also essential that ICAO urge Contracting States from regions under-represented in CAEP to participate in the Committee’s activities. States and international organizations must be provided with all possible information on available measures for reducing the environmental repercussions of aviation operations so that it is possible to implement the appropriate measures while carrying out activities.

6.3 Lastly, it is important to bear in mind the following: countries’ differentiated responsibilities based on their respective degrees of economic and industrial development; the conditions of a country which is highly vulnerable and geographically isolated; and the fact that the equitable development of the industry’s growth and of the improved connectivity of isolated countries can be affected by all measures.

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