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ASSEMBLY — 38TH SESSION

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: Economic Development of Air Transport — Policy

40.1 The Commission considered this agenda item under the following two topics: Consolidated statement of continuing ICAO policies in the air transport field, and Outcome of Sixth Worldwide Air Transport Conference (ATConf/6) and follow up work.

Consolidated statement of continuing ICAO policies in the air transport field

40.2 In WP/55, the Council presented a revised version of the Consolidated statement of continuing ICAO policies in the air transport field (Assembly Resolution A37-20). The proposed revisions took into account the developments since the last Assembly and, in particular, the outcome of the Sixth Worldwide Air Transport Conference (ATConf/6). The Commission agreed to defer consideration of the revised Consolidated Statement until it had completed its review of all relevant working papers.

40.3 A number of amendments to the Assembly Resolution were proposed with a view to reflect, with more accuracy, the recommendations adopted by ATConf/6.

40.4 At its second meeting, the Commission reintroduced this topic and reviewed the revised version of the Assembly Resolution in light of its discussion on Agenda Items 40 to 43. A number of additional amendments were proposed. Completing its work on this topic, the Commission agreed to submit for adoption by the Plenary, a revised *Consolidated Statement of continuing ICAO policies in the air transport field* taking into account the Commission's proposed amendments.

**RESOLUTION FRAMED BY THE ECONOMIC COMMISSION
AND RECOMMENDED FOR ADOPTION BY
THE ASSEMBLY**

Resolution 40/X: Consolidated statement of continuing ICAO policies in the air transport field

Introduction

Whereas the *Convention on International Civil Aviation* establishes the basic principles to be followed by governments to ensure that international air transport services may be developed in an orderly, regular, efficient, economical, harmonious and sustainable manner and it is therefore one of the purposes of ICAO to support principles and arrangements in order that international air transport services may be established on the basis of equality of opportunity, sound and economic operation, mutual respect of the rights of States and taking into account the general interest;

Whereas air transport is a major factor in promoting and fostering sustainable economic development at national as well as international levels;

Whereas it is becoming increasingly difficult, particularly for developing countries, to secure the necessary resources required to optimize the opportunities and meet the challenges inherent in the development of air transport, and to keep pace with the challenges posed by demands on air transport;

Whereas the Organization prepares guidance, studies and statistics on the development of air transport for Contracting States on a continuing basis and these should be kept current, focused and relevant and should be disseminated to Contracting States through the most effective means;

Whereas Contracting States are required to provide accurate and factual statistical data and other information in order that the Organization may prepare this guidance;

Whereas the Organization is moving toward management by objective with more focus on implementation over standard setting;

Whereas guidance developed by the Organization, and action taken by the Organization in implementing its Strategic Objectives, should assist Contracting States in developing policies and practices that facilitate the globalization, commercialization and liberalization of international air transport; and

Whereas it is important for Contracting States to participate in the work of the Organization in the air transport field;

The Assembly:

1. *Resolves* that the Appendices attached to this resolution and listed below constitute the consolidated statement of continuing ICAO policies in the air transport field, as these policies exist at the close of the 38th Session of the Assembly:

Appendix A — Economic regulation of international air transport

Appendix B — Aviation data/Statistics

Appendix C — Forecasting, planning and economic analyses

Appendix D — Taxation

Appendix E — Airports and air navigation services

Appendix F — Air carrier economics

Appendix G — Air mail

2. *Urges* Contracting States to have regard to these policies and their continuing elaboration by the Council in documents identified in this consolidated statement and by the Secretary General in manuals and circulars;

3. *Urges* Contracting States to make every effort to fulfil their obligations, arising out of the Convention and Assembly resolutions, to support the work of the Organization in the air transport field, and, in particular, to provide as completely and promptly as possible the statistical and other information asked for by the Organization for its air transport work;

4. *Requests* the Council to attach particular importance to the problem of financing the development of the human and technical resources necessary to ensure the best possible contribution of air transport to the economic and social well-being of developing countries;
5. *Requests* the Council, when it considers that it would be of benefit in assisting its work on any air transport issues, to consult expert representatives from Contracting States by the most appropriate means, including the establishment of panels of such qualified experts, reporting to the Air Transport Committee or of Secretariat study groups, and working by correspondence or by meetings;
6. *Requests* the Council to convene Conferences or Divisional meetings, in which all Contracting States may participate, as the principal means of progressing the resolution of issues of worldwide importance in the air transport field, when such meetings are justified by the number and importance of the issues to be dealt with and where there is the likelihood of constructive action upon them;
7. *Requests* the Council to provide for workshops, seminars and other such meetings as may be required to disseminate ICAO's air transport policies and associated guidance to and amongst Contracting States;
8. *Requests* the Council to keep the consolidated statement of ICAO's air transport policies under review and advise the Assembly as appropriate when changes are needed to the statement; and
9. Declares that this resolution supersedes Resolution A37-20.

APPENDIX A

Economic regulation of international air transport

Section I. Agreements and arrangements

Whereas the basic principles of sovereignty, fair and equal opportunity, non-discrimination, interdependence, harmonization and cooperation set out in the Convention have served international air transport well and continue to provide the basis for its future development;

Whereas multilateralism in commercial rights to the greatest possible extent continues to be an objective of the Organization;

Whereas within the framework of the Convention, Contracting States have many differing regulatory goals and policies but share a fundamental objective of participation through reliable and sustained involvement in the international air transport system;

Whereas one of the objectives of the Convention is that international air transport services may be operated soundly and economically and in that regard the International Air Services Transit Agreement (IASTA) and the Convention for the Unification of Certain Rules for International Carriage by Air (Montréal Convention of 1999) facilitates the achievement of that objective for the Contracting States who are already parties to it;

Whereas the Assembly has repeatedly stressed the obligation of each Contracting State to comply with Article 83 of the Convention by registering with the Council as soon as possible all arrangements relating to international civil aviation, in accordance with the *Rules for Registration with ICAO of Aeronautical Agreements and Arrangements*;

Whereas undue delays and non-compliance relating to the registration of aeronautical agreements and arrangements are not desirable for the accuracy and completeness of regulatory information and for enhancing transparency;

Whereas the establishment of international air transport fares and rates should be fair, transparent and designed to promote the satisfactory development of air services;

Whereas consumer interest should be given due regard in the development of policy and regulation of international air transport;

Whereas there is a need to adapt to the changing regulatory and operating environment in the air transport field and the Organization has accordingly developed policy guidance for the regulation of international air transport, including model clauses and template air services agreements, for optional use by States in bilateral or regional agreements; and

Noting that the Organization has developed and provided to States an innovative meeting facility, the ICAO Air Services Negotiation (ICAN) event, which facilitates and improves the efficiency of their air services negotiations and consultations;

The Assembly:

1. *Reaffirms* the primary role of ICAO in developing policy guidance on the regulation of international air transport and in assisting and facilitating liberalization as necessary;

2. *Urges* Contracting States to give due regard, in the liberalization process, to the principles pertaining to safeguard measures designed to ensure the sustained and effective participation of all States in international air transport, including the principle of giving special consideration to the interests and needs of developing countries;

3. *Urges* Contracting States to refrain in regulatory practices, from taking unilateral action that would negatively affect the common interest of the aviation community and the efficient and sustainable development of air transport;

4. *Urges* Contracting States that have not yet become parties to the International Air Services Transit Agreement (IASTA) and the Montréal Convention of 1999, to give urgent consideration to so doing;

5. *Urges* all Contracting States to register cooperative agreements and arrangements relating to international civil aviation with ICAO in accordance with Article 83 of the Convention and the *Rules for Registration with ICAO of Aeronautical Agreements and Arrangements*;

6. *Urges* Contracting States to keep the Council fully informed of serious problems arising from the application of air services agreements or arrangements and of any developments which tend toward the objective of multilateralism in the exchange of commercial rights;

7. *Urges* Contracting States to continue to pursue liberalisation of market access at a pace and in a manner appropriate to needs and circumstances, given due regard to interests of all stakeholders, the changing business environment and infrastructure requirements;

8. *Urges* Contracting States to give due regard to the distinct features of air cargo services when exchanging market access rights in the framework of air service agreements and grant appropriate rights and operational flexibility so as to promote the development of these services;

9. *Urges* Contracting States, in dealing with the issues related to slot allocation and night flight restrictions, to give due consideration to the needs and concerns of other States and make every effort to resolve any concerns through consultation in a spirit of sympathy, transparency, mutual understanding, and cooperation;

10. *Urges* Contracting States, with respect to night flight restrictions, to respect and follow the ICAO Balanced Approach principle in regulatory action on aircraft noise management at airport;

11. *Urges* States to develop policies on passenger protection in online reservation, purchasing and check-in transactions;

12. *Encourages* Contracting States to make use of and benefit from the ICAO Air Services Negotiation facility;

13. *Requests* the Council to develop a compendium of competition policies and practices in force nationally or regionally;

14. *Requests* the Council to develop and adopt a long-term vision for international air transport liberalization, including examination of an international agreement by which States could liberalize market access, taking into account the past experience and achievements of States, including existing market access liberalization agreements concluded at bilateral, regional and multilateral levels, as well as the various proposals presented during the Conference;

15. *Requests* the Council to develop a specific international agreement to facilitate further liberalization of air cargo services, taking into account past achievements, States' views on existing arrangements, and through consultation with all interested stakeholders;

16. *Requests* the Council to continue to cooperate with regional and subregional bodies in their examination and development of measures of cooperation, including liberalized arrangements, and the results of these measures, in order to see whether similar or other measures should at the appropriate time be recommended to Contracting States for application on a wider basis;

17. *Requests* the Council to continue the comparative and analytical study of the policies and practices of Contracting States and airlines concerning commercial rights and the provisions of air services agreements and to inform all Contracting States of any new developments in international cooperation, including liberalized arrangements, with respect to commercial rights;

18. *Requests* the Council to keep under review the machinery for establishing the Organization's policy guidance on the regulation of international air transport, and to revise or update it as required;

19. *Requests* the Council to review periodically the rules for registration of aeronautical agreements and arrangements with a view to simplifying the process of registration;

20. *Requests* the Council to develop, in the short term, a set of high-level non-prescriptive core principles on consumer protection which strike an appropriate balance between protection of consumers and industry competitiveness and which take into account the needs of States for flexibility, given different State social, political and economic characteristics; these core principles should be consistent with existing instruments, in particular the Convention for the Unification of Certain Rules for International Carriage by Air, adopted in Montréal on 28 May 1999;

21. *Requests* the Secretary General to remind Contracting States of the importance of registration without undue delay, of aeronautical agreements and arrangements and to provide such assistance to Contracting States as they may require in registering their aeronautical agreements and arrangements with the Council;

22. *Requests* the President of the Council and the Secretary General to promote universal adherence to and implementation of international conventions and agreements, including the International Air Services Transit Agreement (IASTA) and the Montréal Convention of 1999 and to urge Contracting States to inform the Secretariat of their intentions with respect to adherence; and

23. *Requests* the Council to develop policies on consumer protection in e-commerce transactions.

Section II. Cooperation in regulatory arrangements

Whereas certain economic, financial and operational constraints unilaterally introduced at the national level affect the stability of, and tend to create unfair discriminatory trading practices in, international air transport and might be incompatible with the basic principles of the Convention and the orderly and harmonious development of international air transport;

Whereas the provision of regular and reliable air transport services is of fundamental importance to the development of the economies of States, especially the developing States, including those dependent on tourism;

Whereas the strict application of the criterion of substantial ownership and effective control for the authorization of an airline to exercise route and other air transport rights could deny many States a fair and equal opportunity to operate international air services and to optimize the benefits to be derived therefrom;

Whereas air carrier designation and authorization for market access should be liberalized at each State's pace and discretion progressively, flexibly and with effective regulatory control in particular regarding safety and security;

Whereas the broadening or the flexible application of the criteria for airline designation and authorization could help create an operating environment in which international air transport may develop

and flourish in a stable, efficient and economical manner, and contribute to the participation objectives of States in the liberalization process, without prejudice to States' obligations for aviation safety and security;

Whereas the realization of developmental objectives among such States is increasingly being promoted by cooperative arrangements in the form of regional economic groupings and functional cooperation symbolic of the affinity and community of interest which are particularly shared among developing States belonging to such regional economic integration movements; and

Whereas the exercise of route and other air transport rights of a developing State having such community of interest by an airline substantially owned and effectively controlled by another developing State or States or its or their nationals sharing the same community of interests will serve to promote the foregoing interests of developing States;

The Assembly:

1. *Urges* Contracting States to avoid adopting unilateral measures that may affect the orderly and harmonious development of international air transport and to ensure that domestic policies and legislation are not applied to international air transport without taking due account of its special characteristics;

2. *Urges* Contracting States to take into consideration that fair competition is an important general principle in the operation of international air services;

3. *Urges* Contracting States to continue to liberalize air carrier ownership and control, according to needs and circumstances, through various existing measures such as waivers of ownership and control restrictions in bilateral air services agreements or designation provisions recognizing the concept of community of interest within regional or sub regional economic groupings, and those recommended by ICAO;

4. *Urges* Contracting States to accept such designations and allow such airlines to exercise the route rights and other air transport rights of a State or States, in particular developing States, within the same grouping, under mutually acceptable terms and conditions including air transport agreements negotiated or to be negotiated by the parties concerned;

5. *Urges* Contracting States to recognize the concept of community of interest within regional or subregional economic groupings as a valid basis for the designation by one developing State or States of an airline of another developing State or States within the same regional economic grouping where such airline is substantially owned and effectively controlled by such other developing State or States or its or their nationals;

6. *Urges* Contracting States to give consideration to the use of alternative criteria for airline designation and authorization, including those developed by ICAO, and to adopt a flexible and positive approach to accommodate other States in their efforts to liberalize air carrier ownership and control without compromising safety and security;

7. *Urges* Contracting States to develop competition laws and policies that apply to air transport, taking into account national sovereignty and to consider ICAO guidance on competition;

8. *Urges* Contracting States to encourage cooperation among regional and/or national competition authorities, including in the context of approval of alliances and mergers;

9. *Invites* Contracting States with experience in various forms of joint operation of international air services to submit to the Council, on a continuing basis, information concerning their experience; so that the Organization may have information that might be of assistance to Contracting States;

10. *Requests* the Council to initiate work on the development of an international agreement to liberalize air carrier ownership and control, taking into consideration safety and security concerns, the principle of reciprocity, the need to allow a gradual and progressive adaptation with safeguards, the need to take account of regional experiences, the requirements of various States' domestic laws, and the effects on all stakeholders including labour;

11. Requests the Council to develop tools such as an exchange forum to enhance cooperation, dialogue and exchange of information on fair competition between States with a view to promoting compatible regulatory approaches towards international air transport;

12. Requests the Council to continue to monitor developments in the area of competition in international air transport and update, as necessary, its policies and guidance on fair competition;

13. Requests the Council, when approached, to render all feasible assistance to Contracting States wishing to enter regional or subregional economic groupings with respect to the operation of international air services; and

14. Requests the Council to give assistance, when approached, to Contracting States that take the initiative in developing cooperative arrangements for the joint ownership and operation of international air services, directly among themselves or whose airlines develop such arrangements, and to promptly circulate to States information concerning such cooperative arrangements.

Section III. Airline product distribution

Whereas the advancement of information and electronic technologies have had a significant impact on the way the airline industry is doing business, particularly on its product distribution; and

Whereas ICAO has developed a Code of Conduct for the Regulation and Operation of Computer Reservation Systems (CRSs) for States to follow, and two related Model Clauses for optional use by States in their air services agreements;

The Assembly:

1. *Requests* the Council to monitor developments in airline product distribution and related regulatory practices, and disseminate information to Contracting States on significant developments; and

2. *Requests* the Council to review whether there is a continued need for the ICAO CRS Code and Model Clauses in light of the industry and regulatory changes.

Section IV. Trade in services

Whereas on the issue of including aspects of international air transport under the General Agreement on Trade in Services (GATS), ICAO has actively promoted an understanding by all parties concerned of the provisions of the *Convention on International Civil Aviation* and of the particular mandate and role of ICAO in international air transport;

The Assembly:

1. *Reaffirms* the need for ICAO to continue to explore future regulatory arrangements and develop recommendations and proposals to meet the challenges facing international air transport, responding to the internal and external changes affecting it;

2. *Recognizes* that such arrangements should create an environment in which international air transport may develop and continue to flourish in an orderly, efficient and economical manner without compromising safety and security, while ensuring the interests of all Contracting States and their effective and sustained participation in international air transport;

3. *Reaffirms* the primary role of ICAO in developing policy guidance on the regulation of international air transport;

4. *Urges* Contracting States that participate in trade negotiations, agreements and arrangements relating to international air transport to:

- a) ensure internal coordination in their national administrations and in particular the direct involvement of aeronautical authorities and the aviation industry in the negotiations;
- b) ensure that their representatives are fully aware of the provisions of the *Convention on International Civil Aviation*, the particular characteristics of international air transport and its regulatory structures, agreements and arrangements;
- c) take into account their rights and obligations vis-à-vis those of ICAO Member States which are not members of the World Trade Organization;
- d) examine carefully the implications of any proposed inclusion of an additional air transport service or activity in the GATS bearing in mind, in particular, the close linkage between economic, environmental, safety and security aspects of international air transport;
- e) promote a full understanding of the role and mandate of ICAO in developing policy guidance on economic regulation, including liberalization of international air transport, and consider using this guidance; and
- f) file with ICAO under Article 83 of the Convention copies of any exemptions and specific commitments pertaining to international air transport made under the GATS;

5. *Requests* the World Trade Organization, its Member States and Observers to accord due consideration to:

- a) the particular regulatory structures and arrangements of international air transport and the liberalization taking place at the bilateral, subregional and regional levels;
 - b) ICAO's constitutional responsibility for international air transport and, in particular, for its safety and security; and
 - c) ICAO's existing policy and guidance material on the economic regulation of international air transport and its continued work in the field; and
6. *Requests* the Council to:
- a) continue to exert a global leadership role in facilitating and coordinating the process of economic liberalization while ensuring safety, security and environmental protection in international air transport;
 - b) pursue in a proactive manner developments in trade in services that might impinge on international air transport and inform Contracting States accordingly; and
 - c) promote continued effective communication, cooperation and coordination between ICAO, the World Trade Organization, and other intergovernmental and non-governmental organizations dealing with trade in services.

Section V. Elaboration of policy guidance

Whereas governments have international obligations and responsibilities in the economic regulation of international air transport;

Whereas economic liberalization and the evolution of air transport industry will continue to bring about opportunities, challenges and issues with respect to the regulation of international air transport; and

Whereas the Organization has addressed many of the regulatory issues and compiled related policies and guidance material;

The Assembly:

1. *Urges* Contracting States in their regulatory functions to have regard to the policies and guidance material developed by ICAO on economic regulation of international air transport, such as those contained in Doc 9587, *Policy and Guidance Material on the Economic Regulation of International Air Transport*;

2. *Encourages* Contracting States to incorporate the basic principles of fair and equal opportunity to compete, non-discrimination, transparency, harmonization, compatibility and cooperation set out in the Convention and embodied in ICAO's policies and guidance in national legislation, rules and regulations, and in air services agreements;

3. *Requests* the Council to ensure that these policies and guidance material related to economic regulation remain relevant, current, and responsive to changing situations and requirements of States; and

4. *Requests* the Council to consider additional ways and means by which to enhance the status of its policies for the sustainable economic development of the air transport system.

APPENDIX B

Aviation data/Statistics

Whereas ICAO's Statistics Programme provides an independent and global foundation for the purpose of fostering the planning and sustainable development of international air transport;

Whereas each Contracting State has undertaken that its international airlines shall file the statistics requested by the Council in accordance with Article 67 of the Convention;

Whereas the Council has also laid down requirements for statistics on domestic airline operations, international airports, and international route facilities, pursuant to Articles 54 and 55 of the Convention;

Whereas the Council has laid down requirements for data collection on civil aircraft on register pursuant to Article 21 of the Convention;

Whereas there is a need for the Organization to collect data from States on annual aviation fuel consumption to be used to address emerging challenges of sustainable development of air transport, and to monitor and report the potential impact of economic measures linked to the operational aspects of the international aviation services and related infrastructure;

Whereas the nomination by States of focal points for aviation statistics will facilitate the timely filing of statistics and data requested by ICAO;

Whereas the Council has adopted a policy of management by objective which requires collection of pertinent data and analysis to measure the performance of the Organization as a whole and of its constituent parts in meeting the Strategic Objectives of the Organization;

Whereas the development of ICAO's integrated statistical database for validation and storage of data provides Contracting States and other users with an efficient online system for the retrieval of statistical data;

Whereas a number of Contracting States are still not filing, or have not been filing completely, the statistics requested by the Council;

Whereas cooperation amongst international organizations active in the area of collection and distribution of aviation statistics may enable reduction in the burden of filing statistics;

Whereas ICAO's role in processing and disseminating aviation data allows States to use the data as a significant tool for the safe and orderly growth of international civil aviation services that are operated soundly and economically; and

Whereas ICAO has continued its effort to make the processes involving aviation data efficient and effective through the development of a set of electronic tools in order to answer to the evolving needs of Contracting States;

The Assembly:

1. *Urges* Contracting States to nominate focal points for aviation statistics, and to make every effort to provide the statistics required by ICAO on time and electronically whenever possible;
2. *Urges* Contracting States to use the available electronic tools when accessing ICAO aviation data;
3. *Encourages* Contracting States to use available electronic tools when providing aviation data to ICAO;
4. Encourages Contracting States to actively participate in the development of electronic tools by providing support and feedback and by sharing relevant knowledge and experience; and
5. *Requests* the Council, calling on national experts in the relevant disciplines as required, to examine on a regular basis the statistical data collected by ICAO in order to meet more effectively the needs of the Organization and its Member States, and to establish the necessary metrics to monitor the performance of the Organization in meeting its Strategic Objectives, to improve the uniformity of the statistics, the completeness and timeliness of reporting by Contracting States, and the form and content of analyses; and
6. *Requests* the Council to:
 - a) continue to explore ways of closer cooperation with other international organizations active in the collection and distribution of aviation statistics;
 - b) make arrangements, on an appropriate basis, for assistance to be given upon request to Contracting States by personnel of the Secretariat for the improvement of their civil aviation statistics and their statistical reporting to the Organization;
 - c) develop a process by which to enable harmonization of aviation data from different sources in order to facilitate the provision of accurate, reliable and consistent data required for informed decision-making by States; and
 - d) create, host, and manage a platform where the aviation community can share and promote its data and electronic tools in accordance with the principles and provisions as contained in the Convention and relevant decisions of the Organization.

APPENDIX C

Forecasting, planning and economic analyses

Whereas ICAO's independence in carrying out investigations into trends and in applying economic analyses provides a necessary foundation for fostering the planning and sustainable development of international air transport;

Whereas Contracting States require global and regional forecasts of future civil aviation developments for various purposes;

Whereas the Council, in carrying out its continuing functions in the economic field, must foresee future developments likely to require action by the Organization and must initiate such action in good time;

Whereas the Organization has to regularly assess its performance against its Strategic Objectives with particular focus on safety, air navigation capacity and efficiency, security and facilitation, economic development of air transport and environmental protection; and

Whereas the Organization requires specific forecasts and economic support for airports and air navigation systems planning and environmental monitoring and planning purposes;

The Assembly:

1. *Requests* the Council to prepare and maintain, as necessary, forecasts of future trends and developments in civil aviation of both a general and a specific kind, including, where possible, local and regional as well as global data, and to make these available to Contracting States and support data needs of safety, air navigation capacity and efficiency, security and facilitation, economic development of air transport and environmental protection;

2. *Requests* the Council to develop one single set of long-term traffic forecast, from which customized or more detailed forecasts can be produced for various purposes, such as air navigation systems planning and environmental analysis;

3. *Requests* the Council to develop methodologies and procedures for the preparation of forecasts, the assessment of economic impact of new measures, the analyses of cost-benefit or cost-effectiveness, and the development of business cases to meet the needs of the Organization, the regional air navigation planning groups, environmental planning bodies and, as required, other activities of the Organization;

4. *Requests* the Council to make arrangements to collect and develop material on current forecasting methods both for the purposes described in clauses 1, 2 and 3 and for dissemination to Contracting States from time to time as guidance in their own forecasting, planning and economic analyses; and

5. *Requests* the Council to monitor developments, conduct studies on major issues of global importance and share its analyses with States, international organizations and the industry.

APPENDIX D

Taxation

Whereas international air transport plays a major role in the development and expansion of international trade and travel and the imposition of taxes on aircraft, fuel, and consumable technical supplies used for international air transport, taxes on the income of international air transport enterprises and on aircraft and other movable property associated with the operation of aircraft in international air transport, and taxes on its sale or use, may have an adverse economic and competitive impact on international air transport operations;

Whereas ICAO policies in Doc 8632, *ICAO's Policies on Taxation in the Field of International Air Transport*, make a conceptual distinction between a charge and a tax in that “a charge is a levy that is designed and applied specifically to recover the costs of providing facilities and services for civil aviation, and a tax is a levy that is designed to raise national or local government revenues which are generally not applied to civil aviation in their entirety or on a cost-specific basis”;

Whereas it is a matter of great concern that taxes are increasingly being imposed by some Contracting States in respect of certain aspects of international air transport and that charges on air traffic, several of which can be categorized as taxes on the sale or use of international air transport, are proliferating;

Whereas the matter of aircraft engine emission-related levies is addressed in Assembly Resolution A38-XX, *Consolidated statement of continuing ICAO policies and practices related to environmental protection — General provisions, noise and local air quality (Appendix H, Aviation impact on local air quality)*; and

Whereas the resolution in Doc 8632 supplements Article 24 of the Convention and is designed to recognize the uniqueness of international civil aviation and the need to accord tax-exempt status to certain aspects of the operations of international air transport;

The Assembly:

1. *Urges* Contracting States to follow the resolution of the Council as contained in Doc 8632, *ICAO's Policies on Taxation in the Field of International Air Transport* so as to avoid imposing discriminatory taxes on international aviation;
2. *Urges* Contracting States to avoid double taxation in the field of air transport; and
3. *Requests* the Council to ensure that the guidance and advice contained in Doc 8632 are current and responsive to the requirements of Contracting States and to continue to promote their application more vigorously.

APPENDIX E

Airports and air navigation services

Section I. Charging policy

Whereas ICAO policies in Doc 9082, *ICAO's Policies on Charges for Airports and Air Navigation Services* make a conceptual distinction between a charge and a tax in that “a charge is a levy that is designed and applied specifically to recover the costs of providing facilities and services for civil aviation, and a tax is a levy that is designed to raise national or local government revenues which are generally not applied to civil aviation in their entirety or on a cost-specific basis”;

Whereas the matter of aircraft engine emission-related levies and market-based measures is addressed separately in Assembly Resolution A38-XX, *Consolidated statement of continuing ICAO policies and practices related to environmental protection — General provisions, noise and local air quality (Appendix H, Aviation impact on local air quality)*, and in Assembly Resolution A38-XX, *Consolidated statement of continuing ICAO policies and practices related to environmental protection — Climate change*;

Whereas Article 15 of the Convention establishes the basis for the application and disclosure of charges for airports and air navigation services;

Whereas the Council has been directed to formulate recommendations for the guidance of Contracting States with regard to the principles on which providers of airports and air navigation services for international civil aviation may charge to recover the costs of their provision and derive other revenue therefrom, and with regard to the methods that may be employed to that effect;

Whereas the development of air transport infrastructure and the global plan for aviation system block upgrades (ASBUs) requires necessary business case justification to secure funding and financing to support their implementation; and

Whereas the Council has adopted and revised, as necessary, and published in Doc 9082, *ICAO's Policies on Charges for Airports and Air Navigation Services*;

The Assembly:

1. *Urges* Contracting States to ensure that Article 15 of the Convention is fully respected;
2. *Urges* Contracting States to base the recovery of the costs of the airports and air navigation services they provide or share in providing for international civil aviation on the principles set forth in Article 15 of the Convention and additionally in Doc 9082, *ICAO's Policies on Charges for Airports and Air Navigation Services*, regardless of the organizational structure under which the airports and air navigation services are operated;
3. *Urges* Contracting States to ensure that airport and air navigation services charges are applied towards defraying the costs of providing facilities and services for civil aviation;

4. *Urges* Contracting States to make every effort pursuant to Article 15 of the Convention to publish and communicate to the Organization any charges that may be imposed or permitted to be imposed by a Contracting State for the use of air navigation facilities and airports by the aircraft of any other Contracting State;

5. *Encourages* Contracting States to adopt the principles of non-discrimination, cost-relatedness, transparency and consultation, as endorsed in Doc 9082, in national legislation, regulation or policies, as well as in air services agreements, to ensure compliance by airports and air navigation services providers;

6. *Encourages* Contracting States to ensure that the current ICAO policies for cost recovery of security measures and functions at airports and by air navigation services providers, as endorsed in Doc 9082, are implemented so that security user charges are reasonable, cost-effective and foster harmonization worldwide;

7. *Requests* the Council to develop guidance on funding of air transport infrastructure, appropriate oversight functions and financing of the air transport system, including mechanisms to support operational improvements as described in the aviation system block upgrade modules (ASBUs); and

8. *Requests* the Council to ensure that its policies and guidance related to funding contained in Doc 9082 and other documents are current and responsive to the requirements of Contracting States.

Section II. Economics and management

Whereas in handling growing volumes of traffic the global costs of providing airports and air navigation services continue to rise;

Whereas Contracting States are placing increased emphasis on improving efficiency and cost-effectiveness in the provision of airports and air navigation services;

Whereas a balance should be maintained between the respective financial interests of providers of airports and air navigation services on the one hand and air carriers and other users on the other and which should be based on promoting cooperation between providers and users;

Whereas Contracting States have called on the Organization to provide advice and guidance aimed at promoting equitable recovery of airport and air navigation services costs;

Whereas Contracting States are increasingly assigning the operation of airports and air navigation services to commercialized and privatized entities, which may have less awareness and knowledge of States' obligations specified in the Convention and its Annexes and of ICAO's policies and guidance material in the economic field, and are using multinational facilities and services to meet the commitments they have assumed under Article 28 of the Convention; and

Whereas the Council has adopted provisional policy guidance on the allocation of Global Navigation Satellite System (GNSS) costs to ensure an equitable treatment of all users;

The Assembly:

1. *Reminds* Contracting States that with regard to airports and air navigation services they alone remain responsible for the commitments they have assumed under Article 28 of the Convention regardless of what entity or entities operate the airports or air navigation services concerned;
2. Encourages Contracting States to consider the establishment of autonomous entities to operate airports and air navigation services providers, taking into account economic viability as well as the interests of the users and other interested parties;
3. *Urges* Contracting States to promote quality air navigation services performance through good governance;
4. *Urges* Contracting States to cooperate in the recovery of costs of multinational air navigation facilities and services and to consider the use of the provisional Council policy guidance on the allocation of GNSS costs;
5. *Requests* the Council to continue to develop ICAO's policy and guidance material with a view to contributing to increased efficiency and improved cost-effectiveness in the provision and operation of airports and air navigation services, including the foundation for a sound cooperation between providers and users;
6. *Requests* the Council to continue its refinement of its policy guidance on the allocation of GNSS costs and the coordination of technical, legal and economic aspects, including cost-efficient interoperability;
7. *Requests* the Council to promote ICAO's policies on user charges and related guidance material, including organizational and managerial advice, in order to increase the awareness and knowledge of these among States and commercialized and privatized airports and air navigation services entities;
8. *Requests* the Council to keep the economic situation of airports and air navigation services under review and make reports thereon to Contracting States at appropriate intervals; and
9. *Urges* Contracting States to make every effort to provide with the least possible delay the financial data relating to their airports and air navigation services to enable Council to provide such advice and prepare such reports.

APPENDIX F

Air carrier economics

Whereas there is a continuing interest among users, including international organizations with interests in tourism, aviation and trade, in the level of international air carrier costs of operation and appropriate revenue yields;

Whereas the objective studies by ICAO on international air transport costs and revenues are widely used by Contracting States and other international organizations, have promoted neutrality and have resulted in a more equitable system of revenue sharing; and

Whereas ICAO requires air carrier revenue, cost and operational data to assist the Council in assessment of the effectiveness of measures proposed for the implementation of the Strategic Objectives of the Organization, and for environmental planning, investment studies and other purposes;

The Assembly:

1. *Requests* the Council to instruct the Secretary General to issue periodically a study on regional differences in the level of international air transport operating costs, analysing how differences in operations and input prices may affect their levels and the impact that changes in costs may have on air transport tariffs; and

2. *Urges* Contracting States to make every effort to obtain from their international air carriers with the least possible delay the cost, revenue and other data requested by ICAO.

APPENDIX G

Air mail

Whereas the Assembly has given ongoing directions with regard to ICAO's work in the field of international air mail;

The Assembly:

1. *Urges* Contracting States to take into account the effects on international civil aviation whenever policy is being formulated in the field of international air mail, and particularly at meetings of the Universal Postal Union (UPU); and

2. *Directs* the Secretary General to furnish to the UPU, on request and as stipulated in relevant cooperation arrangements between UPU and ICAO, information of a factual character which may be readily available.

Outcome of Sixth Worldwide Air Transport Conference (ATConf/6) and follow up work

40.5 In WP/56, the Council reported on the outcome of the Sixth Worldwide Air Transport Conference (ATConf/6), which included Conference Recommendations for action by States and ICAO. The paper also presented the Council's proposed action plan for follow up work with corresponding priorities for endorsement by the Assembly.

40.6 In WP/202, the Republic of Colombia drew attention to the benefits of consumer protection, as a fundamental element in tourism promotion and a driver of economic development. The

paper suggested that States provide their consumer protection regulations to ICAO for assistance in the preparation of globally harmonized minimum principles, which should strike a proper balance with industry interests. The paper recalled the support expressed by ATConf/6 for greater convergence and compatibility as well as for the development by ICAO of basic principles on consumer protection, with the assistance of the Air Transport Regulation Panel (ATRP), States and regional bodies.

40.7 In WP/204, the Republic of Colombia referred to shortcomings with the reservation and purchase of international airline tickets online, including additional charges subsequent to purchase, non-receipt of tickets by the passenger and denied boarding. The paper expressed support for the development of ICAO policies on e-commerce consumer protection with a view to identifying the obligations of suppliers offering products using electronic media as well as that of consumer rights.

40.8 WP/185, presented by the Republic of Cuba, reported on the impact of the economic, commercial and financial blockade imposed by the United States on the development of the Cuban civil aviation sector. Emphasis was placed on the extraterritoriality of the blockade and its violation of the principles and aims of the Chicago Convention. Noting that this matter was raised at ATConf/6, Cuba believed that unilateral actions are not conducive to the safe, orderly and sustainable development of international civil aviation. It called on ICAO to address States' concerns with regard to extraterritorial and unilateral measures by certain States that impact air transport services and urged Member States to refrain from using such measures known to hamper sustainable development of international civil aviation. The delegation proposed to amend draft Resolution [40/X] set out in WP/55, Appendix A, Section 1, paragraph 3, by adding the expression "and extraterritorial".

40.9 In WP/188, the Dominican Republic drew attention to the necessity of having a basic regime of passenger rights, governing, in particular, passenger compensation in cases of cancellations, denied boarding or delays. The paper urged ICAO to formulate core principles on consumer protection which would serve as a basis for the elaboration of internal rules, taking into account the Criteria and Guidelines on Customer Service and Total Quality in the Aerial and Airport Services developed by the Latin American Civil Aviation Commission (LACAC).

40.10 In WP/198, Indonesia presented its views on the outcome of ATConf/6. It recognized the need of the Conference to strike a balance between developing and developed countries in liberalization. While supporting the recommendations of ATConf/6 and the Council's plan for future work, expressed was the view that liberalization should be determined voluntarily as decided by each country and implemented gradually, taking into account the State level of air transport development.

40.11 WP/186 presented Singapore's approach to consumer protection in international air transport, based firstly on the enactment of legislation balancing the interests of consumers and businesses; secondly on a liberal air services policy fostering competition, and thirdly on cooperation to educate consumers on key aspects of air travel. The paper proposed core principles supporting the optimization of consumer benefits through competition, the access of passengers to information and education, and finally the compatibility with the national consumer protection regime and international agreements such as the Convention for the Unification of Certain Rules for International Carriage by Air, adopted in Montréal on 28 May 1999 (MC99).

40.12 In WP/112, fifty-four African States, Members of the African Civil Aviation Commission (AFCAC), reported on the progress being made by African States on Liberalization of Air Transport in

Africa. The paper also presented the African position on some of the outcomes of ATConf/6 recommendations. The African States requested the Council to continue to assist and support them in the process of liberalization through training, regional seminars or similar activities. They called on Member States to use ICAO policy and guidance material on air transport liberalization and to support ICAO as the focal point in coordinating the development of sustainable air transport systems.

40.13 WP/293, presented by the twenty-two Member States of the Latin American Civil Aviation Commission (LACAC), highlighted the major achievements of ATConf/6, which should guide future policies and actions of the States and the Organization. It analyzed the mandates contained in the Consolidated statement of continuing ICAO policies in the air transport field (Assembly Resolution A37-20), linking them to the recommendations of ATConf/6. The paper also addressed the need for ICAO to prioritize its work in the air transport field, which is in line with the new strategic objective on economic development of air transport.

40.14 In WP/63, Lithuania, on behalf of the European Union, identified four areas in which it recommended ICAO focus in its ATConf/6 follow up work , namely: liberalization of market access; fair and open competition; liberalization of air carrier ownership and control; and consumer protection. The paper suggested that ICAO continue to play a leading role in the economic regulation of international air transport with a view to ensuring its sustainability. The paper also called on the Assembly to include in Assembly Resolution A37-20 the actions identified in the paper and suggested that ICAO review its policies and establish and implement a work programme for 2014-2016 with priorities as identified.

40.15 In WP/290, the Airports Council International (ACI) supported the recommendations of ATConf/6 contained in Appendix B to A38-WP/56, specifically Recommendation 2.3/1 on consumer protection. ACI was of the view that core principles should address both consumer protection in normal operations, when there are routine instances of overbooking or technical difficulties leading to cancellations, and also during periods of serious flight disruption caused by events outside the control of airlines and airports.

40.16 In WP/73, the International Air Transport Association (IATA), described the negative impacts of the proliferation of consumer protection regimes, including the potential for duplication of claims, the possibility of increased cancellations as well as higher ticket prices. The paper also highlighted the costs of compliance with multiple rules and the need for consistency with MC99. IATA proposed a set of core principles for incorporation by States into existing and future passenger rights regimes.

40.17 WP/291, presented by the International Transport Workers Federation (ITF), reviewed the major effects of aviation deregulation and liberalization with particular attention to civil aviation transportation workers and the growing emergence of “flag of convenience” scenarios in the airline sector of the industry. It further examined the principal lessons of ATConf/6 in this regard and stressed two important principles: the implementation of basic safeguards for safety and security and the recognition of the role of aviation workers.

40.18 In WP/118, the United States noted that business aviation is an important component of a comprehensive international air transportation system and that ATConf/6 called on ICAO to develop relevant policy guidance, as compatible economic treatment among States would allow for the safe, secure, and orderly development of the business aviation industry at the global level. The paper presented

information on some core principles adopted by the Asia Pacific Economic Cooperation's (APEC) Transportation Working Group (TPTWG) for best practices in the economic treatment of business aviation operations.

40.19 The Commission noted the information contained in WP/118.

40.20 In considering the report of the Council in WP/56 on the outcome of ATConf/6, broad support was expressed for the endorsement of the recommendations of the Conference contained in Appendices A and B

40.21 With respect to the Council action plan for the follow up work presented in Appendix C of WP/56, while there was general support for the actions to be undertaken and the need for prioritization of the tasks, several proposals were presented concerning the priorities of specific tasks set by the Council. Some suggested that a higher priority be given to such tasks as the development of an international agreement on air cargo service, providing and developing guidance to assist States in liberalization particularly for developing countries, and promotion of MC99. The view was expressed that the outcome of ATConf/6 represented a careful balance of the Conference deliberations as well as that of the interests of States in different regions and stages of development and that the overall balance should be respected.

40.22 With respect to future work of the Organization in the area of consumer protection, there was broad support for the Council plan to implement the ATConf/6 recommendations, particularly concerning the work relating to the development of core principles. Some States pointed out that such core principles should be of a high-level and non-prescriptive in nature, and requested that the consolidated statement of continuing ICAO policies in the air transport field be amended accordingly. There was support for the idea that the core principles should take into account existing national regulations, should cover different operational circumstances and should be compatible with existing international instruments and guidelines. Support was also expressed for passenger information initiatives. The World Tourism Organization (UNWTO) reiterated that it had no intention of substituting or duplicating any related regulatory frameworks and expressed support for ICAO's future work in the development of a set of high level, non-prescriptive core principles on consumer protection.

40.23 Regarding the issue of "flags of convenience", the Commission noted the proposal made by ITF related to the need for ICAO to collaborate with other UN agencies, as it had previously been reflected in the outcome of ATConf/6. A view was expressed that there is an existing robust ICAO system of extensive Standards and Recommended Practices (SARPs) and Annexes presently available covering related safety and security concerns.

40.24 In concluding the consideration of the Organization's action plan for follow up work to ATConf/6, the Commission endorsed the recommendations of ATConf/6 contained in Appendices A and B, and the Council's action plan in Appendix C. The Commission also agreed to consider the information contained in this paper for the update of Assembly Resolution A37-20. The Commission indicated that the Council should take into account the various proposals and views expressed during the discussions in its future work in implementing the recommendations of the conference, giving due regard to the needs of States and the resources of the Organization.

40.25 With respect to WP/185, the position expressed by Cuba inviting the Assembly to add the words “and extraterritorial” to the relevant clauses regarding avoidance of unilateral measures in the draft Assembly Resolution (A38-X), was supported by some States. The United States opposed Cuba’s conclusions, including the proposal to amend the draft resolution, and reiterated its view that the matter was an issue not appropriate for discussion in the Economic Commission, and that it had the sovereign right to carry out its bilateral relationships in accordance with its national interests and value. The Commission noted the information contained in WP/185 and the views expressed during the discussion and recognized that this was a complex, delicate and sensitive issue which had been raised on previous occasions but one which the Economic Commission could not resolve. It was therefore decided that this matter be brought to the attention of the President of the Council, whose “good offices” had been involved in this issue in the past.

— END —