



FIFTY-SIXTH SPECIAL MEETING OF ECAC DIRECTORS GENERAL

(Cyprus, 30 August - 3 September 2007)

Agenda item 4: ICAO matters

- b) **Consideration of remaining European papers for the forthcoming ICAO Assembly**

EUROPEAN PAPER ON IMPROVING THE EFFICIENCY OF ICAO

(Presented by Mr J-M. Bour, Chairman of EMTO)

PROPOSALS FOR A STUDY OF THE CHICAGO CONVENTION

(Presented by the ECAC Secretariat)

SUMMARY

This paper presents in **Appendix A** a revised draft of ECAC's paper on improving the efficiency of ICAO which updates the original version produced in 2005 by taking account of relevant developments in ICAO since then.

The paper also contains in **Appendix B**, the draft of an Assembly paper containing proposals for a study of the Chicago Convention.

ACTION TO BE TAKEN

In respect of Appendix A, Directors General are invited to:

- a) consider the updated paper; and
- b) decide on its submission as a European paper (requiring the necessary processes within the EU to be finalised) to the ICAO Assembly.

In respect of Appendix B, Directors General are invited to:

- a) consider the proposed paper; and
- b) decide on its submission as a European paper (requiring the necessary processes within the EU to be finalised) to the Assembly.

APPENDIX A

36TH SESSION OF THE ASSEMBLY OF THE INTERNATIONAL CIVIL AVIATION ORGANISATION (ICAO)

(Montreal, 18-28 September 2007)

Agenda item 23: Increasing the effectiveness of ICAO

PROPOSALS FOR INCREASING THE EFFECTIVENESS OF ICAO

(Working paper presented by Portugal on behalf of the European Community and its Member States¹ and of the other States Members of the European Civil Aviation Conference²)

Summary

A number of important operational reforms are in the course of being implemented in ICAO both at Council and Secretariat level. This paper with its broad base of support amongst ICAO Contracting States, seeks to build on these reforms and maintain the current momentum for operational improvements designed to secure increased productivity and efficiency in the organisation.

Action by the Assembly is in paragraph 7.

¹ Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom.

² Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Croatia, Georgia, Iceland, Moldova, Monaco, Norway, Serbia, Switzerland, The former Yugoslav Republic of Macedonia, Turkey and the Ukraine.

Introduction

1. In 2005, the European Civil Aviation Conference developed a paper on operational reforms to the ICAO system which were designed in part to draw attention to what ECAC believed was a clear need for ICAO to become more efficient and responsive to the changes taking place in air transport on a global basis. At that time ECAC engaged in a wide ranging consultation process with its sister regional organisations and individual Contracting States of ICAO. The first version of this reform paper attracted widespread support among Contracting States. There was a large measure of support for its considered approach to operational reform and in particular to a realignment in the balance of responsibilities between the Council of ICAO and the Secretary General.

2. This current paper updates ECAC's earlier version taking account of positive developments within ICAO in the meantime, including the adoption by the Council of ICAO of strategic objectives for 2005-2010.

3. Since the earlier version of the reform paper, we have noted with satisfaction that a number of important steps have already been taken to implement its recommended reforms. For example, term limits are being established for the posts of President of the Council and Secretary General, more flexible Council Rules of Procedure are in place and a restructuring of the Secretariat is envisaged with a shift of focus in ICAO's work from standardisation to implementation. Welcome as these developments are, they do not go far enough in the context of the detailed reforms regarded as being necessary.

4. The Secretary General's establishment of an Audits Results Review Board dealing with both safety and security audits to consider and propose specific action, strategies and if necessary, to encourage enforcement measures is a step in the right direction. Further work in this area is undoubtedly needed.

5. We also acknowledge the positive work put in hand to reform the work of ICAO by the Secretary General. This paper is designed to encourage and support this work and seeks to ensure that the momentum is not lost. We welcome the adoption by the Council of ICAO's Strategic Objectives for 2005-2010 and suggestions for simplifying and streamlining the objectives. The three fundamental objectives of safety, security and the environment should be accorded priority of both attention and resources. These Objectives are supplemented by a detailed Business Plan, setting out how the Secretariat intends to achieve (or progress towards) these objectives, with appropriate milestones, performance indicators, and details of the financial and human resources to be deployed. In this regard, we welcome the very important organisation and restructuring process undertaken by the Secretary General. We also note with approval the measures on gender equality and the revised rules for Standing Committees.

6. We believe that the adoption of the reforms proposed in this paper will yield immediate operational benefits to both Contracting States and the Organisation itself in the overall interest of better serving the air transport industry. In due course, the modernisation of the worldwide air transport regulatory framework may well need to be considered in order to ensure that it is responsive to the dynamic industry it serves and keeps pace with global developments.

Action by the Assembly

7. The Assembly is requested to:
- note this paper and its annex; and
 - request the Council and Secretary General to adopt and implement the measures outlined in the Conclusions to the annex.

ANNEX

OPERATIONAL REFORMS TO ICAO DESIGNED TO SECURE INCREASED PRODUCTIVITY AND EFFICIENCY

Introduction

1. It is emphasised that in suggesting the reforms outlined in this paper, they should be regarded as a first step in a longer-term process. They are designed, in conjunction with the Strategic Objectives to yield efficiencies in the short-term. They do not involve amendment of the Chicago Convention.

Role of ICAO

2. Since its establishment under the Chicago Convention, ICAO, as the United Nations specialised agency responsible for civil aviation, has performed a vital centralising role in all developments in this field. Not the least of ICAO's achievements has been the adoption of a series of important, far-reaching international Conventions which together form an extensive unification of public international law relating to international civil aviation. It has many other significant achievements to its name, with perhaps the most noteworthy being the adoption of international Standards and Recommended Practices (SARPs) covering all operational and technical aspects of international civil aviation, the regulatory basis for its safe and orderly development. ICAO also plays an important role in the field of technical assistance and this continues to be a priority activity administered by the Technical Cooperation Bureau (TCB).

3. In recent years ECAC has observed in addition to the development of SARPs (whether in the fields of safety or security) an emphasis on ensuring that these SARPs are implemented by Contracting States. ICAO has proved its institutional flexibility by developing, without the need to amend its Constitution, audit programmes in both safety (USOAP) and security (USAP) fields.

The Challenges Facing ICAO

4. Attention is drawn to the following strategic and political challenges facing ICAO:

- the safety and security auditing processes which are an integral part of ICAO's activities have revealed widespread deficiencies in compliance with ICAO's Standards and Recommended Practices. Although substantial progress is undoubtedly being made in remedying these short comings, the strategic question facing ICAO as an organisation is how to ensure compliance with SARPs, especially when serious deficiencies persist despite the best efforts of both Contracting States and ICAO to assist;
- how to avoid the fragmentation of a worldwide air transport system which it has been instrumental in developing and nurturing for 60 years. The rapid

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development of increasingly sophisticated and expensive technology brings with it a risk of a growing disparity between Contracting States in their abilities to implement the coherent regime of global standards based on SARPs designed by ICAO;

- the success and growth of air transport has resulted in the creation of problems of environmental protection which need to be addressed if aviation is to command support for continued future expansion. One of the undoubted challenges in this regard is posed by the uneven development of political and community concern about aviation environmental matters in different regions of the world. This risks widening a rift between regions in which different emphasis is placed on the balance between environmental concerns and economic development; and
- in the context of its global responsibilities and the constantly evolving nature of the industry it serves, ICAO has developed a well-earned reputation in the United Nations family for efficiently meeting the objectives of its Contracting States and the needs of the industry it serves on a relatively modest budget. However, financial constraints in Contracting States, an increasing reluctance on the parts of governments to devote public funds to support what is increasingly regarded as a mature industry and the growing emphasis on managerial efficiency in all walks of life, place a requirement on ICAO (such as is the case for other international organisations) to demonstrate that it can offer value for money, the highest levels of cost-effectiveness and a commitment to transparent, effective and dynamic management. This will include developing a budgetary regime which combines predictability, stability and flexibility over the organisation's financial cycle.

5. These strategic and political challenges exist now and will undoubtedly be augmented by others of similar importance as the air transport industry develops. The history and traditions of ICAO give grounds for optimism that they will be successfully addressed as a matter of urgency. Meeting these challenges is the primary role of the Council.

ICAO'S Strategic Objectives

6. It is vital that the new Strategic Objectives should inspire the entire Organisation, running like a golden thread from top to bottom. They should thus form the basis, not only of the new ICAO Business Plan, but also of, in descending order, the more detailed plans of the Organisation's Bureaux, Regional Offices and branches, right down to the personal objectives and performance plans of individual staff. Every member of staff and every organisational unit should have a clear understanding of how his, her or its work contributes to the achievement of ICAO's Strategic Objectives. However, whereas a consistent framework is by no doubt required for the organisation's work, it should not be transformed into a bureaucratic apparatus.

PROPOSED OPERATIONAL REFORMS

Balance of Responsibilities Between Council and Secretary General

7. In order to take full advantage of the excellent work done in drawing up the organisation's Strategic Objectives, it is important to make a clear delineation between the respective roles of the Council and the Secretariat.

8. The Council should focus its attention on strategic and political matters and refrain from micro-managing what are essentially the duties and responsibilities of the Secretariat. Having established the Strategic Objectives the Council should now give priority to tackling the challenges outlined in paragraph 4 above, plus any others as they arise. By concentrating on these strategic challenges the Council will be able to keep the organisation's Objectives continuously under review, and adapt them as necessary. To take one example, in the context of enhancing audit procedures to better deal with cases of serious deficiencies the role of the Council could usefully be reinforced in particular, with respect to sub-paragraphs J and K of Article 54 of the Convention. There will also of course be emerging political issues which fall squarely within the remit of the Council.

9. By contrast, it is proposed that the task of implementing the Strategic Objectives be allocated formally to the Secretary General and the Secretariat. It would follow in that context that the role and responsibilities of the Secretary General should be made explicit when the appointment under Article 54 H of the Chicago Convention is made, perhaps by means of Directives from the Council to the Secretary General.

10. In addition, we welcome the requirement that the holder of the office of either President of the Council or Secretary General may serve for a term of three years and be eligible to serve a maximum of two consecutive terms of three years.

11. The Business Plan necessary to ensure that the organisation's Strategic Objectives are implemented, should be drawn up by the Secretary General. It would be his responsibility, once this Business Plan has been approved by Council, to implement it in all its details. This requires that the Secretary General be made responsible for:

- within the approved ICAO Regular Budget, allocation of funds appropriate to the implementation of the Business Plan and the priorities established;
- the establishment of priorities within each Strategic Objective;
- decisions on the evolving structure of the ICAO Secretariat (number of bureaux, divisions etc);
- the effective and efficient functioning of the Secretariat, including the assignment of staff necessary to ensure that the priorities in the Business Plan are carried out (and for the reallocation of staff across different areas of ICAO should this be necessary); and

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- ensuring that the requisite staff training and development is undertaken in order that the Business Plan and any Directives given by the Council when adopting the Business Plan, are implemented professionally and fully.

The Secretary General would of course be accountable to Council on an annual basis or otherwise as appropriate for progress made on the implementation of the Strategic Objectives.

12. This distinction between the roles of Council and Secretary General, would make best use of the strengths of both the Council and the Secretariat, and would mirror the normal balance of responsibilities in other large organisations in both the public and private sectors. ICAO's needs would best be served by a clear cut division of responsibilities, with the Council ensuring that the Organisation's Strategic Objectives evolve and adapt to new challenges and the professional Secretariat carrying out and reporting on the implementation of those Strategic Objectives.

Work Methods Employed by the Council and Secretary General

13. With a clear cut allocation of responsibilities between the Council and Secretary General, there would be a number of knock-on effects which could result in adjustments to the work methods employed by the Council and ICAO Secretariat. There is no wish to suggest any changes to the mandatory or permissive functions of the Council outlined in the Chicago Convention, but with the Council focusing primarily on strategic and political issues, including the adoption and implementation of SARPs and the follow-up of audits, it will spend less time on discussions of a largely technical or detailed administrative nature. While the number of Council Sessions per year is a matter for the Council itself to decide on, an increased emphasis on strategic issues, with implementation of the Strategic Objectives being a matter for the Secretary General, might well mean a reduction in the number of meetings of Committees which assist the Council in its work. The need to ensure that work methods in ICAO are adapted to achieve maximum effectiveness in implementing the Strategic Objectives applies right across the organisation. The work methods of the Secretariat would be directly influenced by the new Business Plan and it is incumbent on the Council to ensure that its own work methods best reflect the new approach embodied in the Strategic Objectives and Business Plan. The work of both the Secretariat and the Council suffer from a lack of anticipation and planning, which reflects a lack of priorities.

Budgetary matters

14. Turning to budgetary matters, it is emphasised that it is not the intention in any of the suggested reforms to increase the strains on ICAO's budget. There are three issues that need to be addressed:

- as ICAO's core activities should be funded from the Regular Budget if the Secretary General is to be empowered to deliver the Strategic Objectives. At present, work in ICAO on civil aviation security is funded largely by voluntary donations and it is suggested that a deadline be established by which this work would be fully funded from the Regular Programme Budget. This implies the continued need to make every effort to ensure savings and avoidance of wasteful

use of limited resources. A corollary to this of course is an acceptance that despite every effort to make savings, this may involve an increase in the budget and a consequent increase in Member States' contributions.

- in implementing the Strategic Objectives set by Council within the budget limitations adopted by Assemblies, the highest levels of accountability are required of the Secretary General. This requires that every effort should be made to give the Secretary General the maximum possible predictability, stability and flexibility in the budgetary arrangements; and
- ICAO should explore other means (such as international financing institutions) of funding essential technical assistance as a follow-up to ICAO's two audit programmes. ICAO should have a coordination role in the funding of assistance.

Regional Offices

15. ICAO's regional offices play a vital role in the Organisation's work and their importance both to the regions they serve and in the overall ICAO structure should not be underestimated. These offices are an integral part of the ICAO Secretariat to which the Strategic Objectives and Business Plan (adjusted if local circumstances require) should be applied. They must be the arms of the organisation in the field and focus on the specific needs of the regions concerned. These offices co-ordinate their activities with aviation organisations serving the same region and increased efforts in this regard could yield benefits. Mobility of staff should be encouraged between the headquarters and the regional offices.

CONCLUSIONS

16. ICAO's productivity and efficiency, and therefore its ability to respond to the challenges in global aviation, will be significantly enhanced by the following measures:

- a) Council in pursuance of Article 54 and 55 of the Chicago Convention, to focus attention on strategic and political matters including adoption and implementation of SARPs, adoption of and keeping the Strategic Objectives under review and periodically holding the Secretary General to account on progress made towards them. The Council should put a particular emphasis in adapting and improving the process of adoption of SARPS. It should also focus on the issue of implementation, taking into account the need to set up implementation plans and timeframes adapted to all categories of Contracting States;
- b) Council to review its own working methodology to see if changes are needed to meet its new focus on strategy rather than detail;
- c) Council to explore other possibilities of attracting financial assistance from outside bodies for technical assistance to States in following up audit recommendations;
- d) Secretary General to be accountable on the basis of a yearly report to the Council for his implementation of the Strategic Objectives and for the outcome of the

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actions he has taken in that regard;

- e) Secretary General to be tasked explicitly with the formulation of the Business Plan including priorities, and, once approved by Council, its detailed implementation;
- f) Secretary General to be explicitly responsible for the deployment of Secretariat staff as he considers most appropriate to achieve the Strategic Objectives and the milestones in the Business Plan;
- g) Secretary General to be given the flexibility, within the overall Regular Programme Budget, to allocate financial resources as he considers most appropriate to achieve the Strategic Objectives and milestones;
- h) priority to be attached to enhancing the predictability, stability and flexibility of the organisation's budgetary arrangements;
- i) the core activity of security to be brought within the regular programme budget, by an agreed deadline; and
- j) the important role played by regional offices to be acknowledged and their work to be integrated seamlessly into the Strategic Objectives and Business Plan under the authority of the Secretary General, while ensuring that these offices have the necessary human and financial resources.

APPENDIX B

PROPOSALS FOR A STUDY OF THE CHICAGO CONVENTION

1. At its meeting on 18 April 2007, the Co-ordinating Committee considered whether a paper on the revision of the Chicago Convention should be submitted to this year's ICAO Assembly. It postponed any decision to the Special Meeting of Directors General in Cyprus, but decided that as a matter of urgency, work should be put in hands to inform the Committee better about the actual condition of the various elements which make up the international aviation regulatory framework. It was felt that the various issues involved should be studied to provide the Committee with a considered view of where and to what extent modernisation of the international framework might be worth pursuing. A small Task Force was asked to undertake this work.

2. The Task Force unanimously agreed that the time was appropriate to begin the process of institutional modernisation of the Chicago Convention. It felt strongly that such a process should remain in the hands of Contracting States and not be led by the ICAO Council. It decided to recommend to the Co-ordinating Committee that Europe should propose to the forthcoming Assembly that a group of Contracting States be mandated to undertake a study of the Chicago Convention, looking at the positive aspects of the current Treaty which should be retained and indicating areas where the institutional framework would benefit from amendments or additions, particularly in the areas of safety, security and the environment. The Task Force felt that the results of such a study should be considered at the 2010 Assembly of ICAO. It was also mentioned during the Task Force's deliberations that there might be value in order to maintain the momentum of the study to conduct a review of its progress after 18 months perhaps in a Special Meeting of ICAO Directors General. This idea has been introduced into the draft Assembly Resolution contained in the Annex to Appendix B.

3. The Task Force's conclusions were conveyed to the Co-ordinating Committee. The only reaction came from one member of the Committee, who suggested that a draft Assembly paper be prepared and submitted to Directors General. A proposed draft is contained in Appendix B.

4. At the same time, work has been progressing on this subject in ICAO in the Friends of the President Group. It would appear from the latest documentation from that Group (a draft Council working paper received on 6 August via the good offices of the French Council Member) that a belief is emerging that the Chicago Convention needs to be reassessed, i.e. the conclusion reached by ECAC's small Task Force. The suggestion being considered by the Friends of the President is that the Assembly should mandate the Council to carry out studies on the possible review of the Convention along the lines common in the UN system of organisations by overriding Resolution A4-3 of 1950 (a resolution, which, despite its age, remains in force) which precludes the Council from initiating proposals for amendment of the Chicago Convention unless urgency can be demonstrated.

5. Should it be concluded that a European paper should be submitted to the Assembly, it would, of course, have to be considered within the EU processes.

**36TH SESSION OF THE ASSEMBLY OF THE
INTERNATIONAL CIVIL AVIATION ORGANISATION (ICAO)**

(Montreal, 18-28 September 2007)

Agenda item :

PROPOSALS FOR A STUDY OF THE CHICAGO CONVENTION

(Working paper presented by Portugal on behalf of the European Community and its Member States¹ and of the other States Members of the European Civil Aviation Conference²)

Summary

The Chicago Convention has during its lifetime served the international civil aviation community very well but the time has come to begin the process of analysing the Convention with a view to ensuring that it continues to serve a rapidly evolving world of global air transport. Any change or amendment to the Convention should only be considered if it can be clearly established that inadequacies exist which render it unfit for purpose. This paper recommends that the Assembly mandate a group of Contracting States' experts to undertake a general review of the Chicago regime with the intention that their findings be available in good time for consideration during the 37th Session of the Assembly in 2010.

Action by the Assembly is in paragraph 4.

1 Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom.

2 Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Croatia, Georgia, Iceland, Moldova, Monaco, Norway, Serbia, Switzerland, The former Yugoslav Republic of Macedonia, Turkey and the Ukraine.

1. The issue of whether the Chicago Convention continues to serve adequately the global air transport industry is sometimes put in rather simplistic terms. The image of a dynamic ever-changing industry constrained and inadequately served by an outdated unchanging Convention, is far from correct. When required, the Chicago Convention system has demonstrated its flexibility and adaptability. On the other hand, it is believed that the time is now opportune to begin the process of a critical but balanced examination of the Chicago Convention to *inter alia* identify its strengths and weaknesses as the legal framework for today's global air transport industry.
2. Such an analysis could also be helpful in perhaps bringing clarity and simplicity to what is a legal patchwork of amendments to the Convention and the question of ratification of these amendments by Contracting States of ICAO.
3. It is strongly believed that any analysis or study of an international Treaty should remain in the hands of the Contracting States to that Treaty, which is why this paper proposes that the Assembly should consider mandating a group of Contracting States' experts to undertake the study in question. The outcome of the study should be available in good time for consideration at the 37th Session of the ICAO Assembly in 2010. It is believed that a review of the progress of the work might usefully be made at about the halfway stage between two Assemblies in order to ensure that momentum is maintained. It is tentatively suggested that such a review could be undertaken by, for example, a Special Meeting of Directors General.
4. A draft Assembly Resolution to this affect is contained in the Annex.

Appendix B

Annex

ANNEX TO APPENDIX B

STUDY OF THE CHICAGO CONVENTION

The Assembly,

Recognising that international civil aviation has evolved significantly since the Chicago Convention was adopted in 1944; and

Recognising also that it would be beneficial for an analysis to be made, which would examine the positive aspects of the current Treaty which should be retained while indicating areas where the institutional framework could benefit from amendments or additions, particularly, but not exclusively, in the areas of safety, security and the environment.

Therefore,

1. Mandates a group of experts to be chosen from Contracting States to undertake a general review of the Chicago regime;
2. Requests this group of experts to report to the 37th Session of the Assembly on the outcome of the general review, providing fully documented support for its suggestions for both retention of areas of the existing institutional framework and suggestions for amendments or additions to that framework; and
3. Is of the view that a review of the progress of the work of the group of experts should be made after 18 months by a Special Meeting of Directors General to ensure that momentum is maintained.

– END –