



## Call for input on United Nations Resolution 53/6 – Human Rights and Climate Change

Opportunity Green Submission | 30 January 2024

*Opportunity Green is a UK-based environmental non-profit organisation using law, economics and policy to close the gaps in global climate action. We seek bold and impactful climate solutions, focusing on equity, justice and accountability.*

*This submission is in response to the UN's call for input on the impact of loss and damage (L&D) from the adverse effects of climate change on the full enjoyment of human rights. Opportunity Green submits that emissions contributed by the aviation industry adversely impact a full enjoyment of human rights, specifically in climate vulnerable countries. We therefore submit aviation taxation as a specific recommendation to this critical challenge.*

### Executive summary

The aviation industry is a major contributor to climate change. Aviation is currently responsible for 2% of annual global CO<sub>2</sub> emissions,<sup>1</sup> and when the impacts of aviation's non-CO<sub>2</sub> pollution are considered, it is estimated that aviation has contributed approximately 4% of observed human-induced global warming to date.<sup>2</sup> Aviation will continue to have a significant and increasing impact on climate change in the future. Before the COVID-19 crisis, the International Civil Aviation Organization (ICAO) estimated that international aviation emissions could more than triple between 2015 and 2050.<sup>3</sup> If aviation is left unmitigated, it is estimated that its share of global emissions will rise to 22% by 2050.<sup>4</sup> The wealthiest more developed countries (MDCs) represent most of this footprint, as most citizens of least developed countries (LDCs) have never boarded an airplane.<sup>5</sup>

As a major polluter, it is therefore surprising that aviation is a historically undertaxed industry, and an enormous missed opportunity therefore exists. In 2019, airlines from ICAO Member States created an operating profit of \$45 billion<sup>6</sup> and even modest taxes on this revenue could easily contribute a significant sum to lessen the effects of the climate and human rights crisis on Small Island Developing States (SIDS) and LDCs (explained further below).

In response to question 5 relating to Resolution 53/6, and building on previous calls made by the UN Special Rapporteur on Human Rights, this submission calls for a pledge to which MDCs can commit, agreeing to establish taxes on aviation as a source of L&D financing as follows:

- i. An Air Passenger Levy (APL)
- ii. A tax on kerosene fuel

The revenue from both levies must be contributed to the L&D fund confirmed at COP28, which will assist SIDS and LDCs in responding to L&D. Countries can implement these taxes nationally, without universal international agreement. It is important that countries do not wait for an international treaty on aviation taxation as that could take years, which would not match the urgency of the climate crisis.

Crucially, contributions to L&D financing from aviation taxation must be in addition to those that MDCs are already obligated to pay under existing UNFCCC climate finance obligations. While the aviation sector has a large moral responsibility to contribute to supporting those impacted by climate change, it should not reduce the obligation on MDCs who have historically failed to meet their agreed contributions.

## Introduction

The climate crisis is inherently a human rights crisis. Climate change is disproportionately impacting vulnerable countries, particularly SIDS and LDCs. Between 1970–2021, 91% of over 2 million deaths caused by extreme weather, climate and water-related disasters occurred in developing countries.<sup>7</sup> Before the 2000s, SIDS were struck with less than 10 major disasters per year. In the last 20 years, this has risen to around 20 per year.<sup>8</sup> The exploitation of fossil fuels by MDCs, large businesses, and wealthy individuals has contributed hugely to their expansion of wealth. Yet, LDCs and SIDS bear the heaviest adverse effects of climate change, despite having little responsibility for its cause.

As the average global temperature continues to rise, climate vulnerable countries divert their already limited resources to responding to climate disasters, rather than focusing on sustainable development.<sup>9</sup> In response to this cyclical dilemma, the UN Special Rapporteur on Human Rights and the Environment, David Boyd, and international human rights lawyer, Stephanie Keene, suggested the creation of aviation and maritime shipping levies to “help close the gap in SIDS and LDCs’ finance for losses, damages, and adaptation in an expeditious, equitable and efficient manner.”<sup>10</sup> At the International Maritime Organization (IMO) there is a live discussion of an international shipping levy proposed by several climate vulnerable Pacific Island States, in which they argue that part of the generated revenues by the levy should go towards mitigation and adaptation efforts in climate vulnerable nations – in addition to the climate finance obligations under UNFCCC. The aviation industry should do the same. However, due to governance challenges at the ICAO,<sup>11</sup> national governments should move forward with taxation domestically (placed on all flights departing from their jurisdictions, not just domestic flights) as quickly as possible, without waiting for an international universal agreement on aviation taxation.

It is estimated that L&D financing needs in LDCs could reach almost \$2 trillion in 2050.<sup>12</sup> Yet current climate finance mechanisms do not effectively direct revenue to LDCs. From 2016 to 2018, LDCs only received 14% of global climate finance (US\$12 billion in 2018).<sup>13</sup> SIDS – some of which are also LDCs – received only 2% of global climate finance (US\$2 billion in 2018).<sup>14</sup> Boyd further explains that the majority of climate finance takes the form of loans that poor countries will struggle to repay,<sup>15</sup> with only a ‘miniscule amount of funds’ being transferred from MDCs to LDCs despite 30 years of discussions.<sup>16</sup> This is precisely why a fund separate to existing climate finance mechanisms was created at COP27 to assist in responding to L&D.

This submission recommends the creation of two (APL and kerosene) aviation taxes, with revenues being contributed to the L&D fund, to be urgently implemented by national governments, and endorsed at upcoming ICAO meetings and future UNFCCC COPs.

## Aviation emissions and critical challenges

This submission identifies the following three key problems with aviation, and recommends specific financial mechanisms as solutions below:

1. A failure to adopt the polluter pays principle for the commercial aviation industry
2. A failure to adopt the polluter pays principle for private jets
3. Harmful new technologies

### Polluter pays

The polluter pays principle is a principle of international environmental law. It is a simple principle that requires those who cause pollution – rather than those who suffer its effects – to pay for the costs of such pollution. As mentioned throughout this submission, the effects of these aviation emissions, and climate change more generally, are hardest felt by LDCs and SIDS. Yet the financial rules and structures applicable to international aviation do not

give effect to the polluter pays principle, despite being a significant contributor to climate change (see the executive summary above). The sector pays very little tax: kerosene is often exempt from fuel taxes, and passenger taxes, where they exist, are low (see further below). In September 2023, African leaders called for world leaders "to rally behind the proposal for a global carbon taxation regime including a carbon tax on fossil fuel trade, maritime transport and aviation, that may also be augmented by a global financial transaction tax."<sup>17</sup>

The UN's own special rapporteur, Boyd, supports international maritime and aviation levies, from which between US\$56 and \$392 billion could be collected to "provide a tremendously needed source of assistance and empowerment to SIDS' and LDCs' climate change response capacity."<sup>18</sup> The aviation levy was suggested at \$10 – \$75 per ticket and has a projected annual revenue of between \$20 billion to \$300 billion with 2019 levels of commercial air passengers. The higher end of the estimation could fund a large proportion of the annual economic costs of L&D in SIDS and LDCs by 2030, which are projected to be between \$290 billion and \$580 billion.<sup>19</sup>

### **Private jets**

This submission has thus far focused on commercial aviation, yet private and business jets have a hugely disproportionate impact on emissions and climate change due to their exclusiveness.<sup>20</sup> The OpenSky Network studied the emissions of approximately 250 private jets between 2019 to 2022. The total CO<sub>2</sub> emissions from these aircraft across the four years is estimated to be between 0.45 and 0.5 megatonnes (equivalent to approximately one year of emissions in Greenland). The average yearly emissions from these selected 250 jets are equivalent to approximately 45,000 people's average lifetime emissions globally.<sup>21</sup> Overall, private jet flights pollute up to 14 times more than commercial flights.<sup>22</sup>

This submission argues that this imbalance should be addressed, and that global leaders should act to ensure the polluters who use private jets pay for their contribution to the climate crisis and by association, the human rights crisis.

### **Harmful new technologies**

There are many innovative technologies aiming to decarbonise the aviation industry, most of which focus on alternative fuels, and use the ambiguous term "sustainable aviation fuel" (SAF). From used cooking oil to green hydrogen, there are many different types of SAF with different sustainability profiles. However, many of these options will still contribute to both a climate and human rights crisis for LDCs and SIDS. For example, biofuel production has been criticised for leading to deforestation, disputes over food prices and land use, and human rights violations.<sup>23</sup> Likewise, MDCs establishing green hydrogen plants in LDCs and SIDS with water scarcity and energy poverty issues are contributing to a neocolonialism, whereby LDCs and SIDS are once again disproportionately disadvantaged by MDCs' economic activity, as was the case with the exploitation of crude oil.<sup>24</sup>

Therefore, countries should primarily contribute any aviation levy revenues to support climate vulnerable countries rather than investing in non-solutions nationally. Additional national taxes can be applied to aviation as necessary to generate revenue for in-sector decarbonisation as the EU has done with the Emissions Trading System.<sup>25</sup>

### **Addressing these challenges**

This submission proposes two aviation taxes: an APL, and a kerosene tax. With a Taskforce on International Taxation to Enhance Development and Climate Action announced by Kenya and France at COP28,<sup>26</sup> these taxes should be supported globally, and MDCs can impose these taxes nationally.

### **Air Passenger Levy (APL)**

Several countries including Austria, Germany, the Netherlands, Sweden and the UK have implemented a national APL on both domestic and international tickets.<sup>27</sup> As the major polluters, MDCs should continue to set an example, and support the introduction of an APL on all flights departing from their jurisdictions. They can then collect the revenue with it earmarked for L&D financing.

The \$700 million pledged at COP28 by several MDCs to the L&D fund covers less than 0.2% of global L&D needs.<sup>28</sup> Meanwhile, a global flat tax of \$25 tax per flight or a frequent flyer levy starting at \$9 for a person's second flight would have led to \$121 billion of revenue in 2019 alone.<sup>29</sup> This level of taxation would provide significant finance to address aviation's pollution, whilst being set at a level that is capable of not significantly impacting aviation industry profits, nor harming tourism in LDCs or SIDS.<sup>30</sup>

## Kerosene tax

Aviation is the most carbon intensive form of transport.<sup>31</sup> Burning kerosene fuel at high altitudes emits both carbon and non-CO<sub>2</sub> emissions in the form of nitrous oxides, contrails and particulates. Non-CO<sub>2</sub> emissions have been overlooked by industries and regulators, yet these non-CO<sub>2</sub> impacts mean aviation actually accounts for 4% of global warming.<sup>32</sup> The tax exemption on kerosene thus far has been described as "the biggest absurdity of all," by Wopke Hoekstra, EU Commissioner for Climate Action.<sup>33</sup> Climate Action Network estimates that an aviation fuel tax in the EU alone could produce \$12.8 billion in revenue by 2027.<sup>34</sup> A tax on kerosene in the UK alone could generate £6.7 billion in revenue and would not negatively impact the economy.<sup>35</sup> If other MDCs mobilised, this could create a significant amount of revenue needed by LDCs and SIDS to recover from L&D.

This submission notes that there are criticisms of imposing an APL and kerosene tax. However, such taxes would not substantially impact business.<sup>36</sup> The positive impact of L&D financing from aviation taxation revenue hugely outweighs any negligible impacts on business, especially in this climate and human rights crisis. Additionally, these taxes have been declared legal by multiple different courts.<sup>37</sup>

## Conclusions

MDCs have failed to meet their climate finance pledge of \$100 billion per year by 2020, and discussions are now starting on a post-2025 goal.<sup>38</sup> Therefore, it is uncertain whether respective goals for the L&D fund will be met. However, the revenue from APL and kerosene taxes would help significantly to fund the L&D costs LDCs and SIDS have incurred.

This submission has shown that: (i) the aviation industry bears significant responsibility for climate change, and is likely to be responsible for an increasing share of future global warming; (ii) at the same time, the aviation industry contributes very little tax, and does not even pay tax on kerosene fuel; (iii) the climate impacts of aviation are predominantly caused by MDCs and predominantly suffered by LDCs and SIDS; (iv) L&D funding mechanisms would provide an opportunity to give effect to the polluter pays principle and provide an important source of L&D financing, without necessarily impacting the industry's profitability and (v) it is within the power of national and regional governments to impose national taxes on aviation which can be used to support L&D financing.

**We submit that APL and kerosene taxes will provide a significant proportion of the revenue needed by LDCs and SIDS to recover from L&D. We call on the ICAO to support the imposition of taxation on aviation, we call on COPs to be a forum for countries to mobilise around L&D and support aviation as a contributor, and we call on national governments to impose the taxes in their respective jurisdictions, ensuring the revenue is dedicated to L&D financing.**

In a world where scientists argue that keeping a 1.5°C global warming limit is unlikely,<sup>39</sup> these financial mechanisms cannot be ignored as they will provide life-changing assistance to countries who are the least responsible for these crises. It is no longer a case simply of equity, but now of absolute necessity and urgency.

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<sup>4</sup> Energy Transitions Commission, 'Making Net-Zero Aviation Possible' (July 2022) <<https://www.energy-transitions.org/publications/making-net-zero-aviation-possible/>> accessed 17 January 2024.

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- <sup>10</sup> David Boyd and Stephanie Keene, 'OHCHR Policy Brief No. 2 – Air Travel and Maritime Shipping Levies: Making Polluters Pay for Climate Loss, Damages and Adaptation' 2021 p. 4.
- <sup>11</sup> Carly Hicks, 'Clear Sky and Transparent Sea' (Opportunity Green, December 2022) <<https://www.opportunitygreen.org/publication-clear-sky-and-transparent-sea>> accessed 23 January 2024.
- <sup>12</sup> Anil Markandya and Mikel González-Eguino, *Integrated Assessment for Identifying Climate Finance Needs for Loss and Damage from Climate Change*, in Mechler Bouwer et al. (eds), *Loss and Damage from Climate Change: Concepts, Methods, and Policy Options*, (Springer, Cham, 2019).
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- <sup>14</sup> Markandya and González-Eguino (n 12); and Tracy Carty et al., *Climate Finance Shadow Report 2020: Assessing Progress Towards the \$100 Billion Commitment* (Oxfam International, 2020).
- <sup>15</sup> Boyd and Keene (n 10) p.4.
- <sup>16</sup> Boyd and Keene (n 10) p.4.
- <sup>17</sup> Nairobi Declaration on Climate Change <[https://www.afdb.org/sites/default/files/2023/09/08/the\\_african\\_leaders\\_nairobi\\_declaration\\_on\\_climate\\_change\\_rev\\_eng.pdf](https://www.afdb.org/sites/default/files/2023/09/08/the_african_leaders_nairobi_declaration_on_climate_change_rev_eng.pdf)> 89 IMF, 2022, Economic and Environmental Benefits from International Cooperation on Climate Policies. Departmental Paper 2022/007.
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