



# ICAO NEWS RELEASE

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## ICAO COUNCIL CONCLUDES CONSIDERATION OF THE REPORT ON THE 24 FEBRUARY 1996 SHOOTDOWN OF CIVIL AIRCRAFT OFF CUBA

**MONTREAL, 28 June 1996** - The Council of the International Civil Aviation Organization (ICAO) yesterday concluded its consideration of the report on the 24 February 1996 shooting down of two United States-registered private civil aircraft with a resolution (see Attachment A) reaffirming the principle that each contracting State shall take appropriate measures to prohibit the deliberate use of any civil aircraft registered in that State for any purpose inconsistent with the aims of the Convention on International Civil Aviation. The resolution also reaffirms the Council's condemnation of the use of weapons against civil aircraft in flight as being incompatible with elementary considerations of humanity and the rules of customary international law.

The resolution will be transmitted to the United Nations Security Council along with the report of the investigation team (see Attachment B for conclusions of the report).

In closing the Council's discussion, Dr. Assad Kotaite, President of the Council of ICAO, commended the investigation team for its hard work, professionalism, integrity and impartiality, qualities which he described as being in the highest tradition of the international civil service.

ICAO was created in 1944 to promote the safe and orderly development of civil aviation in the world. A specialized agency of the United Nations, it sets international standards and regulations necessary for the safety, security, efficiency and regularity of air transport and serves as the medium for cooperation in all fields of civil aviation among its 184 Contracting States.

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RESOLUTION ADOPTED BY THE COUNCIL OF THE  
INTERNATIONAL CIVIL AVIATION ORGANIZATION  
AT THE TWENTIETH MEETING OF ITS 148TH SESSION  
ON 27 JUNE 1996

**THE COUNCIL**

*RECALLING* that two US-registered private civil aircraft were destroyed on 24 February 1996 by Cuban military aircraft;

*HAVING CONSIDERED* the request of the Government of the United States for an investigation concerning this incident;

*HAVING CONSIDERED* the request of the Government of Cuba inviting the Organization to carry-out an exhaustive investigation;

*HAVING CONSIDERED* the request of the United Nations Security Council in a Presidential Statement of 27 February 1996 that the International Civil Aviation Organization investigate this incident in its entirety;

*RECALLING* the Resolution adopted by this Council on 6 March 1996 which strongly deplored the shutdown of these two civil aircraft, and which directed the Secretary General to initiate an immediate investigation of this incident in its entirety and to report on that investigation within 60 days of the adoption of this Resolution, for consideration during its 148th Session;

*EXPRESSING* appreciation for the full co-operation of the authorities of the States concerned with the ICAO investigation team in this regard;

*HAVING CONSIDERED* the report of the Secretary General on the investigation on 26 and 27 June 1996 during its 148th Session;

*RECALLING* the principle that every State has complete and exclusive sovereignty over the airspace above its territory, and that the territory of a State shall be deemed to be the land areas and territorial waters adjacent thereto;

*RECALLING ALSO* that States, in the exercise of their authority under Articles 1 and 2 of the *Convention on International Civil Aviation*, shall be guided by the principles, rules, standards and recommended practices laid down in the Convention and its Annexes, including the rules relating to the interception of civil aircraft, and the principle, recognized under customary international law, concerning the non-use of weapons against such aircraft in flight;

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1. *NOTES* the report of the investigation instituted by the Secretary General;
2. *REAFFIRMS* the principle that States must refrain from the use of weapons against civil aircraft in flight and that, when intercepting civil aircraft, the lives of persons on board and the safety of the aircraft must not be endangered;
3. *REAFFIRMS* the principle that each Contracting State shall take appropriate measures to prohibit the deliberate use of any civil aircraft registered in that State or operated by an operator who has his principal place of business or permanent residence in that State for any purpose inconsistent with the aims of the *Convention on International Civil Aviation*;
4. *REAFFIRMS* its condemnation of the use of weapons against civil aircraft in flight as being incompatible with elementary considerations of humanity, the rules of customary international law as codified in Article 3 *bis* of the *Convention on International Civil Aviation*, and the Standards and Recommended Practices set out in the Annexes to the Convention;
5. *EXPRESSES* its deep regret over the loss of four lives and its deep sympathy and condolences to the bereaved families of the victims of this tragic event;
6. *RESOLVES* to transmit the Secretary General's report to the United Nations Security Council;
7. *INSTRUCTS* the Air Navigation Commission to study the safety-related aspects of the report of the investigation with regard to the adequacy of standards and recommended practices and other rules relating to interception of civil aircraft, and to report to the 150th Session of the Council on any measures it considers necessary so as to prevent the recurrence of a similar tragic event;
8. *REQUESTS* the President of the Council to report on the adoption of this Resolution to all ICAO Contracting States as soon as possible, and to report on this Resolution to the next ordinary Session of the Assembly in 1998 for any action the Assembly may wish to take;
9. *REQUESTS* all Contracting States to report at any time to the Council any infraction of the above-mentioned rules contained in the *Convention on International Civil Aviation*;
10. *URGES* all States which have not yet done so to ratify as soon as possible Article 3 *bis* of the *Convention on International Civil Aviation*, and to comply with all the provisions of this Article pending its entry into force.

- END -

### 3. CONCLUSIONS

3.1 The authorities in Cuba notified the authorities in the United States of multiple violations of Cuban territorial airspace, which took place on seven specific dates from 15 May 1994 to 4 April 1995, by aircraft operating out of the United States, and repeatedly demanded that the United States adopt measures to put an end to these violations.

3.2 At least one aircraft, N2506, overflew the city of Havana at low altitude on 13 July 1995, and released some leaflets and religious medals. Cuba requested the United States to prevent such violations.

3.3 In a public statement issued on 14 July 1995, the government of Cuba declared its firm determination to take all the necessary steps to prevent provocative actions and warned that any aircraft intruding into Cuban territorial airspace may be shot down.

3.4 According to the authorities in Cuba, two light aircraft violated Cuban territorial airspace on 9 and 13 January 1996, and released leaflets which fell on Cuban territory. According to the pilot of one of the aircraft, N2506, half a million leaflets were released on 13 January 1996; on both dates they were released outside the 12 NM Cuban territorial limit and the wind carried them to Havana.

3.5 Prior to 24 February 1996, the United States authorities issued public statements and NOTAMs, advising of the potential consequences of unauthorized entry into Cuban airspace, and initiated legal actions against the pilot of N2506.

3.6 Under Article 12 of the Chicago Convention, each contracting State undertakes to adopt measures to insure that every aircraft carrying its nationality mark, wherever such aircraft may be, shall comply with the rules and regulations relating to the flight and manoeuvre of aircraft there in force.

3.7 The Brothers to the Rescue was a volunteer group of pilots, based in Miami, Florida, United States, formed to search for, and assist, Cuban rafters fleeing the island. There was evidence to indicate that some members of the group sought to influence the political situation in Cuba.

3.8 After the events on 9 and 13 January 1996, the authorities in Cuba realized that control of the Brothers to the Rescue Organization was beyond the United States government; the Commander of the Anti-Aircraft Defence and the Air Force of Cuba was instructed that violations of Cuban territorial airspace should no longer be tolerated, and he was authorized, if such a situation arose again, to decide personally on military interception and shooting down, if so required.

3.9 On 23 February 1996, the Department of State in the United States alerted FAA/AIA to the tense situation in Cuba and the possibility that the Brothers to the Rescue might attempt an unauthorized flight into Cuban airspace; FAA/AIA alerted FAA Headquarters, FSDO, FAA in Miami, and the military liaison officer at Miami ARTCC.

3.10 On 24 February 1996, the Department of State in the United States requested, through the FAA Operations Center in Washington, D.C., information on the departure of Brothers to the Rescue aircraft. In addition to FAA facilities, other agencies, including Customs, had been notified. According to the authorities in the United States, any incursions into Cuban territorial airspace were to be documented for compliance/enforcement purposes.

3.11 N2456S, N5485S and N2506 deviated from the route given in their VFR flight plans; they were flying within the MUD-8 and MUD-9 danger areas within Havana FIR, promulgated as being active on 24 February 1996.

3.12 At 15:21 hours on 24 February 1996, N2456S was destroyed by an air-to-air missile fired by a Cuban MiG-29 military aircraft.

3.13 At 15:27 hours on 24 February 1996, N5485S was destroyed by an air-to-air missile fired by a Cuban MiG-29 military aircraft.

3.14 There were significant differences between the Cuban military radio communications recordings provided by Cuba and by the United States. Several transmissions in the recording provided by the United States could not be found in the recording provided by Cuba, all of which related to vessels in the area of shoot-down. The differences could not be explained as the result of simultaneous transmissions recorded differently by different stations, nor could they be explained as the result of technical difficulties in the recording.

3.15 There were significant differences between the radar data provided by Cuba and by the United States, which could not be reconciled.

3.16 The recorded positions and track of the *Majesty of the Seas*, the observations by its crew and passengers, the position of the *Tri-Liner* relative to the *Majesty of the Seas*, and the resulting estimated locations of the shoot-downs were considered to be the most reliable position estimates.

3.17 No corroborative evidence of the position of the *Majesty of the Seas* was obtained. With this qualification and based on the recorded positions of the *Majesty of the Seas*, N2456S was shot down approximately at position 23 29N 082 28W, 9 NM outside Cuban territorial airspace and N5485S was shot down approximately at position 23 30.1 N 082 28.6W, 10 NM outside Cuban territorial airspace.

3.18 Means other than interception were available to Cuba, such as radio communication, but had not been utilized. This conflicted with the ICAO principle that interception of civil aircraft should be undertaken only as a last resort.

3.19 During the interceptions, no attempt was made to direct N2456S and N5485S beyond the boundaries of national airspace, guide them away from a prohibited, restricted or danger area or instruct them to effect a landing at a designated aerodrome.

3.20 In executing the interception, the standard procedures for manoeuvring and signals by the military interceptor aircraft, in accordance with ICAO provisions and as published in AIP Cuba, were not followed.

3.21 The Protocol introducing Article 3 *bis* into the Chicago Convention had not entered into force. Neither Cuba nor the United States had ratified it.

3.22 The rule of customary international law that States must refrain from resorting to the use of weapons against civil aircraft in flight, as codified in Article 3 *bis* of the Chicago Convention, and the ICAO provisions concerning interception of civil aircraft, apply irrespective of whether or not such aircraft is within the territorial airspace of that State.

**GLOSSARY**

ACC	Area Control Centre
ADF	Automatic Direction Finder
ADIZ	Air Defence Identification Zone
AIFSS	Automated International Flight Service Station
AIM	Aeronautical Information Manual (United States)
AIP	Aeronautical Information Publication
AMIS	Aircraft Movement Information Service
ARSR	Air Route Surveillance Radar
ARTCC	Air Route Traffic Control Center
ATC	Air Traffic Control
ATS	Air Traffic Services
CARIBROC	Caribbean Regional Operations Center (United States)
cm	Centimetre(s)
CNCPV	Joint National Centre for Flight Planning (Cuba)
CTA	Control Area
CVR	Cockpit Voice Recorder
DAICC	Domestic Air Interdiction Co-ordination Center, Customs (United States)
°C	Degrees Centigrade
°T	Degrees True
DFDR	Digital Flight Data Recorder
DME	Distance Measuring Equipment
FAA	Federal Aviation Administration (United States)
FAR	Federal Aviation Regulation (United States)
FBI	Federal Bureau of Investigation (United States)
FDR	Flight Data Recorder
FIR	Flight Information Region
FL	Flight Level
FSDO	Flight Standards District Office, FAA (United States)
FSS	Flight Service Station (United States)
ft	Foot/feet
GPS	Global Positioning System
HF	High Frequency (3 000 to 30 000 kHz)
hPa	Hectopascal
IACC	Civil Aviation Institute (Cuba)
ICAO	International Civil Aviation Organization
IFR	Instrument Flight Rules
INS	Inertial Navigation System
kg	Kilogram(s)
kHz	Kilohertz
km/h	Kilometres per hour
km	Kilometre(s)
kt	Knot(s)

lb	Pound(s)
m	Metre(s)
MHz	Megahertz
mm	Millimetre(s)
MUD	Danger area designated by Cuba
MUP	Prohibited area designated by Cuba
N	North
NBC	National Broadcasting Corporation (United States)
NM	Nautical Mile(s)
NORAD	North American Air Defense (United States)
NOTAM	A notice containing information concerning the establishment, condition or change in any aeronautical facility, service, procedure or hazard, the timely knowledge of which is essential to personnel concerned with flight operations
NTSB	National Transportation Safety Board (United States)
PSR	Primary Surveillance Radar
QNH	Altimeter sub-scale setting to indicate elevation (above mean sea level) when on the ground
RAC	Rules of the Air and Air Traffic Control
SAR	Search and Rescue
SEAD	South East Air Defense sector, NORAD (United States)
SIGMET	Information issued by a meteorological watch office concerning the occurrence or expected occurrence of specified en-route weather phenomena which may affect the safety of aircraft operations.
SSR	Secondary Surveillance Radar
STOL	Short Take-off and Landing
TWR	Aerodrome Control Tower
UHF	Ultra High Frequency (300 to 3 000 MHz)
UTC	Co-ordinated Universal Time
VFR	Visual Flight Rules
VHF	Very High Frequency (30 to 300 MHz)
VOR	VHF Omnidirectional Radio Range
W	West