



**WORKING PAPER**

**WORLDWIDE AIR TRANSPORT CONFERENCE (ATCONF)**

**SIXTH MEETING**

**Montréal, 18 to 22 March 2013**

**Agenda Item 1: Global overview of trends and developments**

**Agenda Item 1.2: Other areas of ICAO's work that may have economic implications**

**IMPACT OF THE UNITED STATES ECONOMIC, COMMERCIAL, AND FINANCIAL  
EMBARGO AGAINST CUBA IN THE CIVIL AVIATION SECTOR**

(Presented by Cuba)

**EXECUTIVE SUMMARY**

This working paper aims to inform the international civil aviation community, through information and evidence, about the economic impact of the United States economic, commercial and financial embargo on the development of air transport in the Republic of Cuba, and its **extraterritorial nature**; the violations of the Convention on International Civil Aviation on account of the measures of the United States economic, commercial and financial embargo against Cuba, as well as the impact of the embargo on the development of Cuban civil aviation and on the **sustainability of air transport**, preventing the participation of Cuban airlines in international air transport activities.

**Action:** The Conference is invited to agree to the recommendations presented in paragraph 4.

**References:** ATConf/6 reference material is available at [www.icao.int/meetings/atconf6](http://www.icao.int/meetings/atconf6).

**1. INTRODUCTION**

1.1 Participation in international air transport is based on the Convention on International Civil Aviation (the Chicago Convention). Article 44 of the Chicago Convention (Doc 7300) establishes that one of the objectives of ICAO is "...to insure that the rights of Contracting States are fully respected and that every Contracting State has a fair opportunity to operate international airlines". The last two Air Transport Conferences (ATConf/4 in 1994 and ATConf/5 in 2003) also agreed, as stated in *Policy and Guidance Material on the Economic Regulation of International Air Transport* (Doc 9587, Part 1, Section V), that "...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; and that the interests and needs of developing countries should receive special consideration. The reference material related to this topic may be consulted on the web page of ATConf/6 at [www.icao.int/meetings/atconf6](http://www.icao.int/meetings/atconf6).

<sup>1</sup> Spanish version provided by Cuba.

1.2 There is general concern about unilateral or extraterritorial measures taken by certain States or groups of States, which affect the interests or air transport services of other States. This type of unilateral action exists in various areas: safety, aviation security and economic regulation. It is recognized that unilateral measures may lead to conflicts, and thus, have an impact on the sustained development of international civil aviation.

1.3 As a global intergovernmental organization responsible for civil aviation, ICAO has the mission to harmonize the policies and regulatory systems related to the economic aspects of international air transport. In response to these concerns about the unilateral decisions that have an impact on international air transport, ICAO has the duty to urge States to abstain from taking this type of measure. One example of this mission was ICAO's resolution of the dispute between Cuba and the United States (U.S), which arose when the U.S. banned Cuban airlines from flying over its territory via direct, international, globally recognized routes to and from Canada.

1.4 Unilateral actions are not conducive to the safe, orderly and sustainable development of international air transport.

## 2. BACKGROUND

2.1 In 1960, the U.S. government established an economic, commercial and financial embargo against the Republic of Cuba. Since then, all of the country's economic sectors have been noticeably affected, including the civil aviation sector.

2.2 The U.S. economic, commercial and financial embargo against Cuba violates the principles set out in the Preamble to the Chicago Convention.

2.3 From 1992 at the 47th Session to the 66th Session in 2012, the United Nations General Assembly has consecutively approved, by an overwhelming majority, the resolutions entitled "The need to put an end to the economic, commercial and financial embargo imposed by the USA against Cuba." At the last UN General Assembly in 2012, Resolution 66/6, with the same title, was approved with 188 votes in favour, 3 against and 2 abstentions.

2.4 At the 37th Assembly, during the analysis of Agenda item 54 "Other issues to be considered by the Economic Commission," Working Paper A37-WP/312 was submitted for consideration by this commission, and after an intense debate, the Commission considered that this matter should be brought to the attention of the President of the Council, whose "good offices" had been involved in this issue on previous occasions. This situation has not been resolved. Cuba is now presenting this working paper that outlines some of the latest events and economic effects caused by this unlawful embargo.

## 3. ANALYSIS OF THE IMPACT

### 3.1 **Effects which show the extraterritorial nature of the U.S. regulations and demonstrate that the embargo is not a bilateral matter**

3.1.1 It is impossible to implement the modernization of the automatic check-in and baggage system installed in the terminal areas. The Society of International Aeronautical Telecommunications (SITA) has demonstrated that on account of the U.S. commercial embargo, it is unable to implement the elements required for the check-in system contracted by the Cuban Airports and Aeronautical Services Company (ECASA) and has had to turn to the French company RESA, represented by Global System. This has led to greater expenditure and delays, which have affected the service.

3.1.2 The situation cited above also causes serious difficulties for Cuba, since almost all of the originating States for flights to our country and the vast majority of our clients require the use of these systems. In particular, Cuba wishes to highlight the issue of sending Advanced Passenger Information (API) to the destination within 15 minutes after the aircraft has taken off – it is very difficult to do this from all Cuban airports and results in fines for airlines, which in turn affects their operating costs and means that they run the risk of losing their licenses to operate in Cuba.

3.1.3 The supply of spare parts and pieces for the Bandeirante EMB-110 civil aircraft operated by the Cuban airline “Aerocaribbean, S.A.” and produced by the Brazilian aviation consortium EMBRAER was refused. Their purchase was only possible through trading companies or intermediaries, with a resulting increase in costs of between 20 per cent and 40 per cent of their sales value (Evidence in Appendix No.1 to A37-WP/312).

3.1.4 Impact on the INTERNET sales of Cubana de Aviación. Online sales of Cubana de Aviación S.A. reopened on January 28, 2009 with a new marketing structure, and they started achieving significant increases in their sales figures. However, on May 22 of the same year, these were drastically interrupted when the bank acquiring the funds from the online sales received notifications from the North American VISA company regarding the use of cards issued in the United States to purchase tickets and the violation of the regulations of the U.S. embargo against Cuba by working with the Cubana de Aviación company.

3.1.5 From this point on, there were a series of communications between the airline and the bank acquiring the funds, until in the end we could not continue working with this financial entity to support the electronic business (Evidence in Appendix No.3. A37-WP/312). In this regard, the economic impact on the Cubana de Aviación company has been calculated at a figure close to USD 3 500 000.00 for one year alone.

3.1.6 Impact due to the embargo on a financial transfer from the Cubana de Aviación airline with banks in third countries. The Banco Popular Español S.A. (BPESA) informed us of the embargo imposed by the US OFAC on a Cubana de Aviación transfer, ordered in December 2008 by the management in Madrid for the management in Moscow, for an amount of \$ 107 770.95 euros. This amount was sent by BPESA through Wachovia Bank and was seized by the OFAC. As this was the responsibility of the Banco Popular Español S.A., we asked them to reimburse this amount but they did not do so. There are letters that provide evidence of this fact (Appendix No. 4 to A37-WP/312).

### 3.2 **Violations of the Chicago Convention**

3.2.1 The U.S. economic, commercial and financial embargo against Cuba violates the principles set out in the Preamble to the Chicago Convention, which states that international civil aviation should be developed in a safe and orderly manner and that international air transport services should be established on the basis of equality of opportunity and be operated soundly and economically. The subject of this Conference refers specifically **to the sustainability** of air transport.

3.2.2 The ban on our airline companies from operating in the U.S. has an enormous economic impact; since the airlines are prevented from serving this air traffic, the volume of operations is reduced at our airports and movement of passengers is limited. Furthermore, there is also a ban on the purchase of advanced aircraft technology, equipment, parts, pieces, and other accessories.

3.2.3 The economic, commercial and financial embargo, with its discriminatory measures, also violates the regulations and provisions of the Chicago Convention and, in particular, Article 44, sections a), c), d), f), g), h) and i) which establish among the aims and objectives of ICAO: encouraging the

development of international air transport; meeting the needs of the peoples of the world in this respect, ensuring that the rights of the Contracting States are fully respected and avoiding discrimination between them, and generally promoting the development of all aspects of international civil aviation. It also violates Articles 77 and 79, which plead for the non-prevention of two or more Contracting States constituting joint air transport operating organizations. Cuba has been forced to cancel joint agreements with other airlines.

3.2.4 The effects which we will reflect on hereafter constitute an example of violations of the Chicago Convention with respect to our airlines and to the Cuban civil aviation system as a whole, which has always been committed to offering an improved service to its customers, reducing costs and making air transportation and the delivery of services in general more efficient.

### 3.3 **Some examples of additional expenses from purchasing goods and supplies in different markets and at different prices**

3.3.1 Economic impact on the maintenance of ATR aircraft as regards the supply of parts and pieces and the repair of aircraft and larger aggregates. Under current conditions, we are obliged to make the necessary purchases and repairs in distant markets, mainly in Europe. This causes unnecessary increases, such as the 40% cost increase.

3.3.2 It is prohibitive for Cuba to purchase aircraft with advanced technology. This situation has meant that we have had to lease aircraft under abnormal and unfavourable conditions. For these reasons, Cuban airlines saw themselves affected in one year alone to the tune of **USD 54 974 017**.

3.4 **The grand total of the impact on Cuban civil aviation from 1960 to 2012 amounts to USD 4 028 987 854.00.**

## 4. **RECOMMENDATIONS**

4.1 The Conference is invited to :

- a) examine the information set out in this working paper related to the impact of the U.S. Government's economic, commercial and financial embargo against the Republic of Cuba in terms of air transport activity;
- b) recognize that the unilateral measures imposed by one Member State against another Member State affect its aviation development and constitute a clear violation of the principles and objectives of the Chicago Convention, and they also create negative precedents which could affect other States within the international aviation community.
- c) reaffirm that participation in international air transport is based on the Chicago Convention. Article 44 of the Convention on International Civil Aviation (Doc 7300) establishes that one of the objectives of ICAO is "to insure that the rights of Contracting States are fully respected and that every Contracting State has a fair opportunity to operate international airlines".
- d) urge States to abstain from taking this type of measure.