



WORKING PAPER

LEGAL COMMITTEE – 39TH SESSION

(Montréal, 25 – 28 June 2024)

Agenda Item 2: Consideration of the General Work Programme of the Legal Committee

EFFECTS ON THE INTERNATIONAL AIR TRANSPORT SYSTEM OF UNILATERAL COERCITIVE MEASURES ON STATES

(Presented by the Bolivarian Republic of Venezuela)

1. BACKGROUND

1.1 It is in the domain of knowledge to those who are part of ICAO that the international air transport system has a significant impact on the comprehensive development of States. Additionally, there is the principle of sovereignty and equality between States, a basic principle established in the United Nations Charter, which is a fundamental part of the spirit of Multilateral Organizations.

1.2 However, there are measures that some States apply, contrary to the Convention on International Civil Aviation and the Convention on International Air Traffic, placing the aeronautical sector at a very high level of vulnerability and with a negative impact on related activities such as tourism and free trade, affecting the well-being of their populations and generating serious damage to their economies.

1.3 This unwanted practice limits, among other aspects, the acquisition of technology, publications, training, improvement of aeronautical infrastructure, connectivity and regularity of air transportation, even limiting compliance with SARPs and PANS, putting at risk the safe and orderly development of the State that receives these unilateral actions.

2. ANALYSIS

2.1 Growth of the air transport industry generates great economic benefits for States, allowing them to achieve their strategic objectives, as well as the comprehensive development of nations.

2.2 The ICAO World Air Transport Plan is decisive for the sustainable development of the sector, and it is of utmost importance that fair competition be strengthened, that is, non-discriminatory treatment of States and their air transport companies.

¹ English and Spanish versions provided by the Bolivarian Republic of Venezuela.

2.3 The Chicago Convention establishes in its article 44 “f” and “g” respectively, as follows:

“Insure that the rights of contracting States are fully respected and that every contracting State has a fair opportunity to operate international airlines”

“Avoid discrimination between contracting States

2.4 During several Assemblies and other meetings held at ICAO, this topic has been raised by different Contracting States who have been harmed by such measures, however, this practice is still present, affecting the sustainable development of the sector.

3. CONSEQUENCES OF UNILATERAL MEASURES APPLIED TO THE CIVIL AVIATION OF STATES

3.1 Unilateral coercive measures that affect international air transport represent a serious violation of international law and have economic, social and humanitarian impacts, such as:

3.1.1 Prevents the management of a regular, effective, ecological and economic public air transport service, due to the closure of routes and destinations, directly violating the users of this means of transport, affecting the economy of the States and their airlines.

3.1.2 The sustainability of the air transport system is highly affected, given that it impacts the regularity of the service, connectivity, commercial exchange, among other factors, which are difficult to recover if the measures adopted are prolonged in time, causing the airlines of the affected States to be less competitive, causing serious damage to their assets and promoting a framework of unfair competition.

3.1.3 Reduction in direct, indirect and induced jobs, as well as the free mobility of people and goods.

3.1.4 Other consequences are the closure of routes, which harms connectivity between different international destinations, which translates into a loss of the natural market of the States, generating unwanted distortions in the sector, such as an increase in air tickets, very long connection times, making unnecessary stopovers, among others, which negatively impact air transport users.

3.1.5 It imposes barriers to the comprehensive growth of people, generating significant impacts on the tourism sector, which boosts global trade, promotes social inclusion and international cultural exchange.

3.1.6 Impact on achieving the Sustainable Development Goals (SDGs), which were adopted by the United Nations in 2015, with the aim of ending poverty, protecting the planet and ensuring that by 2030 all people enjoy peace and prosperity without any type of distinction.

3.1.7 The measures imposed on States make it difficult to acquire new technologies, such as more efficient aircraft in their performance, which limits the achievement of ICAO measures, such as those adopted in Annex 16 Environmental Protection. As well as modernization of air navigation systems.

3.1.8 The United Nations Sustainable Development Goals are closely related to the ICAO Strategic Objectives, given that they allow for synergies and contribute to achieving 15 of the 17 SDGs².

² The Organization is fully committed to working in close cooperation with States and other United Nations bodies to support related objectives” (ICAO Source)

3.1.9 These limitations prevent participation in the Long-Term Aspirational Objective for the reduction of CO2 emissions from international aviation (LTAG) approved at the 41st General Assembly of the Organization, for the protection of the environment.

3.1.10 Achieving an acceptable competitiveness index as established in note A40-WP 274 is not feasible for States that have been harmed by the limitations that they generate and that harm the development of the air transport sector. In addition, limiting them to achieving the benefits of this important means of transportation.

3.2 The Venezuelan State has been unilaterally limited by this type of measures through political and economic sanctions that have affected the air transport system in an appreciable way. It should be noted that the Bolivarian Republic of Venezuela presented an information note WP/487 during the 40th ICAO General Assembly held in 2019, where we expressed our concerns and limitations generated by this type of measures. Additionally, we want to state that the Venezuelan State has made great efforts to comply with the standards and recommended practices, where it has reached levels of more than 90% of compliance in the USOAP and USAP audits. Likewise, we highlight the commitment of our State to continue contributing to the safe and orderly development of civil aviation.

3.3 Likewise, we have a public fact about which a complaint is filed with the Council, referring to a Venezuelan-registered aircraft that, during a commercial flight in 2022, was denied technical stopovers for fuel supply and which was subsequently stolen and completely destroyed under unilateral and illegal actions, significantly violating the Chicago Convention.

4. ROLE AND LEADERSHIP OF ICAO

4.1 We recognize the leadership of ICAO in these matters of great importance for the Contracting States, so that they can achieve their objectives as free and sovereign nations, so that the Organization continues ensuring the precepts and spirit that were originally given to the Chicago Convention, where the interest in avoiding all dissension between nations and the promotion of mutual cooperation for the achievement of world peace.

4.2 However, in previous Assemblies it has been decided that the “good offices” of the President of the ICAO Council be used in order to reach suitable solutions, from which the expected results have not yet been obtained and the problem is still present.

4.3 These are reasons why, we reiterate the determining role that ICAO plays, in accordance with the principle of international law that it must apply in the search for satisfactory solutions, and that, in turn, do not limit States from achieving the strategic objectives established by the Organization, the objectives of each State, the established goals of the air transport system and other related activities. In addition, achieving the objectives of other entities of the United Nations system, such as the Sustainable Development Goals, SDGs.

4.4 The International Civil Aviation Organization should assume a more proactive role in mediating between the parties, seek constructive solutions based on cases where sanctions have been imposed

on States, which are developing countries, and seek solutions to prevent that this practice is no longer carried out, because it is affecting the sustainability of air transport.

4.5 ICAO must promote assistance to those States that have been subjected to unilateral measures that violate their ability to provide competitive air transport services, with the sole purpose of strengthening their air transport system.

4.6 Increasing Cooperation between Contracting States is a key piece in a global air transport system that allows States to achieve their objectives and goals. In this way we can continue contributing in having an increasingly economical, efficient, safe and ecological transportation system in the world.

5. MEASURES PROPOSED TO THE LEGAL COMMITTEE

5.1 The Legal Committee is invited to reaffirm the principles of International Law and the Charter of the United Nations on the principles of sovereignty and equality among States and to strongly condemn unilateral coercive measures that affect air transport, for representing illegal actions that threaten against the economic and social development of a nation.

- a) Urge States to avoid taking extraterritorial and unilateral measures that affect the air transport sector of States;
- b) Request the Committee to carry out an investigation of the different cases that affect the navigation of international civil aviation of affected Contracting States, and that have not been able to be resolved in accordance with article 55 paragraph “e” of the Convention, which establishes investigating, at the request of any Contracting State, any situation that may present avoidable obstacles to the development of international air navigation;
- c) Request ICAO to increase assistance to those States that have been subject to sanctions, in order to resolve possible deficiencies in their air transport system;
- d) Urge States to increase levels of cooperation in order to resolve any situation that affects the development of the aeronautical sector and its collateral damage; and
- e) Promote dialogue and international cooperation to find fair solutions for those affected countries.

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