



**ASSEMBLY — 39TH SESSION**

**ECONOMIC COMMISSION**

**Agenda Item 43: Other issues to be considered by the Economic Commission**

**UNILATERAL AND EXTRATERRITORIAL MEASURES IMPOSED BY THE UNITED STATES OF AMERICA IN ITS ECONOMIC, COMMERCIAL AND FINANCIAL EMBARGO AND REPERCUSSIONS ON THE SUSTAINABLE DEVELOPMENT OF CIVIL AVIATION IN THE REPUBLIC OF CUBA**

(Presented by Cuba)

**REVISION NO. 1**

**EXECUTIVE SUMMARY**

The purpose of this working paper is to provide information about the adverse effects on the development of air transport in the Republic of Cuba caused by the continued economic, commercial and financial embargo imposed by the Government of the United States of America against the Republic of Cuba through the application of unilateral measures of an extraterritorial nature, in violation of the Chicago Convention.

**Action:** The Assembly is invited to:

- a) take note of the information contained in this working paper;
- b) consider that unilateral and extraterritorial actions hinder the sustainable development of international air transport;
- c) recognize that unilateral measures and their extraterritorial application adversely affect the sustainable development of civil aviation and are in violation of the principles and objectives of the Chicago Convention; and
- d) in draft Resolution A39/XX, *Consolidated statement of continuing ICAO policies in the air transport field*, in WP/8, Appendix A – Economic regulation of international air transport, Section I, paragraph 3, replace the phrase *unilateral measures* with *unilateral and extraterritorial measures*.

<i>Strategic Objectives:</i>	This working paper relates to Strategic Objective D – <i>Economic Development of Air Transport</i> .
<i>Financial implications:</i>	Not applicable

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

<i>References:</i>	<p>The Convention on International Civil Aviation (Doc. 7300). Resolution A38-14, <i>Consolidated Statement of continuing ICAO policies in the air transport field</i>. A39-WP/8-EC/6, <i>Consolidated Statement of continuing ICAO policies in the air transport field</i>. A38-WP/312, A38-WP/330, A38-WP/379 Conclusions of the following conferences: ATConf/4 (1994), ATConf/5 (2003) and ATConf/6 (2013), which may be consulted at <a href="http://www.icao.int/meetings/atconf6">www.icao.int/meetings/atconf6</a> The Report by Cuba on Resolution 69/5 of the United Nations General Assembly entitled “Necessity of ending the economic, commercial and financial embargo imposed by the United States of America against Cuba”, June 2015.</p>
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## 1. INTRODUCTION

1.1 Participation in international air transport is based on Article 44 (f) of the *Convention on International Civil Aviation* (The Chicago Convention), which states 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”.

1.2 Past Air Transport Conferences (ATConf/4 of 1994 and ATConf/5 of 2003) recognized that Contracting States have many differing regulatory goals and policies but share the fundamental objective of reliable and sustained participation in the international air transport system (Doc. 9587, Part 1, Section V) and that the interests and needs of developing countries require special consideration.

1.3 The Sixth Worldwide Air Transport Conference (ATConf/6) dealt in depth with concerns about the unilateral coercive measures adopted by certain States or groups of States that adversely affect air transport services in all fields of civil aviation, including the most important ones such as safety, security and economic regulation. It is recognized that unilateral and extraterritorial measures can lead to conflicts and negatively impact the sustainable development of international civil aviation. At that conference, Cuba presented Working Paper ATConf/6-WP/37 highlighting the adverse effects of unilateral, coercive and discriminatory measures that prevent Cuban civil aviation from performing and developing properly, in violation of the Chicago Convention.

1.4 In 1960, the Government of the United States imposed an economic, commercial and financial embargo against the Republic of Cuba that has, ever since, significantly impacted all sectors of the national economy, with the aviation sector suffering the most within the field of transportation.

1.5 Last year, as it has every year since 1992, the UN General Assembly in its 70<sup>th</sup> session approved Resolution 69/5 - *Necessity of ending the economic, commercial and financial embargo imposed by the United States of America against Cuba*, by an overwhelming majority with 191 votes in favour, 2 against, and no abstentions.

1.6 On 17 December 2014, the Governments of Cuba and the United States of America initiated negotiations to re-establish diplomatic relations based on mutual respect, as sovereign nations.

1.7 To date, progress has been made in various areas of interest to civil aviation:

- a) removal of Cuba from the “State Sponsors of International Terrorism” list;
- b) re-establishment of diplomatic relations and the re-opening of embassies in both countries;
- c) high-level and technical visits to both countries, mainly on aviation security matters, including frequent meetings of technical experts from the Cuban Civil Aviation Institute and the United States Transportation Security Administration (TSA). In particular, the TSA verified the level of security at Cuban airports as well as the approval or implementation by the competent Cuban authorities of the various TSA security requirements;
- d) resumption of direct postal services;

- e) the signing of a Memorandum of Understanding to begin scheduled flights between the countries;
- f) a Memorandum of Understanding between the Interior Ministry and the General Customs Agency of the Republic of Cuba and the U.S. Department of Homeland Security for cooperation in trade and passenger security;
- g) negotiations for bilateral cooperation in air traffic control, search and rescue, meteorology, climate and atmospheric pollution, and;
- h) a 76% increase in travel to Cuba by U.S. citizens in 2015 from the previous year. In the first half of 2016, there was an 80% increase from the first half of 2015.

## 2. DISCUSSION

2.1 In spite of the progress described in the preceding section of this paper, the embargo remains in force and continues to have negative repercussions for Cuban civil aviation.

2.2 Aviation is the transportation sector hardest hit by the prohibitions and regulations under the embargo, since it makes up 67.5% of the transportation sector as a whole. During the period from April 2013 to April 2016, damages to civil aviation were estimated at USD 990,284,384.

2.3 One of the restrictions imposed on the sector under this policy is that Cuban airlines must obtain additional permits and licences over and above those normally required for international air transport operations in order to fly to U.S. territory.

2.4 Laws that prohibit the acquisition of state-of-the-art technology for aircraft, equipment, parts, spare parts and other accessories, and that prohibit third-country companies from selling goods and services to Cuba if more than 25% of their product components are from the United States, even if their owners are nationals of those countries, adversely affect the sustainable development of Cuban civil aviation.

2.5 The airline *Cubana de Aviación S.A.* is unable to participate to its advantage in the on-line air reservation systems since most are owned in the United States or involve U.S. interests.

2.6 Due to financial harassment, *Cubana de Aviación S.A.* has not been able to have funds from Visa and MasterCard processed through a bank on its own behalf, and therefore must rely on e-commerce services through AMF Global Items, incurring high operating and financial costs.

2.7 Generally speaking, aside from *Cubana de Aviación S.A.*, financial transfers to and from Cuba continue to be blocked, payments are withheld even in currencies other than the U.S. dollar, and services are denied. As regards financial transfers, the U.S. government has not, so far, issued any political statement or legal document explaining to international banks that transactions with Cuba are legal and will not be subject to fines.

### 3. CONCLUSIONS

3.1 economic, commercial and financial embargo by the United States of America against Cuba:

- a) violates the principles contained in the Preamble to the Chicago Convention, which declares that international civil aviation “may be developed in a safe and orderly manner and that international air transport services may be established on the basis of equality of opportunity and operated soundly and economically”;
- b) imposes discriminatory measures that also violate the standards and precepts of the Chicago Convention and in particular, the provisions of Article 44, subparagraphs (a), (c), (d), (f), (g), (h) and (i) setting out the aims and objectives of ICAO which are, among other things, to foster the development of international air transport; to meet the needs of the peoples of the world in this respect; to ensure that the rights of Contracting States are fully respected and to avoid discrimination amongst them as well as to generally promote the development of all aspects of international civil aviation. These measures also violate Articles 77 and 79, which advocate that nothing should prevent two or more Contracting States from establishing joint air transport operating entities;
- c) is a unilateral decision of an extraterritorial nature that is contrary to the spirit of the *Convention on International Civil Aviation*, with negative implications for the development of civil aviation in Cuba.

3.2 The Assembly, as the highest decision-making body in ICAO, holds the appropriate authority as the global Intergovernmental Organization in the field of international civil aviation, to harmonize the policies and regulatory systems related to the economic aspects of international air transport. Moreover, in response to concerns about unilateral and extraterritorial decisions that adversely affect international air transport, the Assembly has the duty to urge States to refrain from using this type of measure.

3.3 Unilateral and extraterritorial actions are not conducive to the orderly and sustainable development of international civil aviation and are important elements to be considered by ICAO and States in the *Consolidated Statement of continuing ICAO policies in the air transport field*. Such actions should be explicitly mentioned in Appendix A - Economic regulation of international air transport, Section I, paragraph 3.

### 4. PROPOSED MEASURES

4.1 The Assembly is invited to:

- a) take note of the information contained in this working paper;
- b) consider that unilateral and extraterritorial actions hinder the sustainable development of international air transport;

- c) recognize that unilateral measures and their extraterritorial application adversely affect the sustainable development of air transport and are in violation of the principles and objectives of the Chicago Convention; and
- d) in draft Resolution A39/XX - *Consolidated statement of continuing ICAO policies in the air transport field*, in WP/8, Appendix A - Economic regulation of international air transport, Section I, paragraph 3, replace the phrase *unilateral measures* with *unilateral and extraterritorial measures*.

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