



WORKING PAPER

ASSEMBLY — 40TH SESSION

ECONOMIC COMMISSION

Agenda Item 36: Other issues to be considered by the Economic Commission

ADVERSE EFFECTS ON THE SUSTAINABILITY OF THE ECONOMIC DEVELOPMENT OF AIR TRANSPORT IN CUBA DUE TO THE IMPOSITION OF UNILATERAL AND EXTRATERRITORIAL MEASURES

(Presented by Cuba)

EXECUTIVE SUMMARY

This working paper informs the international civil aviation community of the extraterritorial unilateral measures that have been imposed on the Republic of Cuba, which impede the sustainable economic development of air transport, violate the Convention on International Civil Aviation and hamper the ICAO *No Country Left Behind* (NCLB) initiative.

Action: The Assembly is invited to consider the action recommended in paragraph 4.1(a), (b), (c) and (d) of this working paper.

<i>Strategic Objectives:</i>	This working paper relates to Strategic Objective – <i>Economic Development of Air Transport</i> .
<i>Financial implications:</i>	None.
<i>References:</i>	Resolution 71/5, adopted by the General Assembly on 1 November 2017 – <i>Necessity of ending the economic, commercial and financial embargo imposed by the United States of America against Cuba</i> Resolution 72/4, adopted by General Assembly on 1 November 2018 – <i>Necessity of ending the economic, commercial and financial embargo imposed by the United States of America against Cuba</i> Doc 10075 – <i>Assembly Resolutions in force</i> (as at 6 October 2016) Doc 10078 – <i>Report of the Economic Commission – Assembly Thirty-Ninth Session</i> A40-WP/22-EC/7 – <i>Consolidated statement of continuing ICAO policies in the air transport field</i> Report on the Ninth North American, Central American and Caribbean Directors of Civil Aviation Meeting, Port of Spain, Trinidad and Tobago, 25 to 27 June 2019 <i>Note verbale</i> from the Embassy of Cuba in Canada to the President of the ICAO Council and to the Secretary General, dated 26 April 2019 Doc 7300 – <i>Convention on International Civil Aviation (Chicago Convention)</i> Doc 9587 – <i>Policy and Guidance Material on the Economic Regulation of International Air Transport</i>

¹ Spanish version provided by Cuba.

1. INTRODUCTION

1.1 The Convention on International Civil Aviation (Chicago Convention) is the basis on which States participate in international air transport. Article 44(f) provides that one of ICAO's objectives is to "ensure that the rights of contracting States are fully respected and that every contracting State has a fair opportunity to operate international airlines".

1.2 Air Transport Conferences ATConf/4 of 1994 and ATConf/5 of 2003) have 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 2 (B)) and that the interests and needs of developing countries require special consideration. The Sixth World 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, aviation security and economic extraterritorial measures. It was recognized that unilateral extraterritorial measures may lead to conflicts and adversely affect the sustainable development of international civil aviation.

1.3 At the 39th session of the ICAO Assembly, in its discussion on Item 43 on the proposal made by Cuba in working paper A39-WP/323 Revision No. 1, the Economic Commission approved the insertion of the term "extraterritorial" in the Resolution on the *Consolidated statement of continuing ICAO policies in the air transport field*, and in Appendix A – *Economic regulation of international air transport*, Section I, paragraph 3, and is now enshrined in Resolution A39-15: *Consolidated statement of continuing ICAO policies in the air transport field*, Section I, paragraph 3. Furthermore, in other matters considered by the Economic Commission in its debates, support was expressed for the idea that extraterritorial measures in the aviation business went far beyond the States in question by affecting third parties, and some States called on ICAO to adopt measures to address the situation.

1.4 In its report to the United Nations General Assembly in 2018 on resolution 72/4 *Necessity of ending the economic, commercial and financial embargo imposed by the United States of America against Cuba*, Cuba stressed that, after the *National Security Presidential Memorandum, on strengthening the Policy of the United States toward Cuba* was signed in 2017, the new regulations and provisions issued by the United States Departments of Commerce, Treasury and State to give effect to that Memorandum had further tightened the embargo and discriminatory measures against the island.

1.5 In a *note verbale* from the Embassy of Cuba in Canada, dated 26 April 2019, the *Declaration of the Revolutionary Government of the Republic of Cuba*, published on 17 April 2019, firmly rejecting new aggressive measures adopted by the United States Government against Cuba, drawing the Organization's attention to their potentially adverse effects on the development of civil aviation in Cuba and requesting ICAO to make an announcement on the subject in the form and manner that it deemed most appropriate, was transmitted to the President of the ICAO Council and to the Secretary General of the Organization.

2. ANALYSIS

2.1 For 58 years, Cuba has been under an economic, commercial and financial embargo imposed by the United States of America. As Cuba has reported to the United Nations, the damage caused by the embargo to the transport sector generally, from April 2017 to March 2018 alone, amounted to \$101,550,000 and substantial damage to Cuban aviation amounted to \$63,640,000. It has been impossible for the civilian air transport sector in Cuba to acquire aircraft, whether by purchasing or leasing,

components or spare parts, technology and know-how, if more than 20% of the components originate in the United States of America, regardless of the country of origin or production of the aircraft. Furthermore, the obstacles to the opening of accounts and to bank transactions, and the withholding of payments, even in currencies other than the United States dollar, have constrained to the extreme the performance of Cuban airlines and firms that provide aviation services.

2.2 In the context of the embargo and its extraterritorial imposition, measures taken recently against *Cubana de Aviación*, the airline company, have included:

- a) cancellation of cooperation agreements with third-country airlines in respect of code sharing and inter-line and multilateral proration because Cubana has been placed on the Specially Designated Nationals and Blocked Persons List of the United States Office of Foreign Assets Control (OFAC);
- b) suspension in Italy, France and Mexico of services used internationally to sell and issue airline tickets owing to adverse implications for their associated clearing banks;
- c) cessation of business with United States firms connected with civil aviation, fearing imposition of anti-Cuba embargo measures by the United States Government.

2.3 Furthermore, pursuant to the decision of the United States Government to activate Title III and to extend the implementation of Title IV of the Helms-Burton Act, as from 2 May, action may be taken in United States courts against Cuban and foreign entities outside the United States jurisdiction; executives of firms that invest lawfully in Cuba in property that was nationalized lawfully in accordance with international law, and their families, may be denied entry into United States territory; and additional financial sanctions may be imposed, further exacerbating the difficulty of conducting legitimate banking transactions between Cuba and the world.

2.4 Under Title III, United States citizens, including those who were aliens at the time of the nationalization of foreign property in Cuba in 1960 in strict compliance with international law, may be authorized to file suits and make claims in United States courts against persons who, in their opinion, “traffick” such property. As no United States’ court has to date interpreted the concept of “trafficking” in nationalized property, no sector or economic activity will be excluded from its scope, which will adversely affect the development of civil aviation in Cuba, in particular foreign firms that have businesses connected with investments in the modernization of Cuban airports and the operations of various countries’ airlines that link Cuba to the world, as exemplified in 2.3, among other adverse effects.

2.5 The above notwithstanding, at the Ninth North American, Central American and Caribbean Directors of Civil Aviation Meeting, held in Trinidad and Tobago from 25 to 27 June, Cuba stated during the Panel discussion on *Enhancing the State Promotion for the Development of Air Transport Matters* that despite the existence of the embargo imposed against it by the United States Government for 58 consecutive years, the support received from the Civil Aviation Authorities of all States in the region and professional relations maintained with three United States federal agencies and one corporation, namely the FAA, TSA, NTSB and Boeing, had been very important to Cuban aviation.

3. CONCLUSION

3.1 Each year, the Secretary-General of the United Nations requests the organs and agencies of the United Nations system to draw up report on the implementation of the *resolution on the necessity of ending the economic, commercial and financial embargo imposed by the United States of America against Cuba* in the light of the purposes and principles of the Charter and international law and to submit it to the session.

3.2 Against that backdrop, ICAO has a role to play in upholding principles such as the sovereign equality of States, non-discrimination, mutual respect, equality of opportunity and the freedom of international trade and navigation, enshrined in the Convention on International Civil Aviation, the Charter of the United Nations and many international legal instruments, and it is the appropriate forum for analysing the effects caused by the application of unilateral and extraterritorial measures that violate those principles and for taking measures to address this situation.

3.3 The economic, commercial and financial embargo imposed by the Government of the United States of America against Cuba:

- a) violates the principles contained in the Preamble to the Chicago Convention, which provides 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) its discriminatory measures violate the standards and precepts of the Chicago Convention, in particular the provisions of Article 44 (a), (c), (d), (f), (g), (h) and (i) setting out ICAO’s aims and objectives, which are 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; to avoid discrimination among them; and generally to promote the development of all aspects of international civil aeronautics;
- c) is a unilateral decision of an extraterritorial nature that is contrary to the spirit of the Convention on International Civil Aviation, the Charter of the United Nations and international law, and it has adverse effects on the development of civil aviation in Cuba.

4. RECOMMENDATIONS

4.1 The Assembly is invited to:

- a) take note of the information contained in this working paper;
- b) reaffirm that unilateral and extraterritorial actions impede the sustainable economic development of international air transport and, in particular, have a great impact on developing countries;
- c) urge all States to abstain from enacting and applying laws and measures with extraterritorial effects that affect the sovereignty of other States, the legitimate interests of entities or persons under its jurisdiction and the freedom of trade and navigation, in accordance with their obligations under the Convention on

International Civil Aviation, the Charter of the United Nations and international law which, among other things, reaffirm the freedom of trade and navigation; and

- d) recognize that the International Civil Aviation Organization is the appropriate standing forum for analysing the effects of the application by States of unilateral and extraterritorial measures that impinge on the orderly, sustainable and harmonious development of international air transport, and that it must therefore adopt measures to address this situation.

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