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DIRECTORS GENERAL OF CIVIL AVIATION CONFERENCE ON A GLOBAL STRATEGY FOR AVIATION SAFETY

Montréal, 20 to 22 March 2006

Theme 2: Improving aviation safety
Topic 2.5: Enhancing safety oversight

VENEZUELA RECATEGORY PROCESS BY THE FEDERAL AVIATION ADMINISTRATION (FAA)

(Presented by Venezuela)

SUMMARY

This informative paper, briefly, describes the actions taken by the Bolivarian Republic of Venezuela, addressed to obtain the restitution of the conditions of equality, reciprocity and fair opportunities for the Venezuelan air carriers established in the Bilateral Agreement subscribed, on 14 August 1953, between Venezuela and the United States and not in compliance unilaterally with the imposition of Category 2 by the Federal Administration of Aviation (FAA) of the United States.

1. INTRODUCTION

1.1 Air transportation, from its beginning, has experienced difficult and turbulent times that have modified the course of humanity, characterized lately by political crises that have happened in warlike conflicts, in recent decades during periods of economic recession and financial collapse, and in the last years, by terrorist attacks that have produced fear and uncertainty in air transportation users. Nowadays these threats, even though they have been mitigated, remain latent and are accompanied by new and increasing challenges for international civil aviation, such as the urgent need to elevate the security levels of civil aviation on a global scale and the proper response by the aeronautical authorities of States to successfully surpass this new and challenging global scene for the sector.

^{1 1} English and Spanish versions provided by Venezuela

1.2 Based on the protection of safety, the FAA established in August 1992, the International Air Safety Association (IASA) Programme in order to determine the degree of compliance by States, which airlines operated to the United States, in respect of the Standards and Recommended Practices (SARPs) proposed by ICAO. Within the framework of this programme, on 2 November 1995, the FAA qualified Venezuela in Category II considering that our country did not comply with the obligations of safety monitoring, contained in Annex 1 — *Personnel Licensing*, Annex 6 — *Operation of Aircraft* and Annex 8 — *Airworthiness of Aircraft* to the agreement of ICAO, for the following reasons:

- a) the Government has not developed or implemented a suitable civil aviation law, and has not established regulations according to the international standards of security proposed by ICAO;
- b) the Aviation Authority is lacking technical experience and/or the resources necessary to send licenses or to supervise aviation according to the international standards of security; and
- c) the Aviation Authority is not able to certify, supervise and enforce compliance on its carrier operations in accordance with the international standards of security proposed by ICAO.

1.3 Since then, the Bolivarian Republic of Venezuela has been aware of the need to increase the standards of security imposed by the recent changes that have taken place at the international level to support the Universal Safety Oversight Audit Programme (USOAP). When the results of the audit were provided to our country in 1999, it presented an action plan to overcome the deficiencies indicated in the referred audit.

1.4 The Action Plan is addressed to achieve the technical obligations, given by the condition of signing the Agreement on International Civil Aviation specifically with the standards addressing the programme for the continued certification and surveillance of the public services of commercial air transportation carriers, both national and international, as well as the review and reformulation of its basic aeronautic legislation, adding SARPs on the safety content in Annexes 1, 6 and 8 of the Agreement on International Civil Aviation, which was testified by the oversight made by ICAO staff in June 2004.

2. DISCUSSION

2.1 Once the differences notified by the oversight effected in 1999 are overcome, a better control of safety will be imposed. The Bolivarian Republic of Venezuela will analyze, if necessary, the unilateral category that was imposed, based on arguments of juridical order, taking into account that the sanction applied by the FAA does not comply with the obligations stipulated in the Agreement on International Civil Aviation and its Annexes. To sum up, the non-compliance with the Annexes of the previously mentioned Agreement was cited and the national law of the United States was applied. Representing an irregular fact, due to such invocation, obligates the impasse originated between both States be solved, for the application of the same agreement, having this controversy considered by the ICAO Council, as it is said in Article 84 of its text and if the decision adopted by the Council would not satisfy the interest or the rights of some of the States in this problem, this issue could be appealed and transferred either to an ad hoc Court accepted by both States, the International Court of Justice or an arbitration procedure as established in Article 85 of the Agreement. Based on the quoted articles of the Agreement on International Civil Aviation, the application of the national law cannot be applied by one State as it would prevent the other State from the corresponding rights in an international agreement. It would totally oppose the principles and standards of international law, that prevents the alleging of the national law of a State to exempt itself from the compliance with an international commitment. This

standard is presented in Article 27 of the Vienna Convention on the Law of Treaties, although Venezuela is not a signing State. Its standards have a binding nature for being international practices, supported by States and gathered in the quoted Convention. The Venezuelan Aeronautic Authority, assumed the decision taken on 24 and 25 February 2006, to notify the reduction in the frequency of some United States cargo and passenger carriers that offer services into and from the national territory and taking back the established status quoted by the States based on the Bilateral Agreement, from 14 August 1953, in order to reestablish the fair and equal opportunities, within the frame of the proper capacity, to respond to the demand and guarantee the right of its national carriers as stipulated on literals b), c) and d) of Section IV of the Air Transportation Agreement subscribed by both countries.

2.2 Our country has declared many times its preoccupation on this subject to the public in diverse settings offered by bodies related to civil aviation at the regional and international level. It would be appropriate to state it during this Directors General of Civil Aviation Conference to ensure the authenticity and opportunity consecrated in The Constitution of The Bolivarian Republic of Venezuela; that way, the international aeronautical community would have a clear and certain knowledge of the legal foundations that motivated this decision. Since that decision, the mechanisms of dialogue to search for ways that make a right and equitable solution for both parts was possible, balancing the commercial air relationships between Venezuela and the United States, a reason for which we considered it propitious to approach the proposed subject during the present meeting.

2.3 Lastly, we remark that air transportation challenges have been, and will be the same for the International Civil Aviation Organization, the body that has contributed from its foundation to lay the bases for the continuous development of air transportation in such sensitive areas as security. The Bolivarian Republic of Venezuela, through the National Institute of Civil Aeronautics, endorses the decisions that are taken in their sine, convinced that they will be signed with equality, harmony, justice and mutual cooperation between all the 189 States that today conform with ICAO, to achieve the objective imposed by the Agreement, addressed to respect Contracting States and equitable opportunity to operate international airlines.

3. CONCLUSION

3.1 The National Institute of Civil Aeronautic of the Bolivarian Republic of Venezuela, invites delegates to:

- a) consider the experience of the Bolivarian Republic of Venezuela, as well as the national actions related to the technical update and evaluation of political viability, for obtaining that the operational certification be exclusive competition of ICAO, establishing universal criteria as well as the procedures that must be used with such an aim, agglutinating experiences of certified countries, and the establishment and implementation of mechanisms that entail the profit of positive results for the healthy exercise of commercial air rights that correspond to all the towns;
- b) recognize the technical, legal and political actions undertaken by the Bolivarian Republic of Venezuela, addressed to comply with the high standards of security established by ICAO, and to try that the spirit of Resolution 2625 of the General Assembly of the United Nations, presented within the frame of the relationships between States, and guarantees the cooperation and the well-being of all the people of the world; and
- c) support the recent actions taken by the National Institute of Civil Aeronautics related to the frequencies in reduction of operations by American Airlines for cargo and

passengers from and into Venezuelan territory, according to the standards of the Bilateral Agreement signed between both countries on 14 August 1953, as a mechanism for the restitution for the Venezuelan airlines of the rights under equality and reciprocity principles and fair opportunities within the frame of the relationships between both States.

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