



ASSEMBLY — 41ST SESSION

EXECUTIVE COMMITTEE

Agenda Item 28: Other high-level policy issues to be considered by the Executive Committee

THE INCOMPATIBILITY OF UNILATERAL RESTRICTIVE MEASURES IMPACTING INTERNATIONAL CIVIL AVIATION ACTIVITIES WITH THE PROVISIONS OF THE CONVENTION ON INTERNATIONAL CIVIL AVIATION

(Presented by the Russian Federation)

EXECUTIVE SUMMARY

Unilateral restrictive measures adopted by several States against other States directly impact international civil aviation and undermine the foundations of the Convention on International Civil Aviation, as well as the efforts of the international aviation community to create a safe and effective world aviation system. They also infringe upon one of the fundamental individual human rights, the right to freedom of movement, which is enshrined in the Universal Declaration of Human Rights, adopted by the United Nations General Assembly in 1948.

Action: The Assembly is invited to consider and adopt the resolution provided in the Appendix to this paper.

<i>Strategic Objectives:</i>	This working paper relates to all ICAO Strategic Objectives.
<i>Financial implications:</i>	Prevention of fatal economic consequences for the development of the world air transport system, the production of civilian aircraft and aviation environmental protection.
<i>Reference:</i>	Doc 7300/9, <i>Convention on International Civil Aviation</i>

1. INTRODUCTION

1.1 The principles of international law in their entirety and interconnectedness make up the basis for fair and equitable international relations, forming a space of equal and indivisible security and effective economic interaction. Direct or indirect violation of these principles is inadmissible. The world's progressive forces, beginning with Emmanuel Kant,² the League of Nations, the Provisional ICAO, the United Nations and, finally, ICAO, laid down the fundamental principles for building a world community of equal opportunity based on cooperation and mutual respect. Some of these fundamental principles are

¹ Russian version provided by the Russian Federation.

² The fundamental principles of a peaceful community of nations were formulated in 1795 by Emmanuel Kant, who, in his political and philosophical essay, "Perpetual Peace", described the cultural and philosophical foundations of the future unification of the peoples and, thereby, expressed the idea of the League of Nations.

particularly powerfully expressed in the preamble to the *Convention on International Civil Aviation* (the 1944 Chicago Convention) as follows:

“...the future development of international civil aviation can greatly help to create and preserve friendship and understanding among the nations and peoples of the world, yet its abuse can become a threat to the general security; ...”

“... it is desirable to avoid friction and to promote that cooperation between nations and peoples upon which the peace of the world depends ...”

2. CONSEQUENCES OF UNILATERAL RESTRICTIVE MEASURES FOR THE POLICY OF SUSTAINABLE DEVELOPMENT OF INTERNATIONAL CIVIL AVIATION AND PRODUCTION OF CIVIL AIRCRAFT

2.1 The adoption of sanctions is the prerogative of the United Nations Security Council on the basis of Chapter VII of the United Nations Charter. The adoption by States of measures that go beyond those of the United Nations Security Council strips the United Nations Security Council measures of their purpose and objectives and undermines their value and effectiveness.

2.2 The policy of unilateral restrictive measures on the part of a number of States calls into question the possibility of continuing the work of the International Civil Aviation Organization within the agreed principles of sustainable development of the world aviation system, as defined in the 1944 Chicago Convention.

2.3 Closure of national airspace to flights by civil aircraft of other States, implemented in a discriminatory manner on the basis of nationality, is a direct violation of paragraph b) of Article 9 of the 1944 Chicago Convention, which states:

*“ b) Each contracting State reserves also the right, in exceptional circumstances or during a period of emergency, or in the interest of public safety, and with immediate effect, temporarily to restrict or prohibit flying over the whole or any part of its territory, on condition that such restriction or prohibition shall be applicable **without distinction of nationality** to aircraft of all other States.”*

2.4 The adoption of unilateral restrictive measures has led to the cessation of normal air traffic in an airspace over 50 million square kilometres in area, which is 10% of the Earth's total airspace or 37.5% of the national airspace of all of the world's countries.

2.5 It is absolutely evident that, in the current circumstances, it is futile to speak of sustainable development of international civil aviation *“...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.”*³ Moreover, one of the fundamental individual human rights is being violated – the right to freedom of movement, which is enshrined in the Universal Declaration of Human Rights, adopted by the United Nations General Assembly in 1948.

³ Quote from the third paragraph of the Preamble to the *Convention on International Civil Aviation*.

2.6 It is also evident that the carbon footprint of flights between pairs of cities is increasing significantly, rendering pointless the efforts of the world aviation community to reduce the volume of greenhouse gas emissions. For instance, the length of the route from Helsinki, Finland to Seoul, South Korea has increased by 2,150 nautical miles, which, in turn, has led to an increase in the flight duration in both directions of 4.5 hours and has driven up CO₂ emissions by 82 tons.

2.7 Unilateral restrictive measures, particularly coercive measures of an economic nature, also impact the most economically and socially vulnerable population groups. Unilateral restrictive measures on the part of a number of States result in an increase in the cost of air transport services and, therefore, a drop in the demand for those services. This is further exacerbated by a declining standard of living resulting from rising energy and food prices, and, consequently, unprecedented inflation.

2.8 On more than one occasion, the United Nations General Assembly has brought up the adverse humanitarian consequences of these measures (e.g. resolutions 76/161 and 76/191). There is absolutely no doubt that the outcome of such a sanctions policy will be, inter alia, a drop in the number of orders in the industry for new civil aircraft, which will, in turn, contribute to a decline in the technological development of the industry and the deterioration of global aviation safety.

APPENDIX

Resolution A41/xx : The incompatibility of unilateral restrictive measures impacting International Civil Aviation activities with provisions of the *Convention on International Civil Aviation*

The Assembly:

Whereas the primary objective of ICAO is to ensure the safety of international civil aviation worldwide;

Recalling that the future development of international civil aviation can greatly help to create and preserve friendship and understanding among the nations and peoples of the world, yet its abuse **can become a threat to the general security**;

Deeply concerned over the adoption of unilateral restrictive measures that are non-compliant with international law and the UN Charter and that create barriers to trade relations between States and impede the process of comprehensive socio-economic development of all States;

Further recalling that it is desirable to avoid friction and to promote that cooperation between nations and peoples upon which the peace of the world depends;

Recognizing that the ICAO Member States entered into obligations and agreed on certain principles and arrangements in order 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;

Emphasizing that any restrictions on the use of airspace implemented in a **discriminatory manner on the basis of nationality** undermine the foundations of the Convention on International Civil Aviation and violate one of the fundamental individual human rights, the right to freedom of movement enshrined in the Universal Declaration of Human Rights, adopted by the UN General Assembly in 1948. These restrictions are also directed against the efforts of the world aviation community to reduce the volume of greenhouse gas emissions and they contribute to a decline in the overall safety of civil aviation;

1. *Calls upon* the ICAO Member States to take measures directed at putting an end to the adoption and application of unilateral restrictive measures which are not sanctioned by the relevant UN bodies and are incompatible with the universally accepted principles and norms of international law, including the UN Charter, and which undermine the foundations of the Convention on International Civil Aviation and impact, particularly, but not exclusively, the developing countries;
2. *Calls upon* the ICAO Member States to denounce the use of such unilateral restrictive measures as means of political and economic coercion, adversely affecting the standard of living of the population of all States, particularly, but not exclusively, the developing countries, rendering pointless the efforts of the world aviation community to reduce the volume of greenhouse gas emissions and generally creating barriers to the development

of international civil aviation of all States, particularly, but not exclusively, the developing countries;

3. *Requests* the ICAO Council to include in its work programme the study of the impact of unilateral restrictive measures on the development of international civil aviation, security and safety, as well as on the increasing level of greenhouse gas emissions from international civil aviation;
4. *Requests* the ICAO Council to present a report at the 42nd Session of the ICAO Assembly on the results of the implementation of this resolution.

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