



ASSEMBLY — 41ST SESSION

ECONOMIC COMMISSION

Agenda Item 39: Other issues to be considered by the Economic Commission

STATE RESPONSIBILITY FOR MONITORING, SURVEILLANCE AND OVERSIGHT OF SPECIALIZED AIRPORT SERVICE PROVIDERS' ACTIVITIES TO ENSURE EFFECTIVE IMPLEMENTATION OF BILATERAL AGREEMENTS AND SAFETY

(Presented by Venezuela (Bolivarian Republic of))

EXECUTIVE SUMMARY

This working paper refers to a series of actions by specialized airport service providers in certain States Signatories to the Convention on International Civil Aviation (the Convention) that are contrary to the spirit and letter of the said Convention, as well as the commitments and responsibilities undertaken by States Parties when signing Air Services Agreements (ASAs) and Memoranda of Understanding (MoU), bearing in mind that States are the owners of the commercial aviation rights that they exchange in a reciprocal manner when signing such bilateral agreements. The Convention's Article 28 "*Air navigation facilities and standard systems*" places States, but not specialized airport services firms, under an obligation to provide services and facilities to facilitate international air navigation which, in accordance with the principles enshrined in the Convention, is an activity that must be carried out in order to strengthen the ties of friendship between nations. Likewise, Article 4 *ejusdem* requires States not to permit use of civil aviation for any purpose inconsistent with the aims of the Convention, and that responsibility lies with State authorities in the exercise of the principle of sovereignty contained in Article 1 of the Convention. On the basis of these considerations, this working paper is brought before the Assembly in the terms set out therein.

Action: The Assembly is invited to:

- a) take this working paper into account;
- b) ensure, pursuant to the Chicago Convention, that Contracting States respect the commercial aviation rights of other States; and
- c) request that the Council make a determination on the obligation incumbent upon States to provide services and airport facilities, in readiness and without restrictions, for the safe aircraft operation on international flights.

<i>Strategic Objectives:</i>	This working paper relates to Strategic Objective — <i>Economic Development of Air Transport</i> .
<i>Financial implications:</i>	Refusal by specialized airport service providers to attend to States Parties' international commercial aviation aircraft premeditatedly delays and impedes proper development of international civil aviation, with air operators incurring financial losses owing to delays, missed connections, passenger protection, loss of slots and increased service costs, among other aspects relating to aircraft parked outside their airport base.
<i>References:</i>	Doc 7300 – <i>Convention on International Civil Aviation</i>

¹ Spanish version provided by Venezuela (Bolivarian Republic of)

1. INTRODUCTION

1.1 The Convention on International Civil Aviation (the Convention) is based on a series of principles designed to ensure the development of international civil aviation as a tool that makes it possible to create and preserve friendship and understanding among the nations and peoples of the world, and can become a threat to the general security if abused or misused (Preamble); moreover, it provides that international air transport services must be established on the basis of equality of opportunity.

1.2 To ensure fulfilment of the underlying principles of the Convention, the International Civil Aviation Organization (ICAO) was established as an international organization, and a constituent of the United Nations; its main functions include the obligation to monitor the safe, orderly and efficient development of international civil aviation, covering, among other aspects, ensuring equality of international air transport service opportunity and striving to avoid discriminatory practices, thus promoting peace and friendship among States Signatories.

1.3 The Bolivarian Republic of Venezuela, as a signatory to the Convention and a Member State of ICAO, has demonstrated its commitment to the fulfilment of obligations arising from its membership of the Organization, as proven by its sustained observance of Standards and Recommended Practices (SARPS), thus contributing to the safe, orderly and efficient development of international civil aviation.

1.4 The Bolivarian Republic of Venezuela has displayed a proactive attitude in the Organization, as reflected in the constant cooperation and assistance that it provides reciprocally to other States. Likewise, in fostering an international air transport service under ICAO standards, the Venezuelan State has signed a series of bilateral agreements (Air Services Agreements (ASAs) and Memoranda of Understanding (MoU)) with other States Parties, said documents being deposited, as required, with ICAO Headquarters, as the international agency tasked with monitoring compliance therewith under internationally agreed parameters. Nevertheless, although the Bolivarian Republic of Venezuela fulfils its international commitments in an appropriate manner, there is inappropriate treatment by certain States that have allowed firms with private legal personality to impede Venezuelan air operators' access to airport services that are necessary for safe international air navigation, which is thus compromised.

2. CONSIDERATIONS ON STATE OBLIGATIONS UNDER SIGNED BILATERAL INTERNATIONAL AIR TRANSPORT AGREEMENTS, AND EFFECTS OF BREACHES THEREOF

2.1 Considerations in consonance with the Convention are outlined below, underpinning the claims stated in this working paper.

2.2 It must be remembered that, to be accepted, bilateral agreements must be signed by the competent authorities of each State, since they entail negotiation and exchange of commercial aviation rights that are the property of each State, in the exercise of the principle of sovereignty enshrined in Convention Article 1, in a situation that directly excludes private individuals, who may only be concession holders to whom the authorities of the signatory States delegate provision of the necessary international air navigation services, in keeping with Convention Article 28 "*Air navigation facilities and standard systems*".

2.3 The above implies that, once a bilateral agreement has been signed, State authorities are responsible for monitoring fulfilment of the commitments undertaken, for while the airport services that

are indispensable for proper development of international air navigation may be awarded under franchise or delegated to third parties in a private legal capacity, it is the State which signs the bilateral agreement and, in so doing, bears responsibilities and obligations in respect of the country. Furthermore, it is a standard requirement in aviation for all specialized airport service providers, before exercising that profession, to undergo certification, accreditation and licensing by the relevant authorities that ascertain, under the continuous safety monitoring programme, whether airport services are being provided under the requisite commercial aviation standards and, before an aircraft is used in an international flight operation, States verify, through the aviation authorities, that the operation is technically sound.

2.4 Accordingly, it is noted with the utmost concern that in spite of having signed bilateral agreements with the Venezuelan State, certain Member States, in implementing those agreements, are inappropriately allowing private firms to refuse to provide specialized airport services to Venezuelan air operators, without taking into consideration Article 28 of the Convention, which stipulates: “Provide, in its territory, airports, radio services, meteorological services and other navigational facilities to facilitate international air navigation, in accordance with the standards and practices recommended or established from time to time, pursuant to this Convention.”

2.5 On the basis of the above quotation, States, not private persons, are the ones who enter into an obligation to provide essential services for the development of international civil aviation under ICAO-required safety standards and, consequently, they (States) are the ones that must ensure that firms to which they delegate an activity that is essential to the development of safe international civil aviation abide by the principles, standards and practices recommended by ICAO, inasmuch as non-fulfilment of the letter of the Convention renders it ineffective and introduces inequality among States by significantly infringing their commercial aviation rights.

2.6 The unilateral action taken by airport services providers in refusing to carry out activities for which they have been certified by States’ aviation authorities is prejudicial to the latter’s (States) obligations to ensure safety; moreover, these States leave their own responsibilities in the hands of private third parties, arbitrarily relax commitments undertaken upon signing the ASA and MoU, jeopardize the safety of Venezuelan air operators and limit in a discriminatory manner the commercial aviation rights of a Convention Contracting State.

2.7 For the *de facto* and *de jure* reasons explained in this working paper, the Venezuelan State considers that it is appropriate to request the Council to analyse the situation that has arisen and to take due action in accordance with Article 54 j), k) and n) under *Mandatory functions of Council* and with Article 55 c), d) and e) *ejusdem* under *Permissive functions of Council*, and to implore it most respectfully to make a timely determination in order to halt such practices that affect free competition and fair balance in commercial aviation relations of ICAO Member States.

3. CONCLUSION

3.1 Lastly, on the basis of the considerations set out in this working paper, the Bolivarian Republic of Venezuela invites the Council to analyse the content of this document objectively and to take decisions on the matter while clarifying the following issues that are considered to be highly important to the safe, orderly and efficient development of international civil aviation:

- a) Who is responsible for fulfilling obligations undertaken by States in signing bilateral and multilateral international civil aviation agreements such as the Convention on International Civil Aviation, ASAs and MoU?

- b) What is the role of the specialized airport service provider, certified by a State's aviation authorities, in the implementation of Article 28 of the Chicago Convention?
- c) May a specialized airport service provider, certified by a State's aviation authorities, refuse to offer essential services to a State's air operator when said operator is exercising commercial aviation rights approved by the country of final destination of the flight on the basis of obligations arising from a bilateral agreement?
- d) Request that the Council make a determination on the breach of State obligations when said obligations are affected by private parties to the detriment of safety.

— END —