



ASSEMBLY — 36TH SESSION

ECONOMIC COMMISSION

Agenda Item 40: Regulation of international air transport services

THE SAFETY DEFICIENCIES ARISING OUT OF THE UNITED STATES SANCTIONS
AGAINST THE CIVIL AVIATION OF THE ISLAMIC REPUBLIC OF IRAN

(Presented by Iran (Islamic Republic of))

EXECUTIVE SUMMARY

This paper presents the historical background of the sanctions against the Islamic Republic of Iran civil aviation before ICAO. It provides the proceedings of the issue in the Economic Commission (EC) of the 35th Assembly. The paper further demonstrates the applicable Iranian Sanctions Regulations and highlights the paramount importance of ICAO for the safety of civil aviation. They are followed by an update concerning the measures, which the 35th Assembly took, based on A35-WP/297, “Adverse Effects of U.S. Trade Embargo on Civil Aviation Activities of the Islamic Republic of Iran”, and then the views and proposals of the EC expressed in Doc 9847, *Report of the Economic Commission of the 35th Session of the Assembly*, A35-EC under Agenda Item 27 are represented. The paper, furthermore, gives an account of ICAO’s mission to audit the civil aviation and air carriers of the Islamic Republic of Iran, which was conducted during the period of 9 to 14 April 2005.

The findings of the audit report dated 17 July 2005-TC4/3.33-13 as “The Report on Safety: The Effects of Economic Sanctions on the Islamic Republic of Iran Civil Aviation”, 9 May 2005, is briefly presented. In the light of discussions, the paper concludes that the spare parts and services essential to civil aviation safety were denied, such a denial is inconsistent with the letter and spirit of the Chicago Convention, and ICAO should not be used as an instrument for exercising foreign policy.

From the 35th Assembly to date, no considerable developments made through the good offices of the President of the Council in spite of the attempts that have been made. Even the Council was requested to table the imposed sanctions in 180th Session, but its view was that the issue is better to be followed up through the good offices of the President of the Council.

Action: The Assembly is invited to:

- a) consider that the issue in hand is within the ambit of the Chicago Convention; thus, it must be dealt with in ICAO as a multilateral technical agency of the United Nations; and
- b) take necessary measures in order that the imposed sanctions on civil aviation of the Islamic Republic of Iran be lifted.

Strategic
Objectives:

This working paper relates to Strategic Objectives A, C, D, E and F.

<i>Financial implications:</i>	Not applicable.
<i>References:</i>	Doc 7300, <i>Convention on International Civil Aviation</i> A35-WP/297 A35-WP/311-EC/48 Doc 9847, <i>Report of the Economic Commission of the 35th Session of the Assembly</i> ICAO Mission Report on the audit of the Civil Aviation and air carriers of the Islamic Republic of Iran, 17 July 2005, TC 4/3.33-13

1. INTRODUCTION

1.1 Historical background of the issue before ICAO

1.1.1 During the 35th Assembly the Islamic Republic of Iran provided the Assembly with A35-WP/297, “Adverse Effects of the U.S. Trade Embargo on Civil Aviation Activities of the Islamic Republic of Iran.” The working paper demonstrated that the United States imposed trade sanctions against the Islamic Republic of Iran civil aviation, that is on aircraft, spare parts, CNS equipment and pertinent post-sale-services had been, and will be, an utter discrimination and is thus contrary to the aims and objectives of Article 44 of the Convention on International Civil Aviation (Chicago Convention) for which the United States is not only a party, but is even a founder. Moreover, the paper stressed that the civil aviation of the Islamic Republic of Iran and other Contracting States, which are also subject to the trade embargo, is and will be, at stake.

1.2 The Islamic Republic of Iran’s paper drew the attention of the 35th Assembly to the imposed embargo and requested the Assembly to consider the issue thoroughly and then take any necessary measures in order that the ground is prepared for the lifting of the sanctions in order that the concerned Contracting States are provided with equal opportunities in order to maintain and upgrade their civil aviation and Air Transport fleets, to improve the safety of their domestic and international air services to fully implement the ICAO Standards and Recommended Practices (SARPs).

1.3 *Report of the Economic Commission of the 35th Session of the Assembly* (Doc 9847) A35-EC includes the arguments and the consideration of the Economic Commission, under Agenda Item 27 “Exogenous Factors Effecting Civil Aviation”, addressed the United States sanctions, as may affect aviation safety, is a complex, delicate and sensitive issue and the Economic Commission could not resolve it. It was therefore decided that the views expressed be brought to the attention of the President of the Council to follow up the issue through his “good offices”.

1.4 According to the report, paragraph 27:31-35 including, the Islamic Republic of Iran’s request and views were discussed and a number of delegations stated their support for the positions taken by Cuba and Iran, and for actions proposed in their papers. In their view, the trade embargo was considered to have an adverse safety and security impact on the participation of these States in international air transport. It also affected their ability to fulfill their safety obligations under the Chicago Convention. It was also felt that a fair opportunity to operate, and a proper competitive balance, was not possible when access to new technology for fleet renewal, spare parts and safety-related aviation equipment is denied. While the issue was one with political origins, it was considered by the sponsors of the two papers (Cuba and Iran) to be essentially a safety and technical issue and, therefore, one within the ambit of ICAO as a multilateral technical agency. Cuba and Iran also felt that ICAO should examine it because the principles and provisions of the Chicago Convention were at issue.

1.5 In response to the positions taken, ICAO conducted an independent investigation of the charges of the Islamic Republic of Iran that the United States sanction was adversely affecting the safety of its civil aviation.

1.5.1 Following the investigation, ICAO issued a report on 9 May 2005, stating that, in fact, the United States sanctions had endangered the safety of civil aviation in Iran, and it is contrary to the provisions, aims and objectives of the Chicago Convention. Among other recommendations, ICAO recommended, “the United States should recommit to the Chicago Convention and advise ICAO through their Representative in Montréal ICAO Headquarters that they will uphold the terms and conditions of the Convention”.

2. DISCUSSION

2.1 **The applicable provisions of the Chicago Convention to this issue**

2.1.1 In the Preamble to the Chicago Convention, it is recited, “...the undersigned governments having 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; ...”

2.1.2 Article 4 of the Chicago Convention states, “Each Contracting State agrees not to use civil aviation for any purpose inconsistent with the aims of this Convention”.

2.1.3 Article 43 of the Chicago Convention established this body, the International Civil Aviation Organization to carry out the “aims and objectives” of the Chicago Convention, as set forth in Article 44 which encompasses in brief, inter alia, the respect to the rights of Contracting States, avoidance of discrimination, promotion of safety and development of all aspects of international civil aeronautics.

2.1.4 As it is obvious from the language of the Chicago Convention, ICAO and its Member States are contractually bound to the promotion, advancement and achievement of the highest standards of aviation safety possible. Acts of Member States, which are inconsistent with the provisions and goals of the Convention, must not be tolerated or excused. The Iran Sanctions Regulations of the United States, to the extent they adversely affect safety in civil aviation, must be rescinded and the 36th Assembly should act appropriately to affect such rescission.

2.2 **The applicable Iranian sanctions regulations imposed by the United States**

2.2.1 The United States has imposed comprehensive sanctions against the Islamic Republic of Iran with the issued Executive Orders. As it was declared, “these sanctions were (and continue to be) imposed by United States for foreign policy reasons”, and as indicated above, it is merely inconsistent with the Article 4 of the Chicago Convention.

2.2.2 According to the United States, manufacturers or other United States firms cannot sell and export aircraft, engines and spare parts, CNS and security equipment etc. to Iranian air carriers or Iranian companies or government agencies, whether the equipment is new or used. Nor can firms in Europe, the Middle East and other countries worldwide re-sell (re-export) most United States-origin equipment to Iranian air carriers, even if they owned the equipment for years. Firms in the United States

cannot sell parts to firms in Europe if they know that those parts will be resold to Iranian air carriers. Firms (including airlines in Europe), which provide maintenance for Iranian air carriers cannot provide such maintenance if it involves the installation or replacement of United States parts.

2.2.3 Leaving aside the extraterritorial reach of the re-export provisions of the United States Iranian Sanction Regulations, these regulations of the United States are, and have been, detrimental to civil aviation safety in Iran, and accordingly, do not conform to the provisions of the Chicago Convention and the goals of its drafters to ensure and promote aviation safety.

3. THE REPORT ON SAFETY: THE EFFECTS OF EMBARGO ON THE ISLAMIC REPUBLIC OF IRAN CIVIL AVIATION

3.1 In fulfilling its obligations under the Chicago Convention, ICAO sent a Fact-Finding Mission to Iran from 9 to 14 April 2005 to review and audit, among other things, the effects of the United States economic sanctions on the safety of civil aviation.

3.2 In sum, ICAO found that the United States sanctions against the Islamic Republic of Iran have adversely affected the safety of civil aviation. The findings of ICAO should be upsetting to anyone, who is committed to the safety of civil aviation and the safety of air transport. The findings of the audit report were released under “The Report on Safety” by TC 4/3.33-13 17 July 2005.

3.3 The instance where safety has been put at risk because of the sanctions is well documented by the ICAO report. The United States sanctions, to the extent they bar the acquisition of the equipment necessary for aviation safety, is inconsistent with the Chicago Convention.

3.4 The Recommendations of ICAO, while positive and welcome, leave civil aviation safety to the discretion and the whim of the Office of Foreign Asset Control (OFAC) of the United States and their misconstruction of the sanctions’ regulations.

3.5 The 36th Assembly is expected to take the lead to bring international public pressure on the United States, as a Member State to ICAO, to lift the sanctions as they are applied to aircraft equipment, spare parts, CNS equipment and technical supports. Aviation safety, as it affects human life and human rights, stands above political differences, which is as it should be, and is the bedrock principle of the Chicago Convention carved into Articles 4 and 44.

4. CONCLUSION

4.1 The sanctions against the Islamic Republic of Iran, to the extent they bar the acquisition of parts and support essential for aviation safety, does not conform with both the letter and spirit of the Chicago Convention to which the United States is not only a member, but also is one of its principal architects.

4.2 Whatever political differences exist between States that are parties to the Chicago Convention, civil aviation cannot, consistent with their Treaty obligations, be used by member States as an instrument for foreign policy.

4.3 The imposed trade sanctions by the United States of America against the Islamic Republic of Iran, which, according to the findings of the ICAO mission, is detrimental to the safety of civil aviation and does originate safety deficiencies.

4.4 The sanctions, to the extent that they endanger the safety of civil aviation in Iran and in other States that Iranian airlines serve, undermine the mandate that the Member States have delegated to ICAO to ensure the safety of civil aviation worldwide.

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