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Theme 2: Improving aviation safety

Topic 2.3: Unified strategy to resolve Safety-related deficiencies

CONTINUITY OF THE UNITED STATES TRADE EMBARGO ON THE CIVIL AVIATION OF THE ISLAMIC REPUBLIC OF IRAN AND THE SAFETY DEFICIENCIES ARISING OUT OF IT

(Presented by the Islamic Republic of Iran)

SUMMARY

This paper presents the historical background of the imposed embargo on (sanctions against) the Islamic Republic of Iran (I.R. of Iran) Civil Aviation before the ICAO. It provides the proceedings of the issue in Economic Commission (EC) of the Assembly 35, a few Hearings before the U.S. Senate Foreign Relations Committee as reasoning for the foundation of ICAO, some of the minutes of the founding body of ICAO in the United States, and the applicable provisions of Chicago Convention to this issue. 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 Assembly 35 took, based on A35- WP/297, "Adverse Effects of U.S. Trade Embargo on Civil Aviation Activities of the I.R. of Iran", and then the views and proposals of EC expressed in A35-WP/311 are represented. Furthermore, the paper gives an account of the independent technical report on civil aviation of the I.R. of Iran.

The findings of the audit report July 17, 2005-TC4/3.33-13 as "The Report on Safety: The Effects of Economic Sanctions on the I.R. of Iran Civil Aviation", May 9, 2005, is briefly presented. In the light of discussions, the paper concludes that the spare parts and services essential to civil aviation safety have been denied, and such a denial is an obvious non-conformity to the letter and spirit of the Chicago Convention, which is actually used as an instrument for foreign policy.

Action by the Conference is in paragraph 5.

REFERENCES

Doc7300/8

A35-WP/297

A35-WP/311-EC/48

ICAO Mission Report on the audit of the Civil Aviation and Air Carriers of the I.R. of Iran, July 17, 2005, TC4/3.33-13

1. INTRODUCTION

1.1 HISTORICAL BACKGROUND OF THE ISSUE BEFORE THE ICAO

1.2 In Assembly 35, the I.R. of Iran provided the Assembly with A35- WP/297, “Adverse Effects of the U.S. Trade Embargo on Civil Aviation Activities of the I.R. of Iran.” The working paper demonstrated that the United States imposed trade embargo on the I.R. of Iran civil aviation, is contrary to the aims and objectives of Article 44 of the Chicago Convention for which the United States of America is not only a party but is also a founder. Moreover, the paper stressed that the civil aviation safety of the Contracting States, which are subject to embargo, has been and will be at stake.

1.3 The I.R. of Iran’s paper drew the attention of the Assembly 35 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 embargo.

1.4 The draft report, A35-WP/311, EC/48 issued by ICAO on October 4, 2004, includes the arguments and the consideration of the EC, under Agenda Item 27:30, addressed the U.S. embargo, as may affect aviation safety, is a complex, delicate and sensitive issue and the EC could not resolve it. It was therefore decided that the views expressed to be brought to the attention of the President of the Council to follow up the issue through his “good offices”.

1.5 According to the report, para. 27:32, the I.R. of Iran’s requests 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. 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....

1.6 In response to the positions taken, ICAO assisted to identify technical experts to assess independently the charges of the I.R. of Iran that the U.S. embargo was adversely affecting the safety of its civil aviation.

1.7 Following the assessment of ICAO, a report was issued on May 9, 2005 stating that, in fact, the U.S. embargo on the I.R. of Iran had endangered the safety of civil aviation in Iran, and it is contrary to the provisions and objectives of the Chicago Convention. Among other recommendations, ICAO recommended, “the United States should recommit to the Chicago Convention.” (See the Report of the fact-finding mission to the I.R. of Iran on 17 July 2005-TC4/3.33-13).

2. DISCUSSION

2.1 The Applicable Provisions of the Chicago Convention to This Issue

2.1.1 The United States was one of the principal architects of the Chicago Convention. Secretary of State Dean Acheson, Assistant Secretary of State Adolph Berle and L. Welch Pogue, Chairman of the Civil Aeronautics Board, were among the United States leaders in support of this Treaty. Under this Treaty, the International Civil Aviation Organization (ICAO) was created to carry out the aims and objectives of the Chicago Convention.

2.1.2 Said Chairman Pogue at Hearings before the U.S. Senate Foreign Relations Committee in

1945, “In order to secure the establishment of minimum safety requirements in international operations, international cooperation is essential. The world organization established by the proposed treaty, which is before you, is an attempt to provide that international cooperation so absolutely essential to safety” (Convention on International Civil Aviation [Hearings before the Committee on Foreign Relations, 79th Cong. 183, (1945)], [Statement of Chairman L. Welch Pogue]).

2.1.3 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;”

2.1.4 The United States, the United Kingdom and Canada proposed the Conference for the Member States make certain undertakings that “Each member state rejects the use of civil air transport as an instrument of national policy in international relations ... [and that] each member state shall carry out in good faith the undertakings which it has freely accepted in this Convention” (Proceedings of the International Civil Aviation Conference, VOL. 1, Document 358 418 [U.S. Gov’t Printing Office, ed., 1948]).

2.1.5 The joint proposal of the United States, the United Kingdom and Canada was incorporated in substance in Article 4 of the Chicago Convention, ratified by the United States on August 9, 1946, by Iran on April 19, 1950, and by virtually every other nation of the world.

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

2.1.7 Part II 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.

3. The Applicable Iranian Sanctions Regulations Imposed by the United States

2.2.1 The United States has imposed comprehensive sanctions against the I.R. of Iran by the issued Executive Orders dated March 15, 1995, and May 6, 1995. As it was recited, “these sanctions were (and continue to be) imposed by the United States for foreign policy reasons”. As indicated above, it is a mere nonconformity to the Chicago Convention and has proved to be detrimental to the I.R. of Iran civil aviation safety.

2.2.2 The United States Iranian Sanctions Regulation reads, in brief, that the United States manufacturers or firms cannot sell and export aircraft, engines and spare parts, CNS equipment etc... to Iranian air carriers, 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 U.S.-origin equipment 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 U.S.-origin parts.

2.2.3 The United States has promulgated a colorable exception for “aircraft safety”, which has not in fact been honored, to permit equipment, engines, parts and support to be sold to Iranian air carriers and aviation related entities in the interest of civil aviation safety. However, the Aircraft Safety Provision has not been effectively implemented to promote and ensure the safety of civil aviation in the I.R. of Iran.

2.2.4 The Aircraft Safety Provision provides that “[s]pecific licenses may be issued on a case-by-case basis for the exportation of goods, services, and technology to insure the safety of civil aviation and safe operation of U.S.-origin commercial passenger aircraft” 31 C.F.R. § 560.528 (2005).

2.2.5 This construction would enable U.S.-origin aircraft parts and components to be exported to Iran direct or via third party, not only for Boeing aircraft, but also for non-U.S. assembled aircraft.

2.2.6 The narrow construction of the Office of Foreign Assets Control (OFAC) is that the phrase “the safety of civil aviation” qualifies “the safe operation of U.S.-origin commercial passenger aircraft” with the result that OFAC will “consider” licenses for the exportation of U.S.-origin aircraft parts and components for use in U.S. made aircraft.

4. **THE REPORT ON SAFETY: THE EFFECTS OF EMBARGO ON (SANCTIONS AGAINST) THE ISLAMIC REPUBLIC OF IRAN CIVIL AVIATION, MAY 9, 2005**

3.1 In fulfilling its obligations under the Chicago Convention, ICAO sent a fact-finding mission to the I.R. of Iran from April 9-14, 2005 to review and audit, inter alia, the effects of the U.S. economic sanctions against the civil aviation safety.

3.2 In sum, the independent experts found that the U.S. embargo placed on the I.R. of Iran has adversely affected the safety of civil aviation. Some of the findings of the report dated May 9, 2005 are as follows:

- a) The United States denied export licenses to the Boeing Company to permit Boeing to modify struts on the five Boeing 747 cargo aircraft being operated by SAHA Airlines, an Iranian airline. The ICAO[independent experts] report stated that the airline “will have to put them back into operation even without the struts modification, which will be detrimental to the safety of flights in Iran and other countries to where these aircraft fly or that they over fly”(ICAO Report Overview, p. 1).
- b) The radars for terminal approach in Tehran and Shiraz, the two largest airports in Iran, need space parts for continued safe operation. The principal radars are Raytheon ASR/SSR, a U.S.-origin product. “The present condition of the radars represents a substantial threat for the operations of these two largest airports in the country” inasmuch as only one channel out of two is currently working and the U.S. sanctions prevent the acquisition of the parts necessary to repair the radars (ibid.).

Not only are the flights of Iranian airlines [air carriers] at risk because of the U.S. sanctions, but also numerous other international airlines... [such as] Air France, Alitalia, Austrian Airlines, British Mediterranean Airways (BeeMed), Emirates, Lufthansa, Malaysia[n] Airlines, Royal Dutch Airlines, Qatar Airways [and so]...as well.

- c) As the ICAO [independent experts] report shows, these safety concerns are not theoretical. ICAO found that these economic sanctions have resulted in reduced safety of flights. “In April 2005, a B-707 operated by SAHA Airlines had a technical failure (broken landing gear during landing), with the consequence that a child died and several people were injured. In view of the restrictions on the maintenance of the aircraft... it is likely that similar unfortunate events will occur” (Ibid.).
- d) Because of the sanctions, some U.S. equipment and parts manufacturers do not provide technical

support and publications, including Service Bulletins and Modification Kits, and other instructions such as the cockpit door modification in Boeing aircraft.

- e) The use of simulators operated by an American company outside the United States was barred to Iranian pilots by the economic sanctions with the result that “all Falcon 20 training and proficiency checks for Iranian pilots [and navigation facilities] were suspended.”
- f) The Civil Aviation Organization of Iran needs avionic equipment for their Falcon 20 aircraft, which are used to calibrate landing systems. This required equipment is of American origin and cannot be obtained because of the sanctions. These landing systems are being used by twenty-three foreign airlines as well as Iranian airlines (ibid., p. 11).

In its report, ICAO [the independent experts] stated, “[a]ny continuation of severe sanctions must be construed to be very detrimental to aviation safety, and immediate action must be taken to avoid a regrettable occurrence. Whatever the justification of economic sanctions is there must be safeguards to protect the minimum level of safety” (ibid., p. 7).

3.3 ICAO is engaged to take the lead to remove any sanctions as they are applied to aircraft equipment, spare parts, CNS equipment and technical reports. Aviation safety, as it affects human life and human rights, stands above political differences. The civil aviation safety is and should be the bedrock principle of the Chicago Convention carved into Articles 4 and 44.

4. CONCLUSION

4.1 The Iran Sanctions, to the extent they bar the acquisition of parts and support essential for civil aviation safety, does not conform with both the letter and spirit of the Chicago Convention to which the U.S. is not only a member, but also one of its principal architects.

4.2 The civil aviation worldwide and ICAO have been and will be commendably obsessive about civil aviation safety. Nevertheless, the Chicago Convention does exist to prescribe a policy of safety... in civil aviation. However, the U.S. sanctions have a destructive effect on the civil aviation safety, Chicago Convention and ICAO; thus, must be lifted. Furthermore, civil aviation by definition is international and must not be subject to embargo and/or sanctions.

4.3 The Political differences between the parties to the Chicago Convention must not be used as an instrument for foreign policy. This is the commitment, which the United States was able to successfully exact from Member States. The I.R. of Iran requests the United States to honor this commitment.

4.4 The Conference is invited to:

- a) note that the imposed trade embargo by the United States of America on the I.R. of Iran, which, as per the findings of ICAO mission, is detrimental to the safety of civil aviation and does originate safety deficiencies.
- b) note that further follow-up measures subsequent to the fact-finding mission to the I.R. of Iran, and report of the findings to the United States Administration for the lifting of embargo by the good offices of the President of the Council have not yet been replied; although, the findings, for the sake of safety, justify an immediate reply.

- c) note that the issue in hand is within the ambit of the Chicago Convention; thus, it must be dealt in the ICAO as a technical UN agency.
- d) note that the U.S. Iranian Sanctions is an obvious non-conformity to the letter and spirit of the Chicago Convention and disrespect to human life, which is endangered by this policy. These sanctions undoubtedly undermine the mandate that the Member States have delegated to ICAO to ensure the safety of civil aviation worldwide.

— END —