



**WORKING PAPER**

**LEGAL COMMITTEE – 37th SESSION**

(Montréal, 4 to 7 September 2018)

**Agenda Item 2: Consideration of the General Work Programme of the Legal Committee**

**IMPLEMENTATION OF ARTICLE 21 OF THE CHICAGO CONVENTION**

(Presented by France, Switzerland, Ukraine, Italy, Hungary, Poland and Finland)

**1. BACKGROUND**

1.1 The principal purpose of article 21 of the Convention on International Civil Aviation (the “Chicago Convention”) is to facilitate the exchange between contracting States of relevant information concerning the registration, ownership and control of aircraft. Article 21 seeks to achieve this purpose by setting out two distinct obligations upon contracting States:

- a) First, “[e]ach contracting State undertakes to supply to any other contracting State or to the International Civil Aviation Organization, on demand, information concerning the registration and ownership of any particular aircraft registered in that State”; and
- b) Second, “each contracting State shall furnish reports to the International Civil Aviation Organization, under such regulations as the latter may prescribe, giving such pertinent data as can be made available concerning the ownership and control of aircraft registered in that State and habitually engaged in international air navigation. The data thus obtained by the International Civil Aviation Organization shall be made available by it on request to the other contracting States”.

1.2 According to the first paragraph of this Article, every State should be able to promptly answer requests from other States, particularly with regard to the owner’s identity of the aircraft de-registered by that State.

1.3 At the same time, article 19 of the Chicago Convention stipulates that registration of an aircraft shall be carried out according to national laws and regulations. Consequently, it is up to each and every Member State to define what is meant by “ownership” in the case of aircraft registration.

1.4 With time, the implementation of Article 21 within this framework established in 1944 raised concerns for some States like France, due to a lack of a common understanding of the notion of “ownership”. The lack of a common definition and understanding creates ambiguity when Member States exchange information on ownership during the process of transferring an aircraft from one State’s registry to another.

1.5 This issue is becoming all the more important nowadays as the international aircraft industry in general and the practices of operators in particular have evolved since 1944. In most cases at that time, the “owner” and the “operator” were one single person. More than seven decades later, operators tend to use more and more leased aircraft owned by large international groups specialized in aircraft acquisitions and rentals. Yet, the absence of ownership information can cause delays in aircraft registration with economic consequences for the operator integrating the aircraft into its fleet, including delays and additional financial costs, which can affect the industry as a whole.

## 2. RELATED WORK

2.1 The item “implementation of Article 21 of the Chicago Convention” was added to the Work Programme of the ICAO Legal Committee by decision of the Assembly during its 39th Session held in 2016. The decision of the Assembly was based on a unanimous recommendation of the Legal Commission, following its consideration of working paper A 39-WP/159 presented by France and supported by all delegations which took the floor.

2.2 Consequently, the Secretary General by State Letter LM2/22-17/87 dated 29 June 2017 launched an online survey on the implementation of Article 21 of the Chicago Convention in which 59 Member States participated. The overall objective of the survey was to understand how Member States implement Article 21, including the challenges encountered by States reporting to ICAO through the Aircraft Registry System (ARS). This web-based system was set up by ICAO to assist Member States to fulfil their obligations under Article 21. It should be replaced later by a new registration platform (Aircraft Registration Network –ARN) currently under development.

2.3 The survey showed that many States face difficulties due to the fact that the contents of the aircraft register are not the same in every ICAO Member State. It pointed out more specifically that the definition of “control” differs from the definition of “ownership” in most States while “ownership” and “control” are criteria widely used by States for the registration of aircraft within their jurisdictions. Moreover, the survey revealed that Member States have different views on the assessment of the ARS database’s effectivity and adequacy.

2.4 In the end, the participating Member States agreed with the suggestion that States could benefit from the development by ICAO of rules, guidance materials or recommendations concerning the de-registration of aircraft.

2.5 At the same time, the European Civil Aviation Conference (ECAC) launched a survey in order to have a better understanding of the situation in all its 44 Member States: the result showed as well some differences between European States in implementing Article 21 and therefore some difficulties mainly because of a confusion between the holder, the owner and the operator of the aircraft. One recommendation of the European States among others was therefore to introduce a standard deregistration certificate mandatory for all ICAO Member States.

2.6 In parallel, ICAO took the decision to establish a Task Force on this issue. This Task Force held two meetings in Montreal, one from 27 to 29 September 2017 and the second one from 10 to 11 April 2018, under the chairmanship of Ms. Susanna Metsälampi (Finland).

### 3. PROPOSITIONS

3.1 The work achieved by the Task Force came to the conclusion that transparency and consistency should be added to the system in order to alleviate or remove any ambiguities.

3.2 In this perspective, a model and standardized certificate of de-registration could be a useful tool to bring more clarity. Indeed in most cases a State which de-registers an aircraft sends to the future State of registration its own certificate of de-registration or a notification of cancellation of registration. France proposed such a model for discussion.

3.3 Although such a document may not be enough by itself to help ICAO Member States to implement and interpret Article 21 of the Chicago Convention in a consistent manner, it can offer advantages by providing a means of improving - in the short term and on a provisional basis - the transfer of aircraft between registries, pending a permanent solution to the difficulties encountered in the implementation of Article 21.

3.4 At the last meeting of the Task Force, it was considered that such a model could be issued as guidance, e.g. in connection with a manual on cross-border transfers, currently being developed under the Cross-Border Transferability Task Force (XBT-TF) set up by the Air Navigation Bureau (ANB).

3.5 The model certificate of de-registration of aircraft developed by Article 21 Task Force was then proposed for consideration to the XBT-TF during its last session in Montreal, from 30 April to 3 May 2018 (see Appendix).

3.6 The decision to set up a dedicated sub-group of Article 21 was taken as well in order to assist ICAO in designing the ARN's specifications as well as its rules of procedure according to the technical and operational needs of Member States and the discussion on ownership.

### 4. ACTION SUGGESTED TO THE LEGAL COMMITTEE

- a) to promote the need for more transparency and consistency in implementing Article 21 of the Chicago convention;
- b) to follow closely the development of the Aircraft Registration Network as a possible long-term solution to help Member States to fulfil their obligations under Article 21 of the Chicago Convention;
- c) to consider the draft model certificate of de-registration sent to the XBT-Task Force at least as an interim solution.

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APPENDIX

MODEL CERTIFICATE OF DE-REGISTRATION

CIVIL AVIATION AUTHORITY OF .....(State)

**Certificate of Deregistration**

*(in accordance with art. 18 and 21 of the Convention on International Civil Aviation)*

**This is to certify that the following aircraft has been removed from the .....(State) Civil Aircraft Register and its registration and nationality marks have been cancelled.**

**Nationality and registration marks:** .....

**Manufacturer:** .....

**Type:** .....

**Serial Number:** .....

**Removal Date:** \_\_\_/\_\_\_/\_\_\_\_\_

**Removal Reason: Aircraft will be exported to .....(State)**

*If possible, fill in the three following fields (“Legal Owner”, “Registered Holder”, “Registered Operator”).*

**Last registered Legal Owner<sup>1</sup>:** .....  
**Address of last registered Legal Owner<sup>1</sup>:** .....

**Last registered Holder<sup>2</sup>:** .....  
**Address of last registered Holder<sup>2</sup>:** .....

**Last registered Operator<sup>3</sup>:** .....  
**Address of last registered Operator<sup>3</sup>:** .....

**Remarks:** *(Our records show no unreleased recorded mortgages or liens against this aircraft.)*

**Aircraft Registry**

*(Aircraft Registration Officer)*

**Date:** \_\_\_/\_\_\_/\_\_\_\_\_

**Civil Aviation Authority  
Aircraft registration**

Address, Telephone, Fax, E-mail, website

— END —

<sup>1</sup> “Legal Owner”: A person, organization or enterprise which is in possession of a document, generally the ownership title of the aircraft, establishing its status as a legal owner, in accordance with the Geneva Convention of 19 June 1948.

<sup>2</sup> “Holder”: A person, organization or enterprise which has legal custody and control of the aircraft. The holder may hire and/or operate the aircraft. If the holder does not hire the aircraft, it is the legal owner.

<sup>3</sup> “Operator”: A person, organization or enterprise engaged in or offering to engage in an aircraft operation. The operator may hire the aircraft. If the operator does not hire the aircraft, it is the legal owner.