



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 the Secretariat)

1. INTRODUCTION

1.1 The Assembly, at its 39th Session, endorsed the unanimous recommendation of the Legal Commission to include the item “Implementation of Article 21 of the Chicago Convention” in the General Work Programme of the Legal Committee with priority number eight. The decision of the Assembly was based on its consideration of working paper A39-WP/159, presented by France and supported by all delegations which took the floor.

1.2 By State Letter LE4/71-IND/17/13 dated 30 June 2017, the Secretary General established the Article 21 Task Force (A21TF) and invited 22 ICAO Member States to nominate experts to constitute the A21TF. The A21TF has since held two meetings at ICAO Headquarters in Montreal. The first meeting was held from 27-29 September 2017 and the second meeting from 10-11 April 2018.

1.3 This paper summarizes the work carried out by the A21TF in its said first two meetings.

2. BACKGROUND

2.1 The concepts of nationality and registration of aircraft are addressed in Chapter III of the *Convention on International Civil Aviation*, (Chicago, 1944 – the “Chicago Convention”), which comprises Articles 17 – 21. According to Article 17, aircraft have the nationality of the State in which they are registered. Under Article 18, an aircraft cannot be validly registered in more than one State, but its registration may be changed from one State to another. Article 19 provides that the registration or transfer of registration of aircraft in any contracting State shall be made in accordance with its laws and regulations. In other words, each State is within its right to develop rules and regulations with respect to registration and consequently how it defines the concept of ownership for the purposes of registration. This is further confirmed by the fact that the term “ownership” is not defined in the Convention.

2.2 Article 21 of the Chicago Convention sets out two distinct reporting obligations for contracting States. 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”. 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.” (emphasis added).

Unfortunately, the lack of common definition and understanding of the notion of “ownership” of aircraft creates ambiguity when Member States exchange information on ownership during the process of transferring an aircraft from one State’s registry to another.

2.3 Over the years, ICAO has taken steps to facilitate the implementation of the reporting obligations set out in Article 21. With regard to the first part, ICAO exchanges correspondence with Member States on an *ad-hoc* basis as and when the need for information concerning the registration and ownership of any particular aircraft arises. With regard to the second part, ICAO established in 2006 a web-based Aircraft Registry System (ARS) to facilitate reporting by States of pertinent data concerning the ownership and control of aircraft carried on their registries. In spite of the foregoing efforts, ICAO has had very little success in collecting aircraft registration, ownership and control data from Member States pursuant to Article 21. The ARS database presently contains aircraft registration data from a handful of States. It has been suggested that this lack of success with the ARS may be attributable, *inter alia*, to a lack of clarity among Member States of ICAO as to the nature, scope and/or import of their reporting obligations under Article 21 of the Chicago Convention, particularly with respect to the requirement to furnish pertinent data concerning the ownership and control of aircraft.

2.4 The purpose of the A21TF is to assist the Secretariat to clarify the nature, scope and import of the obligations assumed by contracting States under Article 21 of the Chicago Convention and also consider the development of ICAO rules, guidance or recommendations aimed at assisting Member States in an effort to enhance the implementation of their obligations under Article 21.

3. FIRST MEETING OF THE A21TF

3.1 The A21TF had before it for the first meeting three Working Papers which formed the basis of its deliberations. At the outset, it became evident that there are several different aircraft registration systems prevailing around the world. On the one end of the spectrum, there are States where aircraft are registered based on the person or entity having custody and control of the aircraft. Those registries define “ownership” to mean custody and control of the aircraft. On the other end of the spectrum are States that operate title registries where registration of aircraft is accorded to entities that have legal and/or beneficial ownership of the aircraft (i.e. where the entity has possession, the power to use, dispose of or otherwise deal with the aircraft). In between, there are States which operate aircraft registries that record legal ownership as well as details of custody and control over the aircraft. Similarly, some States maintain separate registries – one to record title ownership whereas another registry records aircraft registration on the basis of custody and control. It was evident to the A21TF, both from the presentations delivered at the first meeting and the responses to a survey (conducted by the Legal Affairs and External Relations Bureau pursuant to the decision of the Assembly and attached to A21TF/1-WP/2) that, in connection with aircraft registration, the concept of ownership has different meanings in different States.

3.2 The A21TF further noted that these differences in registration systems are permissible under Article 19 of the Chicago Convention which states that, “the registration or transfer of registration of aircraft in any contracting State shall be in accordance with its laws and regulations”. Nevertheless, it was pointed out that these differences may result in delays when aircraft registration is transferred from one State to another. The delay faced by some States in registering aircraft coming from another State stems from the fact the meaning of the concept of “ownership” for the purposes of registration differs among States (i.e. title ownership or custody and control or both), and how this information is treated in the registering State. This is mostly an issue for States where registration is based on legal and/or beneficial ownership when they receive an aircraft from a State where registration is based on custody and control.

3.3 The A21TF Members were unanimous in the view that no amendments to Article 21 would be recommended in an attempt to define “ownership” to conform to any of the prevailing systems. Many delegates agreed that the A21TF should attempt to develop some recommendations to make the differences in the concept of “ownership” more transparent. Having a better understanding of differences between registration systems around the world would facilitate, in many contracting States, the registration of aircraft from registries of other States. This will improve the current state of affairs amongst States when aircraft are transferred from one State to another for registration.

4. SECOND MEETING OF THE A21TF

4.1 Following its consideration of a Working Paper presented by France at its second meeting, the A21TF endorsed in principle the concept of a Model Certificate of De-Registration as proposed by France, subject to the views expressed during the deliberations. It was noted in particular that the A21TF would support the inclusion of the Model Certificate of De-Registration in some form of guidance material rather than as an ICAO Standard or Recommended Practice.

4.2 The A21TF also discussed extensively the Aircraft Registration Network proposed by the Secretariat as a replacement for the Aircraft Registry System. While noting the plans by the Secretariat to use the proposed ARN to gather registration data on both manned and unmanned, as well as certified and uncertified aircraft, the A21TF decided, at the outset of the deliberations, not to pursue those said distinctions any further in the conduct of its work.

4.3 Following its deliberations, the A21TF agreed to support the work of the Secretariat in developing the said ARN. The A21TF urged the Secretariat to take into account the various issues and concerns identified during the deliberations. Further, the A21TF approved the Secretariat’s proposal to establish a Sub-group to be known as the Aircraft Registration Network Sub-Group (ARNSG). Membership in the ARNSG was left open to all States represented on the A21TF. At the suggestion of the Secretariat, the A21TF considered and approved the draft Terms of Reference of the ARNSG presented by the Secretariat. A progress report on the work of the ARNSG is attached to this Working Paper in the **Appendix**.

5. CONCLUSIONS

5.1 The A21TF reached the following conclusions after its first two meetings:

5.1.1 Article 21 of the Chicago Convention does not contain a definition of the concept of ownership of aircraft, neither does it appear that the concept was discussed in the negotiating history – the *travaux préparatoires* – of the Convention. Article 19 of the Chicago Convention provides that “[t]he registration or transfer of registration of aircraft in any contracting State shall be made in accordance with its laws and regulations”. Consequently, it is up to each and every contracting State to define ownership for the purposes of aircraft registration.

5.1.2 It is evident from the survey carried out by the Secretariat and from the deliberations in the A21TF that, consistent with Article 19 of the Convention, there are different definitions of ownership of aircraft across different contracting States (e.g. ownership based on title, custody and control or financial interest). The discussions in the A21TF also show that in some States, aircraft information can be found in several registers. Consequently, the national Civil Aviation Authority of a State may not necessarily have information concerning the owner or title holder of any particular aircraft on its aircraft register if those matters are handled by another entity.

5.1.3 For Contracting States, Article 21 sets the obligation, first, on demand, to provide information on the registration and ownership of any particular aircraft on its register to another contracting State or to ICAO; and secondly, to furnish to ICAO reports 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 total lack of such information from some States may partly be explained by the fact that the obligations contained in Article 21 are perhaps not sufficiently further elaborated in Annex 7 – Aircraft Nationality and Registration Marks.

5.1.4 Currently, when a State provides information on ownership of an aircraft registered in its registry to another State or ICAO, the recipient does not know on which definition of ownership such information is based. Consequently, information concerning the ownership of aircraft that is currently exchanged is ambiguous. Ambiguous ownership information does not facilitate the transfer of registration of aircraft from one State to another. While many States do not base their registration procedures on ownership information received from other States, unambiguous ownership information received from the previous State of registry would facilitate and speed up registration of aircraft in many other States. The A21TF recommends that transparency could be added to the system in order to alleviate or remove the said ambiguities.

5.1.5 A Model Certificate of De-Registration could be a useful tool for bringing transparency into the exchange of aircraft ownership information among States pursuant to Article 21 as it would contain much more detailed information on the aircraft and its owner, operator and/or title holder. A draft Model Certificate of De-Registration proposed by France was considered by the A21TF. While further work on the draft Model Certificate of De-Registration needs to be carried out by the appropriate bodies, it was generally considered that such a Model Certificate could be issued as guidance material (e.g. within the context of a proposed Manual on cross-border transfers currently being developed by the Cross-Border Transferability Task Force).

5.1.6 The A21TF also discussed at length the ICAO system for collecting aircraft registration data from contracting States. The existing Aircraft Registry System (ARS) and its corresponding “Rules” which were adopted by the Council in 2006 are outdated. A new digital platform – the Aircraft Registration Network (ARN) – is currently under development. Ideally, information from existing digital national aircraft registers could be transferred automatically to the ARN, whereas States without digital platforms could be offered customized solutions for the establishment of a digital aircraft registration system.

5.1.7 In designing the specifications as well as the governing rules (i.e. the Regulations referred to in Article 21) for the ARN, the discussions on ownership of aircraft should be taken into account.

6. ACTION BY THE COMMITTEE

6.1 The Committee is invited to note the information provided in this Working Paper.

APPENDIX

PROGRESS REPORT ON THE WORK OF THE AIRCRAFT REGISTRATION NETWORK SUB-GROUP (ARNSG)

1. BACKGROUND

1.1 The ARN will establish a consolidated database of State registered aircraft, including manned aircraft, remotely piloted aircraft (RPA), and small unmanned aircraft (sUA, commonly referred to as drones). For States with established electronic systems, the ARN will create the technical interface for automatic data provision to ICAO. And for States who seek to establish a digital registration process, the ARN will offer a customized application to manage their day-to-day aircraft registry activities, providing a turnkey option for States that do not have an existing electronic registration system. These two options will feed a global aircraft dataset and enable development of additional inter-State operability services and features.

1.2 The ARNSG was established to provide guidance and advice to ICAO to ensure the technical implementation of the ARN consists of the features and functionality that will ultimately benefit any member State. It is a multi-disciplinary group comprised of members from the Article 21 Task Force (A21TF), with the addition of members from the Unmanned Aircraft Systems Advisory Group (UAS-AG), and consists of 17 members from 12 different member States. The top-level tasks of the ARNSG are as follows:

- a) Advise on the State process of aircraft registration to ensure that the proposed ARN captures the relevant data in an appropriate digital process;
- b) Advise specifically on the intended use-case(s) for information concerning aircraft ownership; and
- c) Advise on the development of the regulations referred to in Article 21, taking in to account the rules for the provision of pertinent data developed for the ARS.

2. PROGRESS ACHIEVED IN THE WORK OF THE ARNSG

2.1 There have been two virtual meetings held to date. The first meeting focused on how States currently process and approve applications for new registrations. ARNSG Members presented details regarding their existing processes for both aircraft and small UA/drone registration, and whether each part of the process is paper-based or electronic. This highlighted the fact that a number steps remain manual tasks within many authorities, such as scanning of documents and manual data input into computer based systems. Discussion also highlighted that the way in which a State may differentiate between an aircraft and a drone may differ from one State to another. An example was to differentiate based on the weight of the air vehicle, but this was not consistent from one State to another. And finally, the discussion on existing process covered items such as proof of identity of the applicant, issues related to payment processing, and expected duration of overall registration application processing.

2.2 The second meeting of the ARNSG focused on two areas of discussion. First, the topic of ‘international’ small UA/drone operators was addressed, with group members asked if a visitor to your State was intending to operate a drone, what information would you require them to provide in order for you to maintain satisfactory oversight? It was revealed that some States have the expectation of individuals intending to operate a small UA / drone when visiting the country was for those individuals to register themselves and their drones using the same online system as used by residents of that State. Even if the individual did not have a residence in the country, hotel accommodation may still be mandatory. In one State system, a cell phone number was a mandatory information field, as the system would send a unique verification code to the applicant’s cell phone on completion of the application. Discussion highlighted the fact that whilst the expectation may be for visitors to a State to utilise the same registration system as residents, there may be some fundamental technical barriers to accomplishing this. Accessibility of non-residents and use of other languages are therefore elements that should be taken in to consideration by ICAO during development of the ARN applications.

2.3 The second item discussed was that of clarifying the definition of the applicant of aircraft registrations. It is recognised that States favour one of two different criteria for defining the owner for manned aircraft. Some States consider the applicant, referred to as the ‘owner’, as the legal title-holder of the aircraft. Other States consider the applicant to be the party that has custody and control of the aircraft; essentially the aircraft ‘operator’. The owner and the operator are not necessarily the same. As such, the specific information obtained may be subtly different, and the subsequent use of that specific information may also differ. The ARNSG is continuing to seek clarification from States on these information uses, and the optimum set of information that would be beneficial to States in managing their aircraft registry and subsequent safety oversight responsibilities.

2.4 The final topic of the second meeting addressed the challenge associated with maintaining an accurate database of manufacturers and models was raised. When capturing this information in a digital format, providing an open-text field for the applicant to populate increases the risk of having multiple different records for exactly the same aircraft type. Rather it is preferable to present the applicant with a selection box, to enable them to select the exact make and model of the air vehicle to be registered. The Secretariat explained the objective for the Commercial Aviation Safety Team/ICAO Common Taxonomy Team (CICCTT), currently charged with developing common taxonomies and definitions for manned aircraft. The intent is to widen the mandate for the CICCTT to include the manufacturers, models, and series of all unmanned aircraft, including small personal drones. This information would act as the core dataset for the ARN applications so that an applicant would select the appropriate vehicle from a list of predefined options, rather than the applicant inputting the details in an open-text format.

3. FUTURE WORK OF THE ARNSG

3.1 Subsequent meetings will be scheduled as required to support ICAO in the ongoing development of the ARN. The input from ARNSG members has been invaluable in refining and guiding the functional requirements of the overall ARN development.