



ASSEMBLY — 41ST SESSION

EXECUTIVE COMMITTEE

Agenda Item 28: Other high-level policy issues to be considered by the Executive Committee

INFRACTIONS OF THE CONVENTION ON INTERNATIONAL CIVIL AVIATION BY THE  
REPUBLIC OF BELARUS

(Presented by the Council of ICAO)

EXECUTIVE SUMMARY

This working paper reports on an infraction of the *Convention on International Civil Aviation* (1944 – the “Chicago Convention”) by the Republic of Belarus in connection with the event involving Ryanair Flight FR4978 in Belarus airspace on 23 May 2021. Further to a fact-finding investigation of the event, the Council determined that, on 23 May 2021, the Government of Belarus committed an act of unlawful interference that deliberately endangered the safety and security of Ryanair Flight FR 4978 and the lives of all those on board. The Council decided that the said actions of the Government of Belarus amount to an infraction of the Chicago Convention to be reported to the Assembly under Article 54 k) of the said Convention.

**Action:** The Assembly is invited to:

- a) consider this working paper, and to acknowledge and condemn the infraction by the Republic of Belarus of the Chicago Convention; and
- b) adopt the draft Resolution presented in the Appendix.

<i>Strategic Objectives:</i>	This working paper relates to Strategic Objectives – Safety, Air Navigation Capacity and Efficiency, and Aviation Security and Facilitation.
<i>Financial implications:</i>	This working paper has no direct financial implications
<i>References:</i>	C-DEC 226/16 <i>Report into the Incident Involving Ryanair Flight FR4978 in Belarus Airspace on 23 May 2021</i> Doc 7559, <i>Rules of Procedure for the Council</i> Doc 7300, <i>Convention on International Civil Aviation</i>

## 1. INTRODUCTION

1.1 On Sunday, 23 May 2021, Ryanair Flight FR4978, a commercial passenger aircraft en route from Athens, Greece (LGAV) to Vilnius, Lithuania (EYVI) was diverted to Minsk Airport while passing through the airspace of the Republic of Belarus. The aircraft departed for Vilnius, Lithuania about 7 hours after landing at Minsk Airport.

1.2 At the Second Meeting of its 223rd Session (27 May 2021), the Council considered the item “Incident involving Ryanair Flight FR4978 in Belarus airspace on 23 May 2021”. While expressing strong concern at the apparent forced diversion of Ryanair Flight FR4978 in Belarus airspace, the Council underlined the importance of establishing the facts of what happened and understanding whether there had been any breach by any ICAO Member State of international aviation law, including the Chicago Convention and its Annexes.

1.3 Recalling Article 55 e) of the Chicago Convention, the Council decided to undertake a fact-finding investigation of this event, and in this connection, requested the Secretariat to prepare a report which would present the available facts and relevant legal instruments and identify any gaps in order to safeguard international civil aviation.

1.4 Pursuant to the foregoing decision of the Council, on 3 June 2021, the Secretary General instituted a Fact-Finding Investigation Team (FFIT) composed of eight staff members with specialization in airspace management, operational safety, aviation security and international air law, and led by the Deputy Director, Aviation Security and Facilitation of the Air Transport Bureau.

## 2. ACTIONS BY THE ORGANIZATION

2.1 At the First Meeting of its 225th Session (31 January 2022), the Council, following consideration of C-WP/15284, *Report into the Incident Involving Ryanair Flight FR4978 in Belarus Airspace on 23 May 2021*, highlighted that the bomb threat against Ryanair Flight FR4978 on 23 May 2021, was deliberately false and consequently it had endangered the safety of an aircraft in flight. While expressing concern at the gaps in information provided by Belarus and the inconsistencies in the evidence provided to the FFIT in relation to crucial aspects of the factual reconstruction of the event, the Council requested the FFIT to continue its work with a view to establishing the missing facts, including in connection with the ongoing criminal and other investigations, and to report any further findings to the Council as appropriate.

2.2 Subsequently, during the Sixteenth Meeting of its 226th Session (18 July 2022), the Council considered C-WP/15419, *Report into the Incident Involving Ryanair Flight FR4978 in Belarus Airspace on 23 May 2021*, which presented an updated Report on the fact-finding investigation of the event, as prepared by the FFIT. Based on the facts established by the FFIT, the Council noted that a number of senior officials of the Government of Belarus had knowingly participated or were involved in providing information about a false bomb threat to the flight leading to its diversion to land at Minsk Airport. The Council concluded with grave concern that the safety of Ryanair Flight FR4978 was endangered when a false bomb threat was communicated to the flight crew, on the instructions of senior government officials of Belarus.

2.3 The Council reiterated that the aims of the Chicago Convention include the safe and orderly development of international civil aviation and promoting the safety of flight in international air navigation, and that the use of civil aviation by any State for any purpose inconsistent with these aims would contravene the spirit of the Convention, its Preamble and specifically its Article 4, which provides that “[e]ach contracting State agrees not to use civil aviation for any purpose inconsistent with the aims of this Convention”.

2.4 In light of the foregoing, the Council strongly condemned the actions of the Government of Belarus in committing an act of unlawful interference that deliberately endangered the safety and security of Ryanair Flight FR 4978 and the lives of all those on board. Further, the Council determined that these actions represented a flagrant and serious violation by the Republic of Belarus of the Chicago Convention.

2.5 The Council i) decided to communicate the conclusion of the FFIT investigative process and findings thereof to all Member States by means of a State letter, and by publishing the final report of the FFIT on the ICAO public website; and ii) requested the Secretariat to prepare a draft Assembly working paper, including text for a proposed Assembly Resolution, to be submitted at the forthcoming 41st Session of the ICAO Assembly for the consideration of Member States in accordance with Article 54 k) of the Chicago Convention.

### 3. **EVIDENCE OF THE INFRACTION OF THE CHICAGO CONVENTION**

3.1 The evidence of infraction by the Republic of Belarus of the Chicago Convention is contained in the FFIT Report on the event involving Ryanair Flight FR4978 in Belarus Airspace on 23 May 2021 that is available at the following link <https://www.icao.int/Security/Pages/FFIT.aspx>.

### 4 **ARTICLE 54 K) OF THE CONVENTION**

4.1 By virtue of Article 54 k) of the Convention, the Council shall “[r]eport to the Assembly any infraction of this Convention where a Contracting State has failed to take appropriate action within a reasonable time after notice of the infraction”.

4.2 The Convention does not define the word “infraction” as used in Article 54, although it has been previously interpreted that any action which may be considered as an infraction, breach, violation or infringement of the Convention is potentially open for Council action under Articles 54 j) or k). Without referring specifically to these paragraphs, the Council has previously determined that an infraction, breach, violation or infringement of principles or rules of the Convention has taken place. In this regard, the Council agreed in 1999 that, in continuity of past practice, it may wish to consider taking the action specified in Article 54 j) and k) only where important considerations are at issue (158th Session).

4.3 In making a determination under either Articles 54 j) or k), the Council must further follow due process and elementary principles of justice. This means that, at a minimum, the States concerned must be given adequate opportunity to be heard by the Council under Article 53 of the Convention and Rule 31 of the *Rules of Procedure for the Council* (Doc 7559/11).

4.4 Consistent with the above, on 18 July 2022, the Council determined that, based on the findings of the FFIT Report, the actions by the Republic of Belarus amount to an infraction of Article 4 of the Chicago Convention and should be reported to the Assembly for consideration under Article 54 k).

4.5 Notice of the infraction was formally given to the Republic of Belarus on 12 August 2022. This notwithstanding, the Council is not in receipt of any information that would suggest that the Government of Belarus has taken appropriate action within a reasonable time after notice of the infraction. Accordingly, this matter is hereby submitted to the 41st Session of the Assembly for its consideration, pursuant to Article 54 k) of the Chicago Convention.

5        **CONCLUSIONS AND ACTION BY THE ASSEMBLY**

5.1            The Council invites the Assembly to acknowledge and condemn the infraction by the Republic of Belarus of its obligations under the Chicago Convention, as presented in this paper.

5.2            The Assembly is therefore invited to consider the adoption of the draft Resolution presented in the **Appendix** to this paper.

— — — — —

## APPENDIX

### DRAFT ASSEMBLY RESOLUTION

#### **Resolution A41/xx: Infraction of the Convention on International Civil Aviation by the Republic of Belarus**

*Recalling* the Decision of the ICAO Council of 27 May 2021 concerning the Incident involving Ryanair Flight FR4978 in Belarus airspace on 23 May 2021;

*Having considered* the report of the Fact-Finding Investigation Team (FFIT) instituted by the Secretary General pursuant to that decision of the ICAO Council;

*Bearing in mind* the provisions and principles of the *Convention on International Civil Aviation*, while the primary objective of ICAO continues to be that of ensuring the safety and security of international civil aviation worldwide;

*Considering* the paramount importance of preserving the safety of international civil aviation as enshrined in the *Convention on International Civil Aviation* and its Annexes;

*Noting* that the ICAO Council, on 18 July 2022, determined that, based on the facts established by the FFIT, a number of senior officials of the Government of Belarus had knowingly participated or were involved in providing information about a false bomb threat to Ryanair Flight FR4978 leading to its diversion to land at Minsk Airport;

*Further noting* that the ICAO Council concluded with grave concern, that based on the facts established by the FFIT, the safety of Ryanair Flight FR4978 was endangered when a false bomb threat was communicated to the flight crew, on the instructions of senior government officials of Belarus, and that the actions of the Government of Belarus in committing an act of unlawful interference that deliberately endangered the safety and security of Ryanair Flight FR 4978 and the lives of all those on board, amounted to a flagrant and serious violation of the *Convention on International Civil Aviation*;

*Recalling* that the use of civil aviation by any State for any purpose inconsistent with the aims of the *Convention on International Civil Aviation* would contravene the spirit of the said Convention, its Preamble as well as its Article 4;

*Considering* that the ICAO Council further decided to submit this matter to the 41st Session of the ICAO Assembly, in accordance with Article 54 k) of the *Convention on International Civil Aviation*;

*The Assembly:*

1. *Endorses* the determination of the ICAO Council that, based on the findings of the FFIT Report, the actions of the Government of Belarus in knowingly participating in or being involved in providing information about a false bomb threat to Ryanair Flight FR4978 leading to its diversion to land at Minsk Airport, and thereby deliberately endangering the safety and security of a commercial passenger aircraft and the lives of all those on board, amounted to the use of civil aviation by Belarus for a purpose inconsistent with the aims of the *Convention on International Civil Aviation* which is a flagrant and serious violation of its Article 4;

2. *Condemns* the actions of the Government of the Republic of Belarus in committing an act of unlawful interference that deliberately endangered the safety and security of Ryanair Flight FR 4978 and the lives of all those on board;
3. *Deplores* the fact that, notwithstanding notice of the infraction of Article 4 of the *Convention on International Civil Aviation*, the Republic of Belarus has failed to take appropriate action within a reasonable time after notice of the said infraction;
4. *Urgently calls* upon the Republic of Belarus to take appropriate action in view of this infraction of Article 4 of the *Convention on International Civil Aviation*;
6. *Requests* the Council to remain seized of this matter and to report back to the Assembly as appropriate; and
7. *Instructs* the Secretary General to immediately draw the attention of all Contracting States to this resolution.

— END —