



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
RUSSIAN FEDERATION

(Presented by the Council of ICAO)

EXECUTIVE SUMMARY

This working paper reports on the violation by the Russian Federation of the exclusive sovereignty of the Ukrainian airspace, as well as the dual registration of aircraft and permitting aircraft to fly without the required documents on board, which the Council considered as constituting infractions of the *Convention on International Civil Aviation* to be reported to the Assembly under Article 54 k) of the Convention.

Action: The Assembly is invited to:

- a) consider this working paper, and to acknowledge and condemn the infractions by the Russian Federation of the Convention;
- b) call upon the Russian Federation to immediately cease those infractions, as presented in the paper; and
- c) adopt the draft Resolution presented in Appendix C.

<i>Strategic Objectives:</i>	This working paper relates to Strategic Objectives – Safety
<i>Financial implications:</i>	This working paper has no direct financial implications
<i>References:</i>	C-DEC 226/14 C-DEC 225/8 C-DEC 225/4 C-WP/15425 and Rev No.1 EB 2022/29 EB 2022/12 State Letter AN 3/1.1-22/41 Annex 6 — <i>Operation of Aircraft</i> Annex 7 — <i>Aircraft Nationality and Registration Marks</i> Annex 8 — <i>Airworthiness of Aircraft</i> United Nations Assembly Resolution A/ES-11/L.1 on Aggression against Ukraine Doc 7559, <i>Rules of Procedure for the Council</i> Doc 7300, <i>Convention on International Civil Aviation</i>

1. INTRODUCTION

1.1 The principle that every State has complete and exclusive sovereignty over the airspace above its territory is enshrined in Article 1 of the *Convention on International Civil Aviation* (Chicago, 1944 – hereinafter “the Convention”). Likewise, the principle that States shall refrain from the threat or use of force against the territorial integrity of any State is set out in the Charter of the United Nations.

1.2 On 3 March 2022, at its 11th emergency special session, the General Assembly of the United Nations adopted Resolution A/ES-11/L.1 on Aggression against Ukraine. The Resolution reaffirms the commitment to the sovereignty, independence, unity and territorial integrity of Ukraine and deplores in the strongest terms the aggression by the Russian Federation against Ukraine in violation of the Charter of the United Nations. The violation of the territorial integrity of Ukraine includes the violation of Ukrainian airspace and thus an infraction of Article 1 of the Convention.

1.3 Article 18 of the Convention provides that “[a]n aircraft cannot be validly registered in more than one State”. Moreover, Article 19 states that “[t]he registration or transfer of registration of aircraft in any Contracting State shall be made in accordance with its national laws and regulations.” Accordingly, in respect of an aircraft which has been previously registered in a Contracting State, a valid transfer of registration in accordance with applicable local law would have to take place. Furthermore, Article 29 of the Convention lists the documents to be carried on board an aircraft, which include the certificate of airworthiness and radio station licence. The Convention provides that certificates of airworthiness are issued or rendered valid by the State of Registry (Article 31) and radio station licences are issued by the State of Registry (Article 30).

1.4 Decree no. 411, adopted by the Government of the Russian Federation on 19 March 2022, and applicable as of 23 March 2022, provides for dual registration in Russia of aircraft that are leased by a Russian lessee if the lessor is established in a country which the Russian Government qualifies as “unfriendly”. According to Decree 411, no prior evidence of de-registration is required for this additional registration.

2. ACTIONS BY THE ORGANIZATION

2.1 At the Fourth Meeting of its 225th Session (25 February 2022), the Council considered the item “Situation in Ukraine” and condemned the violation of the territorial integrity and sovereignty of a United Nations Member State, including its airspace, as being inconsistent with the principles of the Charter of the United Nations and Article 1 of the Convention and underscored the paramount importance of preserving the safety and security of international civil aviation and the related obligations of ICAO Member States.

2.2 Moreover, at the Eighth Meeting of its 225th session (7 March 2022), the Council considered the subject of “Registration of aircraft”. It was informed that the Russian Federation had requested its operators to register leased aircraft, already registered in third countries, on its own register. On this basis, it was stated that the Russian Federation apparently intended to deliver new airworthiness certificates. The Council requested the Secretariat to clarify the situation with the involved Contracting State, to undertake the appropriate actions in the particular interest of air safety and to keep the Council informed.

2.3 Accordingly, on 11 March 2022, an Electronic Bulletin (EB) was issued to remind Contracting States of their safety obligations under the Convention and its Annexes.

2.4 Pursuant to Article 21 of the Convention, ICAO received information from several Contracting States concerning aircraft that may be engaged in international air navigation by Russian operators while their certificates of airworthiness were suspended by the respective States of Registry. On 18 March 2022, this safety-critical information was made available on a dedicated secure website, and on the same date State Letter AN 3/1.1-22/41 was sent to all Contracting States reminding them of their safety obligations in relation to surveillance of foreign operators and requesting immediate steps be taken to ensure adherence with the provisions of the Convention and its Annexes 6, 7 and 8.

2.5 A Mandatory Information Request (MIR) to the Russian Federation was issued on 28 March 2022 seeking information on how the Russian Federation ensured that aircraft were duly deregistered in another State before adding them to their own Registry, in particular since 24 February 2022.

2.6 Since evidence of aircraft deregistration was not provided, and aircraft continued to be operated without a valid certificate of airworthiness (Article 31 of the Convention) or a valid radio station license (Article 30 of the Convention), as well as without assurance of the associated oversight responsibilities, the ICAO Universal Safety Oversight Audit Programme (USOAP) identified an immediate safety risk to international civil aviation. On 26 May 2022 the USOAP Significant Safety Concern (SSC) Validation Committee concluded that, if the situation was not resolved by 15 June 2022, an SSC should be confirmed to the Russian Federation. On 15 June 2022 the Russian Federation was notified of the SSC and all ICAO Contracting States were informed through the USOAP online framework and corresponding EB 2022/29.

2.7 At the 14th Meeting of its 226th Session (22 June 2022), the Council considered C-WP/15425, Revision No. 1 presented by 19 ICAO Council Member States which cited as infractions of Articles 18, 19, 29 and 31 of the Convention, the actions of the Russian Federation in passing Decree no. 411 and then proceeding with the re-registration/dual registration of aircraft, as well as permitting the operation of aircraft in respect of which certificates of airworthiness and licences were suspended by the sole State of Registry. The 19 ICAO Council Member States requested the ICAO Council to take action accordingly.

2.8 By a majority decision, the Council took note that an SSC remained unresolved and called on the Russian Federation to immediately cease its infractions of the Convention, with a view to preserving the safety and security of civil aviation, while also urging the Russian Federation to urgently remedy these infractions. The Council requested the Secretary General to report these infractions of the Convention, if not urgently rectified, to all Contracting States, in accordance with Article 54 j) of the Convention, and decided to submit this matter to the 41st Session of the ICAO Assembly for its consideration, in accordance with Article 54 k) of the Chicago Convention.

3. EVIDENCE OF THE INFRACTION OF ARTICLES 18, 19, 29, AND 31 OF THE CONVENTION

3.1 The evidence of the infractions of Articles 18, 19, 29 and 31 of the Convention submitted by 19 ICAO Council Member States in C-WP/15425, Revision No. 1 is reproduced in **Appendix A** (Articles 18 and 19) and **Appendix B** (Articles 29 and 31) of this working paper.

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. It 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 22 June 2022, the Council concluded that the actions by the Russian Federation, set out in paragraphs 1.1 to 1.4 above, qualify as an infraction of Articles 1, 18, 19, 29 and 31 of the Convention to be reported to the Assembly for consideration under Article 54 k), while the Russian Federation failed to take appropriate action within a reasonable time after notice of the infractions, despite strong condemnations by the Council and its calls for compliance with the Convention (C-DECs 225/4 and 226/14), and decided to submit this matter to the 41st Session of the ICAO Assembly for its consideration, in accordance with Article 54 k) of the Chicago Convention.

5 **CONCLUSIONS AND ACTION BY THE ASSEMBLY**

5.1 On 22 June 2022 the Council called on the Russian Federation to immediately cease its infractions of Articles 1, 18, 19, 29 and 31 of the Convention, with a view to preserving the safety and security of civil aviation, while also urging the Russian Federation to urgently remedy these infractions and decided to submit this matter to the 41st Session of the ICAO Assembly for its consideration, in accordance with Article 54 k) of the Convention.

5.2 The Council invites the Assembly to acknowledge and condemn the infractions by the Russian Federation of its obligations under the Convention, as presented in this paper.

5.3 The Assembly is therefore invited to consider the adoption of the draft Resolution presented in **Appendix C**.

APPENDIX A

EVIDENCE SUBMITTED IN C-WP/15425 REV. 1 BY 19 MEMBERS OF THE ICAO COUNCIL FOR INFRACTIONS OF ARTICLES 18 AND 19 OF THE CHICAGO CONVENTION (“DUAL REGISTRATION”) BY THE RUSSIAN FEDERATION

1.1 A large part of the Russian aircraft fleet – 515 aircraft with, according to industry figures, a value of USD 10 billion – is owned by Irish leasing companies. These aircraft are registered in Bermuda, a British Overseas Territory, and in Ireland.

1.2 Decree no. 411¹ was adopted by the government of the Russian Federation on 19 March 2022 and published on 23 March 2022 with an applicability date of 23 March 2022. This Decree provides for dual registration in Russia of aircraft that are leased by a Russian lessee if the lessor is established in a country which the Russian government qualifies as “*unfriendly*” (including the United Kingdom and Ireland). According to Decree 411, no prior evidence of de-registration is required for this additional registration.

1.3 The Transport Minister of the Russian Federation, Vitaly Savelyev, presented Decree no. 411 to the Federation Council of the Russian Federation on 22 March.² In his address, he made the following statements:

- “This piece of legislation aims at forbidding companies to return the aircraft”.
- “We are now transferring aircraft from the Bermudan to the Russian Registry. So far, we have transferred almost 800 of them, we insure them with a Russian insurance company and they will stay in Russia”.
- “We are looking for a legal way, we try to find a solution with leasing companies. However, so far this does not work. They refuse an agreement on re-payment and purchase of those planes by Russia, they insist on their return”.
- “We have not lost all hope yet, but we will not return them. If we did, Russia would remain without aviation. That is why the government adopted these decisions”.

1.4 On a question whether maintenance of these aircraft can be done in the West, Transport Minister Savelyev responded that this was not possible as “we took/appropriated foreign property”.

1.5 As a consequence, most of these aircraft that are registered in Ireland or Bermuda and that are owned by leasing companies which are established in Ireland and have been illegally expropriated are now dually registered in the Russian Federation.

1.6 It is important to stress that throughout the reference period these aircraft have always remained on the Bermudan and Irish registries.

1.7 The Irish civil aviation authority has publically announced that it “*will only deregister aircraft on request from the registered owner, in accordance with relevant Irish legislation and procedures. This also ensures an aircraft is not deregistered until a registered mortgage or ICAO Cape Town* -

¹ Decree no. 411 “On the peculiarities of state registration of civil aircraft in the State Register of Civil Aircraft of the Russian Federation and the peculiarities of state registration of rights to aircraft and transactions with them”

² <https://www.youtube.com/watch?v=2A3Y6eR1irw>

irrevocable deregistration and export request authorisation (IDERA) is discharged.”³

1.8 The Bermudan authorities have also publically announced that they will only “*deregister aircraft on request from the owner, in accordance with relevant BCAA legislation and procedures, that ensures an aircraft is not deregistered until a registered mortgage or ICAO Cape Town - irrevocable deregistration and export request authorisation (IDERA) is discharged.*”⁴

1.9 To provide for the necessary transparency and to alert aviation authorities worldwide, the Irish and Bermudan authorities have published lists with registration details for such aircraft.⁵

1.10 These lists can also be accessed via a hyperlink on the USOAP website of the ICAO Secretariat⁶.

1.11 The following list provides only a limited number of examples for double registered aircraft (primary/current registration in Ireland and double registration in the Russian Federation):

Mark (Registration)	Aircraft name (Type certificated model)	Serial No. (Type certificate)	Certificate number	CoR issue date (dd/mm/yyyy)	Purported Russian dual registry marks*
EI-UNL	BOEING 777-312	28515	UNL/COAN/07	19/04/2021	RA73279
EI-UNM	BOEING 777-312	28534	UNM/COAN/08	04/08/2021	RA73280
EI-UNN	BOEING 777-312	28517	UNN/COAN/07	19/04/2021	RA73281
EI-UNP	BOEING 777-312	28516	UNP/COAN/08	14/07/2021	RA73282
EI-XLC	BOEING 747-446	27100	XLC/COAN/08	20/07/2021	RA73283
EI-XLD	BOEING 747-446	26360	XLD/COAN/07	16/08/2021	RA73284
EI-XLE	BOEING 747-446	26362	XLE/COAN/08	15/02/2021	RA73285
EI-XLF	BOEING 747-446	27645	XLF/COAN/08	16/03/2021	RA73286
EI-XLH	BOEING 747-446	27650	XLH/COAN/09	10/09/2021	RA73288
EI-XLI	BOEING 747-446	27648	XLI/COAN/08	29/04/2021	RA73289
EI-XLJ	BOEING 747-446	27646	XLJ/COAN/09	16/03/2021	RA73290
EI-XLM	BOEING 747-412	28028	XLM/COAN/07	20/07/2021	RA73291
EI-XLP	BOEING 777-	28531	XLP/COAN/07	14/07/2021	RA73292

³ <https://www.iaa.ie/commercial-aviation/sanctions>

⁴ https://www.bcaa.bm/sites/default/files/Web%20Docs/Notices_BACs_OTARs/Notice%20Status%20of%20Bermuda%20Registered%20Aircraft%20-%20Russian%20Air%20Operators%20FA.pdf

⁵ <https://www.iaa.ie/commercial-aviation/sanctions>

https://www.bcaa.bm/sites/default/files/Web%20Docs/Notices_BACs_OTARs/Bermuda%20Aircraft%20Registry%20-%20Russian%20Air%20Operators.pdf

⁶ <https://soa.icao.int/USOAP/CMAUnifyLogin/Index.aspx?ReturnUrl=%2fUSOAP%2fCMAUnifyLogin%2f>

EI-GES	312 BOEING 777- 31HER	32706	GES/COAN/04	11/02/2021	RA73274
EI-GET	BOEING 777- 31HER	32709	GET/COAN/05	20/01/2022	RA73275
EI-GEU	BOEING 777- 31HER	32710	GEU/COAN/04	19/04/2021	RA73276
EI-GFA	BOEING 777- 31HER	32715	GFA/COAN/05	26/08/2021	RA73277
EI-GFB	BOEING 777- 31HER	32730	GFB/COAN/05	26/08/2021	RA73278
EI-GIH	BOEING 737- 86N	32659	GIH/COAN/03	21/06/2021	RA73264
EI-GWF	AIRBUS 330- 323	1265	GWF/COAN/01	20/05/2021	RA-73684

APPENDIX B

EVIDENCE SUBMITTED IN C-WP/15425 REV. 1 BY 19 MEMBERS OF THE ICAO COUNCIL FOR INFRACTIONS OF ARTICLES 29 AND 31 OF THE CHICAGO CONVENTION (OPERATION OF AIRCRAFT INTERNATIONALLY WITHOUT A “CERTIFICATE OF AIRWORTHINESS”) BY THE RUSSIAN FEDERATION

1.1 The following list contains only a few examples of aircraft that have been (and still are) internationally operated by Russian airlines without holding a valid Certificate of Airworthiness as prescribed under the Chicago Convention:

- Aeroflot Airlines flight SU569 from Colombo (Sri Lanka) to Moscow on 6 June 2022, operated with an A330-300 (MSN 1301), Bermudan registration mark VQ-BMY. The Certificate of Airworthiness was suspended by the Bermudan Civil Aviation Authority on 2 March 2022.
- Ural Airlines flight U68641 from St Petersburg to Khudzhand Airport (Tajikistan) on 17 May 2022, operated with an A321-251NX (MSN 10632), Bermudan registration mark VP-BFM. The Certificate of Airworthiness was suspended by the Bermudan Civil Aviation Authority on 2 March 2022.
- Ural Airlines flight U62879 from St Petersburg to Dushanbe (Tajikistan) on 11 May 2022, operated with an A321-251NX (MSN 10476), Bermudan registration mark VP-BFI. The Certificate of Airworthiness was suspended by the Bermudan Civil Aviation Authority on 2 March 2022. The aircraft returned from Dushanbe to Russia the following day.
- Ural Airlines flight U62879 from St Petersburg to Osh (Kyrgyzstan) on 14 April 2022, operated with an A321-251NX (MSN 10632), Bermudan registration mark VP-BFM. The Certificate of Airworthiness was suspended by the Bermudan Civil Aviation Authority on 2 March 2022. The aircraft then also returned from Osh to Russia.
- Ural Airlines flight U68429 from Moscow to Khudzhand Airport (Tajikistan) on 25 March 2022, operated with an A321-251NX (MSN 10600), Bermudan registration mark VP-BFJ. The Certificate of Airworthiness was suspended by the Bermudan Civil Aviation Authority on 2 March 2022. The aircraft then also returned from Khudzhand to Russia.
- Royal Flight RL729 from Moscow (SVO) to Sharm-el-Sheikh on 6 March 2022, operated with a B767-300ER (MSN 27617), Bermudan registration mark VP-BLG. The Certificate of Airworthiness was suspended by the Bermudan Civil Aviation Authority on 5 March 2022.
- Aeroflot flight SU401 from Cairo to Moscow on 3 March 2022, operated with an A321-251-NX (MSN 10595), Bermudan registration mark VP-BXT. The Certificate of Airworthiness was suspended by the Bermudan Civil Aviation Authority on 2 March 2022.
- Ural Airlines flight U67004 from Hurghada to Moscow (DME) on 3 March 2022, operated with an A321-251NX (MSN 10667), Bermudan registration mark VP-BFO. The Certificate of Airworthiness was suspended by the Bermudan Civil Aviation Authority on 2 March 2022.

1.2 The flight history of the concerned aircraft provides for a better understanding of the dimension of this non-respect of fundamental provisions of the Chicago Convention. Examples are:

A41-WP/430
EX/196
Appendix B
English only

B-2

<https://www.flightradar24.com/data/aircraft/ra-73800#2b749123>

<https://www.flightradar24.com/data/aircraft/ra-73800/#2b641675>

APPENDIX C

DRAFT ASSEMBLY RESOLUTION

Resolution A41/xx: Infractions of the Convention on International Civil Aviation by the Russian Federation

Having considered the item concerning infractions of the Convention on International Civil Aviation by the Russian Federation;

Recalling that the United Nations General Assembly in adopting Resolution A/ES-11/L.1 on aggression against Ukraine reaffirmed its commitment to the sovereignty, independence, unity and territorial integrity of Ukraine and deplored in the strongest terms the aggression by the Russian Federation against Ukraine in violation of the Charter of the United Nations;

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 of international civil aviation worldwide;

Considering the paramount importance of preserving the safety of international civil aviation, and that once a Contracting State has registered an aircraft, a number of safety-related obligations fall upon it by virtue of the *Convention on International Civil Aviation* and its Annexes;

Noting that the ICAO Council, on 25 February 2022, expressed its condemnation of the violation of the territorial integrity and sovereignty of Ukraine, including its sovereign airspace, which is inconsistent with Article 1 of the *Convention on International Civil Aviation* and urged the Russian Federation to cease its unlawful activities, to ensure the safety and security of international civil aviation in all affected areas and to respect its obligations under the *Convention on International Civil Aviation*;

Noting that on 15 June 2022, ICAO confirmed a Significant Safety Concern that remained unresolved by the Russian Federation, and on 22 June 2022 the ICAO Council considered a working paper submitted by 19 ICAO Council Member States which, in addition to the infraction of Article 1 of the *Convention on International Civil Aviation*, outlined infractions of Articles 18, 19, 29 and 31 pertaining to the dual registration of aircraft by the Russian Federation and, in turn, permitting the operation of those aircraft without valid certificates of airworthiness, and that in this connection the Council called on the Russian Federation to immediately cease and urgently remedy its infractions of the *Convention on International Civil Aviation*;

Considering that the Russian Federation failed to take appropriate action within a reasonable time after notice of the infractions, despite strong condemnations by the Council and its calls for compliance with the *Convention on International Civil Aviation*;

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 decision of the ICAO Council that the violation of the territorial integrity and sovereignty of Ukraine by the Russian Federation, including its sovereign airspace, and the dual

registration of aircraft by the Russian Federation and, in turn, permitting the operation of those aircraft without valid certificates of airworthiness constitute infractions of Articles 1, 18, 19, 29 and 31 of the *Convention on International Civil Aviation*, conforming to its Article 54 k);

2. *Deplores* that, in disregard of the concerns and condemnations expressed by the ICAO Council, the Russian Federation has continued these infractions of Articles 1, 18, 19, 29 and 31 of the *Convention on International Civil Aviation*;

3. *Condemns* the Russian Federation for the violation of the sovereignty of the airspace of Ukraine and the dual registration of aircraft by the Russian Federation and, in turn, permitting the operation of those aircraft without valid certificates of airworthiness, amounting to infractions of the *Convention on International Civil Aviation* and seriously threatening the safety and security of international civil aviation;

4. *Urgently calls* upon the Russian Federation to cease the actions leading to the infractions of the *Convention on International Civil Aviation* in order to comply strictly with the provisions of the Convention and its Annexes;

5. *Urgently calls* upon the Russian Federation to resolve the issues related to the leased aircraft registered in other Contracting States that have been re-registered in the Russian Federation and to prevent the operation of those aircraft without valid certificates of airworthiness, so as to remedy the infractions of Articles 18, 19, 29 and 31 of the *Convention on International Civil Aviation*;

6. *Requests* the Council to remain seized of this matter and 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 —