



## ASSEMBLY — 41ST SESSION

### EXECUTIVE COMMITTEE

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

#### REPORT OF AN INFRACTION OF THE CHICAGO CONVENTION BY A GROUP OF ICAO MEMBER STATES<sup>2</sup>

(Presented by the Russian Federation)

#### REVISION NO. 1

#### EXECUTIVE SUMMARY

The international civil aviation system is based on respect by the Contracting States to the Convention on International Civil Aviation (hereinafter “the Chicago Convention”) for the rules of international law upon which they have agreed and their adherence to those rules. This is underlined in the preamble to the Convention, where States are reminded that they have agreed on certain principles and arrangements that enable international civil aviation to develop in a “*safe and orderly manner*”.

A number of ICAO Member States have breached several articles of the Chicago Convention, disrupting international civil aviation, jeopardizing through their deliberate actions the safety of international civil aviation and undermining the mutual trust that forms the bedrock of the international aviation system so successfully constructed by ICAO over the more than 78 years of its existence.

The aforementioned countries, by knowingly acting in breach of the Convention, are undermining its foundations, and the necessary response measures are categorized by them as infractions of the Convention while they refuse to accept that there is any causal link between them. Such actions pose a direct threat to the survival of the Convention regime in all ICAO Member States.

Article 54 of the Convention provides mechanisms for the ICAO Council to respond to infractions by States of the Chicago Convention.

<sup>1</sup> Russian version provided by the Russian Federation.

<sup>2</sup> Albania, Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czechia, Denmark (including Greenland, Faroe Islands and the territorial sea), Dominican Republic, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Mexico, Monaco, Montenegro, Netherlands (including Aruba, Bonaire, Saba, Sint Eustatius Island), North Macedonia, Norway, Poland, Portugal, Republic of Moldova, Romania, Saint Maarten, Slovenia, Spain, Sweden, Switzerland, United Kingdom of Great Britain and Northern Ireland, United States of America.

<b>Action:</b> The Assembly is invited to: <ul style="list-style-type: none"><li>a) mandate the ICAO Council to report, in accordance with Article 54 j) of the Chicago Convention, to Contracting States the infractions of Articles 4, 9, 22, 44 and 82 of the Chicago Convention committed by the aforementioned States, as described in this document;</li><li>b) urge the aforementioned States to immediately stop all the infractions that they have committed of the Chicago Convention and its Annexes committed by them and urgently remedy these in full;</li><li>c) urge the aforementioned States that have infringed the Convention to enter without delay into negotiations with the other States in respect of which they have imposed politically motivated unilateral restrictions, with a view to the unconditional restoration of the Convention regime in all ICAO Member States; and</li><li>d) urge the said States that have infringed the Convention to take note of the statement of the ICAO Assembly that any attempts to use ICAO and its Council as an instrument of political pressure on other countries are unacceptable and to refrain from any further attempts to politicize the activities of ICAO.</li></ul>	
<i>Strategic Objectives:</i>	This working paper relates to all the Strategic Objectives
<i>Financial implications:</i>	This working paper has no direct financial implications for any Member States of ICAO
<i>References:</i>	Doc 7300/9, <i>Convention on International Civil Aviation</i>

## 1. INTRODUCTION

1.1 Since 25 February 2022, unilateral restrictive measures have been imposed by the aforementioned ICAO Member States and their overseas territories on flights in their national airspace by the civil aircraft of Russian operators.

1.2 On 12 March 2022, the Bermuda Civil Aviation Authority (BCAA)<sup>3</sup> and then, on 14 March 2022, the Irish Aviation Authority (IAA) notified Russian airlines of the suspension of airworthiness certificates of all the aircraft operated by them that were registered on the national registers of those States. It should be noted that neither BCAA nor IAA transmitted any prior notifications on behalf of their States, nor did they take any steps to enter into a negotiation process with the Russian authorities on this issue.

1.3 On 28 March 2022, Aircraft Leasing Ireland (ALI), the industry body for Irish leasing companies, declared that all its members had fully complied with the European Union's restrictive measures requiring them to terminate their lease agreements with Russian airlines. In the framework of the unilateral restrictions imposed, Boeing Corporation, Airbus and other accredited component manufacturers have refused to honour their existing contracts for the supply of spare parts, while European and North American aircraft maintenance and repair companies (MROs) have refused to honour their agreements for the periodic maintenance of the aircraft of Russian airlines.

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<sup>3</sup> An overseas territory of the United Kingdom.

## 2. LEGAL APPRAISAL OF INFRACTIONS OF THE CHICAGO CONVENTION

2.1 Resolution 70/1 of the United Nations General Assembly, entitled “Transforming our world: the 2030 Agenda for Sustainable Development”, adopted on 25 September 2015, strongly urges States “*to refrain from promulgating and applying any unilateral economic, financial or trade measures not in accordance with international law and the Charter of the United Nations that impede the full achievement of economic and social development, particularly in developing countries*” (paragraph 30). In addition, in its annual resolution on human rights and unilateral coercive measures, adopted on 16 December 2021 (resolution 76/161), the General Assembly urges all States to cease adopting or implementing any unilateral measures not in accordance with international law, international humanitarian law, the Charter of the United Nations and the norms and principles governing peaceful relations among States, in particular those of a coercive nature, with all their extraterritorial effects, which create obstacles to the full realization of the rights set forth in the Universal Declaration of Human Rights and other international human rights instruments, in particular the right of individuals and peoples to development (paragraph 1).

2.2 The unilateral closure by States of their airspace on the discriminatory grounds of nationality is a direct breach of Article 9, paragraph (b) of the Chicago Convention, which states: “(b) *Each contracting State reserves also the right, in exceptional circumstances or during a period of emergency, or in the interest of public safety, and with immediate effect, temporarily to restrict or prohibit flying over the whole or any part of its territory, on condition that such restriction or prohibition shall be applicable without distinction of nationality to aircraft of all other States*”.

2.3 It should be noted that the Russian Federation has always unswervingly adhered to the provisions of Article 4 of the Chicago Convention and has never taken any action to use civil aviation “*for any purpose inconsistent with the aims of this Convention*”. Added to which, the airspace controlled by the Russian Federation comprises 26 million square kilometres.

2.4 The aforementioned unilateral restrictions imposed by a group of ICAO Member States on the Russian Federation are beyond any doubt being used as an instrument of political pressure and are in direct contravention of Article 4 of the Chicago Convention. It is noteworthy that, in his public address on 25 March 2022 the Director General for Mobility and Transport at the European Commission, Henrik Hololei, said literally the following “*I dare to say that we have been destroying Russian civil aviation; it has been the whole idea of the sanctions...*”.

2.5 It should be pointed out that actions and official public statements of this kind by senior executives of the European Union in the performance of their official duties, which undermine the fundamental principles of the Chicago Convention, seriously jeopardize the feasibility of the continued existence of ICAO as a global international organization, while also impelling it to repeat the fate of another international organization – the League of Nations.

2.6 Decisions by the European Union (the member States of the European Union)<sup>4</sup> that constrained lessors to unilaterally terminate leasing agreements concluded under the provisions of Article 83 *bis* of the Chicago Convention, without prior notice and without attempting to enter into negotiations, and without the fulfilment by lessors of their obligations under the leasing agreements relating to unilateral termination (return of security deposits, payment of penalties, etc.), are in direct contravention of Article 44 of the Chicago Convention, which states, among other things, that “*the aims and objectives of the*

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<sup>4</sup> Council Regulation (EU) 2022/328 of 25 February 2022 and Council Decision (CFSP) of 25 February 2015.

*Organization are to develop the principles and techniques of international air navigation and to foster the planning and development of international air transport so as to: ... Insure that the rights of contracting States are fully respected and that every contracting State has a fair opportunity to operate international airlines”.*

2.7 An illustrative example is the detention on 27 February 2022 at Toronto Airport in Canada of an AN-124 aircraft of the Russian airline Volga-Dnepr which was delivering a consignment to Canada of medical cargo – COVID-19 test kits previously ordered by the Canadian Government. The reason for the detention of the aircraft was the closure of Canada’s national airspace to Russian aircraft with effect from 27 February 2022.<sup>5</sup> The Russian aircraft has remained “in detention” to the present day at Toronto Airport. This is a clear example of a breach of Article 22 of the Chicago Convention, which states as follows: “*Each contracting State agrees to adopt all practicable measures, through the issuance of special regulations or otherwise, to facilitate and expedite navigation by aircraft between the territories of contracting States, and to prevent unnecessary delays to aircraft, crews, passengers and cargo, especially in the administration of the laws relating to immigration, quarantine, customs and clearance.*”

2.8 Furthermore, such actions are contrary to Standard 2.1 of Annex 9 — Facilitation, of the Chicago Convention, which, among other provisions, requires ICAO Member States to take appropriate measures “...to prevent unreasonable delays”.

2.9 The numerous flight delays, cancellations and even illegal detentions of aircraft that have occurred in recent months contravene one of the fundamental individual rights, the right to freedom of movement enshrined in the Universal Declaration of Human Rights, adopted by the United Nations General Assembly in 1948.

2.10 It is perfectly clear that the imposition of politically motivated unilateral restrictions by ICAO Member States also infringes Article 82 of the Chicago Convention, which establishes that “*the contracting States accept this Convention as abrogating all obligations and understandings between them which are inconsistent with its terms, and undertake not to enter into any such obligations and understandings.*”

### 3. PRINCIPAL CONCLUSIONS

3.1 The aforementioned United Nations General Assembly resolution 76/161 emphasizes that “*unilateral coercive measures and legislation are contrary to international law, international humanitarian law, the United Nations Charter and the norms and principles governing peaceful relations among States*” (fourth preambular paragraph). Concerns are expressed, however, that the frequency, type, target and scope of application of unilateral coercive measures have expanded enormously in the international arena (nineteenth preambular paragraph).

3.2 Over recent years, the use of international civil aviation as an instrument of political pressure on “undesirable” States has become standard practice. As recently as one year ago, similar restrictive measures were imposed on the Republic of Belarus under highly contrived pretexts. This causes considerable reputational damage to the Organization and undermines its credibility among its Member States.

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<sup>5</sup> NOTAM from Canada at 15:50 hours UTC on 27 February 2022 (271550 CYHQYNYX (F0400/22 NOTAMN Q) CZXX/QOECH/IV/NBO/E/000/999/5205N12506W999).

3.3 It is a matter of serious concern that, to date, the ICAO Council has not issued any assessment of actions of this kind by certain States. During the 14th meeting of the 226th session, the Russian Federation had already lodged a request to this effect with the ICAO Council and is currently awaiting its consideration. As noted earlier, the imposition in a discriminatory manner and on a national basis of politically motivated unilateral restrictions on other countries disrupts the Convention regime in all ICAO Member States and renders worthless the efforts of the international aviation community to create a safe and efficient global air transport system. In those circumstances, the entire notion of the ICAO Global Air Navigation Plan and seamless air navigation is set at naught and there is no point in continuing to discuss long-term aspirational goals aimed at effectively reducing CO<sub>2</sub> emissions in the international civil aviation sector.

3.4 There can be no doubt about the need for urgent action by the ICAO Council aimed at the unconditional restoration of the Convention regime in all ICAO Member States, with a view to ensuring the survival of the Organization itself and protecting the achievements of 78 years of international cooperation in civil aviation.

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