



MINISTRY OF TRANSPORT OF THE RUSSIAN FEDERATION



# The 11<sup>th</sup> Air Law Conference

October 7<sup>th</sup>, 2022, Baku

Theme: Unilateral Restrictive Measures  
in International Air Law: A New Reality

**Mr. Dmitry Zverev**

State-secretary – deputy Minister  
Ministry of transport of the Russian Federation



# INTERNATIONAL AIR LAW SOURCE SYSTEM

Convention on International Civil Aviation, 1944

Standards and Recommended Practices (SARPs)

Multilateral and bilateral international treaties

Soft Law



# THE VIENNA CONVENTION ON THE LAW OF TREATIES

## **Article 26** «Pacta sunt servanda»

«Every treaty in force is binding upon the parties to it and must be performed by them in good faith».

## **Article 27** «Internal law and observance of treaties»

«A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty».

## **Article 60** «Termination or suspension of the operation of a treaty as a consequence of its breach»

«1. A material breach of a bilateral treaty by one of the parties entitles the other to invoke the breach as a ground for terminating the treaty or suspending its operation in whole or in part.

2. A material breach of a multilateral treaty by one of the parties entitles:

(b) a party specially affected by the breach to invoke it as a ground for suspending the operation of the treaty in whole or in part in the relations between itself and the defaulting State»



# PRINCIPLES OF INTERNATIONAL AIR LAW

- ❖ State sovereignty over the airspace above its land territory  
*(Chicago Convention, Article 1)*
- ❖ Freedom of overflight over internationally regulated territories  
*(Convention on high seas, Article 2, para 4)*
- ❖ Civil aviation safety  
*(Chicago Convention, Article 44, para d and h)*
- ❖ Non-discrimination in airlines' commercial activities  
*(Chicago Convention, Article 44, para g)*







# ACCESS TO AIRSPACE

## Provisions of the Chicago Convention

### **Article 11 «Applicability of air regulations»**

*«Subject to the provisions of this Convention, the laws and regulations of a contracting State relating to the admission to or departure from its territory of aircraft engaged in international air navigation, or to the operation and navigation of such aircraft while within its territory, shall be applied to the aircraft of all contracting States without distinction as to nationality, and shall be complied with by such aircraft upon entering or departing from or while within the territory of that State».*

### **Article 44g «Objectives»**

*«Avoid discrimination between contracting States»*

## Sanctions by EU Member States and non-EU countries

### **EU Council Regulation No 833/2014 of 31 July 2014**

(amended on 28 February, 2022), Article 3d, paragraph 1:

*«It shall be prohibited for any aircraft operated by Russian air carriers, including as a marketing carrier in code-sharing or blocked-space arrangements, or for any Russian registered aircraft, or for any non-Russian-registered aircraft which is owned or chartered, or otherwise controlled by any Russian natural or legal person, entity or body, to land in, take off from or overfly the territory of the Union».*

### **USA Department of Transportation Order No 2022-3-2 of 2 March 2022**, paragraph 3:

*«We suspend, pursuant to 49 U.S.C. §41703(b)(1), the authority of all Russian foreign civil aircraft operators to navigate aircraft in the United States and until further Order or Notice of the Department».*



# ACCESS TO AIRPORT SERVICES

## Provisions of the Chicago Convention

### **Article 15 «Airport and similar charges»**

(paragraph 1)

*«Every airport in a contracting State which is open to public use by its national aircraft shall likewise, subject to the provisions of Article 68, be open under uniform conditions to the aircraft of all the other contracting States. The like uniform conditions shall apply to the use, by aircraft of every contracting State, of all air navigation facilities, including radio and meteorological services, which may be provided for public use for the safety and expedition of air navigation».*

## Sanctions by EU Member States and non-EU countries

### **EU Council Regulation No 833/2014 of 31 July 2014**

(amended on 25 February, 2022), Article 3c, paragraph 3:

*«It shall be prohibited to provide any one or any combination of the following activities: overhaul, repair, inspection, replacement, modification or defect rectification of an aircraft or component, with the exception of pre-flight inspection, in relation to the goods and technology listed in Annex XI (Aircraft, spacecraft, and parts thereof), directly or indirectly, to any natural or legal person, entity or body in Russia or for use in Russia».*



## Provisions of the Chicago Convention/SARPS

### Article 83bis «Transfer of certain functions and duties»

(paragraph a):

*«Notwithstanding the provisions of Articles 12, 30, 31 and 32 a), when an aircraft registered in a contracting State is operated pursuant to an agreement for the lease, charter or interchange of the aircraft or any similar arrangement by an operator who has his principal place of business or, if he has no such place of business, his permanent residence in another contracting State, the State of registry may, by agreement with such other State, transfer to it all or part of its functions and duties as State of registry in respect of that aircraft under Articles 12, 30, 31 and 32 a). The State of registry shall be relieved of responsibility in respect of the functions and duties transferred».*

**Provisions of the Annex 8 to the Chicago Convention «Airworthiness of aircraft» and of the Doc 9760 «Airworthiness Manual»**

## Sanctions by EU Member States and non-EU countries

### EU Council Regulation No 833/2014 of 31 July 2014

(amended on 25 February, 2022), Article 3c, paragraph 2:

*«It shall be prohibited to provide insurance and reinsurance, directly or indirectly, in relation to goods and technology listed in Annex XI (Aircraft, spacecraft, and parts thereof) to any person, entity or body in Russia or for use in Russia».*

### EU Council Regulation No 474/2006 of 22 March 2006

(amended on 8 April and 1 June, 2022), paragraph 21:

*«In accordance with the common criteria set out in the Annex to Regulation (EC) No 2111/2005, the Commission considers that the list of air carriers, which are subject to an operating ban within the Union, as set out in Annex A to Regulation (EC) No 474/2006, should be amended to include all air carriers certified in Russia operating aircraft».*

**Decision of the BCAA of 12 March, 2022** on suspension of all Certificates of Airworthiness of those aircraft operating under the Article 83bis Agreement between Bermuda and the Russian Federation.



# FACILITATION OF FORMALITIES

## Provisions of the Chicago Convention

### Article 22 «Facilitation of formalities»

*«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.»*

## Sanctions by EU Member States and non-EU countries

### EU Council Regulation No 833/2014 of 31 July 2014

(amended on 25 February, 2022), Article 3c, paragraph 2:

*«It shall be prohibited to sell, supply, transfer or export, directly or indirectly, goods and technology suited for use in aviation or the space industry, as listed in Annex XI (Aircraft, spacecraft, and parts thereof), and jet fuel and fuel additives as listed in Annex XX, whether or not originating in the Union, to any natural or legal person, entity or body in Russia or for use in Russia».*





### **ICAO Assembly Resolution A40-17**

**«Consolidated statement of continuing ICAO policies and practices related to environmental protection - General provisions, noise and local air quality»**

The Assembly:

*«1. Declares that ICAO, as the lead United Nations (UN) Agency in matters involving international civil aviation, is conscious of and will continue to address the adverse environmental impacts that may be related to civil aviation activity and acknowledges its responsibility and that of its Member States to achieve maximum compatibility between the safe and orderly development of civil aviation and the quality of the environment. In carrying out its responsibilities, ICAO and its Member States will strive to: a) limit or reduce the number of people affected by significant aircraft noise; b) limit or reduce the impact of aviation emissions on local air quality; and c) limit or reduce the impact of aviation greenhouse gas emissions on the global climate»*

## **ENVIRONMENTAL PROTECTION IN THE CONTEXT OF SANCTIONS AGAINST THE RUSSIAN FEDERATION'S AVIATION SECTOR**

”

*«Route changes and increased flight times due to sanctions against Russia (from 30 minutes to 5 hours, depending on the route) led to an increase in greenhouse gas emissions by more than 25%»*

**Roslesinforg – Federal Forest Inventory Manager**



## IN THE CONTEXT OF SANCTIONS AGAINST THE RUSSIAN FEDERATION'S AVIATION SECTOR.

### OVERVIEW

#### Chicago Convention, 1944

##### Article 44 «Objectives»

«The aims and objectives of the 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:

- a) Insure the safe and orderly growth of international civil aviation throughout the world;
- i) Promote generally the development of all aspects of international civil aeronautics».

#### ICAO Assembly Resolution A40-9 «Consolidated statement of continuing ICAO policies in the air transport field»

##### The Assembly:

«3. Urges Member States to avoid adopting unilateral and extraterritorial measures that may affect the orderly, sustainable and harmonious development of international air transport and to ensure that domestic policies and legislation are not applied to international air transport without taking due account of its special characteristics».

«Flight bans and sanctions will cause a loss of capacity, affecting Europe-Asia routes and exacerbating a current capacity crunch.

Moreover, if the Western sanctions against Russia intensify, all airlines that have not hedged their fuel needs will feel the pinch as the aviation fuel prices rose significantly on the market.

Airlines may pass on the cost of fuel to passengers by raising airfares, which could reduce passenger demand for air travel».

#### **International Air Transport Association**

«Flights between Turkey and Russia decreased by 30% from mid-February to mid-March. Lithuania lost 46% of flights through its territory, more than half of them are related to the termination of air traffic to and from Russia. Significant reduction of flights from Germany, France, Britain, Poland and Latvia for the same reason is noted».

**European Organization for the Safety of Air Navigation**  
«Eurocontrol»



# IN THE CONTEXT OF SANCTIONS AGAINST THE RUSSIAN FEDERATION'S AVIATION SECTOR. PARTICULAR CASES



*«Virgin Atlantic Airways Ltd.» is pulling out of Hong Kong for good, canceling flights and closing its offices in the Asian financial hub, ending a 30-year history in the city.*

*The UK airline said in a statement Wednesday that several factors contributed to its decision, including, on the basis of Russian airspace remaining closed, that Heathrow-Hong Kong-Heathrow flight times would be at least 1 hour longer, and that in 2019, Virgin Australia ended Hong Kong-Melbourne and Hong Kong-Sydney services, reducing the number of connecting customers to and from Australia.*

*Around 46 of «Virgin Atlantic» jobs will be impacted, consisting of a mix of office staff and cabin crew».*

**Source: Bloomberg. Europe edition**



*«The need to avoid Russian airspace, soaring fuel prices and low flight loads have brought «Finnair» to the brink of bankruptcy. The operating loss of the company for the first half of 2022 was a record €133 mln.*

*The consequences in the long run may be much more devastating for «Finnair» than the pandemic. Some of the flights to the Asia-Pacific region, which had given «Finnair» up to 50% of its profits, were cancelled. Now the trip to Tokyo, for example, takes not 9 hours, but 13.*

*Finnish planes fly around Russian territory either via the North Pole, which is dangerous because of possible failure of air navigation systems. Or via the Caucasus, flying east of Poland. Lengthening the route means higher fuel costs. According to the airline report, the cost of fuel over the past 6 months has doubled, and now it accounts for 55% of «Finnair's» costs, compared with 30% in December 2021».*

**Source: the Finnish newspaper «Helsingin Sanomat»**





# BILATERAL AGREEMENTS



## Agreement Between the Government of Bermuda Department of Civil Aviation and Federal Aviation Administration of Russia

### Article X

«Any disagreement concerning the interpretation or application of this Agreement shall be resolved by consultation between the Parties and shall not be referred to any international tribunal, arbitration, or third party settlement».



## EXCERPTS FROM MODEL AIR SERVICES BILATERAL AGREEMENT

### Article «Grant of traffic rights»

«The designated airlines of the State of each Party shall enjoy exercising, while operating agreed service on a specified route, the following rights:

- a) To fly across the territory of the State of the other Party without stops;
- b) To make stops in the said territory for non-traffic purposes;
- c) To make stops in the said territory at points specified in the Annex to this Agreement, for the purpose of taking on or putting down international traffic, such as passengers, cargo and mail, separately or combined».

### Article «Settlement of disputes»

«If any dispute arises between the Parties relating to the interpretation or application of this Agreement, the Parties shall in the first place try to settle it by negotiation between Aeronautical Authorities of the States of both Parties.

If the said Aeronautical Authorities fail to reach an agreement through the negotiations, the dispute shall be settled through diplomatic channels».



**THANK YOU FOR YOUR ATTENTION!**

