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Unlawful Seizure: The Legal Implications Of Russia's Re-Registration Of Leased Aircraft

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**“UNLAWFUL SEIZURE:
THE LEGAL IMPLICATIONS OF RUSSIA’S
RE-REGISTRATION OF LEASED AIRCRAFT”**

MATTHEW ORMSBEE*

ABSTRACT

During the Russian invasion of Ukraine, Russia passed a law allowing its domestic airlines to reregister foreign-owned aircraft on the Russian aircraft registry. This law raises important questions about dual registration—*forbidden under international law*—since the prior foreign aviation authorities had not consented to the deregistration of the subject aircraft. Even as lessors revoked airworthiness certificates, Russia re-registered more than 350 leased aircraft. The most significant problem in civil aviation today is Russia’s re-registration law, which undermines predictability, order, and safety. This essay argues that Russia passed its registration law because its war left it with few other options. This does not make Russia’s actions legally defensible, but the context helps frame potential solutions, which will be explored after examining the international aircraft registration regime and the legal implications of Russia’s actions.

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I. INTRODUCTION

When Russia invaded Ukraine in February 2022, it learned that crimes of aggression have consequences—in equal parts on the battlefield and in civil aviation.¹ With each Russian offensive, states increasingly isolated Russia with economic sanctions, diplomatic condemnations, and a momentous and extraordinary vote removing Russia as a member of the International Civil Aviation Organization (ICAO) Council.² Increasingly, Russia made desperate decisions to keep its economy and civil aviation industry afloat.³

Against this backdrop, on March 14, 2022, Russia enacted an unprecedented domestic law allowing Russian-based airlines to reregister foreign-owned aircraft on the Russian national registry.⁴ The law permitted Russian airlines to fly such aircraft

¹ The Rome Statute (1998) and its amendment condemn an “act of aggression” as criminal and define it as “the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State.” Rome Statute of the International Criminal Court art. 8 *bis*, July 17, 1998, 2187 U.N.T.S. 38544 (entered into force July 1, 2002); C.N.651.2010.TREATIES-8 (Depositary Notification).

² Allison Lampert, *Russia Loses U.N. Aviation Council Seat in Rebuke*, REUTERS (Oct. 1, 2022, 11:49 AM), <https://www.reuters.com/world/europe/russia-not-re-elected-un-aviation-agencys-36-member-council-2022-10-01/> [https://perma.cc/2KBT-GRAJ].

³ Natasha Turak, *Russia’s Economy ‘in for Very Tough Times’ Despite Improved Growth Outlook, IMF Managing Director Says*, CNBC (Feb. 12, 2023, 5:16 AM), <https://www.cnbc.com/2024/02/12/russias-economy-in-for-very-tough-times-despite-improved-outlook-imf.html> [https://perma.cc/P7NY-S8XT].

⁴ *Russian Law Creates New Hurdle for Foreign Plane Lessors*, REUTERS (Mar. 14, 2022, 12:51 PM), [https://www.reuters.com/world/putin-signs-law-registering-leased-planes-airlines-property-tass-2022-03-14/#:~:text=March%2014%20\(Reuters\)%20%2D%20Russia,default%20involving%20hundreds%20of%20jetliners](https://www.reuters.com/world/putin-signs-law-registering-leased-planes-airlines-property-tass-2022-03-14/#:~:text=March%2014%20(Reuters)%20%2D%20Russia,default%20involving%20hundreds%20of%20jetliners) [https://perma.cc/3DEC-KFMZ].

domestically and internationally, even while they remained duly registered abroad, mainly in Ireland and Bermuda.⁵ Aviation authorities and owners of the leased aircraft had not consented to a deregistration of the subject aircraft from their nationality registries before the law was enacted.⁶

On the day the Russian re-registration bill became law, Ireland and Bermuda⁷ revoked airworthiness certificates for several leased aircraft in Russia under Article 31 of the Convention on International Civil Aviation (1944) (Chicago Convention).⁸ This is a drastic legal measure since a civil aircraft flying internationally requires a valid certificate of airworthiness to operate.⁹ Irish and Bermudan authorities reportedly revoked the airworthiness certificates because they could no longer access the subject aircraft and ensure appropriate safety oversight.¹⁰ With no good options, the foreign owners took the only viable measure available to them. To date, Russia has re-registered more than 350 leased aircraft on its national aircraft registry.¹¹

The most significant problem in civil aviation today is Russia's national re-registration law, which undermines the predictability, order, and safety upon which aircraft lessors, air carriers, and passengers rely.¹² Russia is one of the largest global markets for leased aircraft, with Russian-based airlines operating more than 500 foreign-owned aircraft.¹³ Thus, Russia's reregistration law

⁵ *Id.*

⁶ Stefan-Michael Wedenig & Donal Patrick Hanley, *The Actions of the Russian Federation and their Impact on the Chicago and Cape Town Convention – An Analysis*, GER. J. AIR & SPACE L. 2022, ZEITSCHRIFT FUER LUFT - UND WELTRAUMRECHT (ZLW), Oct. 7, 2022, at 388.

⁷ Bermuda acted through the U.K. Aviation Authority. *Id.* at 390.

⁸ *Id.* at 388; see Convention on International Civil Aviation art. 31, Dec. 7, 1944, 15 U.N.T.S 295 [hereinafter Chicago Convention].

⁹ See Chicago Convention, *supra* note 8, at art. 31.

¹⁰ *Bermuda suspends permits for Russian-operated planes over safety oversight concerns*, REUTERS (Mar. 13, 2022, 5:27 PM), <https://www.reuters.com/business/aerospace-defense/bermuda-revokes-licences-russian-operated-planes-over-safety-concerns-2022-03-13/> [<https://perma.cc/NT4H-PXD8>]; *Irish aviation regulator suspends permits for Russian operated planes*, REUTERS (Mar. 14, 2022, 9:23 AM), <https://www.reuters.com/world/irish-aviation-regulator-suspends-permits-russian-operated-planes-2022-03-14/> [<https://perma.cc/CW95-KNZQ>].

¹¹ See Victoria Bryan, *Data shows Russia has re-registered 360 aircraft after sanctions*, AEROTIME (Apr. 21, 2022), <https://www.aerotime.aero/articles/30800-russia-re-register-aircraft-iba-data> [<https://perma.cc/N8TU-SHHU>].

¹² See *Russian Law Creates New Hurdle for Foreign Plane Lessors*, *supra* note 4.

¹³ See Simon Carswell, *Aircraft Lessors Face Billions in Write-Offs as Planes Re-Registered in Russia*, THE IRISH TIMES (Mar. 14, 2022), <https://www.irishtimes.com/business/aircraft-lessors-face-billions-in-write-offs-as-planes-re-registered-in-russia-1.4826923> [<https://perma.cc/43WT-2XCT>].

creates significant confusion and disorder in the international aviation law regime anchored to the Chicago Convention.¹⁴ The double-registration law amounts to state-sanctioned unlawful seizures of civil aircraft, which cannot be tolerated.¹⁵

This article does more than examine this legal problem and put forth solutions; it also views Russia in an inescapable conundrum under the old saying that “desperate times call for desperate measures.” Such a once-in-a-lifetime occurrence highlights how civil aviation is inextricably linked to politics, war, and diplomacy. The article argues that Russia enacted its *sui generis* registration law because its war—ill-conceived and unlawful as it is—has left Russia with no other options. This does not make Russia’s actions legally defensible, but the context helps frame potential solutions carefully tailored to the problem. The article puts forth proposals after examining the international aircraft registration regime and explaining the legal implications of Russia’s law for various parties.

II. AIRCRAFT REGISTRATION REGIME

The Paris Convention of 1919 is the earliest modern attempt at a multilateral civil aviation agreement.¹⁶ While this convention established several fundamental tenets of international civil aviation, states ultimately abandoned it in favor of the Chicago Convention, which was signed in 1944.¹⁷ The Chicago Convention remains the core international instrument for civil aviation and a remarkably successful treaty based on its longevity and near-universal ratification.¹⁸

The modern aircraft registration regime arises from the Chicago Convention.¹⁹ Specifically, Article 17 of the Convention

¹⁴ Wedenig & Hanley, *supra* note 6, at 388.

¹⁵ See ICAO Council Review Dual Registration of Commercial Aircraft by Russian Federation, INT’L CIV. AVIATION ORG. (June 28, 2022), <https://www.icao.int/Newsroom/Pages/ICAO-Council-reviews-dual-registration-of-commercial-aircraft-by-Russian-Federation.aspx> [<https://perma.cc/Z4PU-XNV3>].

¹⁶ *Milestones in International Civil Aviation*, INT’L CIV. AVIATION ORG., <https://www.icao.int/about-icao/History/Pages/Milestones-in-International-Civil-Aviation.aspx> [<https://perma.cc/P4TQ-KLMC>]; see generally Convention Relating to the Regulation of Aerial Navigation, Oct. 13, 1919, 828 U.N.T.S. 305 (hereinafter Paris Convention).

¹⁷ *Milestones in International Civil Aviation*, *supra* note 16; see generally Chicago Convention, *supra* note 8.

¹⁸ John Cobb Cooper, *The Chicago Convention—After Twenty Years*, 19 U. MIAMI L. REV. 333, 333–34 (1965).

¹⁹ See generally Chicago Convention, *supra* note 8.

requires that “[a]ircraft have the nationality of the State in which they are registered.”²⁰ Thus, each civil aircraft in the world is wedded to the nationality of its host state. Next, Article 18 states that “aircraft cannot be *validly registered* in more than one State,”²¹ though an aircraft’s registration may change from state to state.²² Accordingly, civil aircraft may legally maintain only a single state registration at any given time. A new state registration, if legally completed, supplants the prior state registration.²³

The single-state registration regime is fundamental to international civil aviation, underpinning unique state rights to civil aircraft based on registration.²⁴ The nationality of an aircraft allows it to remain under the regulatory control of the state of registration, regardless of where the aircraft is located, subject to Article 11 of the Convention.²⁵ Thus, the state of registration has quasi-territorial jurisdiction—extending well beyond the physical boundaries of the registration state—and the aircraft maintains its nationality even when on the ground in another state.²⁶

Any aircraft registration or transfer of a registration by a state must be “made in accordance with its laws and regulations” under Article 19, subject to the consent of the de-registering state.²⁷ The Chicago Convention does not speak to the specifics of how states execute registration transfers.²⁸ However, in practice, registration transfers from one state to another state are commonly a well-choreographed procedure, ensuring a simultaneous change of state registration so that at no time is the aircraft unregistered or double-registered.²⁹

In addition, as a general principle of international law, national laws shall not contravene treaty obligations to the contrary.³⁰

²⁰ *Id.* at art. 17.

²¹ *Id.* at art. 18 (emphasis added).

²² *Id.*

²³ *See id.*

²⁴ The state of registration accrues certain rights of oversight and compliance of the subject aircraft, including the certificate of airworthiness under Article 31 of the Convention. *Id.* at art. 31.

²⁵ *See id.* at art. 11 (“[T]he laws and regulations of a contracting State relating to the admission to or departure from its territory of aircraft engaged in international air navigation . . . shall be applied to the aircraft of all contracting States without distinction as to nationality.”).

²⁶ *Id.*

²⁷ *Id.* at art. 19.

²⁸ *See id.*

²⁹ *See Cross Border Transfers*, INT’L CIV. AVIATION ORG., <https://www.icao.int/safety/cross-border-transfers/Pages/XBT%20Home.aspx> [<https://perma.cc/SR9H-J82A>].

³⁰ Vienna Convention on the Law of Treaties art. 36, May 23, 1969, 1155 U.N.T.S 331 (hereinafter VCLT).

National laws about registration or re-registration are within the scope of this general principle of international law.³¹ Thus, under the Vienna Convention on the Law of Treaties (1969), Russia's national legislation violating the provisions of the Chicago Convention is unenforceable to the extent that it contravenes state parties' obligations under the Chicago Convention's registration principles.³²

III. LEGAL IMPLICATIONS

Russia's reregistration law substantially affects several parties in international civil aviation. While each party is addressed individually, relationships and dependencies bind each relevant party, creating a tangled web of second- and third-order effects that are not adequately addressed without repealing the re-registration law or taking steps outlined in Section IV below.

A. IMPLICATIONS FOR AIRCRAFT LEASING AND FINANCING

Russia's re-registration law turns aircraft leasing and financing on its head. As a starting point, the Cape Town Convention and Aircraft Protocol of 2001 (Cape Town Convention) creates an international registry to record claims, establish priority, and provide notice regarding existing global interests.³³ Under the Cape Town Convention, if a lessee defaults on its obligations, the lessor can recover the leased asset, make claims with respective insurers, and take other lawful recourse.³⁴ However, in the case of Russia, an aircraft may be unrecoverable when a default occurs if the aircraft remains in Russia for the near term or if Russian or other aviation authorities ground them indefinitely based on safety or compliance violations.³⁵

This results in substantial complications for insurers and flying customers when fewer aircraft are in the pool of available aircraft

³¹ *See id.*

³² *See id.*

³³ Convention on International Interests in Mobile Equipment art. 16, Nov. 16, 2001, 2307 U.N.T.S. 4285 (hereinafter Cape Town Convention); *see also* Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment, Nov. 16, 2001, 2367 U.N.T.S. 517 (hereinafter Aircraft Protocol).

³⁴ *See* Cape Town Convention, *supra* note 33, at art. 8.

³⁵ James Holder, Justin Benson, Anna Andreeva & Harrison Denman, *Aviation Insurance and Other Claims Arising out of Russian Sanctions*, WHITE & CASE (July 12, 2022), <https://www.whitecase.com/insight-alert/aviation-insurance-and-other-claims-arising-out-russian-sanctions> [<https://perma.cc/T5M6-Q7LB>].

within a state.³⁶ Greater usage of a shrinking pool of civil aircraft may also result in faster wear and tear and a greater demand for routine aircraft maintenance.³⁷ The scarcity of aircraft may also result in more significant usage of fewer aircraft (meaning faster depreciation), higher costs of maintenance, and higher flying costs for the public.³⁸

In response, creditors and lessors must re-evaluate their level of risk for reregistered aircraft in Russia. Shockingly, total loss of assets may occur if an aircraft in Russia is unrecoverable.³⁹ On this basis, only a small number of companies may seek to lease to Russian operators, even after the Russo-Ukrainian war. Separately, if the re-registration of assets is considered an act of “illegality” under a given insurance agreement, it may trigger a default.⁴⁰ Lease rates will surely skyrocket for those flying in Russia, and lawsuits will determine whether lessors are permanently deprived of stranded aircraft in Russia and whether they have truly exhausted all measures to avoid a total loss.⁴¹

In turn, this may kickstart domestic Russian aircraft production, assuming Russia can muster such an industrial undertaking during the war.⁴² At the very least, Russia’s law will prompt a second look at insurance contracts for the unforeseen act of re-registration.⁴³ This is a massive undertaking when Russia’s law

³⁶ Padraic Halpin, Conor Humphries & Tim Hepher, *Aircraft Lessors Gird to Battle Insurers over Russia Jet Default*, REUTERS (May 10, 2022, 2:08 PM), <https://www.reuters.com/business/aerospace-defense/aircraft-lessors-gird-battle-insurers-over-russia-jet-default-2022-05-10/> [https://perma.cc/6A7B-9SSQ].

³⁷ Marina Aronova, *Punished by Western Sanctions, Russia’s Airlines are Showing More Cracks and More Problems*, RADIO FREE EUROPE/RADIO LIBERTY (Jan. 29, 2023 12:37 PM), <https://www.rferl.org/a/russia-aviation-industry-problems-western-sanctions/32244641.html> [https://perma.cc/6Y6G-VP5J].

³⁸ Steven Harris, *West Sanctions Russian Aviation, But Moscow Decides to Keep Planes Flying Despite Risks*, RUSSIA MATTERS (Oct. 26, 2023), <https://www.russiamatters.org/analysis/west-sanctions-russian-aviation-moscow-decides-keep-planes-flying-despite-risks> [https://perma.cc/UC7C-NKMQ].

³⁹ Holder, Benson, Andreeva, & Denman, *supra* note 35.

⁴⁰ Wedenig & Hanley, *supra* note 6, at 391.

⁴¹ *Leased Aircraft Stranded in Russia: A Survey of the Pending Insurance Claim Litigation in Different Jurisdictions*, KATTEN (Jan. 3, 2023), <https://katten.com/leased-aircraft-stranded-in-russia-a-survey-of-the-pending-insurance-claim-litigation-in-different-jurisdictions> [https://perma.cc/D9YD-E4XM].

⁴² *Russia has Every Opportunity to Boost Domestic Aircraft Production — PM Mishustin*, TASS (June 26, 2023, 8:53 AM), <https://tass.com/economy/1638619> [https://perma.cc/GG6S-AWFR].

⁴³ *See Aircraft Leasing Insurance Change: Sub-Limited Hull War Confiscation Risk*, HOLLAND & KNIGHT: AVIATION L. BLOG (Nov. 3, 2022), <https://www.hkllaw.com/en/insights/publications/2022/11/aircraft-leasing-insurance-change-sublimited-hull-war> [https://perma.cc/GC8Z-4HAZ].

is estimated at a \$10 billion exposure in 2023 for Russia's entire foreign-leased fleet.⁴⁴ With more than 500 foreign-owned aircraft in Russian airspace, the ramifications for lessors and financiers—and thus airlines and customers—cannot be overstated.⁴⁵

Lastly, this may spur changes in Russia's domestic legal framework. For instance, Russian law currently prohibits wet lease agreements, absent a codeshare agreement in place.⁴⁶ Wet leasing permits an airline to give another airline an aircraft “with crew, maintenance and insurance.”⁴⁷ The receiving airline pays for the number of hours of operation.⁴⁸ Perhaps as a result of scarce aircraft, maintenance, and parts, Russia's two largest airlines—Aeroflot and S7 Airlines—have asked Moscow to legalize wet leasing.⁴⁹ Wet leasing would provide flexibility to carriers that have suffered logistically or financially due to the war, the COVID-19 pandemic, and Western sanctions implemented against Russia.⁵⁰ As unlawfully seized aircraft begin to suffer from wear and tear, Russian airlines will seek creative methods to keep their fleets operable and attractive to customers.⁵¹

B. IMPLICATIONS FOR THE CHICAGO CONVENTION

Russia's re-registration law shakes the foundation of modern aviation law. The Chicago Convention was intended to unify states in furtherance of safety, efficiency, security, international order, and peace.⁵² Yet, Russia's law tests these core principles of international civil aviation with the stroke of a pen.⁵³ Specifically, the re-registration regime strikes at one of the central tenets of aviation

⁴⁴ Tim Hepher & Jamie Freed, *Russia Draft Law Raises Doubt over Fate of \$10 Bln of Jets*, REUTERS (Mar. 20, 2022, 8:36 AM), <https://www.reuters.com/legal/transactional/russia-draft-law-raises-doubt-over-fate-10-bln-jets-2022-03-10/> [https://perma.cc/5CFT-YETB].

⁴⁵ See Carswell, *supra* note 13.

⁴⁶ *Why Russian Airlines Are Asking Moscow to Legalize Wet Leasing*, AVIATION WEEK NETWORK (May 19, 2023), <https://aviationweek.com/air-transport/safety-ops-regulation/why-russian-airlines-are-asking-moscow-legalize-wet-leasing> [https://perma.cc/A9MC-G5S8].

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ Taylor Rains, *How Russia is Evading Sanctions to Keep \$10 Billion Worth of Seized Boeing and Airbus Planes Flying*, BUSINESS INSIDER (July 31, 2023 4:16 AM), <https://www.businessinsider.com/how-russia-keeping-western-built-airbus-boeing-planes-flying-sanctions-2023-7> [https://perma.cc/U9U4-H5BL].

⁵² See Chicago Convention, *supra* note 8, at Preamble, art. 44 (for its aims and objectives).

⁵³ *Russian Law Creates New Hurdle for Foreign Plane Lessors*, *supra* note 4.

law under Article 18 of the Chicago Convention: the single nationality of aircraft.⁵⁴ Russia's re-registration law is unparalleled in scope and in its intent to disunify state parties to the Chicago Convention. No state has ever directly challenged an unambiguous mandate under the Chicago Convention in such a fashion.⁵⁵

Russia also violates the sovereign rights of Ireland and the United Kingdom (via Bermuda) by disregarding the Article 19 obligation that a transfer of aircraft registration shall be made subject to the lessor's consent.⁵⁶ Admittedly, Russia initially allowed the double-registered aircraft to be flown only within Russian airspace, thus not falling within the scope of the Chicago Convention, which encompasses only cross-border aviation and not domestic flights.⁵⁷ However, this changed when Aeroflot flew one of its leased aircraft to Sri Lanka.⁵⁸ This flight to Sri Lanka (and any others not publicized) symbolizes a turning point in the application of the re-registration law.⁵⁹

The international flight to Sri Lanka marked the first blatant violation of the Chicago Convention.⁶⁰ Russia's flagrant and ongoing breach of this Convention must be met with severe consequences linked to Russia's lack of remorse and the extent of its unlawful international flights once final stock is taken. The Chicago Convention is the bedrock of stability and predictability in international civil aviation.⁶¹ Thus, Russia is playing a dangerous game in the case of a double-registered aircraft flown without a valid airworthiness certificate that is still under another

⁵⁴ See Chicago Convention, *supra* note 8, at arts. 17–18.

⁵⁵ See *Russian Law Creates New Hurdle for Foreign Plane Lessors*, *supra* note 4.

⁵⁶ If the lessor's consent was not required, any state could simply reregister an aircraft without input from the prior-registered state. In practice, two states coordinate closely to deregister and reregister simultaneously so that aircraft are never without registration or with double registration. Stefan-Michael Wedenig & Donal Patrick Hanley, *On Reports of Potential Reregistration of Aircraft in Breach of the 1944 Chicago Convention*, MCGILL (Mar. 21, 2022), <https://www.mcgill.ca/iasl/article-potential-reregistration-aircraft-breach-1944-chicago-convention> [<https://perma.cc/7TR3-5Q8G>]; see *Cross Border Transfers*, *supra* note 29.

⁵⁷ Anastasia Dagaeva, *Turbulent Times: How Russian Airlines Are Weathering the Storms*, CARNEGIE ENDOWMENT FOR INT'L PEACE (Mar. 28, 2023), <https://carnegieendowment.org/politika/89389> [<https://perma.cc/K38H-VQBT>]; see Chicago Convention, *supra* note 8, at arts. 1–2 (relating to sovereignty and territory).

⁵⁸ Pranjali Pande, *Aeroflot Suspends Sri Lanka Flights After A330 Detained*, SIMPLE FLYING (June 5, 2022), <https://simpleflying.com/aeroflot-sri-lanka-aircraft-seizure/#:~:text=Aeroflot%20has%20suspended%20all%20flights,for%20its%20invasion%20of%20Ukraine> [<https://perma.cc/YK9X-PCUA>].

⁵⁹ See *id.*

⁶⁰ See *id.*

⁶¹ See generally Chicago Convention, *supra* note 8.

nationality under the Chicago Convention. The international community should make an example out of this case to dissuade others from following Russia's precedent.

C. IMPLICATIONS FOR THE RULE OF LAW

Russia's actions are an affront to the rule of law by flaunting long-standing tenets of the Chicago Convention and general legal principles. By doing so, Russia sets a dangerous precedent that other rogue states may follow. The rule of law means the equal application of the law without favoritism and that states are individually and jointly accountable for their actions that contravene international law.⁶² The rule of law is fundamental to reliable standards and accountability in the international community.⁶³

Questions about the rule of law are immediately raised when Russia—one of the most prominent parties in civil aviation—deviates from settled state practice in contravention of international law. Without the rule of law, other states will undoubtedly follow Russia's example or exclude Russia's double-registered aircraft from their respective airspace, as has occurred in Turkey and China.⁶⁴ Such a break from settled international practice threatens to unravel a system that serves consumer interests and aviation safety.⁶⁵

The ICAO Council has publicly denounced Russia's actions, reporting the infractions to the ICAO Assembly and stating that such acts will not be tolerated.⁶⁶ The Council's denunciation is without precedent but is greatly needed to deter copycat states.⁶⁷ If the single-state registration standard erodes, the civil aviation regime that has prevailed since 1944 will be less predictable with

⁶² *What is the Rule of Law*, UNITED NATIONS, [https://www.un.org/ruleoflaw/what-is-the-rule-of-law/#:~:text=For%20the%20United%20Nations%20\(UN,and%20which%20are%20consistent%20with](https://www.un.org/ruleoflaw/what-is-the-rule-of-law/#:~:text=For%20the%20United%20Nations%20(UN,and%20which%20are%20consistent%20with) [<https://perma.cc/AH8H-76Y2>].

⁶³ *Id.*

⁶⁴ See *Russia's Transport Ministry to Negotiate 'Double Registration' of Aircraft with Turkey*, TASS (Nov. 8, 2022), <https://tass.com/economy/1533745> [<https://perma.cc/2VXB-YZWF>].

⁶⁵ See Dagaeva, *supra* note 57.

⁶⁶ Dawn Clancy, *For the UN, the Russian Aviation Problem and Potential Money Losses Haven't Gone Away*, PASSBLUE (Nov. 8, 2022), <https://www.passblue.com/2022/11/08/for-the-un-the-russian-aviation-problem-and-the-potential-money-losses-havent-gone-away/> [<https://perma.cc/9PZD-2R6D>] (stating that ICAO issued a "Significant Safety Concern" (SSC) bulletin to Russia in June 2022).

⁶⁷ See *ICAO Council Reviews Dual Registration of Commercial Aircraft by Russian Federation*, INT'L CIV. AVIATION ORG. (June 28, 2022), <https://www.icao.int/Newsroom/Pages/ICAO-Council-reviews-dual-registration-of-commercial-aircraft-by-Russian-Federation.aspx> [<https://perma.cc/V5MN-FE8G>].

double or even triple registrations. States will find it much more challenging to verify that the safety measures for an aircraft have been met, and higher administrative costs will be passed on to consumers. Thus, double registration may encourage the willful breaking of international obligations and undermine ICAO's core principles under Article 44 of the Convention.⁶⁸

D. IMPLICATIONS FOR THIRD-PARTY STATES IN WHICH THE CONCERNED AIRCRAFT ARE FLOWN

States owe a duty of diligence not only to their citizens but to other states as well.⁶⁹ Specifically, states neighboring Russia are not to intervene in the affairs of other states or participate or aid in interfering with these rights.⁷⁰ Thus, if a state accepts Russia's double-registered aircraft into its sovereign airspace, it breaches this obligation under international law.⁷¹ Indeed, the standard of a single registration for civil aviation is likely an *erga omnes* obligation.⁷² If so, each state would owe a duty to all other states not to violate this international norm of civil aviation.⁷³

Russia's internal law also upends the core principle of uniformity of standards and recommended practices under the Chicago Convention.⁷⁴ Article 12 of the Chicago Convention requires contracting states to keep their international regulations "uniform, to the greatest possible extent," with those under the Convention.⁷⁵ In this way, states strengthen predictability and cohesion across national borders by ensuring that state practice is unified to the maximum extent possible. Indeed, Article 33 of the Chicago Convention is premised on states recognizing other states' certificates of airworthiness and licenses, so long as the issuing state has complied with "minimum standards" under the convention and its

⁶⁸ These include: (a) "Insur[ing] the safe and orderly growth of international civil aviation"; (d) meeting "the needs of the peoples of the world for safe, regular, efficient and economical air transport"; (f) "[i]nsur[ing] that the rights of contracting States are fully respected and that every contracting State has a fair opportunity to operate international airlines"; and (h) promoting the "safety of flight in international air navigation." Chicago Convention, *supra* note 8, at art. 44.

⁶⁹ HUGH M. KINDRED & PHILLIP M. SAUNDERS, *INTERNATIONAL LAW CHIEFLY AS INTERPRETED AND APPLIED IN CANADA* 33 (7th ed. 2006).

⁷⁰ *See id.*; *see also* U.N. Charter art. 2, ¶¶ 4,7; J.G. CASTEL, *INTERNATIONAL LAW CHIEFLY AS INTERPRETED AND APPLIED IN CANADA* 49–50 (Butterworth & Co. 3rd ed. 1976).

⁷¹ *See* KINDRED & SAUNDERS, *supra* note 69.

⁷² *See* HUANG JIEFANG, *AVIATION SAFETY AND ICAO 165–67* (Kluwer Law International 2009).

⁷³ *See id.*

⁷⁴ *See* Chicago Convention, *supra* note 8, at art. 37.

⁷⁵ *Id.* at art. 12.

annexes.⁷⁶ Uniformity of standards and recommended practices permits a level of trust and reliance among all states engaged in civil aviation.

Perhaps most notably, Russia infringes on Ireland's and Bermuda's nationality rights and state sovereignty with the re-registration statute.⁷⁷ Therefore, any other state that would recognize the Russian nationality of these aircraft and any purported certification and registration flowing from it would similarly risk infringing on the sovereign rights of Ireland and the U.K. (or at least abetting such infringement).⁷⁸ Such states would be equally culpable for permitting an aircraft to fly in their sovereign airspace without a valid airworthiness certificate and registration.⁷⁹

E. LEGAL PRECEDENT

While similar precedent is thankfully scarce, one past case is particularly relevant and noteworthy in this context.⁸⁰ The U.S. Court of Appeals for the Ninth Circuit in *Air One Helicopters, Inc. v. FAA* held that the U.S. Federal Aviation Administration improperly refused to register a helicopter based on its prior aircraft registration in Spain.⁸¹ Though the Ninth Circuit ruled that the helicopter in question could lawfully be registered in the U.S. while still being lawfully registered in Spain, this case is an anomaly that embodies the maxim that "hard facts make bad law."⁸² The Ninth Circuit judges sympathized with the plaintiff's lengthy and exhausting regulatory struggle and found that proof of a lien discharge in Spain was impossible to deliver to Spanish authorities because the original lien-holding corporation was dissolved.⁸³ In any case, the lien had been discharged and was not in issue.⁸⁴ Thus, the Ninth Circuit found that the Spanish registration was no longer "valid" per the language of Article 18 of the Convention.⁸⁵

While still valid precedent, this case is premised on extraordinary facts, has not been followed in subsequent cases, and

⁷⁶ *Id.* at art. 33.

⁷⁷ *Id.* at art. 1 (stating that "every State has complete and exclusive sovereignty over the airspace above its territory").

⁷⁸ Wedenig & Hanley, *supra* note 6, at 396.

⁷⁹ *Id.*

⁸⁰ *See* *Air One Helicopters, Inc. v. FAA*, 86 F.3d 880 (9th Cir. 1996).

⁸¹ *Id.* at 883.

⁸² *See id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

is easily distinguished from the facts of Russia's national law.⁸⁶ Nevertheless, *Air One Helicopters* stands for the astonishing proposition that a foreign court can determine the validity of an aircraft registration in another state.⁸⁷ Thus, based on non-binding but persuasive U.S. appellate-level precedent, a Russian court could rule that Ireland's prior registration, for example, is now invalid, and, therefore, Russia's registration is valid because it supersedes the earlier registration. This is a valid concern if Russian courts may be beholden to the political demands of the Kremlin.

Furthermore, the language of Article 19 of the Chicago Convention, based on a plain language reading, states that the domestic law of the registering or transferring state governs a transfer of registration.⁸⁸ Thus, Russia could make a colorable argument that its domestic law justifies such a registration transfer to skirt an allegation of double registration. After all, its domestic law, as the transferring state, governs and allows a transfer of registration on Russian terms.

In response to these anticipated arguments, it must first be noted that such a legal argument from Russia is unlikely because the *Air One Helicopters* case is a non-binding anomalous case from the U.S. It is truly a one-of-a-kind decision from another jurisdiction without comparison. The facts of *Air One Helicopters* are unlikely to be replicated again and are certainly not applicable in Russia's present situation.

Additionally, in real-world practice, the transfer of aircraft registration is a carefully choreographed dance between two states, where a deregistration statement from the prior state is virtually always required before or simultaneous with the processing of a registration transfer.⁸⁹ Absent a deregistration statement from a prior state, chaos would ensue in registration offices worldwide if parties could register aircraft without consent and coordination from the prior state of registration. As for *Air One Helicopters*, Russia may cite this case in support of such a claim, though the case is premised on singular facts, and ICAO and affected states should be prepared for such a possibility.

⁸⁶ See *IAL Aircraft Holding, Inc. v. FAA*, 206 F.3d 1042, 1047–48 (11th Cir. 2000).

⁸⁷ *Air One Helicopters, Inc.*, 86 F.3d at 883.

⁸⁸ Chicago Convention, *supra* note 8, at art. 19.

⁸⁹ *Air One Helicopters, Inc.*, 86 F.3d at 882 (noting U.S. Federal Aviation Administration regulations requiring a deregistration statement from the prior state before registering an aircraft in the U.S.).

IV. CONCLUSIONS AND PROPOSALS

A. PUBLIC STATEMENTS AND DEMANDS

It is unlikely that Russia will repeal its re-registration law soon. Therefore, states must collectively condemn the Russian re-registration law and demand that Russia repeal it. The ICAO Council has formally called on Russia “to immediately cease its infractions” and “urgently remedy these violations.”⁹⁰ Additionally, Canada and the United States have both condemned Russia’s actions.⁹¹ Still, these and other influential states must be more vocal about their disapproval through diplomatic channels and by lobbying for further denunciations on the floor of ICAO.

Beyond this, ICAO can publicly note infractions under Articles 54(j) and (k) of the Chicago Convention.⁹² These provisions authorize the ICAO Council to publicly report an infraction of the convention, a failure to carry out recommendations or determinations of the Council, or a failure to take appropriate action after a reasonable time following notice of the infraction.⁹³ For their part, Ireland and Bermuda must demand that Russia cease operating double-registered aircraft, even purely within Russia.

While multinational conventions like the Chicago Convention are a primary source of legal authority, customary international law may also hold Russia accountable.⁹⁴ International custom is generally formed from the statements, actions, and beliefs (*opinio juris*) of states.⁹⁵ Therefore, the civil aviation community needs urgent, consistent, and repeated denunciations to form norms and public beliefs against practices of double registration. Such state practice will serve to hold Russia accountable to the extent that treaty law falls short.

⁹⁰ ICAO Council Reviews Dual Registration of Commercial Aircraft by Russian Federation, *supra* note 67.

⁹¹ *What are the Sanctions on Russia and have they Affected Its Economy?*, BBC (Feb. 23, 2014), <https://www.bbc.com/news/world-europe-60125659> [<https://perma.cc/92BS-GB84>].

⁹² ICAO Council Reviews Dual Registration of Commercial Aircraft by Russian Federation, *supra* note 67.

⁹³ See Chicago Convention, *supra* note 8, at art. 54(j)–(k).

⁹⁴ See Statute of the International Court of Justice, art. 38, ¶ 1(a), June 26, 1945, T.S. No. 933.

⁹⁵ See *id.* at art. 38, ¶ 1(b).

B. ARTICLE 84 SETTLEMENT OF DISPUTES

Next, Ireland and Bermuda must attempt to engage in meaningful consultations and negotiations with Russia. If these are not reciprocated or fruitful after good faith efforts, Ireland and Bermuda must seek ICAO Council intervention under Article 84 of the Convention.⁹⁶ The aggrieved states must demand that the ICAO Council interpret the registration provisions of the Chicago Convention and declare that Russia's double-registration law contravenes the Convention's terms.

The Council must also rule that Russia's double-registration law cannot be justified because the Vienna Convention precludes reliance on national law that derogates treaty obligations.⁹⁷ The ICAO Council is empowered to decide the meaning of Articles 17, 18, and 19 of the Chicago Convention in a dispute between two or more contracting states.⁹⁸ While the ICAO Council's quasi-judicial power is conciliatory during early negotiations, a final decision is binding upon the parties.⁹⁹ Ultimately, the mere commencement of the Article 84 dispute settlement process would send a strong message to Russia.

C. LESSOR VIGILANCE

Lessors must remain vigilant monitoring their assets and move quickly to repossess leased aircraft if they leave Russian territory. This will require patience from lessors and cooperation from partner states. Even if a Russian airline wishes to cooperate with a foreign owner or financing party for repossession, "the obstacles put in place by the Russian authorities, combined with Western sanctions" make recovering aircraft in Russia "extremely challenging."¹⁰⁰

If a seizure is impossible, lessors must quickly revoke airworthiness certificates or other documents that qualify an aircraft to fly.

⁹⁶ Article 84 of the Chicago Convention provides for settlement of disputes by the ICAO Council if two or more contracting states disagree as to the interpretation of application of any part of the convention or its annexes. *See* Chicago Convention, *supra* note 8, at art. 84.

⁹⁷ *See* VCLT, *supra* note 30, at art. 27 ("A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. This rule is without prejudice to article 46.").

⁹⁸ Chicago Convention, *supra* note 8, at art. 84 ("If any disagreement between two or more contracting States relating to the interpretation or application of this Convention and its Annexes cannot be settled by negotiation, it shall, on the application of any State concerned in the disagreement, be decided by the Council.").

⁹⁹ *See id.* at art. 86

¹⁰⁰ Holder, Benson, Andreeva, & Denman, *supra* note 35.

Grounding an asset outside Russia would at least take the aircraft out of the Russian fleet, though it would soon render the aircraft valueless with the passage of time and long-term disuse. This justifies the expediency of all other measures against Russia.

D. PASSENGER CONSIDERATIONS

The Chicago Convention concerns itself with the growth of the civil aviation industry while protecting the safety and security of operations.¹⁰¹ The Convention's chief concerns are passenger welfare and quick and efficient travel.¹⁰² Regrettably, Russia's actions also appear to lead to longer travel times or canceled international flights.¹⁰³ For example, because Turkey has closed its airspace to Russia's double-registered aircraft, flights to Egypt now take up to thirty minutes longer from many departing locations.¹⁰⁴ Longer travel times lead to greater fuel costs, which are borne by the airlines but passed on in part to customers.¹⁰⁵

Additionally, Air Canada temporarily suspended or reduced certain flight routes between Toronto and Montreal to destinations in China and India.¹⁰⁶ Because Russia closed its airspace to Air Canada out of retaliation, it is not cost-effective to bring passengers to China or India while adding substantially to the distance and time traveled.¹⁰⁷ Worse still, Indian airlines, for example, can travel over Russian airspace, benefiting Indian carriers (but disadvantaging those of other nationalities) and leading to a substantial imbalance in international aviation commerce.¹⁰⁸

¹⁰¹ *The History of ICAO and the Chicago Convention*, ICAO, <https://www.icao.int/about-icao/history/pages/default.aspx> [https://perma.cc/957E-5C6S]; see generally Chicago Convention, *supra* note 8.

¹⁰² See Chicago Convention, *supra* note 8, at Preamble.

¹⁰³ *Avoiding Russian Airspace: The Costly Consequences for Airlines and Passengers*, BUSINESS TRAVELER (May 2, 2023), <https://businesstravelerusa.com/news/avoiding-russian-airspace-the-costly-consequences-for-airlines-and-passengers/> [https://perma.cc/QNT7-THSW].

¹⁰⁴ *Turkey Bans Flights of Russian Aircraft with Dual Registration*, YAHOO! NEWS (Nov. 8, 2022), <https://news.yahoo.com/turkey-bans-flights-russian-aircraft-141600046.html> [https://perma.cc/PD4S-6L7E].

¹⁰⁵ *Avoiding Russian Airspace: The Costly Consequences for Airlines and Passengers*, *supra* note 103.

¹⁰⁶ Chris Sloan, *Air Canada CEO Talks Strategy and Focus Areas*, AVIATION WEEK (Sept. 21, 2023), <https://aviationweek.com/air-transport/airlines-lessors/air-canada-ceo-talks-strategy-focus-areas> [https://perma.cc/985N-LZ23].

¹⁰⁷ *Id.*

¹⁰⁸ David Casey, *Air India CEO Defends Use of Russian Airspace*, AVIATION WEEK (June 6, 2023), <https://aviationweek.com/air-transport/location/air-india-ceo-defends-use-russian-airspace> [https://perma.cc/W5HJ-7LSE].

Ultimately, in most cases, global passengers get the short end of the stick due to Russia's double registration law.

E. LACK OF LEGAL DEFENSES

Russia cannot legally justify its double registration law. Article 89 of the Chicago Convention could conceivably relax Russia's obligations under the Convention in times of war or national emergency.¹⁰⁹ Yet, Russia has adamantly denied a war declaration and has not declared a state of national emergency.¹¹⁰ In the absence of valid defenses under the Chicago Convention, Russia must cut its losses and repeal its re-registration law. Setting aside its domestic law is the only way for Russia to return to a state of relative normalcy.

Still, Russia is not without some counterplay. As a counterargument to double registration, Russia may have a good faith position that Article 18 does not envision double registration, but it does envision the handoff of registration from one state to another.¹¹¹ Building upon that, Article 19 states that the "transfer of registration of aircraft" will be made by the transferring state "in accordance with its laws and regulations."¹¹² Thus, Russia may argue that its registration of the leased aircraft on the domestic register does not constitute a double registration but rather a *transfer of registration* from the preceding state to Russia, consistent with Russia's internal laws and regulations.

While this is a colorable argument, it ignores the method in which registration transfers are uniformly accomplished on a global scale. As discussed, such transfers typically consist of a contemporaneous deregistration and new registration in close conjunction between the two concerned states to ensure that an aircraft is never without a state registration but is also never registered by two competing states.¹¹³ Thus, even if the Chicago Convention does not detail the method of deregistering aircraft, it is implied that consent from the deregistering state must be acquired and coordinated before a new registration.

¹⁰⁹ See Chicago Convention, *supra* note 8, at art. 89.

¹¹⁰ Rather, Russia maintains that it is conducting a "special military operation." Robert Dover, *Putin's state of the nation: why Russia hasn't officially declared war and what different it would make*, CONVERSATION (Feb. 22, 2023, 11:21 AM), <https://theconversation.com/putins-state-of-the-nation-why-russia-hasnt-officially-declared-war-and-what-difference-it-would-make-200208> [<https://perma.cc/QGK4JFUM>].

¹¹¹ See Chicago Convention, *supra* note 8, at art. 18.

¹¹² *Id.* at art. 19.

¹¹³ See *Cross Border Transfers*, *supra* note 29.

Absent such an understanding, acquiring states could predatorily usurp an aircraft registration from a prior state by simply recording a new registration that supersedes an older one. This would create a chaotic registration system undermining the Chicago Convention's goals of uniformity, predictability, and safety in aviation. Considering this argument and Russia's lack of legal defenses for its double registration law, Russia's legal defenses are unpersuasive and virtually non-existent.

V. CONCLUSION: END THE WAR, REPEAL THE LAW

Russia's re-registration law amounts to state authorization for an unlawful seizure of civil aircraft. States and ICAO must pressure Russia from economic, political, diplomatic, and legal perspectives to repeal this law and end its war of aggression in Ukraine. The above proposals will help aggrieved states as the war drags on. However, in the meantime, diplomatic pressure will help end the war so that relations will normalize with Russia, and the re-registration law will no longer be viewed as necessary by Russia. Parties must send the strongest message possible to Russia that its double registration law is a flagrant violation of law and a setback for safety and predictability in international civil aviation.