

OVERFLYING IRANIAN AIRSPACE, NEW DEVELOPMENTS

Gist of the News

In a new development reported by *en.haberler.com* on July 22, 2014, Ebrahim Shoushtari, Deputy Head of the Civil Aviation Organization for Aeronautical Operations announced that:

Following the International Civil Aviation Organization (ICAO)'s request, Iran declared readiness to admit passing flights which intend to change their route and use Iran's aerial space, the official underlined. He added that all Malaysian airplanes set off from Amsterdam for south-east Asia have changed route and cross Iran's airspace instead of the eastern Ukraine's airspace.

And the result of the above change of route as reported by *m.trend.az*:

Number of international transit flights over Iran's air zone has increased by 10.3 percent during the one-month period (June 21- July 22), compared to the same month of 2013.

According to another report, the income of Iran through transit flights over Iran's air zone amounts to eight million American Dollars per month. The number of the airplanes that pass through the Iranian air zone is equal to 500-550 per month, according to *newholidays.ir*.

The latest development is that according to *au.news.yahoo.com* on August 9, 2014, after the US started its air strikes on Islamic fighters in Iraq, flights to and from the Persian Gulf and beyond, which normally would have taken place through Iraq airways, favored parallel routes via Iran instead. The same website adds that:

Flightradar24.com indicated a long stream of airliners Friday evening Middle East time, flying single file through western Iranian -- and virtually none over Iraq, in a complete reversal from a month ago.

"We're still seeing some non-US carriers that are overflying Iraq," notably regional and domestic ones, added Daniel Baker of US-based FlightAware.com.

"By and large, though, we are seeing a lot of people going further to the north" and over the Turkish-Iran border, avoiding Iraq as well as war-torn Syria, he told AFP.

The above reports reveal an interesting source of income for Iran, as well as a rich source of legal issues and problems for the lawyers. What are the international rules that apply to transit flights through the air zone of a country? What are the applicable rules under the laws of Iran? In case of a dispute, how the parties settle their disagreements? What is the mechanism of payment for passing through the air zone of Iran? Are there serious payment problems due to the sanctions that are imposed on

Iran? It is clear that we cannot respond to all of these questions in the limited pages of this News and Analysis. However, we open the way for more detailed discussions.

Overflight and its legal basis

Three basic sources of the current legal basis for overflight are international conventions and agreements, bilateral agreements, as well as the laws and regulations of Iran.

International conventions and agreements

One of the basic rights given to all the member-states of the *International Air Services Transit Agreement* (IASTA) it is to fly through the air zone of a country. This right that is coined as “first freedom of the air” is explained in Article 1 – Section 5 of the IASTA:

Each contracting State reserves the right to withhold or revoke a certificate or permit to an air transport enterprise of another State in any case where it is not satisfied that substantial ownership and effective control are vested in nationals of a contracting State, or in case of failure of such air transport enterprise to comply with the laws of the State over which it operates, or to perform its obligations under this Agreement.

The above general freedom is restricted by Articles 3bis, 5 and 6 of the 1944 Chicago Convention governing commercial aviation. Under Article 6 of the Convention:

No scheduled international air service may be operated over or into the territory of a contracting State, except with the special permission or other authorization of that State, and in accordance with the terms of such permission or authorization.

The Iranian government, and more precisely the Civil Aviation Organization of Iran, must be contacted by the Airlines that would like to have their flights operated over or into the territory of Iran in order to obtain a special permission or other authorization from the said organization.

Further, Article 5 of the Chicago Convention adds two more exceptions: First, the ‘first freedom of the air’ in general cannot be restricted for the aircrafts that are not engaged in scheduled international air services. Second, contracting states of the Convention may require aircrafts desiring to proceed over regions which are inaccessible or without adequate air navigation facilities to follow prescribed routes, or to obtain special permissions for such flights.

It is noteworthy that the Chicago Convention has 18 Annexes that regulate and elaborate upon different aspects of legal and technical issues covered by the Chicago Convention.

Finally, under the Protocol relating to an Amendment to the Convention on International Civil Aviation (also called Article 3 *bis* of the Chicago Convention) signed at Montreal on 10 May 1984:

(b) The contracting States recognize that every State, in the exercise of its sovereignty, is entitled to require the landing at some designated airport of a civil aircraft flying above its territory without authority or if there are reasonable grounds to conclude that it is being used for any purpose inconsistent with the aims of this Convention; it may also give such aircraft any other instructions to put an end to such violations. For this purpose, the contracting States may resort to any appropriate means consistent with relevant rules of international law, including the relevant provisions of this Convention, specifically paragraph (a) of this Article. Each contracting State agrees to publish its *regulations in force regarding the interception of civil aircraft*.

Two important rules are stated by the above paragraph:

- 1) If a civil aircraft flies above the territory of Iran without authority, Iran as a contracting State is entitled to require the landing of the aircraft at some designated airport;
- 2) Iran has agreed to publish its regulations in force regarding the interception of civil aircrafts.

As it will be explained below, Iran has special regulations on different aspects of civil aviation, including the interception of civil aircrafts.

Bilateral agreements

Iran has concluded 60 bilateral aviation service agreements (BASA) and memorandums of agreement with Venezuela, Qatar, Tunisia, Switzerland, Georgia, Indonesia, etc.

The issues that are normally included in aviation service agreements include:

- a. *Aviation rights* – The airways determined for the aviation companies including the starting and destination airports and the airports for landing in between;
- b. *Capacity*: The number of passengers on the flights or the number of flights that could take place between the contracting States;
- c. *Destination, ownership and control*: The number of aviation companies and the conditions required for their ownership;
- d. *Tariffs*: The parties sometimes include specific terms in bilateral agreements concerning the price of air tickets to be approved by civil aviation organization of each of the contracting States.

An international example for bilateral aviation service agreements is the one signed between the Russia and the European Commission to regulate flight of the EU airplanes over the Siberia because it is faster and cheaper than a longer flight passing above all the countries that cover the distance between the EU and China, Japan, Korea, etc. Prior to this agreement that took effect in 2014, each of the European countries had to conclude separate agreements with Russia.

Laws and regulations of Iran

The international law of transit flights through air zone of Iran is completed by the laws and regulations of Iran. First of all, Iran has acceded to the 1944 Convention under the Act on Permitting Iran to Accede to the International Civil Aviation Convention (1949). Iran has also deposited its instrument of ratification of the Protocol relating to an Amendment to the Convention on International Civil Aviation (1984) on June 17, 1994.

Under the Regulations on the International Civil Aviation (1963), five freedoms of the air, including the first one mentioned above, are regulated. Further, Articles 5 and 6 of the Regulations make establishment of regular commercial flights between Iran and a foreign country conditioned upon conclusion of bilateral agreements taking into account the flight rights of the Iranian aviation companies as well as those of the neighboring countries.

The Act amending some Articles of the Act Establishing the Civil Aviation Organization (1994) provides that the Civil Aviation Organization of the Islamic Republic of Iran (CAOIRI) shall be the only entity that has the competence for concluding international agreements between Iran and other States. The Act also states that the civil aviation rights obtained by Iran under the international conventions and bilateral agreements shall be enjoyed by the airliners established in Iran.

Another important law relating to transit flight over air zone of Iran is the Act on Permission to Approve Technical Provisions and Rules related to the Chicago Convention (1977). Based on the provisions of this Act, the Council of Ministers passed a decree in 2011 authorizing the CAOIRI to put into execution the 18 Annexes of the Chicago Convention. These annexes must be translated into Persian before getting the required legal force. Apparently the process of translating them into Persian has not finished yet.

Other countries also have their own laws and regulations to control the issues related to overflight. For example, this issue in the United States is regulated under the following provisions:

31 CFR 560.522 - Allowable payments for overflights of Iranian airspace

Payments to Iran of charges for services rendered by the Government of Iran in connection with the overflight of Iran or emergency landing in Iran of aircraft owned by a United States person or registered in the United States are authorized.

Obtaining overflight permission

It has rightly been argued by Edin Omanovic in page 3 of a report titled “*Effective Embargo Enforcement: Overflight denial and Control*” published by the Non-Proliferation Consortium in February 2013 that:

Commercial overflight permissions involve political, economic and technical considerations and can involve government and industry bodies as well as individual airlines. Overflight permission is a politicized issue at higher levels of decision making and a technical one at the operational level. Operating permission for commercial airlines is regulated by a multitude of multilateral and bilateral agreements. For safety and navigation reasons, aircraft operators submit flight plans for specific flights or groups of flights, while overflight and ATC usage fees also mean that prior notification is necessary for administrative purposes.

In the same page of the report it is explained that:

“States have different procedures concerning which government agency an authorization request should be made to, as well as how far in advance such a request must be made. Disparate procedures relating to overflight authorization have seen the proliferation of specialized third-party air operation management agencies that secure overflight permissions at the request of operators.”

In Iran, the Flight Operations Department of the CAOIRI issues flight permits for overflights that pass the air zone of Iran. Under the specific regulations of the CAOIRI, this department is responsible to carry out the following activities:

- 1- Evaluation and certifying the applicants of Air operations;
- 2- Issuance/renewal of Air Operation Certificate (AOC);
- 2- Approval of the agreements in regards to regional or international operations of civil aircraft between companies and organizations;
- 3- Planning and scheduling of spot checks of Civil Aircraft, either domestic or foreign, with coordination of various offices of flight standards; and
- 4- Flight inspection and flight facilities calibration.

Needless to mention that in practice, airlines that need an overflight permit must deal with at least three problems: a) contacting the aviation authorities; b) getting the needed information; and c) payment for acquiring the overflight rights.

Further developments

The most recent development in this field is reported by *online.wsj.com*:

A leading global air-safety organization on Monday called for a sweeping review of the procedures aviation regulators use to warn airliners about potential hazards from flying over combat zones. The Flight Safety Foundation called on the International Civil Aviation Organization to hold a high-level meeting about "the systems in place to warn airlines of hostile airspace." ICAO, an arm of the United Nations, typically is the world-wide clearinghouse for notices to pilots and airlines about potential overflight dangers.

Executive summary

Iran is situated in a strategic region of the world. Recent developments in Ukraine, Iraq, and Syria have made the air zone of Iran relatively safer for all of the flights that used to overfly the air zone of the above countries. In this News and Analysis, after explaining the legal basis of overflight both in international law and in the laws of Iran, we focused on the practical aspects of getting the required permission and the challenges faced by foreign airlines in acquiring it.

Flight security is becoming a key issue for all of the airlines that have to pass through the air zones of the said countries and Ukraine. ICAO is required to take legal and practical steps to enhance the level of flight security without sacrificing the economic interests of airlines that prefer to keep their ticket prices stable or even to find ways to reduce them. In the meantime, Iran can provide the international airlines with a secure

air zone and efficient air services. To improve its aviation services, Iran needs to upgrade its legal and technical system as soon as possible. International lawyers who have theoretical knowledge and practical experience in the field of aviation law may play a significant role in this upgrading process.

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