

## AIRCRAFT CHARTER FLIGHT

**Prof.dr. Rajko Kasagić, e-mail:prof.rajko.kasagic@gmail.com**  
Travnik International University in Travnik, Bosnia and Herzegovina

### *Review article*

*Summary: Charter flights allow fast and secure communications. Since the industrial revolution, traffic has improved so much that its development can be classified as the fastest growing branch of human activity. According to the road on which the traffic takes place, it is divided into: water, land and air (traffic). With the development of economic relations in the world, traffic is improving both the means of transport and the transport routes. Air transport appeared much later than the others. The advantage of air traffic is its speed. For now, this transport is limited mainly to the transport of passengers, while the transport of goods is limited to the transport of postal items, or smaller quantities of goods of greater value, or perishable goods. Air transport as well as the charter itself has primarily an international character. Its real purpose and its economic advantage are fully expressed in the longer air transport over the territory of several countries. With the exception of large states, small states have a first-class interest in using airspace charters over other states. Despite the great importance of charter flights of international organizations, which regulate air traffic, they have not yet regulated this matter with a single international legal act in order to establish uniform standards for this type of transport of passengers and goods.*

**Key words:** *Transport, charter, charter agreement, traffic, tourist agency*

## 1. Sources of air traffic rights

Transportation of passengers and goods by air, due to its great international importance, was very early regulated by international conventions. In 1919, the Convention on the Regulation of Air Navigation was brought in Paris. The Air Navigation Convention was signed in Madrid in 1926, followed by the Pan American Aviation Convention in Havana in 1928. In 1925, the International Conference on Private Aviation Law established a standing committee of experts. Thanks to the work of this committee, in 1929, the Convention on the Unification of Certain Rights Relating to International Air Transport was adopted in Warsaw. This Convention pays special attention to liability for non-performance of contractual obligations<sup>1</sup>. The Convention applies to any international carriage of passengers, baggage or goods by air for a fee. It also applies to free transportation provided by the air transport company. The Convention does not address the issue of charter flights, so it cannot be considered a source of law for this type of international transport. The Hague Protocol of 1955 appeared as an additional document, i.e. a revision of the Warsaw Convention. However, some states remained loyal to the Warsaw Convention, so the Convention and the Protocol may de facto have an independent legal destiny. The Transit Agreement was adopted in Chicago in 1944, guaranteeing a non-offensive overflight and the right to land for technical reasons. This Convention is a replacement for the Paris Convention and contains two types of rules: normative rules on the regulation of navigation and certain aspects of aviation law, while others so it cannot be rules founded by the Montreal-based International Civil Navigation Organization (OACI), as a

specialized agency of the United Nations. Thanks to this Organization, from 1947 to 1975, seven international agreements in the field of private aviation law were reached, filling gaps that had not been regulated until then, seeking to establish uniform standards in international air travel.

## 2. The concept of aircraft

The Chicago Convention has no definition of an aircraft. However, in its annex, an aircraft is defined as "a device that can be held in the atmosphere by an air reaction". It is necessary for the notion of an aircraft that a device in the atmosphere stands with the help of air, whether it is lighter than it or that it flies with it<sup>2</sup>.

According to Article 27 of the Yugoslav Air Navigation Act, an aircraft is considered to be any device built and equipped with the necessary devices that enable it to fly safely<sup>3</sup>. The division into state and civil aircraft is significant because state aircraft are not subject to international conventions nor can fly over the territory of another state without a special permit. With an overflight permit, these aircraft enjoy immunity, while private aircrafts do not enjoy such immunity. According to the Chicago Convention, every aircraft used in international navigation must bear the appropriate marks of nationality and must be registered in the state to which they belong<sup>4</sup>.

<sup>2</sup> Jaksic, B. Land and Air Traffic Law, Zagreb, 1969. p. 127.

<sup>3</sup> Sl. List SFRJ br. 23/1978.

<sup>4</sup> See Article 20 of the Chicago Convention.

<sup>1</sup> According to Article 17 of the Warsaw Convention, the airline will be liable for damage, injury or death, which occurred while international transport was

taking place on the aircraft or during all embarkation and disembarkation operations.

Airworthiness of aircraft certified by a certificate issued in the country in which the aircraft is registered, in accordance with international standards.

### 3. Usage of aircraft

Usage of aircraft has great economic importance for each country due to the fast transport of passengers, mail and goods, which is especially evident in long-distance transport<sup>5</sup>. During the World War I, aircrafts were used for military purposes for the first time. Since then, each state has invested significant funds in the construction and further development of aircraft, on which depends not only the economic but also the defense power of the state. Air transport of goods is of minor importance due to the low payload of aircraft and high transport costs. The interdependence of states and all present in the world has a significant impact on the international development of aircraft, in its technical sense it regulates in a unique way: airport equipment, flight control and aircraft management, security, training of personnel for flying and aircraft maintenance, rescue in case of accidents.

Charter transport experienced a great development after the adoption of the Chicago Convention in 1944, because with its economic advantages, and especially lower prices, it became an inseparable companion of the tourist economic activity. Great countries with their vast territories (USA, Russia, Canada, Brazil, China, Australia) do not give much international importance to charter flights, using them primarily for the transport of passengers, goods, etc. in its territory. However, international charter is of great importance

for small countries due to air travel over other countries. In addition to the economic reason for the international aircraft, i.e. the international charter, there are also reasons of a technical nature for which there are no classic guarantees between countries as in other types of traffic. The usage of an international exchange agreement requires that an international charter agreement to be, as a source of law, extended to international law. Regulating the legal relations from the charter in a unique international way, would bring legal security to the users of these flights and would contribute to the further general bonus of aviation law. There are no specific legal sources in this matter that would serve as a basis for concluding a charter agreement, so the sources must be sought in the existing conventions, which can be directly or indirectly applied to the charter. The Convention on International Civil Aviation, in the part on commercial aviation, indirectly speaks of charter. In the second part, this Convention deals with irregular international traffic, which is:

- Entrance to another country (right of overflight and right of landing for technical purposes) for non-scheduled (charter) flights,
- Same rights (entry, overflight and descent for technical purposes) for irregular commercial purposes.

Irregular aircraft the flights do not have to require permission from the states to fly over and are therefore fitted in relation to the real flights. Namely, the Convention is more liberal towards non-scheduled flights. Not all countries have accepted this view. It is therefore the Secretariat of the International Civilian Organization

<sup>5</sup> Members European Union France, Great Britain, Germany and Spain have invested 11 billion dollars in the production of the A 380 passenger plane (AIRBUS). The plane was presented in Toulouse in January 2005 as a symbol of economic and technological significance

inventiveness member of the European Union. The A 380 can accommodate 550 passengers and 70 cars, and has 850 seats on two floors, which is the maximum for receiving passengers. Fuel consumption per passenger is lower than car fuel consumption

aircraft (ICAO, OACI) in 1951 announced that the signatories had the discretion to impose their conditions and legal provisions on all categories of international irregular traffic. Since then, countries have introduced protectionism against regular and, consequently, non-scheduled airlines. Namely, the aircraft is obliged to obtain a permit from its state as well as the state in which it flies.

The Chicago Convention defines international air transport in general, which is obvious that according to this wording, the charter would not belong to international transport<sup>6</sup>. Such a conclusion, although logical, would not be acceptable, because the charter in most cases, as the execution of a charter agreement, involves the transport of passengers or goods. Among the documents of the International Civil Transport Organization, Resolution 045 from 1945 should be emphasized, which, in addition to the "Affinity Charter", also uses in practice "Split charter" (split charter and charter various groups of passengers). This Resolution addresses several issues related to the charter of the airline, members of IATA (The International Air Transport Association), and above all on the issues of which part of the aircraft capacity can be used for own and other needs, after subleasing by sublease.

#### 4. Charter agreement

Charter agreement is basically a lease agreement applied in the field of aircraft. As a term, the charter agreement originated in the United States, where it was first used in the Air Commerce Regulations in 1934, which was accepted in other languages, and began to spread rapidly. It is a lease agreement only in terms of legal nature, so due to its specificity in other elements it

became completely independent, and that is: a different responsibility of the contracting parties, the usual clauses, the very relationship of the aircraft owner. By its nature, a charter agreement includes a combination of elements of the execution of legal aircraft lease and air transport operations.

Contract about the charter is *sui generis*. Regardless of its characteristics, specific obligations, rights of the contracting parties, it does not rely on the lease agreement even if there are some similarities. It basically presupposes the agreement of the will of the two parties on the acquisition of rights and obligations. Viewed in this way, it is a contract for the lease of an aircraft or space in an aircraft, with or without a crew, concluded between the owner of the aircraft and the user, lessee or charterer. Based on their agreement on the essential elements of the contract (aircraft, lease, aircraft use, crew engagement) the owner leaves his means of transport for a certain time or a certain time for use to the charterer, outside the regular line.

ICAO (Organization International Civil Aviation Organization) expressed its opinion on the charter as a non-scheduled flight:

"The term charter is used here in a special sense, acquired in the field of transport, meaning the purchase of the entire space on one aircraft, intended for a specific flight or flights for the benefit of the customer (individual or group). Therefore, this transport covers various forms of specialized air transport operations, from taxi flights, where one or two passengers are transported, to a larger number of passengers or cargo, for a longer period on the basis of a private or government contract.

IATA Resolution 045 authorizes the members of that organization to engage in chartering as part of their activities,

---

<sup>6</sup> See Article 96 of the Chicago Convention.

by issuing sublease the entire capacity of one aircraft. When concluding a contract with a charterer, the carrier is allowed to envisage the possibility that the space in the plane, which the charterer does not use with his permission, will be used by the carrier to transport goods or mail in accordance with IATA tariff<sup>7</sup>.

Contract about the charter is the basis and condition of the charter, i.e. the legal source of regulating the relations that appear in the charter. The charter can be viewed from the legal aspect as the fulfillment of contractual obligations, but also from the economic, technical and other aspects. The charter agreement is the legal basis for the inclusion of aircraft in non-scheduled air transport. In theory, the question of the concept of international transport arises. Is it international air transport in the case of two contracting parties belonging to different countries or is the international character of the transport related to the transport that follows from the charter agreement. The contract can be concluded between two parties belonging to different countries, but the transport can be done between two points in the same country. It is possible that the owner of the aircraft and its lessee belong to the same country, and that the transport under the charter agreement is performed abroad. However, the international character of transport is the only real criterion of an international charter flight, and not the nationality of the charter aircraft owner, passenger and consignor<sup>8</sup>.

There are two sources of charter transport: the previous charter or lease agreement and the subsequent transport contract, as a consequence and part of the realization of the first contract. **Delimitation of aircraft charter agreements**

<sup>7</sup> Predma conditions for the transport of goods, the IATA Department of Tariffs and Affairs on November 1, 1975, limited the value of shipments in international air transport, which can be transported by one aircraft to one million dollars. If the consignment exceeds this value, it must be divided into several aircraft.

and contracts for the regular carriage of passengers and the carriage of goods by aircraft have their own essential legal system, as these contracts have special legal treatment with regard to freedom of contract, in part with regard to the application of international conventions. Special legal treatment is also reflected in the liability of the contracting parties and the position of third parties that may arise in the performance of contractual obligations. The charter agreement must relate to a specific aircraft and the specific purpose of its use.

## **5. Domain application of charter agreements and types of charter agreements**

Domain application of charter agreements is very wide. Inclusive tour<sup>9</sup> cannot be equated because it is about public transport where tickets are publicly sold to passengers at individual prices, while charter flights are not about public transport. The difference is that with the Inclusive tour tickets are not sold to passengers by the carrier but by the agency<sup>10</sup>. Frequent use of airline flights and a sudden increase in trade irregular air traffic resulted in a specialized division of flights, and thus charter flights.

Classic form of charter agreement is when two airlines agree to lease the second charter aircraft to the other. Based on the charter agreement, the charter company concludes a contract for the transport of passengers and practically appears as a carrier.

<sup>8</sup> Kasagić, R. Traffic Law, Travnik International University in Travnik, 2015, p. 143.

<sup>9</sup> With the Inclusive tour arrangement, passengers are individually sold services by plane, accommodation, meals at the hotel, sightseeing, all of which are included in the complete charter ticket.

<sup>10</sup> Trajković, M., Traffic Law, Belgrade, 1985, page 368.

The plane can be rented under a fixed-term charter agreement for certain period of time or a fixed-term charter agreement for a specific trip. In the first contract, the time criterion is used, and in the second, a certain path, where the indicators are kilometers or miles, in which price is an essential element of the contract.

The plane on the basis of a charter agreement can be rented with or without a crew. Hiring a crew with the use of an aircraft in a charter is a new element of the contract that distinguishes this legal business from a lease agreement in civil law. An unmanned charter contract is less common in practice, so it is often pointed out that this is not a real charter contract, as the crew lease element is missing. Therefore, this contract is closer to the contract on the lease of property in civil law. However, in this case it is a charter because the crew is not leased but it is there to provide services in the profession who are trained to operate and operate the aircraft. In the case of charters with the crew, the charterer is responsible for the actions of his crew during the flight, while in the case of unmanned charters, the charterer is responsible, not the owner of the aircraft.

The charter agreement for personal needs is most commonly used in the United States. The contract is concluded by airlines and individuals for the transport of family, friends or for the transport of goods over a certain distance. The price is paid for the entire space of the aircraft, regardless of whether all the space is used or not.

Common the feature of these contracts is that there is no individual ticket sale, but the entire rent is charged from the charterer.

By the charter agreement, the leased aircraft may be used to transport other people or to transport other people's goods. These are intermediary contracts, the so-called individual carrier. Practice shows that the role of a charterer is mainly an agency that

earns on the difference between the aircraft rent and the individual ticket price.

A charter contract can be concluded between large and small companies. It doesn't pay off for large companies to hire their own planes on short routes, which is why it leases unmanned aircraft to small companies. The large company still reserves the right to issue travel documents under its own name, and the chartered aircraft still bears its markings. Only the crew bears charter marks. Agency which concludes a contract with the owner of the unmanned aircraft, and the latter equips it with the crew and leases it to another charterer, the aircraft is leased. In this case, it is a question of sublease relations, i.e. sub-charter as a special type of charter. With sub-charters, the question arises as to which of these two tenants and sub-tenants represents the right carrier and bears the responsibility that arises from that status. The sub-charter and the owner of the aircraft cannot be in a direct legal relationship, because they have not concluded a contract that would legally bind them. The absence of a legal relationship between the aircraft owner and the sub-charterer would be reflected in the reluctance to sue directly between these persons. The owner could sue the sub-charterer only if the charterer had previously transferred the capacity of creditor to the sub-charterer to him by civil cession. International Association aviation creditors and many airlines avoid placing aircraft on a sub-charter by including a clause in the charter agreement on such a ban.

## 6. Phases in charter development

Like each and every new social area must go through several stages in order to stand out and become independent, it is also the case with the charter, although, as we have seen, there is still a lack of uniform legal regulations in this area. Since the name and practice first appeared in the United States it is logical

that they went through several phases in that country in order for the characteristics of the charter agreement to crystallize on its own. In the first phase, the Civil Aeronautical Act was adopted in 1938. This law and the Civil Aeronautic Authority are the forerunners of the establishment of the Civil Aeronautics Board (CAB). The CAB looked favorably on the charter carriers, calling them "Irregular carriers". Charter carriers were exempted from meeting special conditions, or meeting the requirements required of regular carriers (special permits, equipment, staff qualifications). At the end of the World War II, non-scheduled carriers were subjected to the obligation to submit reports on their flights, which was the beginning of tightening the criteria for charter transport.

The second phase of the treatment of charter transport began in 1947, when charter carriers were given the name "irregular transport". At this stage of development, charter companies were classified into several categories, according to the type of permit they received and the size of the aircraft they used for transport. The basic idea is to tighten the responsibility of the charter carrier and to bring it closer to the responsibility of regular airlines. On the basis of the Economic Regulations of December 10, 1948, all previous general privileges of irregular transporters were abolished, and the exemption from obligations in the future was decided on a case-by-case basis. The new Public Law 87-528 was passed in 1962 when the third phase in the development of the American charter began. A charter is defined as an additional air carrier that must have a special certificate in order to be able to deal with charter transport, and only to the extent that it complements the activity of regular carriers. In the UK, charter carriers are categorized

"Independent transporters". They deal with charter transportation, inclusive tours, air taxi transportation, aerial filming, even

regular flights on a particular line. The new British sources, the Civil Aviation Act, abolished the monopoly of large aviation corporations in 1960 and created a new body - the Air Traffic Authority with the right to issue permits for all types of flights to all carriers on an equal footing and best offered terms. The licensing procedure has favored the development of charters.

Under French law, the charterer is obliged to provide sufficient financial guarantees before the start of the leased plane transport in order to get the impression of his solid material and civil liability. Yugoslavia was a liberal country in issuing charter flights. This matter was regulated by the Law on bond and basic substantive legal relations in air navigation. The matter of charter agreements is regulated in the chapter "Aircraft leasing". Such a contract must be in writing form. The aircraft can be leased to a chartered or unmanned charter. The charterer has the right to change the crew.

## 7. The advantage of hiring a charter

In the previous presentation, the advantages of hiring an aircraft on the basis of a charter agreement can be noticed, so we will try to present them in one place in order to emphasize the importance of this type of traffic.

Benefits are reflected in the following:

- Passenger transport, personal transport, transport of goods, postal shipments are made on the basis of demonstrated need which gives an advantage over regular transport;
- If the charterer does not have professional training staff, i.e. air traffic crew, he will hire the staff of the aircraft owner, especially if the aircraft needs to land at one of the unusual airports, where

landing and take-off is very risky, so pilots with a refined sense of control and navigation are needed<sup>11</sup>;

- In practice, it happens that the consumption of certain imported goods (wine) increases sharply. The trader as an importer will hire a charter for the import of these products in order to retain consumers.

## Sources

- [1] Jakšić, B., Land and Air Traffic Law, Zagreb, 1967,
- [2] Aržek, Zvonimir "Unification of Traffic Law", Proceedings of the Faculty of Foreign Trade, Zagreb, 1967,
- [3] Sarić, S., Jankovec, I., Trajković, M., Đurđev, D., Saobraćajno pravo, Novi Sad, 2006,
- [4] Kasagić, R., Traffic Law, Travnik, 2015,
- [5] Krstić, Đ., Savremena tendencija u unification of the international of Aviation Law, Belgrade, 1966.
- [6] Jankovec, I., Filipović, V., Šuleić, P., Stanković, P., Saobraćajno pravo, Beograd 1979.
- [7] Trajković, M., Traffic Law, Belgrade, 2015,
- [8] Poor, Wharton, American Law of Charter, New York, 1966.

---

<sup>11</sup> At Gustav III Airport, known as the airport "Bartholomew", under the direction and control of France, to which only small regional aircraft land; the shortest landing route on the island of Saba - the Netherlands is 396.5 m long. When landing and taking off, pilots have to contend with strong winds; Princess Airport Juliana is located on the island of Caint Martin in the Caribbean. The runway starts 12 meters from the beach. A small mistake by the pilot would have brought the plane into the water. The runway is 2180 meters long. In the east of Nepal in the city of Lukla there is an airport at an altitude of

2900 meters. It was built between hills near rock buildings. In the French Alps, Krusevel Airport is known for its short runway of 525 meters. In Scotland, planes land on Gossip Mor Beach. When the tide is over the runway is covered with water.