



# Transport Committee

Oral evidence: [International aviation law: Flight 4978, HC 312](#)

Tuesday 15 June 2021

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[Watch the meeting](#)

Members present: Huw Merriman (Chair); Mr Ben Bradshaw; Simon Jupp; Grahame Morris; Gavin Newlands.

Questions 1–61

## Witnesses

[I](#): Michael O’Leary, Chief Executive, Ryanair.

[II](#): Professor Antonios Tzanakopoulos, Associate Professor of Public International Law, University of Oxford; and Professor Miles Jackson, Associate Professor of Law, University of Oxford.

[III](#): Robert Courts MP, Minister for Aviation, Department for Transport; and Richard Moriarty, Chief Executive, Civil Aviation Authority.

– [Letter from HE Maxim Yermalovich, Ambassador of Belarus to the UK](#)



## Examination of witness

Witness: Michael O'Leary.

Q1 **Chair:** This is a one-off session of the Transport Select Committee on international aviation law. Flight 4978 was a Ryanair flight to Minsk, and this evidence session will explore the implications for international travel of its re-routing. We will be looking at exactly what occurred in relation to flight 4978, the UK Government response to the diversion, and the implications for international aviation law.

I am delighted that this morning, going backwards from the end, we have the Aviation Minister and the Civil Aviation Authority; two international aviation legal experts and academics from Oxford University; and I will shortly ask Mr Michael O'Leary from Ryanair to introduce himself as our first witness.

Before I do so—bear with me—we also asked the Belarussian ambassador to the UK to join us and thought that he would be doing so. He has actually now written to us to say that he is unable to do so. In fairness, I thought we would just hear what he had to say. I refer to his letter, which is dated 9 June 2021.

"Dear Mr Merriman, Following your invitation to the session of the Transport Committee, I would like to inform you that all relevant information regarding the emergency landing of Ryanair aircraft in Minsk provided by the Department of Aviation of the Ministry of Transport and Communications of Belarus was conveyed by the Embassy to the British aviation authorities and the Foreign, Commonwealth and Development Office right after the incident.

"This information includes explanation of the sequence of events that led to the emergency landing, audio recording and transcription of radio traffic between the plane's crew and air controller. These materials prove that the authorities of Belarus took all necessary measures to ensure the safety of the passengers of flight FR4978 in full compliance with the international aviation law.

"The Belarussian side is concerned about the unfortunate decision of the British authorities to suspend Belavia's permit to operate commercial services from and to the UK. Sanctions against the air company go far beyond the spirit of cooperation and mutual assistance. Unlike most airlines, Belavia kept operating flights between Minsk and London even amid the coronavirus pandemic in complete accordance with the highest international standards bringing British nationals back to the UK safely."

He goes on: "This arbitrary act of pressure on the trusted airline, which was in no way involved in the incident with the Ryanair plane, results in a direct punishment of ordinary people in both Belarus and the UK. Dozens of Belarussian and British nationals have contacted the Embassy asking for assistance in finding a way to travel between London and Minsk...The current ban on air flights is detrimental to the long-standing humanitarian contacts between the two countries and deprives



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Belarusian children of the opportunity to improve their health in the UK.” This relates to treatment that is given to children impacted by Chernobyl.

He finishes off: “I would like to call on the Transport Committee to give a careful and impartial consideration to the aforementioned materials with the involvement of competent specialists...the Embassy will be ready to request additional information from relevant institutions of Belarus.

“I hope that the UK Parliament will make a wise assessment of the matter, which will result in lifting restrictions on flights between Belarus and the United Kingdom.”

We have some excellent competent specialists, on which note, Mr O’Leary, I invite you to introduce yourself for our record.

**Michael O’Leary:** Thank you, Mr Chairman. I am Michael O’Leary, group CEO of the Ryanair group of airlines, which includes a Polish subsidiary called Buzz. The aircraft on the day itself was actually a Ryanair aircraft. It was technically and legally on the Polish register, which is why most of the investigation and reporting has gone through the Polish CAA, as opposed to the Irish Aviation Authority or the UK CAA.

Q2 **Chair:** A very good morning, and thank you very much for being with us again, albeit on a different matter from the one we discussed last time. I am sure we will have a little time before 10 o’clock to touch on general matters that may be of interest to you as well.

This is a full day of Select Committee evidence taking on Belarus because the Foreign and Commonwealth Affairs Select Committee is also looking at Belarus from a human rights angle this afternoon. We wish them well.

Michael, in general terms what are you able to tell us about the diversion of flight 4978?

**Michael O’Leary:** I should explain that the diversion of the aircraft and the landing in Minsk is currently the subject of a formal investigation by ICAO, which is the international air transport agency. We have submitted our final report to the Polish Aviation Authority. The Polish Aviation Authority, the Lithuanian Aviation Authority—where the aircraft landed—and also the Irish Aviation Authority are then feeding in the formal aspects of the report to ICAO. I do not want to prejudice what ICAO may rule on. It is due out in about two weeks’ time. I can certainly share with you what is already in the public domain.

In my personal opinion, this was a state-sponsored hijacking. There is no other way to explain it. The aircraft was travelling from Athens in Greece to Vilnius in Lithuania on 23 May. There were 126 passengers on board, including four infants. It had six crew members, so a total of 132.

Overhead Belorussia, the aircraft was spoken to by Minsk ATC, who claimed that they had received a reliable or credible security threat to the aircraft, which they had received through the Belorussian security authorities. This consisted of a credible threat that, if the aircraft entered



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Lithuanian airspace or attempted to land at Vilnius airport, a bomb on board would be detonated.

There was a significant amount of interaction between the captain of the aircraft and Minsk ATC. The captain was repeatedly seeking an open line of communication back to Ryanair's operations control centre in Warsaw. Various excuses came back from Minsk ATC as to why they could not reach us, such as Ryanair not answering the phone, all of which were completely untrue.

We fly to a lot of airports in both Poland and the other Baltic states. I would say that the pilot was put under considerable pressure, not overtly but covertly, by the suggestion that he really should divert and land in Minsk. He was not instructed to do so, but he was not left with any great alternatives. He asked for alternative diversion airports but was only given Minsk. In the end, when Minsk ATC repeatedly said that they could not contact the company's operations centre, his only means of communication was therefore through Minsk ATC.

He asked, following the safety protocols, whether the threat level was a green, orange or red alert. Minsk ATC confirmed it was a red alert, which in effect gives the pilot almost no alternative. They diverted and landed in Minsk. The aircraft landed and was taken to a remote stand. It was surrounded by local security, who appeared to be military people waving guns.

The passengers and bags were offloaded. The bags, unusually, were left on the airport ramp. Sniffer dogs were seen sniffing at the bags. The bags should have been taken into the terminal and re-put through security. A number of unidentified persons boarded the aircraft, unusually in this case, because only the handling agent would board the aircraft. They were carrying video cameras and repeatedly attempted to get the crew to confirm on video that they had voluntarily diverted to Minsk. They refused to confirm that.

The crew was put under significant pressure. The cabin crew and the passengers were then taken into the terminal building under armed guard, where they were held for a number of hours. The captain was left on board the aircraft. Every time he left the cockpit to examine either the engines or to do a walkaround, he was accompanied by an armed guard. It was a very threatening and hostile environment.

We eventually got the aircraft back out of Minsk—this is a summary—after about eight hours, thanks to the intervention of the European authorities. The DG for transport was extraordinary helpful and rustled up a lot of European pressure.

I spoke to the Lithuanian Prime Minister three times that afternoon. She was obviously under considerable pressure because the vast majority of the passengers, who were Lithuanian, were on social media. It very quickly became a social media issue in Lithuania. The Polish authorities



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were very helpful and very alert to what was going on. Everybody was working closely together. Our priority that afternoon was to get the aircraft, the passengers and crew back out of Ukraine, onward and into Lithuania.

After about six or seven hours, eventually the aircraft was reboarded. Five passengers were missing when it reboarded. Two identified passengers were a Lithuanian journalist, who is a leading figure in the Belorussian opposition party, and a companion who was travelling with him. There were three other unidentified persons. One was on a Belorussian passport, one was travelling on a Greek passport, and one was travelling on a Russian passport. We understand from the security agents that it is likely that they were three KGB types. Whether that was Russian KGB or Belorussian KGB, we do not know, and we are not sure that there is much of a difference anyway.

This was clearly a premeditated breach of all international aviation rules and regulations on safety. An aircraft was brought down under false pretences using Minsk ATC. It seems clear that certainly two passengers were removed against their will and forcibly detained in Ukraine. We still have no feedback from the other three passengers. They did not appear to be forcibly removed or detained against their will in Ukraine. We have since written to the Ukraine Government, seeking confirmation of the identities of those three passengers. We clearly know the identity of the other two. We have had no response from the Ukrainian authorities.

What has happened since then, briefly, is that obviously the European Aviation Authorities—EASA, the UK CAA and others—have put a no-fly zone over Belorussia. They have banned Belavia, which is the Belorussian airline, from flying to and from the EU. No EU airlines are allowed to fly over Belorussia. That is where we are.

We are expecting ICAO to report within the next two weeks. That will be the final factual investigation of these events. As one of the airlines directly involved, I should say for the Committee's sake that we do not believe or support a long-term ban of either European airlines overflying Belorussia or Belorussian aircraft flying over the EU. This is not the way forward for international air travel.

International air travel fundamentally depends on all airlines being allowed to freely overfly countries, and all aviation authorities and air traffic controls returning to what would be the normal protocols that have operated since the Chicago convention in 1945. We cannot have a situation whereby airlines, air travel, our customers and our citizens run the risk of being hijacked and diverted under false pretences. Equally, far more UK citizens will be disrupted as a result of long-haul flights between the UK and Asia, for example, now having to fly around Belorussia or avoiding Belorussian airspace. This is not in the long-term interests of our industry, or in our passengers' best interests.



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We need an outcome where the European and the UK authorities, hopefully assisted by international partners, receive appropriate assurances from the Belorussian and/or Russian authorities that this will never happen again, so that air travel can return to the pre 23 May normal, and that our passengers and our citizens do not run the risk of being hijacked or of having massively longer flights or having to detour around countries because of state interference by state actors in the norms of aviation security and freedom.

**Q3 Chair:** Michael, thank you so much. You have given such a comprehensive overview of what occurred. With the time we have, I am keen to drill in on the implications or the logistics of being able to fly across the skies with part of them blocked. You have touched on that already.

Before I do that—I am very mindful and respectful of the legal position and what you can and cannot say—we would like to pass on our best wishes to all of your crew, who have no doubt been traumatised by what you have just described.

Is it the type of thing that you prepare your crew for? I imagine it is more the case of direct, terrorist-related issues rather than what appears to be a Government intervention on where your planes land.

**Michael O'Leary:** Yes. There is a two-part answer to that. First, we prepare all of our crews, pilots and cabin crew, as do all airlines, for bomb threats or reports of bomb threats. It is regrettably reasonably routine, in that we probably have a number of those on a monthly basis.

There is a reasonably well-established international protocol for airports and air traffic control assessing whether there is any credibility to those or whether they are just crank calls. The accepted procedure is to divert to the nearest diversionary airport, when it is regarded as being a serious or credible threat to the lives of the aircraft, passengers and crew. You would then offload the passengers and baggage. We check everything else and, once it is found to be false, everybody gets reboarded and continues onwards, admittedly with a significant delay.

It is unprecedented however, certainly in Ryanair's 30-year history and, I believe, even the 80 years since the 1945 Chicago convention, that an air traffic control system or a state agency would fabricate a case such as this to persuade, encourage or effectively leave the crew with no alternative but to divert to an airport in that state, which we would normally not fly to and do not fly to. That would be unprecedented, and there would be no way of training our crews for that kind of eventuality.

We have looked subsequently, with both the Polish authorities and the UK CAA, at whether there is some procedure we could take that would somehow interrogate Minsk ATC. As an airline, in the interests of the safety of our own passengers, we have to be able to accept that what any air traffic control tower or state agency is telling us has been verified, and is credible and true. At the heart of all this, safety must come first.



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Therefore, while we must take all threats as credible, we have to take advice from air traffic control, which is a state agency, and we have to put the safety of passengers, crew and aircraft first.

I am not sure that there is any way of training our people or airline employees to somehow verify in the moment whether something is credible or whether it is a bad actor. We must operate on the basis that pilots are operating in a very small cockpit with very restricted communications. The only way of communicating with the ground is through the air traffic control system.

Q4 **Chair:** It sounds like they did a magnificent job, as did everyone at Ryanair. Have you had a chance to think about whether the Chicago convention—obviously, it goes back in time—and ICAO, which has powers to suspend the voting rights of members, are up to date when we look at the world as it is right now?

**Michael O'Leary:** We have looked at that, but again I think we have to wait for the ICAO report, which is the final investigation and comes out in two weeks' time. Both at Ryanair and as an industry, we are looking for direction from our diplomatic or political masters in the UK and Europe, and hopefully the Americans as well, to insist on a return to the minimum standards that have prevailed for the last 80 years, and that these kinds of threats will only be passed on when they are real and credible.

There is some speculation in this case that, when the email threat that they claimed was real and credible was produced, the timing of it was 30 minutes after our crew were first contacted. I cannot verify that yet, and we will not be able to until the ICAO report is published.

For the industry and for people, the world has benefited hugely by making flying more accessible and certainly more affordable for our citizens in the last 20 or 30 years. Anything that would restrict the freedom to fly or the international norms of overflying—even rogue states have not engaged in this kind of behaviour before—is an early warning. It must be taken with the greatest and utmost seriousness in the highest diplomatic and political channels.

**Chair:** Thank you. I will hand over to Ben Bradshaw because we want to touch on the issues you have mentioned with regard to the logistics of the skies being blocked in certain parts now.

Q5 **Mr Bradshaw:** Michael, could you tell us a little bit more in cost and inconvenience terms what this has meant for you and the airline industry in general? What sorts of extra fuel costs, diversions and time costs has it led to?

**Michael O'Leary:** Thank you, Ben. In our case, the costs were reasonably minor. We were flying north/south, so we barely skirted the western extremity of Belorussia. Yes, we had a diversion with an eight-hour delay, but the costs in our case were infinitesimally small.



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The huge costs are for airlines that fly east/west—airlines flying from Europe to Asia and vice versa. Belorussia is a very large country geographically. It, Ukraine and Russia are the key flight paths from Europe to Asia and vice versa. If you cannot fly across Belorussia, Russia or Ukraine, you have to go an inordinately long way round, which is to go south over the middle east. That has had challenges in recent months as well, with the outbreak of hostilities between Israel and Hamas.

You are talking about a huge diversion. I have no understanding what the costs are, but for the additional flight times, fuel costs and aircraft costs of trying to fly around Russia, Belorussia and/or Ukraine—Ukraine has been very welcoming of western aircraft, but there have been issues there in the past; you will remember that a Malaysian aircraft was shot down over Easter—you are talking about a multimillion euro or multimillion pound additional cost for UK, European and Asian airlines flying to and from or between Asia and Europe.

**Q6** **Mr Bradshaw:** Are the main effects on east Asia, south Asia and south-east Asia destinations?

**Michael O'Leary:** And on European destinations for arrivals from the rest of Asia.

**Q7** **Mr Bradshaw:** We are talking about the whole of Russian airspace now, aren't we, because the Russians have weighed in on this?

**Michael O'Leary:** In effect, yes. Historically, in the couple of days after this, Lufthansa, Air France and others such as KLM would have flown to Russia overflying Belorussian airspace. When that was closed, for the first day or two, the Russians refused overfly flights for Lufthansa, Air France and other European airlines to fly around Belorussia, coming in through Russian airspace. The Russians were participating in this and trying to force European airlines to overfly Belorussia by keeping Russian airspace closed. I think that after a day or two they realised that there would be no services between Europe and Russia, so the Russians relented and opened up Russian airspace.

From an airline point of view, we are just a European airline. Flying east/west to Asia is not part of our business. The politicisation of airspace, or closing one airspace and forcing airlines to fly around—in some cases you cannot fly around because the neighbouring country will not offer traffic rights for that either—is very dangerous territory if we are going to start politicising overfly and flying rights over any country, certainly within Europe or within Russia.

**Q8** **Mr Bradshaw:** What is the solution, Michael, given that any backing down on this would be seen as giving in to what you have just described as state-sponsored hijacking?

**Michael O'Leary:** The solution would appear to me to be that we have to have, at the highest political and diplomatic levels, an agreement or an understanding that there will not be repetition of this type of behaviour. I



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think the short-term sanctions were absolutely correct and appropriate. Banning Belavia in the short term is appropriate. Banning European airlines overflying Belorussia is absolutely appropriate, but it is not a medium or a long-term solution. We need air travel. Our population depends on and needs it, not just for tourism but for business and visiting friends and relatives as well.

There is an international order in air travel that has not been disrupted by any country before. There were periods in our history when Chinese communism was at its worst and Russian misbehaviour in the cold war was at its worst, but there was never an example of an aircraft being brought down under false pretences by any of what we would have considered rogue states. This is the first case.

I know that the highest security authorities are very concerned that there will be copycat examples in other rogue states. That is why it is absolutely vital and imperative that the strongest sanctions are taken in the short term, but that as quickly as possible we need to be able to ensure with confidence that the air routes from Europe to Asia have been reopened and that there will be no recurrence of this kind of interference by state-sponsored actors, whether it is by Belorussia or their Russian paymasters.

**Mr Bradshaw:** Thank you.

**Chair:** We have five minutes remaining, Michael. I thought we would ask you about a couple of wider issues away from the subject. First of all, there is a question from Grahame and then a question from Simon.

Q9 **Grahame Morris:** I wonder if you might explain something, Michael. You have explained the complications with Ryanair and their subsidiary Buzz being registered with the Polish Civil Aviation Authority. What discussions are you having with our own Civil Aviation Authority on the safe resumption of operations? I understand that the case involving the circumstances will be heard in two weeks, but in the longer term, if the aim is to try to get an agreement in place, what are those discussions looking like?

**Michael O'Leary:** Thank you; that is a good question. One of the great strengths of the international aviation community or industry is the very close liaison between the aviation authorities. We all work together. The CAA has very good relationships with EASA, the European safety agency, and therefore with the other European aviation agencies, including the Poles. As you might imagine, though, what we would consider the central and eastern European countries are particularly alert to misbehaviour by certainly the Russian state and some of its satellite states. They are very on the ball in these circumstances.

We have been liaising with both the UK security agencies and the CAA. We have briefed them closely, inasmuch as we can, but with some of the information, such as the cockpit voice recorder, the black box and the electronic flight data recorder, access is by the Polish CAA. There is a



very close liaison between the Polish CAA, EASA and the CAA. We are all working under the ICAO umbrella to finalise the investigation and the final report within the next two weeks, and to make recommendations. We are hoping that a very strong recommendation will come out of that.

The CAA are intimately involved, but the technicality is that, because the aircraft was on the Polish register, it is the Polish authorities who are in control of the investigation. We have to route all of our information through the Polish authorities. The Polish authorities then disseminate it to the UK CAA and the other European agencies. I am not sure whether that answers the question, Grahame.

**Q10 Grahame Morris:** That is a good explanation. We are going to explore that in a bit more detail with the academics on the next panel, but that is very useful for my information.

**Michael O'Leary:** Given that we are one of the larger airlines operating in the UK, we also have a very close working relationship with the CAA. We have the height of respect for the safety standards and security operated by the CAA. I would say that we are in daily, certainly weekly, liaison with Richard Moriarty and his team in the CAA.

**Q11 Grahame Morris:** May I ask you a more general question? It is obviously paramount that this inquiry focuses on Belarus from a travel perspective and not a human rights perspective. That is for others to make a judgment on. More generally, the important thing is the safe resumption of operations, in terms of not having any acts of piracy, and having a Covid-safe environment.

Michael, more generally, what steps are Ryanair taking to prepare for when we return to normal operations? I do not just mean for overcoming the security threat. I mean in getting the green light for more general operations. What training are you offering furloughed staff, who will probably need their skills sharpening up before the resumption of operational duties?

**Michael O'Leary:** That is a good question. Turning briefly to the Covid situation, it is somewhat technical, but through the Covid period we have been trying to keep all our pilots and cabin crew current. They have all had to fly once a month, and in many cases we have been operating empty aircraft just to keep pilots and cabin crew current.

The safety agencies—EASA in Europe, the Irish Aviation Authority here in Ireland, and the CAA—have extensive procedures in place for returning both pilots and cabin crew to service. In some cases, if they have not flown for a significant period, there are short training courses that they have to go through. The pilots must go back through simulator training. All the UK and European airlines will be meeting those standards.

There has been a very strong recovery for flying within Europe in the Schengen area. As you know, the return to flying in the UK and Ireland has been repeatedly disrupted by the changing dates for the reopening,



or the removal of restrictions. Increasingly, we and the industry are calling for vaccinated passengers not to have restrictions imposed on them. The European authorities are moving with the digital green certificate on 1 July. Many EU countries have already launched it, so if you have been vaccinated you can get your own QR code on your mobile phone. That seems to us to be the safe way to return to international travel, particularly for UK families, for many of whom the school holidays are coming up in July. They need and wish to be able to travel to the beaches of Europe during July and August.

On board and in the airports, we are all continuing to observe strict safety protocols, with hand sanitisation. We still require face-mask wearing on board our aircraft, for example, despite the fact that passengers will have been vaccinated. We are all taking additional precautions to try to ensure that the return to pre-Covid air travel volumes takes place in as safe and secure an environment as possible.

**Grahame Morris:** Thank you.

Q12 **Simon Jupp:** Good morning, Michael. Thank you for joining us. As you know all too well, confidence is at an all-time low in the aviation industry and among passengers. Incidents like the one we have been discussing this morning will not help that. In your view, what are the consequences for connectivity in the UK and the Government's levelling-up agenda if the aviation industry does not receive ongoing sector-specific support from the UK Government?

**Michael O'Leary:** We are into a bigger issue about Covid. The industry has received the same furlough support as most other industries. However, in the case of the aviation industry, that is inadequate because aviation has been devastated much harder and for much longer than almost any other industry. Most of the airlines and the airports have seen a 90% reduction in traffic over the last 12 months.

We welcome the furlough support, but more needs to be done. We are not looking for more subsidies. What we need are incentives to get people back travelling. We have been strongly of the view that the way that should be done, which passes the support not to the airlines or airports but directly to the consumer, is by scrapping APD for a two or three-year period until air traffic volumes return to pre-Covid normal. That would be a subsidy to each passenger, certainly on short-haul flights, of between £13 and £15. It would not go to the airlines or the airports. Relieving that egregious and regressive tax, particularly on ordinary families, would enable a very quick recovery in traffic volumes, certainly between the UK and Europe. The money would pass directly to consumers.

What we need is a measure to get people quickly back flying. Remember, when the UK restrictions are finally lifted, Thomas Cook no longer exists. That is 4 million seats gone. FlyBe no longer exists; 6 million seats gone. Many of the other airlines have significantly reduced their capacity. There



are going to be, I think, anything between 15 and 20 million fewer seats annually between the UK and Europe for the next two, three or four years. Inbound visitor volumes—London depends on inbound passenger volumes—are going to be significantly depressed for the next couple of years, and air fares are likely to be higher. It is critical not that the Government give us more subsidies but that they scrap APD for a two or three-year period to allow consumers to return and the industry to recover.

**Simon Jupp:** Thank you, Michael.

Q13 **Chair:** Michael, I have one last question because I know we have taken a lot of your time. Returning to the issue with Belarus, in particular the overflight issue across Belarus and Russia, when we come back to normal capacity, which of course we all hope will be soon, is it your concern that this could lead to a problem in terms of managing the skies, with potentially an issue around safety as well?

**Michael O'Leary:** Absolutely. Across the world, the industry generally wants a return to open skies for overflights, even if we are overflying rogue states. It does not involve us, but most of the air routes between the UK, Europe and Asia overfly a whole series of countries that we would consider to be bad actors or to have dodgy or authoritarian Governments—the Russian satellite states and many of the middle eastern states, and so on.

It is fundamental to our way of life and to our freedom that airlines and air travel are not disrupted by unlawful or unprincipled behaviour in any one of those rogue states, operating copycat behaviour such as the Belorussian authorities got up to on 23 May. We cannot, as an industry, emphasise enough how much our industry depends, and many of our economies depend, on having unrestricted access across the skies and international airways. It is vitally important to our industry and to our economies that at the highest political and diplomatic levels—whether that is in Europe, the UK, NATO or whatever sphere—the Belorussian authorities and the Russian authorities agree to return to the pre-23 May norms.

I certainly believe they have learnt their lesson. I do not think that Putin or the Belarussians would want to threaten their air access to and from Europe. Certainly, the freedom to overfly states is something that we have perhaps taken for granted for the last 70 or 80 years. It was only taken away, rightly and properly in my view, from the Belarussians as a result of this incident. We must restore it as quickly as possible, so that the skies over international states are free and accessible, and airlines and our citizens are free to fly internationally without the risk of security or safety disruption, as happened in this case.

I am not just talking about Ryanair, but on an international basis people must be able to book in confidence. If I am travelling from Athens to Lithuania, I must know that nobody will interfere. The Lithuanian



authorities can exercise some control on my arrival or the Greek authorities can exercise some control on my departure, but you cannot have aircraft being hijacked or diverted under piratical circumstances so that individual passengers can be detained or have their freedoms withdrawn in as reprehensible a manner as occurred on 23 May in Belorussia.

**Chair:** Michael, thank you so much for giving us your time. We know that you were limited as to what could be said, but, as ever, you have given us excellent evidence. Again, on behalf of the Committee, I wish all of your team who were involved in that incident the very best from us.

**Michael O'Leary:** Thank you very much. They have all received counselling in the aftermath of the incident. I emphasise again to the Committee that we expect the ICAO final report, hopefully with some strong recommendations, to be available in about two weeks' time. If the Committee would like me to come back at that point in time and discuss it in more detail, I would be very happy to do so.

**Chair:** It is very good of you to make that offer. We will no doubt consider it. Thanks again.

**Michael O'Leary:** Thank you very much to the whole Committee.

## Examination of witnesses

Witnesses: Professor Tzanakopoulos and Professor Jackson.

Q14 **Chair:** We now have our aviation legal experts before us. Good morning. I ask you both to introduce yourselves.

**Professor Tzanakopoulos:** Good morning, everyone. Thank you for the invitation. My name is Antonios Tzanakopoulos. I am an associate professor of public international law at the University of Oxford. I am also the secretary general of the International Law Association.

**Professor Jackson:** Thank you, everyone, for the invitation. I am Miles Jackson. I also teach international law at Oxford. I am a fellow of Jesus College.

Q15 **Chair:** Two professors from Oxford are always welcome. Thank you very much for being with us. I hope you managed to listen to the evidence from Michael O'Leary from the operator's perspective. We are now going to focus on the legal ramifications. Before I hand over to Gavin Newlands, I will open by asking this. Is there an argument that Belarus has breached international aviation law?

**Professor Jackson:** My answer is yes. Although of course, as Michael O'Leary said, we are waiting for the report from ICAO, there is a strong argument that Belarus breached both the Chicago convention and rights thereunder, as well as the Montreal convention of 1971.

Q16 **Chair:** Can you give us a bit more detail as to where those breaches may



have occurred in terms of the various articles?

**Professor Jackson:** Of course. Maybe I can go back a step and say something about what the Chicago convention tries to do. It is trying to balance something quite delicate, which is states' rights in respect of their own air space, with an ambition to allow for civil aviation to go ahead. It strikes that balance in a number of ways in the terms of the convention.

If we look at 3bis of the convention, it allows states to require a plane to land in certain circumstances. We see this balance being struck. Those circumstances are twofold. It allows a state to require landing if a civil aircraft is flying without authority, which does not seem to be the case here, or if there are reasonable grounds to conclude that the aircraft is being used for any purpose inconsistent with the convention. That also does not seem to be the case here. On a straightforward application, given what we know of the facts, it looks to us like that is a breach of that provision of the Chicago convention.

Similarly, the Montreal convention sets out a number of provisions that relate to the safety of civil aviation. It sets out a number of unlawful acts in relation to the safety of civil aircraft. I will read you one of the offences specified in that convention. Article 1 provides that any person commits an offence if he "unlawfully and intentionally...communicates information which he knows to be false, thereby endangering the safety of an aircraft in flight." The provisions of those two conventions seem to us to have been breached.

Q17 **Chair:** Thank you very much indeed, Miles. Antonios, it is a curious one. I am deliberately being cautious because there is a report that is still to be made—that deliberation. The EU and the UK have already put in place sanctions and punishments, so they have obviously reached a view that there has been some form of breach. Do you have any commentary from that perspective? Is it absolutely clear that there has been that breach, and therefore we are just waiting for the inevitable, which is the report from ICAO?

**Professor Tzanakopoulos:** As Miles said, it is reasonably clear that there has been a breach, based on the facts that are publicly available at the moment. The aircraft was clearly not flying without permission in Belorussian air space. It was also not being used for purposes contrary to the purposes of civil aviation in the convention, so I cannot see any way in which you could argue that at least 3bis has not been breached. Similarly with the Montreal convention, we have an issue as well. It is pretty clear to me, as Miles said, that there is a breach.

What usually happens in international law, which is a decentralised system, is that states appreciate the legal position for themselves. Clearly, the UK appreciates the legal position for itself. It can determine for itself that a breach has taken place, and it can react to that breach by putting in place measures—not punishment. You are not supposed to



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punish, but to use countermeasures that respond to the breach by a counter-breach, basically by telling the other state, the responsible state: “Unless you accept that you have breached the law and make good on your breach by offering”—as Michael O’Leary said, for example—“assurances and guarantees of non-repetition, as the law of state responsibility would require, we will breach the law towards you or impose measures against you until you do so.”

These are measures meant to induce the compliance of the state rather than to punish it. It is good that we keep that in mind. I am not sure if that was helpful to you.

**Chair:** Yes, it was. It is a nuanced position. There have been sanctions interposed, but we have not actually had the determination by the official body, being ICAO.

Let’s go into a little more detail about the legalities. We can then talk about the sanctions and not the punishment—to your point. I will bring in my colleague, Gavin Newlands, who I think is on mute. Sorry Gavin, bear with us. Now you are coming in loud and clear.

**Q18 Gavin Newlands:** What a relief. Good morning. To go a bit deeper on the offence itself, and whether or not flight 4978 was an act of air piracy, from what I understand, generally it is somebody on board an aircraft who seizes or exercises control by means of threat, force or intimidation. On this occasion, it would appear that that direct intimidation did not exist on board the aircraft, but that there were fighter jets outside the aircraft. We have heard from Michael O’Leary already that on landing, when asked on camera to confirm that they had landed there of their own accord, they refused to do so. Is that an act of air piracy or not?

**Professor Tzanakopoulos:** No, I do not think it is an act of air piracy. It does not fall within the scope, based on what we know. This is all subject to new facts being brought to light. There is a lot of talk about state-sponsored hijacking. The 1970 Hague convention on unlawful seizure of aircraft is commonly referred to as the hijacking convention. It requires some sort of control over the aircraft to be taken, so that we have a seizure.

The way we understand that control has to be pretty narrow in that convention. It has to be through intimidation, threat or use of force over the pilots in the cockpit, or a direct seizing of the aircraft, otherwise we would have no way to separate an interception from the actual seizure of the aircraft. Of course, from Michael O’Leary’s perspective, I understand that if you are the pilot and you are being told by ATC that you have to divert, and at the same time you are being shadowed by two MiG fighter aircraft, obviously it does not seem to you as if you have too much choice of what you do.

That still does not mean that the aircraft has been hijacked within the meaning of the Hague convention. What it means is that you are subject to a situation of being intercepted and you have to follow the fighter jet,



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and so on, but you have not been hijacked in that sense. If we do not draw that distinction, any time that any state intercepts any other aircraft we will have state-sponsored hijacking, which is clearly not a position we want to be in. Clearly, the UK will also intercept aircraft that enter unlawfully.

I would be careful with that terminology in legal terms. I understand it in more colloquial terms, but I am talking about legal terms, based on the facts that we have right now. There is the question as to whether there were KGB agents on board, whose KGB agents they were and what they did on board. Unless it can be shown that they actually were Belarussian agents and somehow seized control of the aircraft, either directly or through intimidation of the pilots in the cockpit, it would not fall within the Hague convention on unlawful seizure. That is how I would put it.

Q19 **Gavin Newlands:** Professor Jackson, anything to add?

**Professor Jackson:** I have one point. As Antonios said, we need to wait for the factual report on some aspects of the applicability of the hijacking convention. Like Antonios, I understand the extra-legal force of the designation as hijacking, terrorism or piracy, but there does not need to be hijacking or piracy to be a very serious breach of international law. A very serious breach of a very well-functioning regime of civil aviation is of equal seriousness in many senses.

Q20 **Gavin Newlands:** Given the situation that Belarus has claimed—in fact, you have written about it—how difficult is it going to be to prove that Belarus knowingly communicated false information about a safety threat, as they said, from Switzerland, on board the flight? How difficult is it going to be to prove that?

**Professor Jackson:** I think we will have to wait for the ICAO report, but if you were making that kind of assertion, essentially, as justification for your conduct, you would need to put forward the information and the proof of the evidence to ICAO. They may have that evidence, but ICAO will have to make a factual finding about credibility, reliability and whether it is actually borne out. I think that Belarus will need to show that they were acting under that exception. If not, it would be unlawful.

Q21 **Gavin Newlands:** Mr O’Leary said, from information he had heard, that the email, or communication, from Switzerland regarding a bomb was half an hour after ATC had been in contact with the plane. Are you aware of that as well?

**Professor Jackson:** That is the story I have seen reported too, which would be quite a good indication of falsity.

Q22 **Gavin Newlands:** I will move on, and come back to Professor Tzanakopoulos. Does the international aviation community have the appropriate legal and enforcement tools to respond effectively to this situation?



**Professor Tzanakopoulos:** It depends on what you mean by effectively.

Q23 **Gavin Newlands:** What do you mean by effectively?

**Professor Tzanakopoulos:** There are a number of ways to react, both within the context of ICAO and in a decentralised manner by states. We have already seen these reactions taking place.

You can take issue, as Mr O’Leary did, with the measures taken in response, but there is a wide variety of measures available in response to such incidents. That is generally the way international law works. When there is a violation and a determination that a violation has taken place, the way that states react is by taking countermeasures and trying to put enough pressure or enough inducement on the responsible state, basically, to cease the violation and offer assurances and guarantees of non-repetition and potentially offer reparation for the breach, but more importantly to get that state to the negotiating table and to figure a way out of the whole thing.

The tools are there, but, of course, for them to be effective you have to be smart about the tools that you use. If you end up with your reaction as sanctions, as they are sometimes called, or countermeasures as they are legally called, you may end up hurting yourself more than you hurt your target. We have an indication of that. If your immediate reaction is, “Oh, we just ban Belavia and overflights,” you might be causing more trouble in the long term to civilian aviation than dealing with the case at hand.

Q24 **Gavin Newlands:** You tend to agree with Michael O’Leary’s point on that matter.

**Professor Tzanakopoulos:** I understand the problem of that being the immediate reaction for a short period of time, but it is clear that if you want to get Belarus to come back in line, as it were, perhaps other types of countermeasures or sanctions would be more effective than just flat out banning them from all over the place. This has perverse effects on people trying to leave Belarus, for all sorts of reasons.

Q25 **Gavin Newlands:** Fair point. Can you give me an example of the sanctions that you could levy instead?

**Professor Tzanakopoulos:** There are all sorts of sanctions that you can do, anything from more generalised trade sanctions to increasing particular targeted sanctions on the leadership of the state. You could take particular targeted sanctions, individual sanctions against the local civil aviation authority, which after all was involved in the incident—for example, against its head and the people involved in the incident, including through travel bans, asset freezes and so on.

There are also possibilities of taking all sorts of measures that are very lawful but are not friendly in that sense, and that also increase pressure on the state. It could be stopping voluntary aid, recalling ambassadors or



downsizing the diplomatic mission. All that stuff puts on pressure in a more generalised manner and sends a very clear signal that you will have to come back into line, or at least sit at the negotiating table and find a way out, otherwise we can make it very painful for you. That is the general idea.

Q26 **Gavin Newlands:** Dr Jackson, do you have anything to add?

**Professor Jackson:** In a wider sense, there are political judgments to be made by the state in not imposing self-defeating measures in the first place, and, secondly, thinking about the negative effect of sanctions or bans on civilian populations who were not involved. That is the judgment that has to be made. An automatic ban on flights out of Belarus is likely to affect civilians, a lot of people, quite seriously. That is all in the mix that should be considered by the state.

Q27 **Gavin Newlands:** The last question from me is this. Has this incident highlighted any potential shortcomings in any of the agreements? Does anything need to be done in terms of the Chicago agreement or Montreal? Is there anything you think would require updating to address this situation?

**Professor Jackson:** I think the exceptionality might highlight that it has been working quite well. Mr O'Leary said something quite important, which is that states have to be able to rely on messages from civil aviation authorities and from air traffic control. They have to be able to rely on that. They cannot go behind that instruction.

This has garnered so much attention because it is exceptional. We will see what ICAO does and what happens thereafter, but I do not think so.

Q28 **Gavin Newlands:** Do you agree, Professor Tzanakopoulos?

**Professor Tzanakopoulos:** I tend to agree. I think Miles is absolutely right. The fact that this is so exceptional highlights how effective the regime has been. There are also methods for the resolution of disputes. Most conventions, in particular the Chicago convention, can be used to great effect. It is actually being used by Qatar in an instance I am sure you are familiar with. It may end up before the International Court of Justice in The Hague, which is the UN principal judicial organ. It is an effective regime. I do not think it is a question of amending it. It is rather a question of dealing decidedly with its violation in an instance.

**Gavin Newlands:** Application and enforcement, rather than change. Thank you both very much.

**Chair:** Grahame, do you want to come in?

Q29 **Grahame Morris:** Might I ask our academics about something? I think I understand the advice, or your expert opinion, in respect of what appropriate sanctions would be. You heard Michael O'Leary's evidence earlier, and you seem to agree with him about the importance of maintaining the integrity and the freedom to overfly states, including



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Russia, Belarus and Ukraine.

What happened is reprehensible and I am not trying to defend it at all, but it seems that the victim in this is the airline Belavia, in the sanctions directed against them in particular. Is your academic opinion that the response of the international community should be not so much directed at the Belarus airline but against individuals involved in that political decision? Is that the gist of what you are saying? It should be asset seizures or other sanctions against individuals that would maintain the integrity of being able to overfly that air space.

**Professor Tzanakopoulos:** There is one question about how to justify a particular reaction on the basis of the law. There is another one that has to do with what the strategy is behind the construction of the relevant sanctions or countermeasures that we take in any given case.

I am no expert in designing sanction regimes. It just seems to me that it would be far more effective to target the equivalent Michael O'Leary of Belavia, rather than Belavia itself. That would be more painful in the circumstances than just to block Belavia itself. As I said, this is a matter of appreciation, and a matter of designing the particular sanctions regime in a way that will put the most pressure on the state to comply, and at the same time have the least possible number of perverse effects.

Q30 **Grahame Morris:** I am grateful for your candour. Thank you very much indeed. Professor Jackson, are you in agreement with your colleague's view?

**Professor Jackson:** I know at the start the Chair said that the human rights situation is being dealt with by Foreign Affairs, but we might see these things as connecting to each other. This is the kind of act of a regime under pressure, and there are systemic human rights violations ongoing. Binding the responses together may be strategically wise.

**Grahame Morris:** Thank you.

Q31 **Chair:** I have a closing question. It goes back to precedent. Is the Civil Aviation Authority's action in suspending the Belorussian airline's foreign carrier permit the type of thing that would normally be invoked on safety grounds, as opposed to what we have seen here? I know this is relatively unprecedented, but can you think of examples where something similar has been invoked, on a non-safety basis, to an airline?

**Professor Tzanakopoulos:** It depends what you mean by safety. Especially in bilateral air service agreements safety can have a rather broad meaning.

Q32 **Chair:** That is a great point. By safety, we normally mean that there are concerns about the safe engineering capability of an airline and its ability to maintain international safety standards, rather than the safety of the country in which it is domiciled. It is interesting that you touch on the word "safety" as a very generic term. Do continue.



**Professor Tzanakopoulos:** The reason I mention it is that, of course, when you read something like “safety”, the first thing you think about is airworthiness of aircraft. There have been situations when there has been suspension of Belorussian flights into Europe because of airworthiness concerns in the past. For a while, Belavia was unable to land in European airports precisely because of its airworthiness issues, but I may be mistaken on that, so do not take me at my word. I would have to look it up.

The point is that there are security exceptions in air service agreements. There are provisions that allow for the suspension of an air service agreement between states when there are security concerns that go beyond safety in terms of airworthiness. In such a bilateral situation, every state will assess for itself whether its security interests are on the line, and so will be able to suspend licences and so on. It would depend on the particular air service agreement in play.

Q33 **Chair:** Miles, do you have anything to add on that front?

**Professor Jackson:** Nothing to add.

Q34 **Chair:** The Minister has been listening in the room to a large part of your evidence. When you said it would be a political matter, that was when he walked straight through the door. He is a lawyer as well, so will no doubt appreciate the points you have recognised.

It is absolutely fascinating to hear the evidence from you both in this space. Perhaps I could throw one final question at you, if you don't mind. In this situation, where we have seen the Russians intervene and make the point that if airlines are not flying over Belarus they cannot fly over Russia as an alternative, is there a real concern that we could see international standards unravel, or do you believe it is just a temporary matter that will be solved by diplomacy rather than legality?

**Professor Tzanakopoulos:** History teaches us that it will not unravel. If anything, this type of escalation of countermeasures and counter-countermeasures and reactions upon reactions is common. In fact, one of the cases that we use to teach escalation of countermeasures and counter-countermeasures is an air service agreement from the 1970s between the US and France. The US was doing something that France did not like. France banned all flights from the US. The US then turned around and said, “No, that's the first violation. It is not allowed. It is not a countermeasure, so we'll ban all the flights from France.” The situation escalated enough to put pressure on the states to sit down and resolve the issue, or submit it to an arbitral tribunal, which is what they did in that instance.

In this particular instance, we have the ICAO council, to which states parties to the Chicago convention can resort. We have the possibility of appeal to the ICJ. We have the possibility of using countermeasures to push towards a negotiation of some sort. I really do not think it will



unravel. It does not unravel that easily. Rather, it will be an episode that will be resolved, probably along those lines.

**Chair:** Antonios and Miles, thank you so much for lending us your academic legal expertise. Our best wishes to you and everyone else at Oxford as well. Thank you, again.

## Examination of witnesses

Witnesses: Robert Courts MP and Richard Moriarty.

Q35 **Chair:** Apologies to our final panel for the delay. I ask the Government and the Civil Aviation Authority to introduce themselves.

**Robert Courts:** I am Robert Courts, Minister for Maritime, Aviation and Security.

**Richard Moriarty:** Good morning. I am Richard Moriarty, chief executive of the Civil Aviation Authority.

Q36 **Chair:** Good morning, to you both. Apologies that we were over time. Largely, it was due to me reading out the letter from the ambassador of Belarus to the UK. We were hoping he would be with us, but he sent us a letter instead, which I thought that, in fairness, I should read out.

I know that you have been listening to the evidence of both Michael O’Leary and the two professors from Oxford. We are keen to explore a lot of that. I will start, Minister, by asking what implications the diversion of flight 4978 have for future air travel.

**Robert Courts:** Thank you, Chair. Thank you very much for inviting me to come along and talk about this serious incident involving the FR 4978 flight on 23 May.

I ought to say at the outset that the factual circumstances remain to be determined by the ICAO investigation that we have heard about today. However, on the face of it, the Lukashenko regime, on the pretext of a bomb alert, forced the Ryanair flight from Athens to Vilnius, with more than 100 passengers on board, to divert from its route and land in Minsk.

The apparent actions of Belarus demonstrate contempt and disregard for long-standing and universally applied international norms for air transport. The apparent actions of Belarus are not acceptable in today’s globalised system of international civil transport. We have taken a number of actions, in close co-operation with the Foreign, Commonwealth and Development Office and the CAA, who of course we have here today, to take quick and decisive action to address our concerns. Our concerns mainly are that Belarus acted contrary to the long-standing and universally applied norms of international civil aviation.

Of course, we have the ICAO report that we are awaiting. I apologise in advance, Chair, that there is a limited amount that I can go into while we



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await the outcome of that report, particularly with regard to the future for international civil aviation.

Q37 **Chair:** Thank you, Minister. Let me ask Richard, from the Civil Aviation Authority, the same point about implications for future air travel. I will then come back to what you have just said, Minister.

**Richard Moriarty:** Thank you, Chair. If it is true, and the ICAO investigation demonstrates that it is true, that a pretext was used for the diversion of a civil aircraft that was lawfully flying between Athens and Vilnius, it is an exceptional event in international aviation. It is not something that we have ever seen before. It calls into question, as the Minister said, very long-standing protocols, conventions and norms around civil aviation. Clearly, we need to wait to see how the facts get established through the ICAO investigation. We are watching the situation very carefully.

Q38 **Chair:** Minister, you rightly said that there is a limit to what you can say. It was the same for Michael O’Leary as well. We are very respectful of that.

Given that we are still waiting, what is your view of the reasons why some measures have been taken, which are perhaps indirect, in terms of the responsibility, for example of Belavia, in this whole process? Why have immediate steps been taken, notwithstanding that we are, as you rightly say, still waiting for the investigation to conclude?

**Robert Courts:** Immediate steps by the Government, Chair?

Q39 **Chair:** Indeed, but also by the EU. The UK is not alone as far as that is concerned.

**Robert Courts:** Yes. Of course, we have seen a number of steps taken by international partners in a number of spheres. Perhaps I could explain the actions that have been taken.

**Chair:** Please.

**Robert Courts:** They can be put into two categories. There are those that apply to abroad; in other words, to the air space over Belarus. Richard may wish to go into that in a bit more detail in due course. Essentially, that is the implementation of a NOTAM—the acronym for notice to airmen—which gives advice and information to those who are flying. That is of course, as you would expect, Chair, something that is a Department for Transport matter.

Aviation safety includes in this context the security of those on board—referring to one of the points you discussed with the lawyers recently—and is safety in the broadest sense. It is the responsibility of the Department for Transport to ensure the safety and security of British citizens and British carriers, were they to be in air space where that might be threatened. That is the CAA’s implementation of a level 2 NOTAM. We may wish to go into the different levels that are available in



due course. That is the first category of action. As I say, the justification for that is the safety of UK citizens and UK carriers.

Then you have the measures that have taken place with regard to Belavia and the United Kingdom itself, where there are three categories. There are four overall; one applies to the Belorussian air space and the third applies to the UK. The first of those is to suspend Belavia's permit to operate to and from the UK. The second is stopping issuing ad hoc permissions to Belorussian carriers. The third is stopping scheduled Belorussian services from entering UK air space.

Those are all justified on the basis of the action that we have seen, which is contrary to the long-standing and universally applied standards of international aviation. It is important to look at that. This is an aviation safety matter. Safety includes security. As Richard will elaborate in due course, we take the precautionary principle, or rather the CAA does, when dealing with matters of aviation security and aviation safety. The justification for all those three matters is that the action we have seen Belorussia take is contrary to long-standing and universally applied principles of international civil aviation.

**Q40 Chair:** Thank you. Richard, do you want to add anything on that particular part? I assume this is all very unprecedented waters, as far as the Civil Aviation Authority is concerned.

**Richard Moriarty:** It certainly is. As the Minister said, quite rightly, until such a time as the facts are established, we felt it was right to advise the Government to adopt the precautionary principle with regard to safety, and particularly for overflights of Belorussian air space. The justification and background for the foreign carrier permits is governed by an air service agreement between the UK and Belorussia, which includes an obligation on both sides to act in good faith in international protocols, conventions and norms.

**Chair:** Thank you, Richard. I have already stumbled into territory that Grahame Morris is going to cover for us, being the UK Government response to the diversion. I shall cease speaking and hand straight over to Grahame to continue.

**Q41 Grahame Morris:** To follow on from that, Minister, I am glad that you were in the session with the professors from Oxford. That was quite instructive. You have actually cleared up one of the questions I was going to ask, which was about the definition of "safety" and the interchangeability with "security".

Can I refer you to the letter, which you may not have seen, that the Chair read out at the beginning from the ambassador of Belarus to the UK? He asks for an objective examination of the case by aviation experts. He calls on our Committee to give careful and impartial consideration to the materials. He also raises the issue of sanctions against Belavia. He points out the cost of that; it is not just British people who cannot go for holidays there and Belarussian citizens coming to the UK. My area hosts a



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party of children from the Chernobyl disaster every year, and that will not happen because of these sanctions.

What steps do you think Belavia are going to have to take to satisfy the international aviation authorities and the British Government that normal service can be resumed? Will it suffice to suggest there be an undertaking that such actions would not be countenanced again, or is there some other remedy that you can suggest?

**Robert Courts:** We need to be a little bit careful about terminology. I am sorry for sounding like a lawyer, but—

**Chair:** You are a lawyer. Once a lawyer, always a lawyer.

**Robert Courts:** It is difficult to shake off those old habits.

Some of the terminology is used in a broader sense. I have not had the chance to see that letter, but I heard you read it out, Chair, so I am familiar in broad terms with its contents.

Sanctions, of course, have a wider meaning in international law than what we are dealing with here. What we are dealing with here are essentially regulatory matters and decisions undertaken by the DFT and implemented by the CAA. Those are concerned with safety and security in the short term.

Richard has already briefly referred to the air navigation order. It is important to have a look at that at the moment. It governs the actions that we can take under the air service agreements. Those air service agreements, as Richard outlined, give the Secretary of State some broad powers that can include the ability to act if a country has breached the air service agreement, or if it has acted in a manner prejudicial to the operation of that agreement. Good faith, of course, is critical to that, as we have heard.

What we have, on the face of it, with the caveat that we await the facts as found by ICAO, is that Belarus appears to have acted contrary to the long-standing and universally applied international norms for air transport, including those established under treaty, as we heard earlier from the lawyers. It is difficult for me to go any further than that at the moment; given that we have the ICAO report coming, it would be inappropriate for me to speculate at this time on steps that we may or may not take. We will have to wait for the ICAO report and then we will consider what steps to take in due course. I wish to draw that important distinction, without sounding pedantic, between the steps that we are taking under the CAA and sanctions, which are a different matter under international law.

Q42 **Grahame Morris:** Thanks for clarifying that. The previous panel used the term “countermeasures”. I do not know if that is a legally acceptable term. The concern I am seeking to address or put to you, Minister, is that we do not mix a political remedy—I am not using the word sanction—with



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the issue of safety, as covered, as Mr Moriarty said, by the air service agreements.

If you heard the earlier testimony from our academics, there may be a better remedy or a better method to ensure that we have open skies and freedom to fly, free from hindrance—some alternative method other than the broad-brush sanction against Belavia. Is that under consideration by the Department and the Government?

**Robert Courts:** Clearly, Chair, there are a number of steps that could be taken by the Department, by the CAA and by the international community. Of course, we will consider all those. I am careful not to get into speculating about what those might be at this stage, given that we have not had that ICAO response. I think that the terms of the air service agreements, as I have explained, are particularly instructive because of the wide power that is given to the Secretary of State particularly to act if a country acts in a way prejudicial to the operation of that agreement.

There are the two aspects to this. There is of course the aspect around the NOTAMs and the safety of what happens when you are in Belorussian air space, but it would have been irresponsible for Her Majesty's Government not to have acted to minimise the resultant risk to UK citizens. Further, because of the contempt and disregard that, on the face of it, appears to have been exercised by Belarus by this action, there are some other actions that are intended to show that this action is not acceptable within the safety and security context.

Q43 **Simon Jupp:** Good morning, Minister and Richard. We much appreciate your coming along this morning. What further steps could the UK Government, the Civil Aviation Authority and the international community as a whole take in response to the diversion of Ryanair flight 4978? May I start with Richard?

**Richard Moriarty:** I would not wish to speculate on the outcome of the investigation that ICAO have ongoing. We and DFT were quite instrumental in ICAO in launching that. It is absolutely right and proper that we see it through to its conclusion.

This might be a rare event for me, but I am in violent agreement with Michael O'Leary on one point. Whatever the outcome, we must find a way back to what is, effectively, the rule of law, rule of convention and the protocol of civil aviation around overflights, which after all has been a key ingredient of the success of global connectivity over the last 70 years. It is absolutely important that there is work with international partners to help achieve that.

If you think about how partners reacted to this, the European states and EASA, our equivalent, took very similar action. Other partners have taken similar action too. I think the point Michael made about the long term and getting to a place where overflights are respected and all nations uphold conventions, particularly the Chicago convention, in relation to overflights is really important. In terms of precise state-led sanctions, it would not



be right and proper for me to speculate, particularly in light of the ongoing ICAO investigation.

Q44 **Simon Jupp:** Minister, are you in violent agreement with Michael O’Leary as well? Are there any further steps that you are considering, or think should be considered, in light of this incident?

**Robert Courts:** There are a number of steps that, of course, nations can take, some of which will fall outside our responsibility at the DFT. We just need to be distinct about the things that are our responsibility and that are in our power, and things that would lie elsewhere, principally with the Foreign Office. I would not wish to trespass on their land, nor would I wish to prejudge the investigation that ICAO are undertaking.

As Richard explained, the UK was instrumental in pushing for that investigation to be made early. That has indeed been achieved. What I can certainly agree with is the broad statement of principle, and I urge all nations to obey international law and to obey the long-standing norms of international civil aviation that have led to the world that we are used to, where you have freedom of the skies, freedom of navigation and the ability to travel without let or hindrance. That has helped with connectivity. It has helped with commerce and the interconnected world that we have come to know and value so much.

Q45 **Simon Jupp:** We know that the investigation is ongoing, Minister, but is the UK working with international partners, whether it is your Department or the FCDO, to plan a further response to the diversion of this particular plane? We heard earlier some really powerful testimony from Michael O’Leary regarding the impact it had on passengers and staff. What further actions could be considered to try to make sure that this does not ever happen again?

**Robert Courts:** You can expect, quite rightly, that the UK will continue to work with international partners, as we have in response to this incident, through ICAO, G7 and other key partners, as you would expect, given that it was an Irish airline, Poland-registered, and Ireland and Poland are key western allies. You can expect that we will always work with international partners. I ought not to speculate—I know that it is frustrating—as to what we may or may not do, because we have not yet had that ICAO report.

Q46 **Simon Jupp:** In this particular instance more than most, your interactivity with the Foreign Office is absolutely crucial. How regular is that? Is there enough working together across Government Departments on a response to a situation like this? I used to work in local government, and briefly in the civil service. One of the things that often struck me is sometimes how people can work in silos. Can you assure us that that is not the case here?

**Robert Courts:** You are absolutely right that working together when you have an incident occur that covers a number of different Government Departments is absolutely key. I know that the Foreign Secretary and the



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Secretary of State for Transport were in contact at the time of this event. I know that my officials are in very frequent contact with others. Of course, I assure you that, if we need to speak to others across Government, we will do so. It is essential in this. It is also unavoidable, for the given reason that there are different responsibilities that attach to different Departments.

**Q47 Simon Jupp:** Richard, what else do you think could be done to prevent a similar diversion to this taking place in the future? What are your thoughts on what you have just heard from the Minister on how Government Departments are working together, and on international partners' response?

**Richard Moriarty:** Perhaps I could answer that in two parts. First, the Government were very swift off the mark in response to this event. Shortly thereafter, there were a number of meetings and calls involving the Foreign Office, DFT and ourselves. It really was a team UK response.

All of us know that we cannot do this in isolation. We have to work with international partners. That was one of the reasons why both my team and the Minister's team were keen to enlist the help of ICAO in kicking off the fact-finding investigation, which is really important for bringing other states along. We await the findings of that. We have also been in contact with EASA and other European regulators throughout.

The question that then arises is, should there be any changes as a result of this, particularly in relation to the legal framework? This is frustrating to hear, but to be honest, given that it is within the purview of ICAO, we must await and read carefully the reports of its experts on its fact-finding mission.

All I would note—I think our professors attested to this—is that, if it is the case that this was a forced diversion under pretext, it really is an exceptional event in the last 70 years. No one can think back and find an equivalent. It suggests that the international norms and conventions, which have supported global connectivity, have worked except in that one instance, if it is proven. That is why I think it right that I hold my counsel on whether change is needed, until we read that ICAO report.

**Q48 Simon Jupp:** I am going to try to get a bit more out of you, Richard. Would you be surprised if no changes were made as a result of the investigation and what is subsequently found, discussed and agreed?

**Richard Moriarty:** Obviously, I would have to read the report and study it carefully. What we are talking about is states upholding long-standing conventions and protocols of civil aviation. It is not overly obvious to me that a rush to legislation is the right response, other than the broad diplomatic pressure that our professors spoke of. To be honest, I cannot stress enough that we have to read and digest that ICAO report before coming up for air and working out what the right remedy and way forward might be.



**Simon Jupp:** Thank you, Richard, and thank you, Minister.

Q49 **Chair:** Your journalistic background is evidently displayed, Simon. Over to Gavin Newlands—who seems to be on mute. This is not direct sabotage of you, Gavin. I am sorry, it has happened twice. We seem to have lost Gavin. It is always great being the Chair when that happens; you can't beat face to face.

I was going to come to some concluding points so I will throw them in now. Richard, you said that we had been quick off the mark in taking action, and that indeed is the case. You and the Minister also said that you have to wait for the report. Does this mean that the initial decisions have been more policy driven than legally driven, particularly with regard to the state carrier of Belarus, which, as the ambassador pointed out, was in no way involved in the incident with the Ryanair plane? Is it policy driven or are there some legal bridges that you can get to, to get to the position that you have taken?

**Robert Courts:** It is important to consider the stages. A lot of the questions that the Committee has quite rightly asked surround what we would do in the future. Of course, as Richard has just explained, we do not wish to be obtuse, but until we have established the facts in the ICAO report we cannot know the action we might take. It is the answer to Simon's question just now. The action you might take is dependent upon the facts as established, which is why we cannot go any further.

What we can do is look at the tools that are available to us at the moment. Those are in the sphere of aviation safety and security. The legal ground that we have acted on is based on the air navigation order and around the air service agreement. There is a wide range of discretion in regard to the issuing of ad hoc permits, which is one of the actions that we have taken. That is the discretion that vests in the CAA. The other two actions rest underneath the air navigation order. As I have explained, that gives the Secretary of State discretion to act when a country has acted in a manner prejudicial to the operation of that agreement. That includes acting contrary to the long-standing universally applied norms, as I have said. This is very much based upon a legal ground. That is what we can do. Anything further would require reflection of the ICAO report and some wider engagement.

Q50 **Chair:** I understand that with regard to the overflight matter over Belarus. It could be seen that that needs to be a pre-emptive measure, taken with regard to safety, given what may have occurred. With regard to the actual state carrier, where can you give me the link as to why it is involved, in terms of sanction, if I can call it that?

**Robert Courts:** I understand the context in which you use the word. There are two aspects. There is clearly the action taken with regards to minimising the risk to UK carriers and UK passengers. That appertains particularly to the NOTAM—the notice to airmen—that the Committee has probably accepted is something that applies to the air space over Belarus and the safety and security of UK passengers.



Clearly also, the UK, alongside our international partners—it is key to remember, as Richard said, that the action we have taken is very much in line with our European allies and is clear with the view that the international community has taken—has a wide discretion that exists under the air navigation order and the air service agreement. That power also exists when a country has acted contrary to the long-established norms to which I have already referred. That is what I would point to in terms of both law and policy, if that makes sense.

**Q51 Chair:** It does. In terms of the comparison with the EU response, two of the three matters that the EU has put in place the UK has also put in place, with regards to the national carrier and overflights. The EU has also placed sanctions on individuals and organisations, but the UK has not.

I know that may be more of a Foreign Office matter, but what was the thinking behind doing two of the three, rather than the sanctions directly related to individuals?

**Robert Courts:** Chair, I am afraid that is something you would have to direct to a Foreign Office Minister. It is not something that I or my Department would be involved in. Clearly, we are in contact, because the actions that we take have a foreign policy ramification, but issues of sanctions against individuals from a legal sanction point of view would be a matter for the Foreign Office.

**Q52 Chair:** The matter with regards to the investigation at the international level is very much a Transport matter. Do you envisage that there could be other conversations needed between the Department for Transport and the Foreign Office once you get the findings back from that, in terms of what wider—I won't use the word penalties or punishment because I was told off by the lawyers previously—sanctions or action that could be taken, driven by your Department but perhaps carried out by the Foreign Office?

**Robert Courts:** I can certainly confirm that I would anticipate that once we have the ICAO report it will be read and considered carefully, not only by us, and that we will consult our colleagues across Government, and we will consider what steps we ought to take. What I cannot do, I am afraid, is speculate as to what those things might be. That we will consider and consult across Government is something that I can certainly confirm.

**Q53 Chair:** From a Transport perspective, how concerned are you about the intervention of the Russian authorities now, not with regard to what may or may not have occurred on that particular flight? We know that there was an issue with regard to Austrian Airways. One of their flights was refused permission to go via Russian space. The Russians seem to have taken the view that, if carriers are not going across Belarus, they cannot go across Russia. What is that going to do to the schedules? We made the point to Ryanair, to Michael O'Leary, about safety, potentially, when



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we have more international flights resuming and they need to go across either Belarus or Russia.

**Robert Courts:** I would urge all states under any circumstances to obey the norms of international law, which have been well established and well followed for 70 years, since the end of the second world war. They have laid the basis for the international aviation sector that we all value so much and that has brought so much connectivity and value, not just to this country but to the world. That is underpinned by the rule of law and the international norms that we have seen. I would strongly encourage all countries to cleave to those at all times.

Q54 **Chair:** From a regulatory perspective, Richard, I was doing some research earlier and I understand that there are 300 flights daily across Belarus, and roughly 100 are operated by EU or UK carriers. What is that doing in terms of air space management?

**Richard Moriarty:** Obviously they need to route away from the air space, either to the north or the south. There will be a commercial impact in time and cost, potentially burning a bit more carbon along the way.

If I could pick up the point about Russia, you are absolutely right to identify two approvals. Austrian Airways and, I think, Air France were denied when they sought to route around Belarus. We are aware, though, that they are the only two examples. We are not yet aware of, and we do not have evidence, that this is a concerted pattern of reaction or behaviour by the Russians. We only have experience of those two examples.

Q55 **Chair:** One of them was a flight to Islamabad. Was that the Air France matter, or was that British Airways?

**Richard Moriarty:** Apologies, Chair, but I am only aware of two. One was Air France and one was Austrian Airways. I am happy to provide a note to the Committee clarifying the matter.

Q56 **Chair:** It is my research, so it may be poor. On a Monday, a British Airways Boeing 777 was already in the air with a flight plan that sliced across Belarus and onwards to Islamabad in Pakistan. After the order to avoid Belarus came through, the pilot steered north and was forced to hold short of the Russian border while a new flight plan was negotiated with air traffic controllers. So much time and fuel was used that, when permission was eventually granted to cross Russia, the plane had to refuel in Moscow before continuing to Islamabad. Those were press reports that I picked up. Have you picked that up as well, because obviously that is British Airways and one of our own?

**Richard Moriarty:** I am not aware of that particular example from British Airways, but I am very happy to make investigations and report to the Committee.

Q57 **Chair:** The point I am driving at is that from a safety perspective—again,



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let's use that as a hypothetical because it is probably safer—if you have a situation where an aircraft is up in the skies and is having difficulty as to whether it can access Russian air space because it cannot access Belorussian air space, and is having to land and refuel, we have safety issues with regard to the skies above not just Belarus but also Russia.

**Richard Moriarty:** In terms of air traffic control putting in place operational restrictions for a whole host of legitimate matters, that is quite common in aviation. We do so ourselves in the UK. There may be special events like the G7, where we prevent flights from going near. There may be operational issues, such as runways out of commission or military training, and we have to notify aviators to avoid that bit of air space. It is quite common that operators deal with what are called NOTAMs—the notices that we issue. Pilots, of course, are exceptionally well trained to deal with that and have procedures for diversions. It is more a cost and convenience delay and an environmental impact than safety, per se.

Q58 **Chair:** Margins are incredibly tight at the moment. Is there a danger that, if you have extra fuel load for the extra time and schedule changes, it could put some flights at risk? We are talking about ordinary times and not right now, when obviously there is reduced capacity in any event. Are you concerned as to whether we will start to see flight cancellations as a result of them not being economic?

**Richard Moriarty:** Not really. It is standard practice for airlines to carry excess fuel in case they need to divert. You are right that it is a cost, and it is a cost of doing business.

If I can give the Committee some assurance, I would never ever be complacent about safety, given what we do for a living. The UK has quite a long track record of working to enhance safety standards. Even in difficult economic times, the CEOs of the airlines take safety very seriously, as you will attest from Michael's evidence earlier. I am not particularly concerned about that, Chair, albeit that I would never be complacent.

Q59 **Chair:** I appreciate that. We have a proud record as far as international safety is concerned. I was actually looking at it more from the other angle, which is that, if we return to some kind of normality with regard to international flights, is there a concern that we may have to take down flights because we do not have the air space to get them into London? Bangkok to London is an example of one that really requires that space. In order to uphold our fine record of safety, are you having conversations with your international partners as to whether you need to reduce capacity because you do not have the same amount of sky?

**Richard Moriarty:** Obviously, we are having conversations with EASA and EUROCONTROL, which looks at the network. Currently, the corridors are there. What would be a much bigger issue for international aviation is if Russian air space was closed. We have no evidence to suggest that that



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will be the case. That would perhaps get you into the territory that you have suggested, but we have not seen or picked up evidence that that might be the case.

Q60 **Chair:** Minister, do you want to add anything on the particular angle that Richard has just covered?

**Robert Courts:** As Richard says, clearly safety is something that the Department takes with the utmost seriousness. We will work closely with the CAA to consider any ramifications that there may be at any time. I would like to stress, as Richard said, that there are various contingency plans in any event that airlines take into account as a matter of course. Sometimes, of course, different flight plans have to be taken. Things occur when you are in the air, and they have to be able to cope with those. That is the case under any circumstances anyway.

Q61 **Chair:** I do not know if other Members want to add anything more. My last question is this. The ambassador references UK citizens being able to get back to the UK. Have you any examples of UK citizens who have been unable to come back to the UK from Belarus, or wanting to do so, as a result of the action that has been taken, or is that not within your knowledge?

**Robert Courts:** I do not have knowledge of any such, Chair. Clearly, if I were made aware of any, we would investigate and look at the matter seriously.

**Chair:** The one thing I would say to the ambassador is that he was always welcome, but we have indeed been very fair. We have put some of the points that he raised. That is the type of great democracy we have in this country. We will leave it there, on that basis.

Richard Moriarty, thank you very much indeed for joining us via the screen. Minister, thank you for joining us in the room, and also for listening to the evidence previously. We will reflect and no doubt get back to you if we have thoughts and observations.