

Obligations Of The Operator Of The Drone Used For Commercial Purposes

Siham Swadi Tuamah, Saja JAwad Kadhim

Article Info	Abstract
<p>Article History</p> <p>Received: April 03, 2022</p> <p>Accepted: November 04, 2022</p> <hr/> <p>Keywords : Operator , Drones , Commercial</p> <p>DOI: 10.5281/zenodo.7293267</p>	<p><i>Since the operator is responsible for compensating the victim for the damage caused by the latter, it is necessary to highlight the obligations of the drone operator, the problem here lies in the search for the obligations of the drone operator, in the laws governing drones with a review of the position of international conventions relevant to the subject of research, analysis of the legislative situation in Iraq and the statement of its adequacy to address the subject of research, and has been limited to We searched for aircraft used by individuals and private sector companies and not those used by the state, and from this point of view the research was divided into two sections, the first of which dealt with the definition framework of the drone operator and highlighted the legal nature of drones and their legal adaptation, and we were exposed in the second section to the obligations of the drone operator, and in the conclusion we reached some conclusions and proposals that contribute to solving some of the problems that can be raised by the use of this modern technology in the commercial field.</i></p>

Introduction

In light of the technological development, a new type of aircraft has emerged that has its own advantages, the most prominent of which is the absence of the pilot on board the aircraft where it is directed remotely, in addition to its small size and the diversity of sources of operation, and has been called the term (Drone), so these aircraft have become of great importance, due to the increasing uses both at the civil and commercial level, and the military use has occupied for a long time the largest space, where it was previously used to achieve military objectives and this use achieved great success, but in Recently it began to be used for commercial purposes, which prompted the International Civil Aviation Organization (ICAO) to pay attention to the legal status of this type of aircraft and sought to introduce its concepts into its legislation, and urged States to regulate the legal status of drones, and indeed many countries have enacted laws regulating the use of drones and determining the conditions of their registration, controls of operation and eligibility of their operators, as well as the statement of the obligations and responsibility of their operator, and one of these countries is the United States of America, which has passed the Chapter 107 law on drones. The State of Qatar has also legislated Regulation No. 5 of 2017, and finally the United Arab Emirates has issued Law No. 4 of 2020 on drones.

The International Civil Aviation Organization (ICAO) has paid the greatest attention to this type of aircraft, due to the fact that drones, despite their small size, can cause serious damage, and since the operator is responsible for compensation for these damages, it is necessary to determine his legal status and indicate the duties and obligations imposed on him. About the damage caused by this type of aircraft.

Research Hypotheses

The existence of a modern technology such as a drone creates many questions for researchers, including:

- 1) What is the legal nature of the drone? and is it an aircraft in the traditional sense or not?
- 2) In the absence of legal rules governing drones, will the provisions of the law of the N Flight be applied? Iraqi Civil or should a law be issued of its own?
- 3) Who is the person to whom the status of drone operator is proven?
- 4) What are the obligations imposed on the drone operator?

Research Methodology:

In light of the hypotheses of the research, we will follow the analytical approach by analyzing the texts of the laws, and the comparative approach by comparing with the provisions of some laws such as the US Chapter 107 Law of 2016 on drones, the Qatari Regulation No. 5 of 2017, and the UAE Law No. 4 of 2020 on drones, with a statement of the position of some international agreements related to the subject of research.

Section one

Identification framework of the drone operator

International agreements and laws regulating the legal status of drones have been concerned with the definition of "drone operator", because of the importance of this definition, through which it is possible to determine the legal status of the drone operator and the duties or obligations imposed on him that he must comply with, especially after the drones have proven their effectiveness at present, due to their low price, speed and the possibility of reaching areas that man cannot reach, so it has become possible to use them in many areas, including the commercial field, and in order to know With the definition of the operator of the drone, the definition of the drone must be defined, and this is what we will show in (the first requirement), and we will discuss the definition of the operator of the drone in (the second requirement).

The first requirement: Definition of drones

Several definitions of drones have been introduced^[1] defined by some as "an aircraft that can fly without a pilot on board, can fly automatically or with a control device on board, can be consumed with or after use, can carry lethal weapons or can be without lethal weapons, and ballistic missiles, semi-ballistic missiles, projectiles, torpedoes, mines, plates, or sensors are not drones"⁽²⁾, as defined by some jurisprudence as "a valid and self-prepared air vehicle for remote guided air navigation without a human crew on board, and uses the dynamic air capability that allows it to lift the vehicle into the air"^[3], and therefore the drone is an air vehicle^[4] characterized by the absence of a human element on board, but the absence of the human element does not mean that it is an air vehicle completely independent of man, although at first glance when exposed to its definition it is initiated by us that it does not require human intervention, But in fact, most types of these aircraft, either pre-programmed to fly in the air, or equipped with a remote control and consequently part of the A system...In one of the comments of the International Civil Aviation Organization (ICAO) (ICAO) I defined it as "the aircraft intended to operate as a drone on board".^[5]

As for the position of national legislation, it has taken over the statement of what is meant by drone^[6] as stated in the US Chapter 107 Act of 2016 on drones in its third article, the drone as "an aircraft operating without the possibility of human intervention directly inside or on board the aircraft".^[7] With regard to the position of the Qatari legislator, the drone was defined in Regulation No. (5) of 2017 in Article I as "Aircraft operated without the presence of A pilot on board"^[8], and it is noted on the position of the Qatari legislator that he used phrases similar to those of the US Chapter 107 Act, and explicitly differentiated between the drone and the balloon flying drone and this is evident when he singled out each of them with a separate definition^[9] and explicitly excluded the flying balloon from being subject to the provisions of the said law.^[10]

As for the position of the UAE legislator, Law No. (4) of 2020 on the regulation of drones is stated in Article (2) as "an aircraft flying in the air without the presence of a commander on board and includes the aircraft guided by the naked eye, the remotely piloted aircraft, and the self-guided aircraft", it is noted from the said definition that the UAE legislator came up with a general definition of the drone and then distinguishes between self-drones, remotely piloted aircraft, and the aircraft guided by the naked eye, and it seems that Clear when he singled out each of them with a special definition^[11].

Referring to the position of the Iraqi legislator, we find in the text of the second paragraph of Article (79) of the Iraqi Civil Aviation Law No. 148 of 1974 that it refers to drones by saying "... Drones may operate over the territory of the State and the space above it only with the authorization of the civil aviation authorities after the approval of the other competent authorities of the State...", but the said law does not contain a definition of the drone, hence the question arises as to the legal nature of the drone? And is it considered an airplane in the traditional sense? Thus, can it fall within the scope of the definition contained in the Iraqi Civil Aviation Law No. 148 of 1974?

We note that the majority of laws recognize that the aircraft is movable property, because it represents a large economic financial value, and this is what the Iraqi legislator referred to in the Iraqi Civil Aviation Law No. 148 of 1974, as amended, where article 40 of the aforementioned law stipulates that "the aircraft is movable money in relation to the application of laws and regulations in the State".^[12] It is worth noting that the comparative laws did not refer to the legal nature of the drone, but we see that aircraft, whether piloted or drone, are considered The absence of the pilot on board the aircraft does not change the legal nature of this type of aircraft, and therefore the drones are nothing more than a means of transport and are subject to the provisions of the movable contained in article 62 of the Iraqi Civil Code No. 40 of 1951 as amended^[13], and therefore aircraft of all types, whether conventional aircraft or drones, are considered transported and the reason for this is the possibility of transporting or transferring them from one place to another without damage, and what is in support of Our words are settled by jurisprudence^[14], as well as what is stipulated in Article (40) of the aforementioned Iraqi Civil Aviation Law^[15], and on the one hand .As for the extent to which the drone is considered an aircraft in the legal sense, the International Civil Aviation Organization (ICAO) has considered drones to be aircraft in the legal sense of the word, considering that the special license required in article (8) for them to be able to fly over the territory of a Contracting State is similar to the license that takes the form of a special or other agreement under article (3) of the Chicago Convention^[19].

The laws regulating the legal status of the drone have taken the position of the International Civil Aviation Organization (ICAO), where drones used for commercial purposes and other than those used for entertainment are considered aircraft in the legal sense of the word and subject them to the Civil Aviation Authority.^[20] As for the position of our Iraqi legislator, as we have already shown, he referred in the second paragraph of article 79 of the Iraqi Civil Aviation Law to drones and restricted their flight over the territory of the State by obtaining a permit from the Civil Aviation Authority, meaning that the Iraqi legislator has approved Drones are promised as aircraft and subject to the Civil Aviation Authority, whether by interpreting the text of article 79 or even when scrutinizing the text of paragraph (6) of the Iraqi Civil Aviation Law, it has expanded the concept of the aircraft to include any air vehicle that can fly and stay in the air from air reactions, provided that the air reactions are not reflected from the surface of the earth, to include balloons and legitimate aircraft in addition to fixed-wing aircraft, and the legislator's use of the phrase "etc." That the legislator has made the door open for aircraft that may be introduced in the future, and that ...

Second requirement: Definition of drone operator

We have already pointed out that international agreements as well as the laws governing the legal status of drones have been concerned with the definition of "air operator", so we will divide this requirement into two sections that will be divided in the first section (definition of the operator of the drone under international agreements), and in the second section we will indicate (definition of the operator of the drone in accordance with national laws).

Section one

Definition of the operator of the drone under international agreements

Kievna has already mentioned the drone used for commercial purposes as an aircraft in the traditional sense, which makes it fall within the scope of international agreements on conventional aviation, so the question arises here who proves to him the description of the operator of the drone? In order to answer the said question, it is necessary to review the position of the 1952 Rome Convention and the Montreal Conventions of 2009, whereby the operator of the aircraft in accordance with the Rome Convention of 1952 is considered the person who uses the aircraft at the time of the damage, and the operator of the aircraft is considered to be the one who used it himself, his subordinates or his agents during the exercise of their functions, whether within or outside the scope of their competence, and is also considered the operator of the aircraft who reserves for himself the right to navigational control over the aircraft, even in the case where another person grants him the right to use the aircraft directly or Indirectly and in accordance with article 2/2 of the above-mentioned Convention^[23] "the owner in whose name the aircraft is restricted shall be deemed to be the exploiter of the aircraft and shall therefore be liable unless the evidence during the proceedings determining his liability establishes that another person is the exploiter ...", and if the provisions of the articles apply in the case of exploitation of the conventional aircraft, it is possible to apply them to drones, the operator of the aircraft .

- (a) The owner in whose name the drone is registered
- (b) The person who evaluates the owner's evidence that he is using the drone for when the damage has occurred.
- (c) The person to whom the right to the navigational management of the aircraft is established, in other words the person who has the right to control the aircraft.

It follows that each of the mentioned persons proves the status of an air operator, and therefore his liability for damage caused by the drone is entitled to others unless proven otherwise, and in the case where two or more of the operators of the drone share the necessary components of the drone system, the registered owner of the drone is the one who proves to him the status of an investor unless it is proved during the liability determination proceedings that another person is the exploiter, in accordance with the text of article 2.3. From the 1952 Rome Convention, it should be noted that in the case of unlawful use^[24] or temporary use of the aircraft^[25] liability is joint-liability, the Rome Convention considers liability here to be joint consolidated between the operator and the illegal or temporary user.

As for the 2009 Montreal Conventions, article I of the two Conventions in question states paragraph (f) "The operator of the aircraft means the person operating the aircraft, provided that if the navigation of the aircraft is under the control of another person from whom the right to operate the aircraft derives, directly or indirectly, he shall be considered as the operator. A person is considered to be an operator of an aircraft when he or she personally uses the aircraft or when his or her employees or agents use that aircraft in the course of their employment, whether or not it is within their sphere of authority." It is clear from the text of the aforementioned article that the operator is the person who operates the aircraft, except that if there is a person who has the right to manage the navigation of the aircraft, or the aircraft is under the control of a person whose right to control the aircraft directly or indirectly has been derived by The operator counts the first person as its operator

According to the above, the operator is not without one of the two hypotheses, either 1- the person operating the drone during the damage 2- or the person from whom the right to use the drone is derived, provided that this person has reserved for himself the right of the navigational administration.

We note that this definition is similar and not identical to that of article 2/2 of the aforementioned Rome Convention, and when comparing the provisions of the 1952 Rome Convention with the Montreal Conventions

of 2009, we find that it is absent in the definition of the operator in the two said conventions and in contrast to the Rome Convention the assumption that the registered owner is the operator, due to the widespread charter of aircraft in the present era, the consideration of the owner as an operator is no longer acceptable at present in the face of the widespread charter of aircraft.^[26]

The question arises here in the case of more than one operator of the drone systems on whom is the responsibility?

In the case of a single operator of drone systems, it is normal to assign liability to him and without dispute, but in the case of more than one operator of drone systems, verification of the identity of the operator remains a matter of fact, as the Rome Convention has placed the burden of proof on the owner in order to be able to get rid of liability, that is, the owner proves that he is not the operator, but the Montreal Conventions and in the absence of the owner being considered the operator of the aircraft, the burden of proof falls on the injured person. In other words, it is the third party that proves the status of the operator, and in fact the drafters of the Montreal Conventions took into account the interest of the owner and wanted to rid the owner of the burden of proof, and verifying whether the person is the operator of the aircraft or not is not difficult, as there are records on board the aircraft as well as in the management of the airport from which the aircraft takes off determining who is the operator of the aircraft, while in the case of drones, the same applies in each ground station there are records that determine the person of the operator of the aircraft. This led the Montreal Conventions to exclude the assumption that the owner was the operator of the aircraft.^[27]

Section II: Definition of the operator of the drone in the light of national laws

Qatar's Regulation No. (5) of 2017 states that the operator is "any natural or legal person who is employed or acting on his behalf in the operation of the drone, whether for recreational, non-recreational or commercial purposes" ⁽²⁸⁾. We conclude from the text of the Qatari legislator, that the operator is the one who operates the aircraft, or the person who acts on his behalf in the operation of the aircraft.

UAE Law No. 4 of 2020 defines the drone operator as "a person authorized by the Authority to carry out any of the operations in accordance with the provisions of this Law and the decisions issued thereunder". It is clear from the definition of the UAE legislator that the operator is the one who has obtained permission from the Authority to operate the drone.

There is no definition of the operator in the Iraqi Civil Aviation Law, but the legislator came and defined the investor as "the natural or legal person who operates an aircraft whose command body is subject to his orders, whether on his behalf or on behalf of another person" ^[29]. It is noted that the investor here is either the owner of the aircraft who invests it by providing air transport services in return and its driving body and crew are subject to his orders or the tenant who invested it provided that its driving body is subject to his orders and therefore the concept of its command does not apply. The investor in the event of renting the aircraft with the owner retaining the appointment of the driving body, as the owner of the aircraft is considered an investor and does not apply to the charterer the description of the investor ⁽³⁰⁾.

We note from the position of the national legislation when it mentions the definition of the operator did not address the possibility that the remote pilot is the person operating the aircraft, and this is specific to the flight of the aircraft without traditional flight, it is possible that the operator is the pilot remotely, and the pilot remotely can be someone other than the operator as if the pilot works in a company that provides services with a drone, in which case the company acquires the status of air operator, and the person who controls the aircraft acquires the status of pilot for Yet ⁽³¹⁾, we have already pointed out that the most important thing that distinguishes drones from conventional aircraft, is the absence of the pilot "pilot of the aircraft" on board, and the Iraqi Civil Aviation Law has defined the pilot of the aircraft as "the pilot responsible for the operation and safety of the aircraft during the period of flight" ^[32].

It is clear from the definition of the Iraqi legislator that the phrases used by the legislator are broad, so as to include any pilot responsible for the operation and safety of the aircraft during the period of flight, and therefore the Iraqi legislator did not specify whether the pilot of the aircraft is on board, or he controls it from a ground station, and it is known that the drone cannot fly in the air completely on its own, but there must be someone who directs it from the ground, which is called the pilot of the aircraft, and the latter takes over Directing the aircraft from the guidance chamber on the ground surface, and also controls the movement and trajectory of the aircraft through radio signals, via dedicated devices ^[33].

Section two

Obligations imposed on the drone operator

The laws governing drones impose a number of obligations on the operator of the drone, and in fact these obligations are nothing more than obligations imposed on the operator of the drone regardless of its use, whether the drone is used for civil or commercial purposes, and these obligations are considered as preventive obligations and this is what we will indicate in (the first requirement), and some of them are considered as material obligations and this is what we will discuss in (the second requirement).

The first requirement : Preventive Obligations

The laws oblige the drone operator to comply with the laws and regulations and follow the instructions of the competent authorities in addition to his commitment to follow the instructions of the aircraft manufacturer, and this is what we will take his statement as follows:

Section one

Compliance with laws and regulations and following the instructions of the competent authority

The first obligation of the drone operator is to comply with the laws and regulations of the State in which the aircraft is registered and issued by the Civil Aviation Authority, including the safety requirements and procedures and operating controls established by the Authority, both those to be taken before, during or after the end of the flight^[34].

Before the start of the flight, the drone operator is obliged to register the drone and obtain all the licenses and certificates specified by the competent administrative authority, and on the other hand, it is the responsibility of the drone operator to appoint a competent person to fly the drone, as an aircraft commander and a qualified team should be appointed to carry out the flight.[35] Article 116 of the Iraqi Civil Aviation Law No. 148 of 1974, as amended, "The investor of the aircraft shall not be allowed to carry out a commercial air transport flight except for the purpose of carrying out a commercial air transport flight. After one of the pilots appoints a pilot and the commander is responsible for the safety of the aircraft and those on it and all the persons present in it must obey the pilot of the aircraft and implement any instructions issued by him to ensure the safety of the persons and funds on board and to ensure the safety and regularity of navigation in the atmosphere", it appears from the text that the Iraqi legislator has entrusted the task of appointing a competent pilot to the investor of the aircraft, and derives from this obligation of the operator to ensure that the crew members are in possession of the licenses required by the laws. The regulations, and having sufficient knowledge of the flight as stated in the Manual of Remotely Guided Aircraft Systems (ICAO), the operator is obliged to ensure that all ...

The operator of the drone must also establish a record dedicated to the recording of the flight operations carried out by him, and record all the results of all tests carried out before the flight and after the flight, in addition to recording all defects and repairs⁽³⁹⁾. as for the position of the Iraqi legislator, he indicated in the second paragraph of Article (66) that the pilot of the aircraft is responsible for recording everything related to the results of the tests in the technical record of the aircraft^[40] and the operator of the drone shall keep records relating to the operation and maintenance of the aircraft, its systems and any other information specified by the Authority^[41].

We conclude from the totality of what has been stated that the obligation to comply with the laws and regulations lies with the operator of the drone or the pilot remotely, and what supports our words is what is stated in article 115 of the Iraqi Civil Aviation Law, "The investor or his representative shall be responsible for monitoring the flight operations of his aircraft in order to ensure that they are carried out in accordance with the specified safety levels and the implementation of the provisions of the laws, regulations and instructions issued thereon." It seems from the formulation of the text of the said article by our legislator that the investor or his representative is responsible for maintaining the safety of air navigation and the extent of compliance with the provisions of the law, since the phrase "or his representative" must be understood that the intention of the legislator here is directed to the pilot of the aircraft.

Section two

Follow the instructions of the drone manufacturer

The drone operator is obliged to follow the instructions of the aircraft manufacturer, otherwise he is responsible for the damages that may result from the use of this type of aircraft, where the first and fourth paragraph of Article (25) of the UAE Drone Law No. 4 of 2020 referred to the operator's commitment to follow the instructions of the manufacturer, in addition to the obligation of the drone operator to ensure that each aircraft is accompanied by its own manual prepared by the manufacturer, and must make sure that the books contain the procedures To be taken in normal circumstances or unusual (emergency) circumstances to which the aircraft may be exposed during flight^[42].

The seventh paragraph of the aforementioned article also stipulates that the operator shall abide by the "instructions of the Authority and the manufacturer regarding the operation of more than one drone through a single remote control station".

Second requirement : Physical Obligations

The laws governing drones impose a number of obligations on the operator of the drone, and these obligations are considered as physical obligations, the latter is obliged to conclude an insurance contract in addition to contracting with service providers, and finally he is obliged to prepare a navigable aircraft, and this is what we will explain in detail as follows:

Section one

Commitment to conclude an insurance contract

The increasing prevalence of drone use leads to new exposure to liability, in which one can expect many types of liability claims associated with their use, the insurance industry has provided coverage to address liability concerns, and a large number of countries now require mandatory insurance, including Canada, China, Austria, Belgium, Cyprus, Germany and Italy while others that do not require mandatory insurance include the United States, Australia, Indonesia and Brazil ⁽⁴³⁾.

Some argue that states should require drone operators to maintain adequate insurance or a guarantee covering their liability, and states should establish appropriate rules to address liability arising from the use of drones, as well as insurance matters in order to protect third parties, for example in November 2014 Transport Canada introduced mandatory insurance that requires users of commercial drones to obtain at least CAD \$100,000 in liability insurance in the event that A new regulation requiring mandatory liability insurance against third parties entered into force in Germany in April 2017, and insurance companies such as Allianz global are introducing new policies for liability insurance resulting from the use of the commercial drone, and these policies take into account the insurance required of countries in light of the increased risks associated with the operation of drones.[44] In light of the above, the question arises here What is meant by insurance? What is the scope of this insurance? What are the alternative guarantees? We will try to answer these questions through the following paragraphs:

1- The concept of the air insurance contract

Some define an air insurance contract as (a contract by which the insured is obliged to compensate the insured "investor" for the damage caused to him as a result of aviation accidents in return for the payment of the agreed premium, provided that the compensation does not exceed the value of the damages realized from the realization of the insured risk). ⁽⁴⁵⁾

It also states in its definition (a contract concluded by the owner or operator of the aircraft against the risk of loss or damage to the aircraft, under which the insured undertakes at his choice to compensate, replace or repair the material damage caused to the aircraft due to flight errors in addition to compensating all those who were damaged by the accident that hit the aircraft) ⁽⁴⁶⁾.

It is noted on the above definitions that they did not indicate the nature of this contract and the comparative laws did not provide a definition of the air insurance contract and by reference to the position of the Iraqi legislator did not specify in the Civil Aviation Law what is meant by the air insurance contract, and focused his attention on the land and sea areas, although it is no less important than them, in terms of the international character and the gravity of the risks to which the aircraft is exposed.

With reference to the Iraqi Civil Code, the air insurance contract is no different from the insurance contract in general, it is like other civil contracts, the Iraqi Civil Code No. 40 of 1951, as amended in article (983) defines insurance as "a contract in which the insured is obliged to lead to the insured or to the beneficiary an amount of money, salary income or any other financial compensation in the event of the occurrence of the insured risk in return for insurance premiums or any other financial payment made by the insured. Therefore, the aircraft insurance contract is a consensual contract that is concluded as soon as the offer and acceptance are compatible, and it is also a contract binding on both sides, so the insured is bound by the guarantee and the insured is bound by the insurance premium, as well as being a probable contract, because it is difficult for contractors to determine the amount of obligations and rights of the parties to the contract because it depends on the occurrence of a certain thing in the future that may or may not be achieved ([47]), and if we want to define the contract of insurance on the drone we find that it is a contract concluded by the investor Or the owner of the aircraft, who is the insured with the insured and the insured hereby pays a sum of money or compensation to the beneficiary for whom the contract was concluded in the event of an accident in exchange for the insurance premiums paid by the insured ".

According to Article (17) of Regulation No. (5) of 2017, which indicated that the operator of the drone, except for categories (A0-A1), must insure it, and referred the said article to Article (90) of the Civil Aviation Law, which states, "Subject to the provisions established in this Law, every operator of an aircraft operating in the territory of the State must insure it to cover his liability for damages that may be inflicted." Passengers, baggage, cargo on board the aircraft and damage that the aircraft may cause to third parties on the surface of the earth. This operator must also insure its employees who are exposed to aviation risks to cover the damages that may arise from it", and it follows that it is also the Qatari legislator who has introduced compulsory insurance because the text came in the form of the order, and obliged the operator of the drone except for the mentioned categories to carry out insurance at his own risk, the person obliged to insure here is the operator of the drone.

As for the position of the UAE legislator, the UAE announced in 2017 the minimum mandatory insurance for drones with commercial use, estimated the minimum liability at AED 3.67 million, and announced that compulsory insurance will be required for drones as of 2018 ([48]) and stated in paragraph 10 of Article 25 of Law No. (4) of 2020 on drones under the title of operator obligations "Ensure the availability of appropriate insurance cover for liability For damages that may arise from operations or operational experiments. In accordance with the conditions and controls determined by the Authority in this regard", it is noted from the text of the article that the UAE legislator obliged the operator to carry out liability insurance, the person obliged to

carry out insurance is the operator of the drone, and we support the position of the UAE legislator when he introduced compulsory insurance and unlike the American legislator who did not take compulsory insurance.[49] The absence of a legal rule that requires the user of the drone (the operator) to carry out insurance at his own risk will inevitably lead to two things, the first of which is the non-recourse of users Drones to Alqi!...^[51]

Since insurance is mandatory for drone operators in some countries, there must be legal rules governing the air insurance contract as well as the existence of companies that provide these services, as the companies that insure the aircraft are few and often global, so we propose to the Iraqi legislator that there be legal rules regulating air insurance, as well as the proliferation of insurance companies that provide this service so that this condition does not be an obstacle to the operators of drones..

2. Scope of insurance

Air insurance is of the kindest, it is either insurance on the aircraft, i.e. for damage to the fuselage when it explodes, burns, perishes or collides, regardless of whether it is in the air or lying on the airport grounds without including the goods or baggage it transports.^[52]

The 1929 Warsaw Convention did not provide for the liability of the air carrier, and by contrast, the 1999 Montreal Convention amending the Warsaw Convention made provisions that the liability of the air carrier must be insured, stating in article 50 of the Convention that "States Parties shall require their carriers to maintain adequate insurance to cover their liabilities under this Convention. The State Party in which the carrier organizes flights may request it to provide evidence that it retains sufficient insurance to cover its liability under this Convention" and notes from the text of the Convention that it obliges States to require their carriers to enter into an insurance contract at their own risk, and States must also require the carrier to prove that it has performed insurance covering its liability.^[53]

The 1952 Rome Convention provided for this type of insurance and ruled in the first paragraph of article 15 thereof that "each State may require the operator of the aircraft registered in another Contracting State to insure his liability for damage to third parties on its surface within the limits provided for in the Convention in order to compensate for damage that may affect third parties on its surface".

It follows from the statement that insurance includes insurance for the aircraft, insurance for damage to third parties on the surface of the earth as well as insurance for damage to goods.

With regard to the Montreal Conventions of 2009, article 9, paragraph I, of the Convention on Compensation for Damage to Aircraft by Third Parties stated that "States Parties shall oblige their operators to maintain sufficient insurance or security to cover their liability provided for in this Agreement". The aircraft shall attach it to third parties, for the reason being to ensure that the injured persons on the surface of the earth receive the amounts of compensation due to them by the operators, and the second paragraph of the aforementioned article states that "the State Party in which the operator operates flights may oblige him to provide evidence that he has sufficient insurance or security, and the State Party shall, in so doing, apply to operators belonging to other States Parties the same standards as it does to its operators", The Convention also obliges in accordance with the said paragraph in the event of the operation or investment of aircraft by the operator either within or outside the State Party.

3. Alternative Safeguards

The Rome Convention of 1952 provided another guarantee to the injured in lieu of insurance procedures, as paragraph (4) of Article 15 of the Rome Convention stated that "any of the guarantees mentioned after the provisions of Article XVII shall be considered satisfactory, instead of insurance, when it has been made in accordance with the provisions of Article XVII:

- (a) Deposit of cash insurance in the public treasury of the Contracting State in which the aircraft was registered or in a bank authorized to do so.
- (b) A guarantee given by a bank authorized to do so by the Contracting State in whose records the aircraft is registered.
- (c) A guarantee provided by the Contracting State in whose records the aircraft is recorded, provided that the State undertakes not to invoke judicial immunity if the dispute over such security develops into litigation." It corresponds to Article (187) of the Iraqi Civil Aviation Law No. 148 of 1974, as amended.

The second paragraph of Article 17 of the 1952 Rome Convention also stipulates that "the security shall be deemed sufficient to the extent that it is within an amount equal to that established by the provisions of Article XI if the security relates to the exploiter of one aircraft, but if the said security is exploited by a number of aircraft, the security shall be sufficient when the amount is at least equal to the total maximum prescribed for the heaviest aircraft between them."

Section two

Contracting with service providers

It is also the operator's responsibility to enter into a contract with service providers, as the ICAO Remotely Piloted Aircraft Systems Manual states that the drone operator is responsible for contracting services with service providers (e.g. communications and service providers) as appropriate^[57].

The service providers here are meant to be remote control stations in the country over which the aircraft is flying, sometimes the operators of remotely piloted aircraft systems may enter into agreements with remote control stations, in order to provide services in the area where the aircraft fly in order to share resources between them, whenever necessary to conclude such contracts and the aircraft operator is obliged to conclude such contracts^[58].

Section three Numbers of a navigable aircraft

The drone operator is obliged to ensure that the aircraft is valid for air navigation, he is obliged to verify the programming of the aircraft and the validity of its batteries, the UAE Drone Law No. 4 of 2020 obliges the drone operator to ensure that the aircraft is valid for air navigation and this is what is stipulated in Article 25 of the said Law[59], and the United States of America has also obliged the drone operator to conduct a special inspection of the aircraft and control station systems in order to ensure that the drone systems are safe to operate ([60]) It follows that the drone operator must ascertain the airworthiness of the aircraft, otherwise he is held liable for damage to the goods as a result of using an unfit drone for the purpose of transporting the goods, and by reference to the Iraqi Transport Law, we find in the text of article 128 of the Iraqi Transport Law No. 80 of 1983 "The carrier is obliged to exercise caution and caution before flight of the numbers of the aircraft and its suitability for air navigation" ([61]). Therefore, the law imposes on the operator of the aircraft the numbers of an aircraft that is navigable for air navigation, and derives from this obligation, the obligation to maintain the aircraft as well as the maintenance of its engines and equipment, due to the reason for the referring to the position of our national legislator, we find in the text of article (70) of the Iraqi Civil Aviation Law No. 148 of 1974 as amended, "The civil aviation authorities may carry out or request inspections, tests or aviation to offer translation where they deem it necessary to verify the validity of the aircraft or any of its devices, equipment or components and such authorities shall have the right to enter at any time into any of these works."

After we have explained the obligations of the operator of the drone, it must be pointed out that the operator is the pilot remotely, in this hypothesis the operator is obliged to add to the previous obligations imposed on the pilot remotely, the pilot of the drone is obliged to receive adequate training, to be able to see the drone, and to have sufficient knowledge of the flight, the weather and the followers of safety procedures, as well as to ascertain the location of the aircraft, and that the aircraft flies in the place allowed to fly (That is, to avoid entering the restricted area and to adhere to the permissible height of the drone), and the pilot of the drone is obliged not to expose others to danger.[62] In the case where the air controller is used, both the responsible pilot and the air controller must maintain communication between them throughout the flight.[63] If he breaches one of these duties, he shall be held liable for damages, whether those caused to others on the surface of the earth or even damage to the goods transported whenever they are made. The use of the drone for transportation.

Conclusion

1- The drone is a carrier of a special nature, and it is also an aircraft in the legal sense of the word either from the point of view of the International Civil Aviation Organization ICAO or through a review of the position of national laws, and it follows that considering it an aircraft in the legal sense means that it falls within the scope of international agreements on conventional aviation, and although the drone is considered an aircraft in the legal sense, the Chicago Convention did not consider the remote pilot a pilot in the traditional sense.

2- The operator of a drone under the Rome Convention of 1952 is not without the following hypotheses that he is either the person who has the navigational management of the aircraft, or the owner or user of the aircraft. As for the amendment introduced by the 2009 Montreal Conventions, the said conventions have emerged from the hypothesis that the owner is the operator of the aircraft, as each of the agreements mentioned in this assumption has been found to be outdated at present in the light of the widespread charter of aircraft.

3- We have come up with the possibility of meeting the qualities of remote pilot and operator in one person and this is specific to flying without conventional flight.

4. The laws governing drones impose a number of obligations on the operator of the drone, including preventive obligations, such as compliance with laws and regulations, following the instructions of the competent authority, as well as following the instructions of the aircraft manufacturer, including material obligations such as the conclusion of the insurance contract, contracting with service providers and preparing a navigable aircraft.

Recommendations

1- We propose to the Iraqi legislator to take the initiative to regulate the legal status of drones intended for commercial and civil use, through the enactment of a special law or a regulation attached to the Civil Aviation Law, that defines the obligations of the operator of the drone.

2- We call upon the Iraqi legislator to set and approve standards for remote pilots' licenses and certificates.

3- We suggest to the Iraqi legislator that there must be legal rules regulating air insurance, as well as the spread of insurance companies that provide this service so that this condition shall not be an obstacle to drone operators.

References

- Professor S. G. Tzafestas, On Integrating Unmanned Aircraft Systems into the National Airspace System, SPRINGER, 2nd Edition, 2018,
- International Civil Aviation Organization. Unmanned Aircraft systems (UAS). Cir 328. Approved by The Secretary General and published under his authority. 2011.
- Federal aviation administration, How to Register Your Drone, 2021, the link: ((https://www.faa.gov/uas/getting_started/register_drone/)). Visited at ((09-10-2021)).
- Who is a drone operator, Regulations on UAS (drone) explained, provisions applicable to both "open" and "specific" category, Drones (UAS), Regulations, European Union Aviation Safety Agency, FAQ N.116447, 2020, Available at <https://www.easa.europa.eu/faq/116447> (visited in 25-6-2022).
- Manual on Remotely piloted Aircraft Systems (RPAS), ICAO Doc 10019, An 507, chapter 4, 2015.
- ANTHONY A. TARR. JULIE-ANNE TARR. MAURICE THOMPSON AND JEFFREY ELLIS, DRONE LAW AND POLICY Global Development, Risks, Regulation and Insurance, 2022.
- DAVID HODGKINSON and REBECCA JOHNSTON, AVIATION LAW and DRONES, Unmanned Aircraft and the Future of Aviation, 2020 .
- Therese Jones, International Commercial Drone Regulation and Drone Delivery Services, the RAND Corporation, Santa Monica, Calif, 2017.
- Sergi Giménez , World Drone Regulations, L2b Aviation Ltd, 2019.
- Engineering, Maintenance, and Construction Deivison sop number 003, Unmanned Aircraft system (drone) operations, 2017, southeastern Pennsylvania Transportation, Maintenance and Construction.
- Pilot Institute website, Blog: When is A Visual Observer Required for Drones, Posted on August 13, 2020, visited on October 25, 2021. <https://pilotinstitute.com/drone-visual-observer/>

Author Information

Asst. Prof. Siham Swadi Tuamah

Al Mustansiriya University, College of Law

Saja JAwad Kadhim

Al Mustansiriya University , College of Law
