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DIPLOMATIC CONFERENCE TO ADOPT A MOBILE EQUIPMENT CONVENTION AND AN AIRCRAFT PROTOCOL

(Cape Town, 29 October to 16 November 2001)

PROPOSAL FOR INCLUSION OF A PROVISION RELATING TO NON-CONSENSUAL RIGHTS OR INTERESTS IN THE DRAFT PROTOCOL

(Presented by Belgium)

Belgium submits the following proposal to the Commission of the Whole for inclusion in the Draft Protocol.

1. We have consulted with several interested delegations and observers concerning this proposal. We believe that in its present form, the Draft Convention/Protocol could jeopardize the rights of EUROCONTROL, the European Organisation for the Safety of Air Navigation, to successfully recover air navigation route charges. EUROCONTROL is an international organisation with headquarters in Brussels, Belgium and currently comprises 30 European Member States, including Belgium. It is governed by the International Convention Relating to Co-operation for the Safety of Air Navigation, as amended by the Protocol of 12 February 1981 and revised by the Protocol of 27 June 1997.

2. One of EUROCONTROL's tasks is to establish, bill and collect route charges on behalf of the Member States participating in the common Route Charges System. Each Route Charge bill issued by the Organisation constitutes a single charge due in respect of each flight and constitutes a single claim by EUROCONTROL, payable at its headquarters. Moreover, the charge attaches as a lien to the aircraft which incurred the charge, irrespective of in whose hands it may be, if the law of the Member State concerned so permits.

3. The Draft Convention and Protocol (Articles 38 and 39 of the Convention) provide adequate safeguards for Contracting States to protect their non-consensual rights or interests. However, by not allowing EUROCONTROL to also register its non-consensual rights or interests, Belgium is concerned that the result may be a reduction in EUROCONTROL's recovery of route charges, to the consequential detriment of its Member States.

4. We therefore propose the following addition to the Protocol:

“An international organisation constituted by sovereign States and entrusted by its Member States with collection of air navigation charges may at any time in a declaration, pursuant to Article 39 of the Convention, deposited with the depositary of the Protocol, declare that a non-consensual right or interest of a category covered by its declaration shall, within a Member State, have priority over an international interest if that non-consensual right or interest is of a kind that within the Member State concerned would have priority over an interest in the object equivalent to that of the international interest. Such a declaration shall be effective for the territorial extent of its Member States who are Contracting States.”

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