



UNIDROIT Committee of governmental Experts for the preparation of a draft Convention on International Interests in Mobile Equipment and a draft Protocol thereto on Matters specific to Aircraft Equipment

Sub-Committee of the ICAO Legal Committee on the study of international interests in mobile equipment (aircraft equipment)

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DRAFTING COMMITTEE / RESTRICTED GROUP

Thursday 23 March, 6.30 / 8.30 p.m.

Members of the Drafting Committee are kindly requested to give the Chairman of the Restricted Drafting Group any written comment they wish to make on this document within 24 hours after its being circulated

PRELIMINARY DRAFT [UNIDROIT] CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT

ARTICLES 15 TO 22

CHAPTER IV

THE INTERNATIONAL REGISTRATION SYSTEM

Article 15

The International Registry

1. – An International Registry shall be established for registrations of:
 - (a) international interests, prospective international interests and registrable non-consensual rights and interests;
 - (b) assignments and prospective assignments of international interests;
 - (c) acquisitions of international interests by [legal or contractual] subrogation ¹;
 - (d) subordinations of interests referred to in sub-paragraph (a) of this paragraph; and

¹ This could be partial or total.

(e) sales or prospective sales of objects to which this Convention is made applicable by a Protocol under Article 39.

2. – Different international registries may be established for different categories of object and associated rights. ~~For the purposes of this Convention, “International Registry” means the relevant international registry.~~

3. – For the purposes of this Chapter and Chapter V, the term “registration” includes, where appropriate, an amendment, extension or discharge of a registration.

Article 16

The Supervisory Authority and the Registrar

1. – There shall be a Supervisory Authority as provided by the Protocol.

2. – The Supervisory Authority shall:

(a) establish or provide for the establishment of the International Registry;

~~(b) where the Registrar has not been designated by the Protocol, appoint the Registrar~~ except as otherwise provided by the Protocol, appoint and dismiss the Registrar;

(c) after consultation with the Contracting States, make or approve and ensure the publication of regulations pursuant to the Protocol dealing with the operation of the International Registry;

~~(d) and establish administrative procedures through which complaints concerning the operation thereof can be made to the Supervisory Authority;~~

~~(d)(e) exercise supervisory control over~~ supervises the Registrar and the operation of the International Registry and give such directions as it thinks fit to the Registrar to rectify acts or omissions which are in contravention of this Convention, the Protocol or the regulations²

~~(e)(f) at the request of the Registrar provide such guidance to the Registrar as the Supervisory Authority thinks fit;~~

~~(f)(g) set and periodically review the structure of fees to be charged for the services and facilities of the International Registry;~~^{3 (9)}

~~(g)(h) do all things necessary to ensure that an efficient registration system exists to implement the objectives of this Convention and the Protocol; and~~

~~(h)(i) report periodically to Contracting States concerning the discharge of its obligations under this Convention and the Protocol.~~

3. – The Supervisory Authority may enter into any agreement requisite for the performance of its functions including any agreement ~~provided for~~ by referred to in Article 26.

² This does not empower the Supervisory Authority to require or permit the Registrar to change any data relating to a registration;

^{3 (9)} The question whether the Registrar shall operate as a non-profit-making entity is a policy question which may need to be determined separately for each category of object and accordingly left to the Protocol.

4. – The Registrar shall:

- (a) ensure the efficient operation of the International Registry and perform the functions assigned to it by this Convention, the Protocol and the regulations;
- (b) implement directions given by the Supervisory Authority.

Article 16 bis

Access to the international registration facilities

A person who is not a national of, or located in a Contracting State shall not on that ground be denied access to the registration and search facilities of the International Registry.

CHAPTER V

MODALITIES OF REGISTRATION

Article 17

Registration requirements

1. – The Protocol and regulations shall specify the requirements, including the criteria for the identification of the object:

- (a) for effecting a registration; or
- (b) for making searches and issuing search certificates, and, subject thereto,
- (c) for ensuring the confidentiality of information and documents of the International Registry.

~~2. – The Protocol and regulations may specify any further requirements necessary to convert the registration of a prospective international interest^{4 (10)} or a prospective assignment of an international interest into the registration of an international interest or an assignment of an international interest.~~

2. – The requirements shall not include any evidence of a consent to registration.

3. – Registration shall be effected in chronological order of receipt at the International Registry data base, and the file shall record the date and time of receipt.

~~3.4. – The Protocol may provide that a Contracting State may designate an entity in its territory as the entity through which the information required for registration shall or may be transmitted to the International Registry.~~^{5 (11)}

⁴⁽¹⁰⁾ Consideration should be given to the question as to whether there should be a requirement to inform the International Registry that a registered prospective international interest has become an international interest. Such a requirement would not affect the priority conferred by Article 19(3).

⁵⁽¹¹⁾ The Registration Working Group proposed that the question of the relationship between this entity and the International Registry could be dealt with by the relevant Protocol. Consideration should be given to the question as to whether this relationship should be left to be dealt with by national law. A separate question requiring consideration

Article 18
Transmission of information

[Deleted]

Article 19
When registration takes effect

1. – A registration shall take effect upon entry of the required information into the International Registry data base so as to be searchable.

2. – A registration shall be searchable for the purposes of the preceding paragraph at ~~any~~ the time when:

(a) the International Registry has assigned to it a sequentially ordered file number; and

(b) the registration, including the file number, may be accessed at the International Registry ~~and at each registration facility in which searches may be made at that time.~~

3. – If an interest first registered as a prospective international interest becomes an international interest, ~~[then, subject to compliance at any time with any further requirements referred to in Article 17(2),]~~^{6 (42)} the international interest shall be treated as registered from the time of registration of the prospective international interest.

4. – The preceding paragraph applies with necessary modifications to the registration of a prospective assignment of an international interest.

~~5. — The International Registry shall record the date and time a registration takes effect.~~

~~6.5.~~ – A registration shall be searchable in the International Registry data base according to the criteria prescribed by the Protocol.

Article 20
Who may register^{7 (43)}

Alternative A

~~[1. — An international interest which is a security interest, a prospective international interest or an assignment or prospective assignment of an international interest may be registered by or with the consent in writing of the chargor or assignor or intending chargor or assignor, as the case may be. Any other type of international interest may be registered by the holder of that interest.]~~

~~concerns whether the liability of this entity should be dealt with in the preliminary draft Convention or rather be left to be dealt with by the otherwise applicable law, on the basis that the entity in question would not be part of the international registration system.~~

~~^{6 (42)} The Drafting Group noted that the additional language included within square brackets would only be necessary to cover the eventuality that the regulations required more information for the registration of an international interest than for the registration of a prospective international interest.~~

^{7 (43)} The question whether the debtor's consent should be required in all cases will need to be considered in due course.

Alternative B

[1. – An international interest, a prospective international interest or an assignment or prospective assignment of an international interest may be registered, and any registration amended or extended prior to its expiry, by or with the consent in writing at any time of the debtor or assignor or intending debtor or assignor.]⁸⁻⁽¹⁴⁾

2. – The subordination of an international interest to another international interest may be registered by or with the written consent at any time of the person whose interest has been subordinated.

3. – A registration may be ~~amended, extended prior to its expiry or~~ discharged by or with the consent in writing of the party in whose favour it was made.

4.– The acquisition of an international interest by [legal or contractual] subrogation may be registered by the subrogee.

5. – A registrable non-consensual right or interest may be registered by the holder thereof.

Article 21

Duration of registration

Registration of an international interest remains effective ~~[for the period of time specified in the Protocol or the regulations as extended in conformity with Article 20(3)]~~ [until discharged or until expiry of the period specified in the application for registration as extended by any registered consent to extension of such period].

Article 22

Searches

1. – A Any person may, in the manner prescribed by the Protocol or regulations, make or request a search of the International Registry concerning interests registered therein.

2. – Upon receipt of a request therefor, the Registrar, in the manner prescribed by the Protocol or regulations, shall issue a registry search certificate with respect to any object:

(a) stating all registered information relating thereto, together with a statement indicating the date and time of registration of such information; or

(b) stating that there is no information in the International Registry relating thereto.

– END –

⁸⁻⁽¹⁴⁾ ~~In the event that Alternative A is preferred to Alternative B, the substance of Alternative B will need to be reinserted in the preliminary draft Aircraft Protocol.~~