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

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

SECOND JOINT SESSION

(Montreal, 24 August – 3 September 1999)

REPORT

(by the Registration Working Group (RWG))

1. The Registration Working Group (RWG), set up by the first Joint Session on 5 February 1999 met during the Second Joint Session on 25 and 26 August 1999. Representatives of the following States attended as members: Canada, Egypt, Finland, France, Ireland, Japan, Singapore, South Africa and the United States. Observers of the Aviation Working Group and the International Air Transport Association also attended sessions of the group as advisors. The Secretariats of ICAO and UNIDROIT were represented at all meetings of the Group.
2. Mr. R.C.C. Cuming (Canada) continued as Chairperson and Mme Potvin Plamondon (Canada) continued as Assistant to the Chairman.
3. The task of the Group was to complete consideration of the registration provisions of the draft [UNIDROIT] Convention on International Interests in Mobile Equipment (Study LXXII – Doc. 42)/draft [UNIDROIT] Convention on International Interests in Mobile Equipment (ICAO Ref. LSC/ME-WP/3) (**the draft Convention**) concerned with the international registration system, modalities of registration and liabilities and immunities of the international registry (Chapters IV, V and VI) and the provisions of the draft Protocol to the draft [UNIDROIT] Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment (Study LXXIID – Doc. 3)/draft [UNIDROIT] Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment (ICAO Ref. LSC/ME-WP/4) (**the draft Protocol**) concerned with registration of international interests in aircraft objects (Chapter III).

4. The Group first took under consideration the Report by the RWG (UNIDROIT CGE/Int.Int/WP/15) (ICAO Ref. LSC/ME-WP/26) dated 11 February 1999, Attachment C to Report of the First Joint Session (UNIDROIT CGE Int.Int/Report) (ICAO Ref. LSC/ME-Report). The draft provisions in Appendix I were reconsidered in the light of information received by and comments addressed to members of the RWG following the February meeting of the Group. It was agreed by the members of the Group, that, subject to reservations of some members hereinafter noted, draft provisions set out the attached Appendix I to this Report would be recommended to the Joint Session as replacement for Articles 15 to 27 of the draft Convention (Articles 15 to 26 of the Appendix I to the Report by the Drafting Committee (UNIDROIT CGE/Int.Int.WP/26) (ICAO Ref. LSC/ME-WP/27 dated 12 February 1999) being Attachment D to Report of the First Joint Session (UNIDROIT CGE Int.Int/Report) (ICAO Ref.LSC/ME-Report).

5. The Group decided not to take a position with respect to the need to grant international legal personality to the Supervisory Authority as provided in draft Article 26, paragraph 1.

6. One delegation questioned the need to give immunity to the Supervisory Authority and the Registrar as provided in draft Article 26, paragraphs 2 and 3.

7. One delegation expressed concern with respect to the decision to regulate all issues relating to the liability of the Supervisory Authority and the International Registry in the Protocol. (See draft Convention Article 26, paragraph 4). It took the position that the principle of liability for errors and omissions is one of the essential elements of an international registration system which should be provided for in the Convention. The principle could be amplified, modified or excluded by the Protocol.

8. The Group decided not to take a position with respect to making the Supervisory Authority liable for failure to properly discharge its obligations under the Convention and Protocol. (See draft Convention Article 26, paragraph 4(a) and draft bracketed Protocol Article H, paragraph 1 and 3).

9. The Group then took under consideration draft provisions prepared by the Chairman dealing with registration matters to be addressed in the future Aircraft Protocol. These draft provisions were considered in the light of registration provisions in the draft Convention and the draft Protocol.

10. It was agreed by the members of the Group that, subject to reservations of some members as hereinafter noted, draft provisions set out in the attached Appendix II to this Report would be recommended to the Joint Session as replacement for Articles XVI to XIX of the draft Protocol.

11. The Group declined to place before the Joint Session a specific recommendation as to how the Supervisory Authority will be designated or constituted. However, three possible approaches are set out in the note to Appendix II to this Report.

12. The general approach adopted by the Group was to leave to regulations promulgated by the Supervisory Authority matters of detail concerning the creation and operation of the International Registry. However, matters of basic structure and policy should be addressed in the Articles of the future Protocol.

13. A basic structural feature of the approach recommended by the Group is the separation of the roles of Supervisory Authority and Registrar. An important aspect of this feature is that users of the International Registry will have a body to which complaints concerning the operation of the Registry may be brought.

14. The Group decided not to take a position with respect to giving to a national (Chicago Convention) registry the power to set requirements that must be met before it transmits (as an exclusive transmitter) registration information to the International Registry. (See draft bracketed Protocol Article I, paragraph 2(b)).

15. The text of the registration provisions of the future Convention recommended by the Group is appended hereto as Appendix I. The text of the registration provisions of the future Protocol recommended by the RWG is appended hereto as Appendix II.

16. The Joint Session, in consideration of the Group's recommendations, is invited to consider the appropriate means of insuring their due consideration by the Drafting Committee.

**REGISTRATION PROVISIONS OF THE PRELIMINARY
DRAFT UNIDROIT CONVENTION**

(as recommended by the Registration Working Group)

Article 1
Definitions

It is recommended that the definition of «Intergovernmental Regulator» be deleted.

It is recommended that the definition of «International Registry» be amended to refer to Article 15(2).

It is recommended that the definition of «Registrar» be amended to refer to Article 16(2).

It is recommended that the definition of «regulations» be amended as follows:

«Regulation» means a regulation promulgated by a Supervisory Authority.

CHAPTER IV*

THE INTERNATIONAL REGISTRY

Article 15

It is recommended that this Article be replaced by proposed Article 15 set out below.

1. – In this Convention and the Protocols, «International Registry» means the international registry facilities established for the purposes of this Convention and a Protocol and, where the context permits, includes the Registrar designated by the Supervisory Authority.

2. – Different international registries may be established under Protocols for different categories of objects and associated rights. In this Convention a reference to «International Registry» is a reference to the relevant International Registry.

3. – The following may be registered in the International Registry:

(a) international interests, prospective international interests [and registrable non-consensual rights and interests];

(b) assignments and prospective assignments of international interests;

* A consolidation of former chapters IV and V.

- (c) subordinations of interests referred to in sub-paragraph (a) of this paragraph; and
- (d) such other interests as may be specified in the Protocols.

4. – For the purposes of this Chapter (and Chapter V) the term «registration» includes, where appropriate, an amendment, extension or discharge of a registration, and for the purposes of Chapter VII, «registered interest» includes any interest referred to in paragraph 3(a)-(d) of this Article.

Article 16

It is recommended that this Article be replaced by proposed Article 16 set out below.

- 1. – A Supervisory Authority shall be created pursuant to or specified in the Protocol.
- 2. – The Supervisory Authority may:
 - (a) establish or provide for the establishment of the International Registry;
 - (b) designate the Registrar for the International Registry;
 - (c) promulgate regulations dealing with the operation of the International Registry and with procedures through which complaints concerning its operation can be made to the Supervisory Authority;
 - (d) exercise supervisory control over the Registrar and the International Registry, and, upon request of the Registrar provide guidance to the Registrar as is appropriate;
 - (e) set and periodically review the fee structure for services of the International Registry so as to ensure that all costs are recovered;
 - (f) do all things necessary to ensure a modern, efficient and effective registry system exists for the purposes of this Convention and the Protocol; and
 - (g) report periodically to the Contracting States concerning the discharge of its obligations under this Convention and the Protocol;
 - (h) make agreements refers to in Article 26 paragraph 3.
- 3. – The Protocol may:
 - (a) provide that a Contracting State may designate an entity in its territory as an exclusive or non-exclusive transmitter of information required for registration, and
 - (b) specify the legal relationship between that entity and the International Registry.

4. – A person may not be precluded from having access to the international registration facilities of the International Registry for the purposes of registration and searching because the person is not a national of or is not located in a Contracting State.

5. – The Registrar designated under paragraph 2(b) shall:

(a) operate the International Registry and perform the functions assigned to it by this Convention, the Protocol and regulations promulgated by the Supervisory Authority in accordance with established business practices;

(b) implement directives issued by the Supervisory Authority.

(c) [maintain a list of the categories of non-consensual rights or interests declared by Contracting States in conformity with Article 40 and the date of each such declaration. Such list shall be recorded and searchable in the name of the declaring State and shall be made available as provided in the Protocol and regulations to any person requesting it.]

Articles 17 - 23

It is recommended that Articles 17-23 be replaced by proposed Article 17 set out below.

Article 17

The Protocol or regulations promulgated by the Supervisory Authority may:

1. – contain conditions and requirements for
 - (a) registration of items referred to in Article 15, paragraph 3;
 - (b) searches of the International Registry data base;
 - (c) the medium for transmitting registration information and appropriate security measures;
 - (d) the issue of search certificates by the Registrar, and
 - (e) the confidentiality of information and documents of the International Registry.
2. – fix the time of registration of an interest;
3. – set the period of time a registration remains effective;
4. – specify when written consent of an obligor, assignor, intended obligor, intended assignor or subordinated party is required before a registration can be effected; and

5. – deal with such additional matters as are incidental to the creation and operation of the International Registry.

Article 24

It is recommended that this Article be amended as set out below.

A document in the form prescribed by the regulations promulgated by the Supervisory Authority which purports to be a search certificate issued by the International Registry is *prima facie* proof:

- (a) that it has been so issued; and
- (b) of the facts recited in it, including the date and time of registration.

Article 25

It is recommended that this Article be replaced by proposed Article 25 set out below.

1. – When the obligations secured by a security interest [or the obligations giving rise to a registrable non-consensual right or interest] have been discharged, or the conditions of transfer of title under a title reservation agreement have been fulfilled, the holder of such interest or right shall discharge a registration relating to the interest or right upon receipt of a written demand delivered by the obligor to the holder at the address of the holder as set out in the registration, requiring discharge of the registration.

2. – Where a prospective international interest or a prospective assignment of an international interest has been registered, the intended grantee or intended assignee shall discharge the registration upon receipt of a written demand delivered by the intending grantor or interested assignor to the intended grantee or intended assignee, at the address of the intended grantor or intended assignor as set out in the registration, at any time before the latter has given value or incurred a commitment to give value, requiring discharge of the registration.

3. – The Protocol may provide:

- (a) that, if a holder, intended grantee or intended assignee fails to respond to a demand referred to in paragraphs 1 or 2 when required to do so, the obligor, intended obligor or intended assignor may resort to the court for a determination as to whether the holder, intended grantee or intended assignee is entitled to maintain the registration;

- (b) that the court of the Contracting State in which the Registrar is located or the court explicitly chosen by the parties involved shall have jurisdiction to make the determination referred to in sub-paragraph (a) and make an order binding on the Registrar to discharge the registration.

CHAPTER V**

LIABILITY AND IMMUNITIES

Article 26

[1. – The Supervisory Authority shall have international legal personality as is necessary to carry out its functions under the Convention and the Protocol.]

2. – Subject to paragraph 4, the Supervisory Authority, its officers and employees shall be immune from legal process as is necessary to carry out their functions under the Convention and the Protocol.

3. – Subject to paragraph 4 and except as otherwise provided by agreement with the State in which the International Registry is situated:

(a) the Registrar, the officers and employees of the Registrar shall be immune from legal process, as is necessary to carry out their functions under the Convention and the Protocol, and

(b) the assets, documents, database and archives the International Registry shall be inviolable and immune from seizure or other legal process as necessary to allow the International Registry to function as provided in this Convention and the Protocol.

4. – The Protocol may contain provisions dealing with the following matters:

(a) the liability of the Supervisory Authority for failure to properly discharge its duties under this Convention or Protocol;

(b) the liability of the Registrar for loss suffered by a person by reason of an error, omission or malfunction of the International Registry;

(c) the amount recoverable in an action brought against the Supervisory Authority or Registrar;

(d) the acquisition of insurance against liability referred to in paragraph (a) and (b); and

(e) the courts which have jurisdiction in actions brought against the Supervisory Authority or the Registrar.

** Formerly Chapter VI.

CHAPTER V**REGISTRATION PROVISIONS OF THE
DRAFT AIRCRAFT EQUIPMENT PROTOCOL**

(as recommended by the Registration Working Group)

Article A
Definitions

[only those relevant to the Registry Provisions]

1. – Except as otherwise provided in this Protocol, terms used herein have the meaning set out in the Convention.

2. – In this Protocol:

«International Registry» means the International Registry for interests in aircraft objects referred to in Article D.

«registration» includes, where appropriate, an amendment, extension or discharge of a registration.

Article B

Articles 15 paragraphs 4; 16 paragraphs 4 and 5; 24; 25 and 26 paragraphs 1 to 3 of Chapter IV of the Convention and any definitions in Article 1 relating thereto are incorporated into this Chapter. (See Appendix I).

Article C
The Supervisory Authority

1. – [Note: The Registry Working Group (RWG) discussed extensively the various approaches to the designation of the Supervisory Authority as provided in RWG redraft of Article 16, paragraph 1 of the draft Convention. However, the Committee lacked sufficient information to be in a position to recommend an approach.

The following three approaches are put forward for consideration:

(a) The Protocol will specify an existing international organization that will name or constitute the Supervisory Authority.

(b) The Protocol will specify an existing international organization that will appoint the members of the Supervisory Authority who are representatives of States that become Contracting States

within a specified period after the Convention comes into effect, and will provide a mechanism for substituting other representatives as circumstances warrant.

(c) The Protocol will provide that the initial Supervisory Authority will be named or constituted by the Contracting States within a specified period following the date the Convention comes into effect and will provide a mechanism for replacement of the initial Supervisory Authority or continuation of the initial Supervisory Authority as circumstances warrant.]

Article D

Creation of The International Registry

1. – The Supervisory Authority shall establish or provide for the establishment of the International Registry for registration of:

- (a) items referred to in Article 15, paragraph 3, subparagraphs (a) to (c) of the Convention; and
- (b) contracts of sale and prospective sales of aircraft objects.

2. – The Supervisory Authority shall designate a Registrar for the International Registry.

3. – The designation of a person as Registrar shall be for a period of time not exceeding five years. A person may be designated Registrar more than once.

Article E

Powers And Responsibilities of The Supervisory Authority

1. – The Supervisory Authority shall:

(a) exercise supervisory control over the Registrar and the International Registry and upon request of the Registrar provide guidance to the Registrar as is appropriate;

(b) set and periodically review the fee structure for services of the International Registry so as to ensure that all costs are recovered;

(c) do all things necessary to ensure that the International Registry is modern, efficient and effective;

(d) promulgate regulations on entry into force of this Protocol or as soon thereafter as is practicable, and, from time to time thereafter as may be required, dealing with the operation of the International Registry including but not limited to the following:

(i) the establishment of different databases for different categories of aircraft objects and their associated rights;

(ii) the conditions and requirements for registrations or searches of the International Registry database or databases;

(iii) the medium for transmitting registration information to the International Registry;

(iv) security measures pertaining to registration information;

(v) the issue of search certificates by the Registrar; and

(vi) the correction of errors in registrations.

(e) report annually to the Contracting States concerning the discharge of its obligations under the Convention and this Protocol.

2. – The Supervisory Authority may enter into an agreement referred to in Article 26, paragraph 3 of the Convention.

Article F

Basic Features of The International Registry

1. – The International Registry shall be a depository of registration information transmitted by users. The International Registry and Registrar shall have no obligation to ensure that information transmitted for registration is accurate.

2. – The registration-search criterion for an aircraft object shall be its manufacturer's serial number, supplemented as provided in regulations by information necessary to ensure uniqueness.

3. – A registration shall take effect upon entry of the information required by the regulations into the database of the International Registry so that it is searchable.

4. – A registration is effective until a discharge is registered unless otherwise specified by the person making it.

5. – An international interest shall be treated as having been registered at the time a registration of it as a prospective interest is effective.

6. – The preceding paragraph applies with necessary modifications to an assignment of an international interest and to sale.

7. – Except as provided in paragraphs 8 and 9, a registration relating to an international interest, a prospective international interest, an assignment or prospective assignment of an international interest or a sale or prospective sale of an aircraft object may be made by either party to the relevant transaction with the prior written consent of the other party thereto. The Registrar shall require an indication that the consent has

been obtained but has no obligation to verify that consent has been given in fact. The absence of consent does not affect a registration.

8. – The subordination of an international interest may be registered by or with the written consent of the person whose interest has been subordinated.

9. – A registration may be amended or discharged or may be extended prior to its expiry or discharge, by or with the written consent of the person in whose favour it was made.

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

Article G

Searches

1. – Any person may, in the manner prescribed by the regulations, make or request a search of the International Registry using:

- (a) the registration-search criterion referred to in Article F, paragraph 2; or
- (b) such other criterion specified in the regulations.

2. Upon receipt of a request, the Registrar, in the manner prescribed in the regulations, shall issue a search certificate:

- (a) stating all registered information relating to an aircraft object disclosed in a search using the items referred to in paragraph 1 of this Article; and
- (b) indicating the date and time of registration of such information; or
- (c) stating that there is no registration relating thereto.

Article H

Liability of The Supervisory Authority And Registrar

[1. – The Supervisory Authority shall be liable for compensatory damages for loss suffered by a person directly resulting from failure by the Supervisory Authority to discharge properly its obligations under this Protocol.]

2. – The Registrar shall be liable for compensatory damages for loss suffered by a person directly resulting from an error or omission of the Registrar or employees of the Registrar or from a malfunction of the International Registry.

3. – [The Supervisory Authority and] the Registrar shall insure against the liability referred to in paragraphs [1 and 2] of this Article.

4. – The courts of the Contracting State in which the International Registry is located shall have jurisdiction in actions brought under this Article.

Article I

The Role of National Registry Authorities

1. – A Contracting State, in the manner prescribed by the regulations, may designate its national registry or that of another Contracting State or a joint regional registry as the exclusive transmitter of registration information with respect only to:

- (a) helicopters or airframes for which it is the State of registration; and
- (b) registrable non-consensual rights or interests created under its domestic law.

2. – An entity designated as provided in paragraph 1:

(a) shall have a relationship to the International Registry identical to that of any other transmitter of registration information;

[(b) may set requirements that must be met before it transmits registration information to the International Registry but may not alter the effect of regulations of the Supervision Authority dealing with registrations in the International Registry;]

3. – The Supervisory Authority and the International Registry shall not be liable for any conduct of an entity referred to in paragraph 1.

Article J

The language(s) of the International Registry shall be _____.