



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

ICAO Ref. LSC/ME/2-WP/21
UNIDROIT CGE/Int.Int./2-WP/21
31/8/99

SECOND JOINT SESSION

(Montreal, 24 August – 3 September 1999)

DRAFT REPORT

PLENARY SESSION

30 August 1999

The attached constitutes material on Agenda Item 5.

Agenda Item 5 (UNIDROIT Agenda Items 5 & 6): Study of a draft instrument or draft instruments relating to international interests in mobile equipment, with particular regard to aircraft equipment (continued)

5:37 The Plenary reviewed the Report by the Registration Working Group (RWG) presented by its Chairman (WP/17). The RWG had come to the conclusion that general provisions on the issue of registration should be placed in the Convention (Appendix 1 to the RWG Report) and any detailed provisions should be placed in the Protocol (Appendix 2 to the RWG Report). The RWG recommended, therefore, that the Convention contain provisions on the following topics: the overall structure of the Registry, principles applicable to all registries created under the Convention, and a checklist of the features of the Registry. It was decided that the Plenary should consider the new draft articles proposed by the RWG in their order of appearance in their Report.

Proposed revised Article 1 of the draft Convention

5:38 The RWG recommended that amendments be made to certain definitions of Article 1 of the Convention, since they were no longer needed in the light of the structure chosen for the Convention. This recommendation was adopted without further discussion.

Proposed new Article 15 of the draft Convention

5:39 The RWG provided a new draft for this Article, but indicated that this involved no significant changes to the previous draft. The RWG also pointed out that the new Article D, to be included in the Protocol, modified paragraph 4 of Article 15 by adding outright sales to the list of items that might be registered in the International Registry. One delegation expressed concern whether paragraph 4 of the new draft Article would effectively include future interests. These comments were referred to the Drafting Committee for discussion. Another proposal, calling for the removal of the square brackets around paragraph 3, was approved.

Proposed new Article 16 of the draft Convention

5:40 The RWG provided a new draft Article 16. For the purposes of clarity and accuracy, the term "Supervisory Authority" was to be used instead of "Intergovernmental Regulator." The RWG indicated that it had experienced difficulty in determining the approach to be taken as regards the designation of the Supervisory Authority, in view of the policy and administration issues involved. The RWG had therefore provided three alternative approaches in the proposed Article C of the Protocol. The Session saw a "chicken and egg" problem arising regarding the sequence and timing of the creation of the International Registry. It was pointed out that, although it might be preferable to postpone the designation of the Supervisory Authority until the International Registry was up and running, States might decide not to adhere to the Convention until the International Registry was put in place. One delegation proposed to allow for Contracting States to designate a Registrar of their choice until such time as the International Registry was created. Several delegations proposed that the organisation of the International Registry would be facilitated through the involvement of ICAO.

5:41 Referring to the institutional structures established in the *Convention on the Marking of Plastic Explosive for the Purpose of Detection* (MEX Convention) and the *Agreement on the Joint Financing of Certain Air Navigation Services in Iceland*, and to the role played by ICAO the Director of the ICAO Legal Bureau indicated that the Council of ICAO had not to date been seized of any proposal for its involvement in the setting-up and operation of the International Registry but would consider such a proposal in due course. The suggestions made in the preceding paragraph were referred to the Drafting Committee for further consideration.

5:42 In **paragraph 2** of **Article 16**, the RWG provided an enumeration of the powers of the Registrar. Mandatory obligations of the Registrar were set out in the RWG's proposed Articles E and F of the Protocol. Several delegations expressed reservations concerning the manner in which these powers were enumerated, and questioned whether or not they should all be made mandatory. The Aviation Working Group proposed that only **Article 15** should remain in the Convention, and that the rest of the provisions regarding the creation of the International Registry should be placed in the Protocol. These proposals were referred to the Drafting Committee with a view to it reconsidering the list of mandatory and non-mandatory duties of the Registrar. Reservations were also raised regarding **paragraph 4**, and whether it would effectively allow consultation of the registry by those not from a Contracting State. The Drafting Committee was requested to consider alternative approaches. It was further decided that paragraph 5 (c) and Article 23 should be redrafted in order to reflect the changes to be made to **Articles 37** and **38** regarding non-consensual interests.

Proposed revised Article 17

5:43 The RWG proposed a new draft Article 17. Following the expression of reservations by delegates, it was decided that the Drafting Committee should consider whether the provisions of this Article should or should not be mandatory.

Proposed revised Article 24

5:44 The RWG's changes to Article 24 were accepted by the Session without further discussion.

Proposed revised Article 25

5:45 The RWG made changes to this Article in order effectively to address the problem of de-registering interests on the Registry that were no longer valid. The Aviation Working Group made reservations to **paragraph 3**, which provided for entries on the Registry to be removed by court order. The AWG indicated that paragraph 3, as drafted, raised problems concerning jurisdiction, and gave rise to the possibility of conflicting court orders. It was proposed that, if these provisions were to be retained, they should be re-drafted so as to align them with the jurisdiction provisions of the Convention.

5:46 Concern had been expressed regarding the inclusion of a separate jurisdiction in **Article 25 (3) (b)**, in addition to the general jurisdiction provision included in the Convention. It was noted that courts should not normally issue orders against the registry except in cases where the secured party could not be traced. It was also suggested that the word "may" in **paragraph 3** should be replaced by "shall". The Drafting Committee was asked to review these matters.

Proposed revised Article 26

5:47 The importance of the issues relating to liability and immunities was emphasized. It was agreed that the square brackets in **paragraph 1** be removed. The Drafting Committee was requested to separate the liability and immunities provisions into two separate articles. It was further agreed that the major part of the liability provisions should be incorporated in the Convention instead of the Protocol. Moreover, the word "may" in the *chapeau* of **paragraph 4** should be changed into "shall". The Drafting Committee was also asked to consider redrafting **paragraph 4 (b)**.

5:48 In response to a question as to whether a system of strict liability was envisaged, the Chairman of the RWG explained that the text of **paragraph 4** seemed to indicate strict liability. For example, the registry would be held liable for loss by reason of the malfunctioning of the International Registry.

5:49 With respect to immunities, it was suggested that this issue should be covered not only in the agreement with the host State, but also in the Convention. The provisions concerning immunities were referred to the Drafting Committee for refinement. It was suggested that a provision should also be included in the future Convention dealing with the related matter of the privileges of the future International Registry. It was suggested that a model for such a provision was to be found in ICAO's Headquarters Agreement. The treatment of this matter in the Convention could well facilitate the negotiation of such an agreement.

Proposed new Articles A and B of the draft Protocol

5:50 These articles were accepted without any comments.

Proposed new Article C of the draft Protocol

5:51 The meeting considered the three possible approaches identified by the RWG for the designation of the Supervisory Authority. It was emphasized that it would be important for the International Registry to be operational when the Convention came into effect. With reference to the role played by ICAO with regard to the MEX Convention and the Joint Financing Agreement (see paragraph 5:41), it was decided to request the Secretariat of ICAO to prepare a working paper outlining the relevant precedents in this respect in order to provide some guidance for future consideration. The meeting would not express its preference for any of the three approaches identified by the RWG until it had had the opportunity to note the view of the ICAO Council on this matter.

Proposed new Article D of the draft Protocol

5:52 It was suggested that the word "creation" in the title of Article D should be replaced by "establishment". It was further suggested that "[unless that designation takes place in the Protocol]" be added to the end of paragraph 2. In response to a query regarding the distinction between "International Registry" and the "Registrar", it was explained that the "International Registry" referred to the facilities whereas the "Registrar" was the body responsible for registration. The Drafting Committee was requested to revisit Article D, taking into account the above-mentioned suggestions.

Proposed new Article E of the draft Protocol

5:53 The Drafting Committee was asked to review **paragraph 1 (b)** on the understanding that the registry should operate on the basis of the principle of cost recovery rather than profit making. The Drafting Committee should also review the question of "guidance" in paragraph 1 (a) and the issue relating to "regulations" in paragraph 1 (d).

Proposed new Article F of the draft Protocol

5:54 Different views were expressed in the context of **paragraph 1** as to whether the International Registry and Registrar should have no obligation to ensure that information transmitted for registration was accurate. It was decided that the Drafting Committee should study this matter on the understanding that the Registrar could not guarantee the accuracy of the information. In view of the general nature of Article F, particularly paragraphs 1 and 3 thereof, the Drafting Group was requested to review whether Article F should be moved, in whole or in part, to the draft Convention.

5:55 With respect to paragraph 7, it was suggested that the last sentence should be deleted. The Drafting Committee was requested to redraft this paragraph.