



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

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PUBLIC INTERNATIONAL LAW PROVISIONS

Introduction

The restricted group of the Drafting Committee met on 24 and 25 March pursuant to the request addressed to it by the Chairman of Plenary at the conclusion of the discussions within Plenary on 23 March regarding the report submitted by the Public International Law Working Group. The restricted group of the Drafting Committee had been asked by the Chairman of Plenary to seek to give effect to the decisions taken by Plenary in relation to that report with a view to reporting back to Plenary on 27 March.

The restricted group completed the task entrusted to it by the Chairman of Plenary on 25 March. However, in view of the absence, from its deliberations on 25 March, for unavoidable reasons, of two members of the restricted group, it had initially been decided to submit the restricted group's report to Plenary in two parts. The first part referred to the work accomplished by the restricted group on 24 March (UNIDROIT CGE/INT.INT./3-WP/28 - ICAO Ref. LSC/ME/3-WP/28) and the second intended to reflect the outcome of the work of the restricted group on 25 March. However, at its session on 27 March, the restricted group reviewed document WP28 as well as the proposals drafted on 25 March. It finally took the opportunity to incorporate amendments already discussed in Plenary (article 2 of the preliminary draft Convention and Articles X and XIII of the preliminary draft Aircraft Protocol).

This document incorporates and supplements document UNIDROIT CGE/INT.INT./3-WP/28 - ICAO Ref. LSC/ME/3-WP/28 (as modified by the restricted group of the drafting Committee on 25 and 27 March) and then replaces the two documents initially envisaged. These amendments are set out hereunder under the relevant provisions of the preliminary draft Convention and the preliminary draft Aircraft Protocol.

Preliminary draft Convention

CHAPTER I

SPHERE OF APPLICATION AND GENERAL PROVISIONS

Article 1

Defined terms

(u bis) “pre-existing right or interest” means a right or interest of any kind in an object created or arising before the entry into force of this Convention and under the law of a State which subsequently becomes a Contracting State ; [w bis]

Article 2

The international interest

1. – This Convention provides for the constitution and effects of an international interest in certain categories of mobile equipment and associated rights.

2. – For the purposes of this Convention, an international interest in mobile equipment is an interest, constituted under Article 7, in ~~an~~ uniquely identifiable object of a category of such objects listed in paragraph 3 and designated in ~~a~~ the Protocol:

(a) granted by the chargor under a security agreement ;
agreement; or (b) vested in a person who is the conditional seller under a title reservation

(c) vested in a person who is the lessor under a leasing agreement.

An interest falling within sub-paragraph (a) does not also fall within sub-paragraph (b) or (c).

3. – The categories referred to in the preceding paragraphs are :

(a) airframes, aircraft engines and helicopters ;

(b) railway rolling stock ;

(c) space property.

~~3~~ 4. – This Convention does not determine whether an interest to which ~~the preceding~~ paragraph 2 applies falls within sub-paragraph (a), (b) or (c) of that paragraph.

~~4~~ 5. – An international interest in an object extends to proceeds of that object.

CHAPTER VI⁴⁵

PRIVILEGES AND IMMUNITIES OF THE SUPERVISORY AUTHORITY AND THE REGISTRAR

Article 26

Legal personality; immunity

1. – The Supervisory Authority shall have international legal personality where not already possessing such personality.

2. – ~~Except as provided by Article 26 bis and by the terms of any agreement between the Supervisory Authority and the host State, †~~The Supervisory Authority, its officers and employees shall ~~be immune~~ enjoy immunity⁴⁶ from legal process.

[3. – The Supervisory Authority shall enjoy [exemption from taxes and] such [other] privileges as may be provided by agreement with the host State.]^{16bis}

[4.] – Except as provided by Article 26 bis (1) and ~~by the terms of any agreement with the host State in relation to any claim made under that Article :~~

(a) the Registrar and the officers and employees of the Registrar shall ~~be immune~~ enjoy functional immunity^{16ter} from legal process;

(b) the assets, documents, databases and archives of the International Registry shall be inviolable and immune from seizure or other legal process.⁴⁷

[5.] – In this Article “host State” means the State in which the Supervisory Authority or, as the case may be, the Registrar is situated.^{17bis}

⁴⁵ It was noted by the Drafting Group that the contents of this Chapter were provisional in so far as they were on the agenda of the Public International Law Working Group.

¹⁶ ~~It was noted by the Drafting Group that the question of functional immunity is addressed by the 1969 Vienna Convention on the Law of Treaties and that the question of the extent of such immunity is the exclusive concern of the host State.~~

^{16bis} The restricted group did not consider these provisions in seeking to give effect to the decisions taken by Plenary on the report of the Public International Law Working Group in that they were not raised in that report.

^{16ter} The restricted group agreed that regard should be had to the relevant provision of the 1946 Convention on the Privileges and Immunities of the United Nations and the 1947 Convention on the Privileges and Immunities of the Specialized Agencies in order to verify whether the term “functional immunity” was the appropriate term to be employed in this provision.

⁴⁷ *Idem.*

^{17bis} The restricted group noted that a provision relating to the host State agreement will need to be inserted at this point at the diplomatic Conference.

CHAPTER VII

LIABILITY OF ~~THE SUPERVISORY AUTHORITY AND~~ THE REGISTRAR

Article 26 bis

Liability and insurance

~~[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 its obligations under this Convention or the Protocol].¹⁸~~

Alternative A

[2.1. — 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 from a malfunction of the international registration system].^{16bis}

Alternative B

[2.1. — The Registrar shall be liable for compensatory damages for loss suffered by a person directly resulting from the failure of the Registrar to exercise reasonable care and skill in the performance of its duties].^{19 16bis}

3.2. — The ~~{Supervisory Authority and the}~~ Registrar shall insure against the liability referred to in the preceding paragraphs to the extent provided by the Protocol.

¹⁸ ~~The question whether there should be liability, and if so, on what basis, and the courts having jurisdiction over such liability will need to be considered in due course.~~

¹⁹ The Drafting Group noted that Plenary's discussions during the second Joint Session of this issue in the context of the preliminary draft Convention were based on the establishment of a strict liability regimen but when discussing the same issue in the context of the preliminary draft Aircraft Protocol it had requested the Drafting Group to prepare alternative texts.

[CHAPTER XIII

RELATIONSHIP WITH OTHER CONVENTIONS^{28,29}

Article 41bis

Relationship with the UNIDROIT Convention on International Financial Leasing

The Protocol may determine the relationship between this Convention and the UNIDROIT Convention on International Financial Leasing, opened for signature at Ottawa on 28 May 1988.]

CHAPTER [XIV]

[OTHER] FINAL PROVISIONS³⁰

Article U

Entry into force

1. – This Convention enters into force on the first day of the month following the expiration of six months after the date of deposit of the [third/fifth] instrument of ratification, acceptance, approval or accession³¹ but only **applies** as regards **any** category of object to which a Protocol applies:

- (a) as from the time of entry into force of ~~the~~ that Protocol;
- (b) subject to the terms of that Protocol; and
- (c) as between Contracting States Parties to that Protocol.

2. – This Convention and the Protocol shall be read and interpreted together as a single instrument.

²⁸ It is thought that the only existing Conventions needing to be dealt with in Chapter XII are the UNIDROIT Convention on International Financial Leasing and, possibly, the UNIDROIT Convention on International Factoring. It is thought that relations between this Convention and other equipment-specific Conventions should be left to each Protocol.

²⁹ ~~This Chapter was not reviewed by the Drafting Committee in line with the decision taken by the Joint Session not to consider this Chapter at this stage.~~

³⁰ Of this Chapter only Articles V and Y were reviewed by the Drafting Committee during the second Joint Session.

³¹ ~~At the second Joint Session the Plenary recognised the desirability of requiring a small number of ratifications, acceptances, approvals or accessions for the future Convention to enter into force. The question as to whether States would be permitted to ratify the Convention separately from a Protocol was left open by Plenary.~~

Article V

Internal transactions

[If the Protocol so provides, a] A Contracting State may declare at the time of signature, ratification, acceptance, approval of, or accession to the Protocol that it will not apply this Convention in relation to [a purely internal transaction] [In such a case, that State may specify in its declaration which types of transaction are to be considered purely internal transactions].

Article W

~~[Insert provision for accelerated procedure to finalise further Protocols]~~³²

Protocols on Railway Rolling Stock and Space Property

1. – The International Institute for the Unification of Private Law (UNIDROIT) shall communicate the text of any preliminary draft Protocol relating to a category of objects falling within Article 2 (3)(b) or (c) prepared by a working group convened by UNIDROIT to all Contracting States Parties to the Convention through their adherence to any existing Protocol, all Member States of UNIDROIT and all Member States of any intergovernmental Organisation represented in the working group. Such States shall be invited to participate in intergovernmental negotiations for the completion of a draft Protocol on the basis of such a preliminary draft Protocol.

2. – UNIDROIT shall also communicate the text of any preliminary draft Protocol prepared by a working group to relevant non-governmental Organisations as UNIDROIT considers appropriate. Such non-governmental Organisations shall be invited to submit comments on the text of the preliminary draft Protocol to UNIDROIT or, as appropriate, to participate as observers in the preparation of a draft Protocol.

3. – Upon completion of a draft Protocol, as provided by the preceding paragraphs, the draft Protocol shall be submitted to the Governing Council of UNIDROIT for approval with a view to adoption by the General Assembly of UNIDROIT and such other intergovernmental Organisations as may be determined by UNIDROIT .

4. – The procedure for the adoption of Protocols covered by this Article will be determined by the States participating in their preparation.

³² ~~These provisions are to be the subject of consideration by the Public International Law Working Group.~~

Article W bis
Other future Protocols

1. – UNIDROIT may create working groups to assess the feasibility of extending the application of this Convention, through one or more Protocols, to objects of any category of high-value mobile equipment, other than a category referred to in Article 2 (3), each member of which is uniquely identifiable, and associated rights relating to such objects.

2. – The Protocols referred to in the preceding paragraph shall be prepared and adopted in accordance with the procedures provided for under Article W.

[Article X
Determination of courts

A Contracting State shall declare at the time of ratification, acceptance, approval of, or accession to the Protocol the relevant “court ” or “courts” for the purposes of Article 1 and Chapter XII of this Convention.]

Article Y
Declarations regarding remedies

1. – A Contracting State may declare at the time of signature, ratification, acceptance, approval of, or accession to the Protocol that while the charged object is situated within, or controlled from its territory the chargee shall not grant a lease of the object in that territory.

2. – A Contracting State at the time of signature, ratification, acceptance, approval of, or accession to the Protocol shall declare whether or not any remedy available to the creditor under Articles 8 to 10 which is not there expressed to require application to the court may only be exercised with leave of the court.

Article Z
Declarations regarding relief pending final determination

A Contracting State may declare at the time of signature, ratification, acceptance, approval of, or accession to the Protocol that it will not apply the provisions of Article 14, wholly or in part.

Article Z bis
Reservations, declarations and non-application of reciprocity principle

1. – No reservations are permitted except those expressly authorised in this Convention and the Protocol.

2. – No declarations are permitted except those expressly authorised in this Convention and the Protocol.

3. – The provisions of this Convention subject to any reservation or declaration shall be binding on the Contracting States that do not make such reservations or declarations in their relations vis-à-vis the reserving or declaring Contracting State.

Article Z ter
Transitional provisions

Alternative A

[This Convention **does** not apply to a pre-existing right or interest.]

Alternative B ³³

[1. – Except as provided by paragraph 2, this Convention **does** not apply to a pre-existing right or interest.

2. – Any pre-existing right or interest of a kind referred to in Article 2(2) shall retain the priority it enjoyed before this Convention entered into force if it is registered in the International Registry before the expiry of a transitional period of [...] years after the entering into force of this Convention in the Contracting State under the law of which it was created or arose. Where such a pre-existing right or interest is not so registered, its priority shall be determined in accordance with Article 27.

3. – The preceding paragraph **does** not apply to any right or interest in an object created or arising under the law of a State which has not become a Contracting State.]

[Remaining Final Provisions to be prepared by the Diplomatic Conference]

³³ The restricted group recognised that it would be necessary, should Alternative B be adopted, to consider the question of the costs that would be associated with acceptance of this Alternative.

Preliminary draft Aircraft Protocol

CHAPTER I

SPHERE OF APPLICATION AND GENERAL PROVISIONS

Article I
Defined terms

2. – (a) “aircraft” means aircraft as defined for the purposes of the Chicago Convention which are either airframes with aircraft engines installed thereon or helicopters; [a]

(f) “Chicago Convention” means the Convention on International Civil Aviation, opened for signature at Chicago on 7 December 1944, as amended and its annexes; [g]

(g) “common mark registering authority” means the authority maintaining ~~the non-national~~ a register in which an aircraft of an international operating agency is registered in accordance with Article 77 of the Chicago Convention as implemented by the Resolution adopted on 14 December 1967 by the Council of the International Civil Aviation Organization on nationality and registration of aircraft operated by international operating agencies ; [b]

(h) “de-registration of the aircraft” means deleteion or removal of the registration of an the aircraft from a national its aircraft register in accordance with the Chicago Convention; [n]

(n) “~~national~~ aircraft register” means ~~any~~ register maintained by a State or a common mark registering authority for the purposes of the Chicago Convention; [o]

(o) “~~national~~ registry authority” means the national authority, or the common mark registering authority maintaining an aircraft register in a Contracting State ~~which is the State of registry, and~~ responsible for the registration and de-registration of an aircraft in accordance with the Chicago Convention; [c]

(q) “State of registry” means, in respect of an aircraft, the State on the national register of which an aircraft is entered or the State of location of the common mark registering authority maintaining the aircraft register, or a State member of a common mark registering authority, on whose national aircraft register an aircraft is entered under the Chicago Convention. [i]

Article II

Application of Convention as regards aircraft objects

1. – The Convention shall apply in relation to aircraft objects as provided by the terms of this Protocol.

2. – The Convention and this Protocol shall ~~be read and interpreted together as one single instrument and shall~~ be known as the [UNIDROIT] Convention on International Interests in Mobile Equipment as applied to aircraft objects.

Article III *Sphere of application*

1. – Article 3(1)(b) of the Convention shall apply in relation to a sale as if the references to an agreement creating or providing for the international interest were references to the contract of sale and as if the references to the debtor were references to the seller under the contract of sale.

2. – The connection with a Contracting State under Article 3(1)(b) of the Convention is satisfied with respect to this Protocol if an ~~aircraft object~~ is registered in an ~~national~~ aircraft register of a Contracting State [or if the agreement provides that the aircraft ~~object~~ shall be registered, and the aircraft ~~object~~ becomes so registered, in a Contracting State].

~~[2. Notwithstanding the provisions of Article V of the Convention, this Protocol shall apply to a purely domestic transaction.]~~⁷

[3. –] The parties may, by agreement in writing, exclude the application of Article XI and, in their relations with each other, derogate from or vary the effect of any of the provisions of this Protocol, except as stated in Articles IX(2)-(4).

CHAPTER II

DEFAULT REMEDIES, PRIORITIES AND ASSIGNMENTS

Article X *Definition of speedy judicial relief*

[1. – For the purposes of Article 14(1) of the Convention, “speedy” in the context of obtaining judicial relief means within such number of calendar days from the date of filing of the application for relief as is specified in a declaration made by the Contracting State in which the application is made.]

[2. – An agreement between the debtor and the creditor to exclude the application of Article 14(2) of the Convention shall be binding upon all interested persons.]

[3. –] The remedies specified in Article IX(1) shall be made available by the ~~national~~ registry authority and other administrative authorities, as applicable, in a Contracting State no later than [...] calendar days after the judicial relief specified in paragraph 1 is authorised or, in the case of judicial relief authorised by a foreign court, approved by courts of that Contracting State, in accordance with applicable aviation safety laws and regulations.

⁷ This provision will need to be reinstated in the event that Article V of the preliminary draft Convention is not found to be acceptable.

Article XIII

De-registration and export authorisation

1. – Where the obligor debtor has issued an irrevocable de-registration and export request authorisation substantially in the form annexed to this Protocol and has submitted such authorisation for recordation to the national registry authority, that authorisation shall be so recorded.

2. – The person in whose favour the authorisation has been issued (the “authorised party”) or its certified designee shall be the sole person entitled to exercise the remedies specified in Article IX(1) and may do so only in accordance with the authorisation and any applicable airworthiness or aviation safety laws or and regulations. Such authorisation may not be revoked by the obligor debtor without the consent in writing of the authorised party. The national registry authority shall remove an authorisation from the registry at the request of the authorised party.

3. – The national registry authority and other administrative authorities in Contracting States shall expeditiously co-operate with and assist the authorised party in the exercise of the remedies specified in Article IX.

CHAPTER V

RELATIONSHIP WITH OTHER CONVENTIONS ²⁴

Article XXII

Relationship with ~~1948~~ the Convention on the International Recognition of Rights in Aircraft

~~1. — Where a Contracting State is a party to the Geneva Convention:~~

~~(a) — the reference to the “law” of such Contracting State for the purposes of Article I (1)(d)(i) of the Geneva Convention should be to such law after giving effect to the Convention;~~

~~(b) — for the purposes of the Geneva Convention, the term “aircraft” as defined in Article XVI of that Convention shall be deleted and replaced by the terms “airframes,” “aircraft engines” and “helicopters” as defined in this Protocol; and~~

~~(c) — registrations in the International Registry shall be deemed to be regular recordations “in a public record of the Contracting State” for the purposes of Article I (1)(ii) of the Geneva Convention.~~

~~2. — Subject to paragraph 3, the Convention shall, for the Contracting States referred to in the preceding paragraph, supersede the Geneva Convention to the extent, after giving effect to the preceding paragraph, of inconsistency between the two Conventions.~~

~~3. — The provisions of the preceding paragraph shall not apply to Articles VII and VIII of the Geneva Convention where an obligee elects to exercise remedies against an obligor in accordance with those Articles [and provides the court with written evidence of that election].~~

^{24.} ~~With the exception of Article XXX, the Joint Session did not discuss Chapters V and VI, leaving consideration of those Chapters to a time nearer to a diplomatic Conference.~~

The Convention shall, for a Contracting State that is a party to the Convention on the International Recognition of Rights in Aircraft, opened for signature at Geneva on 19 June 1948, supersede that Convention as it relates to aircraft [as defined in this Protocol,] and to aircraft objects.

Article XXIII

Relationship with ~~1933~~ Convention for the Unification of Certain Rules Relating to the Precautionary Attachment of Aircraft

~~The Convention shall, for Contracting States that do not make a declaration under Article Y(2)²² of the Convention, supersede the 1933 Convention for the Unification of Certain Rules Relating to the Precautionary Arrest of Aircraft.~~

1. – The Convention shall, for a Contracting State that is a Party to the Convention for the Unification of Certain Rules Relating to the Precautionary Attachment of Aircraft, opened for signature at Rome on 29 May 1933, supersede that Convention as it relates to aircraft.

2. – A Contracting State Party to the above Convention may declare, at the time of ratification, acceptance, approval of, or accession to this Protocol, that it will not apply this Article.^{22bis}

ADDENDUM

Article XXVI

Entry into force

1. – This Protocol enters into force on the first day of the month following the expiration of [three] months after the date of deposit of the [third/fifth] instrument of ratification, acceptance, approval or accession.

2. – For each Contracting State that ratifies, accepts, approves or accedes to this Protocol after the deposit of the [third/fifth] instrument of ratification, acceptance, approval or accession, this Protocol enters into force in respect of that Contracting State on the first day of the month following the expiration of [three] months after the date of the deposit of its instrument of ratification, acceptance, approval or accession.

²² ~~_____ If Alternative B of Article Y(2) is adopted, this will need to be amended accordingly.~~

^{22bis} This paragraph will be moved to the final provisions in due course.

Article XXVIII
Temporal application

~~This Protocol applies in a Contracting State to rights and interests in aircraft objects created or arising on or after the date on which this Protocol enters into force in that Contracting State.~~

Article XXIX
Declarations and reservations

~~No declarations or reservations are permitted except those expressly authorised in this Protocol.~~

Article XXXII ²⁵
Withdrawal of declarations and reservations

Any Contracting State which makes a declaration under, or a reservation to this Protocol may withdraw it at any time by a formal notification in writing addressed to the depositary. Such withdrawal is to take effect on the first day of the month following the expiration of [three] months after the date of the receipt of the notification by the depositary.

Article XXXIII ²⁶
Denunciations

1. – This Protocol may be denounced by any Contracting State at any time after the date on which it enters into force for that Contracting State, by the deposit of an instrument to that effect with the depositary.

2. – Any such denunciation shall take effect on the first day of the month following the expiration of [twelve] months after the date of deposit of the instrument of denunciation with the depositary. Where a longer period for that denunciation to take effect is specified in the instrument of denunciation, it shall take effect upon the expiration of such longer period after its deposit with the depositary.

3. – Notwithstanding the previous paragraphs, this Protocol shall continue to apply, as if no such denunciation had been made, in respect of all rights and interests arising prior to the effective date of that denunciation.

²⁵ The restricted group felt that more guidance was needed from Plenary regarding the decisions reached by the Public International Law Working Group in relation to Article XXXII as reflected in UNIDROIT CGE/Int.Int./3-WP/18 ICAO Ref. LSC/ME/3-WP/18, paragraph 43.

²⁶ The restricted group felt that more guidance was needed from Plenary regarding the decisions reached by the Public International Law Working Group in relation to Article XXXIII as reflected in UNIDROIT CGE/Int.Int./3-WP/18 ICAO Ref. LSC/ME/3-WP/18, paragraphs 33 to 36.

appendix

**FORM OF IRREVOCABLE DE-REGISTRATION
AND EXPORT REQUEST AUTHORISATION**

[Insert Date]

To: [Insert Name of **National** Registry Authority]

Re: Irrevocable De-Registration and Export Request Authorisation

The undersigned is the registered [operator] [owner]* of the [insert the airframe/helicopter manufacturer name and model number] bearing manufacturer's serial number [insert manufacturer's serial number] and registration [number] [mark] [insert registration number/mark] (together with all installed, incorporated or attached accessories, parts and equipment, the "aircraft").

This instrument is an irrevocable de-registration and export request authorisation issued by the undersigned in favour of [insert name of **obligee creditor**] ("the **authorised party**") under the authority of Article XIII of the Protocol to the UNIDROIT Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment. In accordance with that Article, the undersigned hereby requests:

(i) recognition that the authorised party or the person it certifies as its designee is the sole person entitled to:

(a) ~~obtain~~ procure the de-registration of the aircraft from the [insert name of ~~national aviation aircraft registry~~ aviation registry] maintained by the [insert name of ~~aviation registry~~ aviation registry authority] for the purposes of Chapter III of the Chicago Convention of 1944 on International Civil Aviation; and

(b) procure the export and physically transfer of the aircraft from [insert name of country]; and

(ii) confirmation that the authorised party or the person it certifies as its designee may take the action specified in clause (i) above on written demand without the consent of the undersigned and that, upon such demand, the authorities in [insert name of country] shall co-operate with the authorised party with a view to the speedy completion of such action.

The rights in favour of the authorised party established by this instrument may not be revoked by the undersigned without the written consent of the authorised party.

Please acknowledge your agreement to this request and its terms by appropriate notation in the space provided below and lodging this instrument in [insert name of **national** registry authority].

[insert name of operator/owner]

Agreed to and lodged this
[insert date] Its: [insert title of signatory]

By: [insert name of signatory]

[insert relevant notational details]

* Select the term that reflects the relevant nationality registration criterion.