



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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## **THIRD JOINT SESSION**

(Rome, 20 – 31 March 2000)

### **PROPOSALS**

#### **regarding the establishment and management of the International Registry**

(submitted by the Government of the Federal Republic of Germany)

The German delegation proposes the following amendments to the establishment and management of the International Registry:

#### **Article 16 – Supervisory Authority and Registrar**

##### ***1. Participation of the Contracting States in the issuance of the regulations***

The Convention as well as the Protocol do not regulate all details of establishment and management of the International Registry; these details are rather to be regulated in implementing regulations. The German delegation thinks, this is right. Because these regulations are important and regulate questions essential to practical management, such as the details of application, the remedy procedure or measures to protect the applicant, the Contracting States should be able to participate in drawing up these regulations. There are, in the German delegation's opinion, two different models for such participation:

- A supervisory board could be established, consisting of representatives of the Contracting States.
- A consultation procedure could be established, by virtue of which the Supervisory Authority should communicate the regulations to be issued to the Contracting States for review and amendments.

## 2. *Publication of regulations*

The German delegation thinks that the regulations should be published formally, so that everybody will know the rules applying to the management of the International Registry. This publication could be arranged for by the Supervisory Authority or by the Contracting States.

The following paragraphs should be added to Article 16:

“5. The Supervisory Authority can issue regulations only with the consent of the supervisory board. The board shall consist of representatives of the Contracting States and shall give its decisions by simple majority.

**alternative text:**

The Supervisory Authority shall communicate the regulations to be issued to the Contracting States, which may propose amendments in the course of the following three months. Where proposals for amendments are supported by the majority of the Contracting States, they must be implemented in the regulations.

6. The regulations are to be published by the Supervisory Authority.

**alternative text:**

*The Supervisory Authority shall communicate the issued regulations to the Contracting States which have to publish them.”*

## **Article 17 – Registration requirements**

According to Article 27 of the Convention the registered interest has priority over any other interest subsequently registered. The German delegation considers this principle to be correct and indispensable. But this principle can only be established by ensuring, on the other hand, that all applications are executed in the chronological order of their receipt by the Registrar. This makes it necessary to determine the chronological order referred to.

The German delegation therefore proposes to amend Article 17 by the following paragraph:

“4. The Registrar assures that all applications are executed in the chronological order of their receipt by the Registrar. The precise date and time of receipt shall be noted.

## **Article 19 –When registration takes effect**

The German delegation proposes that Article 19 par. 1 should not be based on the retrievability of the information but rather on the storage of the information at the place determined therefor and in such a way that the information permanently can be reproduced unchanged.

Article 19 par. 1 should therefore be drafted as follows:

“1. A registration shall take effect when the information is stored at the place determined for the database of the International Registry in such a way that the information can permanently be reproduced unchanged.”

### **Article 20 – Who may register**

According to Article 20 par. 1 the registration can only be executed if the chargor has declared his consent. It should be clarified whether such consent is to be required in addition to the written agreement already required by Articles 7 and 29 of the Convention, or whether this consent may be replaced by the written agreement. Article 20 par. 1 and 3 should both be amended by the following sentence:

“The consent can be replaced by the written agreement.”

### **Article 22 – Searches**

Paragraph 1 of Article 22 should be amended by the following clarification:

“No legal or other interest in the search has to be explained.”

### **Article 26 – Legal personality; immunity**

According to Article 16, the International Registry shall have two executive bodies: the Supervisory Authority and the Registrar. But only the Supervisory Authority shall have, according to Article 26, legal personality. The assets of the International Registry, especially its database, shall be inviolable. This entails granting legal personality to the International Registry itself as an international institution. In this case the Supervisory Authority as well as the Registrar might be executive bodies, which themselves would have no legal personality of their own.

If this solution were to be followed, Article 26 par. 1 to 3 should be drafted as follows:

#### “Article 26

#### Legal personality; immunity

1. The International Registry shall have international legal personality. It shall act through the Registrar and the Supervisory Authority.
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 from legal process.
- [3. The International Registry shall enjoy [exemption from taxes and] such [other] privileges as may be provided by agreement with the host State.]”

### **Article 27 – Priority of competing interests**

The German delegation thinks that Article 27 should contain a provision regulating cases where registration is contested. In such cases it should be possible to prevent bona fide acquisition of the interest by invoking the incorrect registration of the interest registered. This could be achieved by registering an objection against a certain registration. Article 27 should therefore be amended by adding the following paragraph 3a:

“3a. If a registration is contested, the Registrar shall register an objection against the registration. If an objection is registered, the buyer of an object can acquire an interest in it only if the interest is valid and belongs to the seller.”