



INTERNATIONAL CIVIL AVIATION ORGANIZATION

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English and
Spanish only

ASSEMBLY — 35TH SESSION

LEGAL COMMISSION

Agenda Item 33: International interests in mobile equipment (aircraft equipment)

INFORMATION PAPER

(Presented by the Latin American Association of Aeronautical and Space Law (ALADA))

1. BACKGROUND

1.1 The Latin American Association of Aeronautical and Space Law (ALADA) has been following closely the development of the current Convention on International Interests in Mobile Equipment and the Protocol on specific issues relating to the items of aircraft equipment of the Convention on International Interests in Mobile Equipment. Both international instruments were developed under the joint auspices of UNIDROIT and ICAO and adopted at the Cape Town Diplomatic Conference (October 29 – November 16, 2001).

1.2 It should be noted that ALADA has, on several occasions, urged that the above-mentioned international documents, which have not yet become effective, be reviewed. Such review should take into account both the economic and air transport policy repercussions that its possible ratification might have for its members. In this connection, ALADA has reached the following conclusions.

2. ADVANTAGES OF RATIFICATION

2.1 Of the four States which have ratified the Agreement and the Protocol, one, Panama, is a member of the geographic region to which ALADA belongs.

2.2 A significant proportion of the aircraft operated by Latin American airlines are not bought from the manufacturer but leased from financial investors, many of whom do not belong to this region, and who require certain legal security guarantees to lower the cost of financing the equipment.

(3 pages)

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¹ English and Spanish versions provided by ALADA.

2.3 There is no doubt that, in principle, both the Convention and the Protocol could give Latin American airlines easier access to financing that is less costly than other sources of funds for fleet renewal and spare parts bank. However, it should be noted that, from a strictly legal point of view, many provisions of both international instruments would have required fine-tuning. Nevertheless, particular attention should be given to the “opt-in/opt-out” provisions when deciding whether or not certain sections should apply which could present problems under domestic legislation.

2.4 The ICAO Legal Committee and the Subcommittee set up in 1998 to review this matter, whose members, including representatives of Argentina, Brazil and Venezuela, played a key role in drafting these two documents. Their work made it possible to overcome many of the problems presented by the original draft documents.

2.5 Particularly important in the new regulation is the creation of a Registry which fulfills a key principle of international aeronautical law, that of “transparency”, based on publicity, which is essential. It should be noted that registration will not be limited to existing international interests but will also apply to future interests, such as recordable non-contractual rights and interests, existing and future assignments of those interests, acquisitions by virtue of legal or contractual subrogation, subordination of interests and notices of domestic interests.

2.6 ALADA nevertheless considers that this does not cover many of the rights *in rem* contemplated in the 1948 Geneva Agreement, thus restricting the scope of the new Agreement to rights *in personam* and rights other than rights *in rem*.

3. REPORT ON ALADA’S LATEST POSITION

3.1 Since this matter is extremely important in the economy and legislation of Latin American States, it had an important place on the agenda of the 28th Latin American Aeronautical and Space Law Meeting, held for the first time in Europe, in Rome, Italy, from March 29 to April 1, 2004.

3.2 For illustrative purposes, the following are the conclusions unanimously approved by the Meeting, which describe the position of the entity on the advisability of ratifying the Convention and the Protocol mentioned above.

“CONSIDERING: The Capetown Agreement of November 16, 2001 on international interests and the Protocol on items of aircraft equipment.

WHEREAS: An international legal system facilitates the availability of financial funds for the air transport industry and promotes the mobility of the items of aircraft equipment which is essential for the operation of the air transport industry.

THE FOLLOWING IS RECOMMENDED:

1. Promoting, within the framework of the Convention and of the aeronautical protocol, a system for the registration of international interests through an international electronic Registry.

2. Assessing the advantages afforded to the States by the “opt-in/opt-out” provisions allowing them to declare, when ratifying the Convention and the Protocol, that they will or will not apply any one or more of the sections which could create problems.

3. Promote cooperation between Latin America and Europe to develop an effective system to finance aeronautical mobile equipment”.

4. **ACTION BY THE ASSEMBLY**

4.1 The Secretariat’s Working Paper A35-WP/16 reports the actions taken to establish and operate the International Registry, and the future work required to establish the best possible conditions for its operation, which ALADA, as Observer, considers invaluable. It therefore reiterates its willingness and experience to cooperate when the Convention and the Protocol enter into force.

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