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**LEGAL COMMISSION**

**Agenda Item 45: Work Programme of the Organization in the legal field**

**THE INTERNATIONAL REGISTRY AFTER 10 YEARS—CIVIL AVIATION'S GREAT SUCCESS STORY**

(Presented by Brazil, Canada, Ireland, Luxembourg, Norway, Singapore, Spain, United Kingdom and the United States)

**EXECUTIVE SUMMARY**

The Cape Town Convention and its Aircraft Protocol have done much to improve global aviation safety. The Convention facilitates asset-based financing and leasing, and provides many countries' airlines with access to safer, greener, and more technologically advanced aircraft and engines than before. Sixty-six States had ratified or acceded to the Aircraft Protocol as of August 2016. The success of the Convention cannot be over emphasized, and its success is due in large part to the effectiveness of the International Registry which allows for the registration of financial interests in aircraft objects, as well as the oversight role by ICAO as the Supervisory Authority. ICAO as the Supervisory Authority is assisted by the Commission of Experts of the Supervisory Authority of the International Registry (CESAIR).

**Action:** The Assembly is invited to note the benefits of the Cape Town Convention outlined in this Paper, and to recognize the good work done by the International Registry and ICAO's Commission of Experts. Interested delegates to the ICAO Assembly are invited to visit the Aviareto International Registry booth in the Assembly exhibition centre from 28 to 30 September where more information on the benefits of the International Registry and Cape Town Convention will be provided.

<i>Strategic Objectives:</i>	This information paper relates to the ICAO Strategic Objective of Safety and to Supporting Implementation Strategy – Programme Support – Legal Services and External Relations.
<i>Financial implications:</i>	This information paper has no significant financial implications.
<i>References:</i>	Doc 9793, <i>Convention on International Interests in Mobile Equipment</i> , signed at Cape Town on 16 November 2001 (Cape Town Convention) Doc 9794, <i>Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment</i> , signed at Cape Town on 16 November 2001 (Aircraft Protocol) Doc 9864, Regulations and Procedures for the International Registry

## 1. INTRODUCTION

1.1 The Cape Town Convention is an international law treaty that facilitates asset-based financing and leasing. It was adopted at a Diplomatic Conference in Cape Town, South Africa in November 2001 as a joint project between ICAO and the International Institute for the Unification of Private Law (UNIDROIT). The Convention would not have been possible if it was not for the exceptional collaboration among the States and the international aviation organizations, including the International Air Transport Association (IATA) and the Aviation Working Group (AWG) both of which played a major role in the treaty's development.

1.2 The Aircraft Protocol entered into force on March 1, 2006. Aviareto Limited, an Irish-registered company, was set up as a joint venture between SITA S.C. (80% shareholding) and the Irish Government (20% shareholding), to bid to operate the computerised International Registry. Aviareto was selected as the Registrar, following a competitive tender process, to develop and operate the International Registry. It has operated the International Registry since that time, with its latest reappointment running through February 2021. As the International Registry is run on a not-for-profit basis, the only objective is to facilitate the effective implementation of the Cape Town Convention and the Aircraft Protocol. The attached Appendix to this Information Paper sets out in further detail how the International Registry works and how it has developed over the last decade.

1.3 The ICAO Council serves as the Supervisory Authority to the International Registry, ensuring its effective and efficient operation. The Commission of Experts of the Supervisory Authority of the International Registry (CESAIR) helps the Supervisory Authority in its work to provide guidance to and oversight of the International Registry. One of the main functions of CESAIR is to review and recommend any proposed changes to the Regulations and Procedures for the International Registry (Doc 9864). The Registrar also works with the International Registry Advisory Board (IRAB), which consists of international aviation legal experts.

## 2. DISCUSSION

2.1 Aircraft are highly mobile equipment that frequently operate across national boundaries. Aircraft operate to countries with significantly different legal regimes governing ownership rights, which creates unique risks for manufacturers and financiers involved in the export of aircraft. These risks can often contribute to high financing costs for aircraft importers.

2.2 The Cape Town Convention was developed to bring these costs down and facilitate access to capital for financing aircraft and other mobile equipment. Financiers no longer have to research the laws of the debtor's State or other States where the security may be enforced since the law of the Convention applies in States that have ratified it. Debtors and governments benefit from the lower costs and reduced risk. The Convention also provides for an electronic, searchable International Registry of aircraft objects. The International Registry provides users the ability to search the priority of security interests in every registered aircraft object.

2.3 The Convention itself provides a basic framework governing the creation, registration, and enforcement of security interests in mobile equipment, and protocols to the Convention then apply the general framework to particular categories of equipment. The first protocol, which is the only one that has entered into force, covers aircraft; later protocols cover railway rolling stock and space assets. A fourth protocol on mining, agricultural, and construction machinery is being developed.

2.4 The Convention and the Aircraft Protocol together have three main components. First, they create a new type of international financier's interest that will be recognized in all States that are parties to the Convention and Protocol. Second, they provide for the establishment of a centralized international registry for those security interests; financiers anywhere in the world can use this registry to register their interests in the aircraft and ensure that they have priority over later-in-time interests. Third, the Convention and Protocol provide financiers with a set of remedies for enforcing their interests in the aircraft if the borrower defaults.

2.5 The Cape Town Convention and its Aircraft Protocol have done much to improve global aviation safety by providing many countries' airlines with access to safer, greener, and more technologically advanced aircraft. To date, 66 States have ratified or acceded to the Aircraft Protocol, and many more States are working on doing the same. The success of the Convention cannot be over-emphasized, and its success is due in large part to the effectiveness of the International Registry and the oversight role carried out by ICAO. But many more States have yet to realize the benefits offered by the Cape Town Convention.

### 3. CONCLUSION

3.1 The Cape Town Convention has already proven its effectiveness and importance in the ten years since entry into force. Not only has the Convention improved the ability of airlines to gain increased access to capital and reduced financing costs and also allowed aircraft and engine manufacturers the benefit of expanded markets and improved sales, but, more importantly, the Convention is improving global aviation safety.

3.2 However, more can be done to increase the number of States that may benefit from this treaty. For those States that are working on ratification, accession, or implementation of the Cape Town Convention, Ireland and the United States are willing to assist in those efforts or to answer any questions. Additionally, ICAO has an Administrative Package for ratification or accession that States may find useful, and UNIDROIT can assist with model instruments of ratification or accession and guidance on the completing of declarations. It is important for all States to have the same opportunity to be part of the Cape Town Convention and all the benefits it has to offer. Universal ratification will serve the aviation safety and efficiency goals of the entire global aviation community.

### 4. RECOMMENDATION

4.1 The Assembly is invited to note this paper, and for States that have not already ratified or acceded to the Cape Town Convention and its Aircraft Protocol, they are invited to take steps to do so.

4.2 For those States that would like additional information, Aviareto, the Registrar of the International Registry, will host a booth in the exhibition space at the ICAO Assembly from 28 to 30 September to provide additional information on the International Registry and Cape Town Convention and to answer any questions.

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## APPENDIX

### The Cape Town Convention and Aircraft Protocol's International Registry

#### 1. INTRODUCTION

1.1 The International Registry (IR) is a key component of the Cape Town Convention and Aircraft Protocol (the Treaty). The IR is a centralised, online, notice-based registry system, providing a stable international legal regime which allows certain registering parties to protect their financial interests and priority over specific aircraft equipment, thereby establishing legal predictability for cross-border financing and leasing of specific aircraft equipment. In the ten years since its establishment, registrations and searches on the IR have grown significantly. This Appendix sets out some examples of how the Registry is used, provides some data derived from the first ten years of the Registry's operation and details the critical success factors that have led to the IR's broad industry support and acceptance.

#### 2. USE OF THE INTERNATIONAL REGISTRY

2.1 A good example of how the IR is used would be a situation in which:

- a leasing firm or investor purchases an aircraft either from a manufacturer or another seller
- using funds from a bank in the form of a loan
- and leases that aircraft to an airline

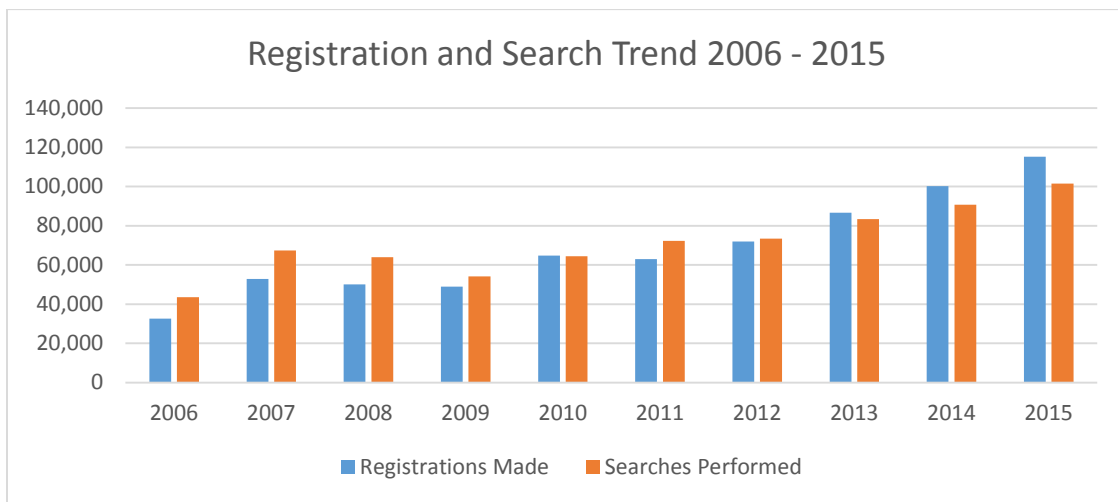
2.2 The sale and security granted in respect of the loan and lease above may, assuming certain qualifying requirements of the Treaty are satisfied, all be registered on the International Registry to give the parties involved the protections of the Treaty as follows:

- The sale of the aircraft may be registered, identifying the buyer and seller, to facilitate the protection and priority of outright buyers.
- Security agreements, such as mortgages granted to secure any loan on the aircraft may be registered by the bank to protect its priority against other creditors. Once registered, any other lender would be on notice that the first creditor has an interest and that interest, if valid, has priority over any subsequent registration or unregistered interests. In most cases, sensible creditors will not release funds until their security is registered. In some cases they insist that their security is registered before the sale given that priority is afforded by the Treaty on a first-to-file basis.
- Finally, the leasing company/investor will register the lease from them to the airline on the IR. This gives them priority over any sublease that may be registered later. Lessors and Lessees also benefit from the protections of the Treaty, including, for Lessors in certain situations, the speedy recovery of the aircraft if the airline is in default of its obligations, for instance for not paying the lease rental and for Lessees, quiet enjoyment rights in the aircraft arising, i.e. rights to its use, pursuant to the terms of the lease.

2.3 In a transaction such as that noted above, the bank will also often insist on having the lease assigned to itself (the assignment is then registered on the IR) so that, if the lessor defaults, rather than taking the aircraft back from the airline, the bank can step in and collect the lease rental directly from the airline. Finally, once a loan is repaid or a lease terminated upon the redelivery of the aircraft, these interests may be recorded as ‘discharged’ on the IR, meaning that the priority previously established no longer exists.

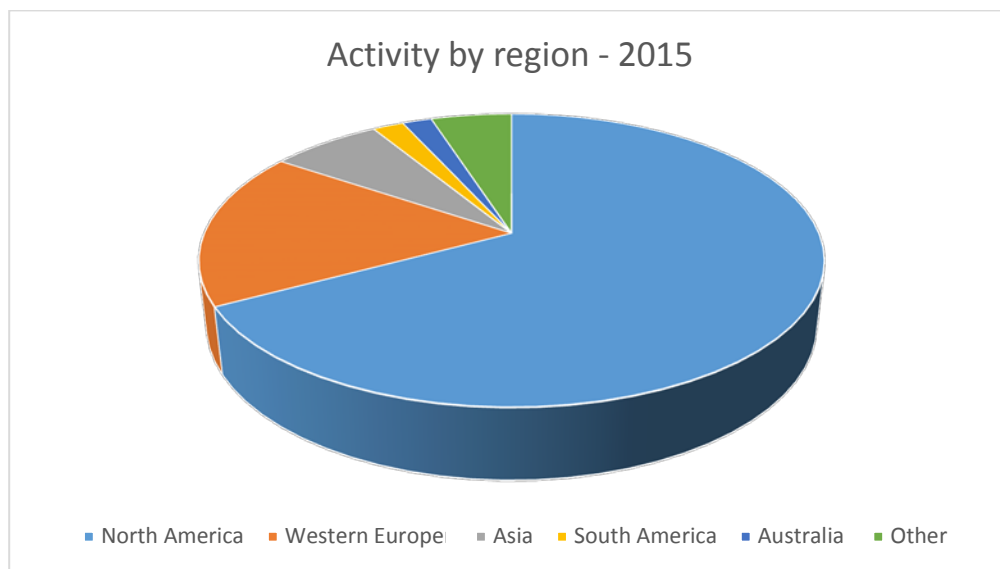
### 3. IR DATA

#### 3.1 Registrations and Search Activity Trends 2006-2015



3.1.1 Over the last ten years, registration volumes have grown at a compound annual growth rate (CAGR) of 12.75% while the number of searches has grown at a CAGR of 7.6%. In 2015 there were 115,000 registrations and 101,000 Searches. These registrations covered nearly 32,000 aircraft objects. The impact of the global financial crisis in 2008 is apparent within the overall growth trend, as is the recovery, which was visible in Q4 2010. Also evident is that, from 2013 onward, there are more registrations than searches, a reversal of the status before 2013.

#### 1.2 Activity to IR website by region during 2015



3.2.1 North America continues to be the source of most web traffic to the IR, with growth evident in Europe, Asia, Middle East and Australia. It should be noted that some of the IR traffic from the U.S. relates to aircraft that are based outside of the U.S. Over time, there is a reduction in the percentage of web traffic originating from the U.S. as other States around the world grow their activity levels.

3.3 Types of registrations made in period 2010-2015 and changes over time

3.3.1 The Registrar provides an annual statistical report of the type and source of registrations on its website (see <https://www.internationalregistry.aero/ir-web/annualStatisticalReport/findAll>) showing the trends since operations began.

3.3.2 Since the establishment of the IR, the number of international interests created has doubled. This reflects a growing level of activity in the aviation financing market. Over 700,000 registrations have been recorded on the IR.

#### 4. INTERNATIONAL REGISTRY SUCCESS FACTORS

4.1 The key success factors in the operation and continued development of the IR are:

- a) Good governance
- b) Shareholders' support i.e. from the SITA S.C. and the Irish Government
- c) A focus on cybersecurity
- d) Effectiveness of the Irish Court system in handling legal cases
- e) Alignment with the industry
- f) Adoption of standards and continuous improvement
- g) ICAO's guidance to the IR as well as its engagement with the industry

4.2 Aviareto is managed through its Board of Directors which places critical importance on good governance, given the centrality of the IR to aviation financing. Effective governance is achieved through the shareholders' objectives, industry engagement, the expertise of the Supervisory Authority, the adoption of relevant standards and management's insistence on looking for objective views of the company's performance.

4.3 Aviareto's shareholders are SITA S.C.<sup>1</sup> (80%) and the Irish Government (20%). As the International Registry is run on a not-for-profit basis, the shareholders' focus is to safeguard the Registry's reputation in its facilitation of the effective implementation of the Cape Town Convention and the Aircraft Protocol. This is the reason for Aviareto's very low appetite for risk.

4.4 This low appetite for risk leads to a focus on cybersecurity, using a risk-based approach, international standards and employing highly skilled engineering, compliance and security audit resources. The IR is freely available to all on the Internet and there is therefore always a risk of cyber-attack. However, given its specialist nature and particularly its use of the .aero website domain, it has less visibility than other, more commercial internet sites.

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<sup>1</sup> The parent company of Aviareto Limited, owning 80%, is Compagnie Internationale de Participations SA (CIP SA), a company incorporated in Belgium. CIP SA is owned by SITA Société Coopérative which is also registered in Belgium and is owned by over 500 of the world's airlines.

4.5 Legal cases relating to the Treaty where an order against the Registrar, (currently having its centre of administration in Ireland), was sought, in particular to facilitate the removal of invalid registrations, have been handled correctly and expeditiously by the Irish High Court. This increases confidence in the legal regime and the reliability of the IR. The jurisprudence is now on a very sound footing.

4.6 Aviareto has engaged deeply with the industry through its advisory board, the International Registry Advisory Board (IRAB). The IRAB is composed of many world-leading experts in aviation finance and international commercial law, practitioners and academics. The IRAB meets between 3 and 6 times a year, depending on the workload. Many ideas, such as the transferrable right to discharge<sup>2</sup> and the Closing Room<sup>3</sup> concept arose out of IRAB discussions. It is a place where modern electronic practice meets modern legal practice. The Registrar appreciates the commitment of IRAB members and the expertise and time they have dedicated, *pro bono*, to this work.

4.7 The IR has adopted appropriate ISO standards in the operation of its business. The Registrar has taken the approach of adopting internationally recognised standards, which it believes are appropriate to electronic registries. To date, three standards have been successfully adopted, *i.e.*, ISO 27001, ISO 9001 and ISO 22301, the first relating to ICT security, the second to quality management and the third to business continuity management. The Registrar is audited annually by the British Standards Institute for ISO 27001 and ISO 22301 and by the National Standards Authority of Ireland for ISO 9001. This ensures a continuous assessment by external professional bodies of the performance and maintenance of standards in the operation of the IR.

4.8 Also, under the continuous improvement process, Aviareto conducts annual security reviews by leading external ICT security consultancy firms. The practice adopted to ensure the continued efficacy of the Registry system security in the light of the ever-changing and increasingly sophisticated threats is to conduct a full security audit each year with a subsequent review, roughly six months later, of progress on the issues raised in the Audit.

4.9 In addition, starting in the year 2007 Aviareto has sought the views of customers through an annual, independently operated, on-line survey. This customer satisfaction survey is based on a set of 17 identical questions that allows comparisons to be made on performance year-on-year. The performance score has improved year-on-year since the survey began. The score in 2007 was 5.77, with a current composite rating based on a ten-point scale of 8.53. The survey responses allow Aviareto to identify actions to take to improve the customer experience.

4.10 The expertise of ICAO, as the Supervisory Authority, has been critical to the success of the IR. ICAO was involved with the Aircraft Protocol from a very early stage and was heavily involved in the diplomatic conference in Cape Town in 2001. The work of any such supervisory authority should not be underestimated. It requires expertise, high-calibre professional staff, adequate resources, an industry-focused practical approach and sound judgement.

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<sup>2</sup> One party can transfer the right to another to signal the discharge *i.e.* the clearing of the interest.

<sup>3</sup> A Closing Room allows users to “pre-position” registration information from a number of parties prior to submission to the IR database.

## **5. SUMMARY**

5.1 Over the last ten years, registration volumes on the International Registry have grown at a compound annual growth rate (CAGR) of 12.75% while the number of searches issued has grown at a CAGR of 7.6%. In 2015 there were 115,000 registrations and 101,000 Searches. These registrations covered nearly 32,000 aircraft objects. States have become parties to the Treaty at an average rate of circa 6 per annum with broad adoption in all regions of the globe.

5.2 The IR's operational record has been robust, especially as it relates to cybersecurity. It has adopted several important standards which allow ICAO to be confident in the quality and security of the system. The IR has invested heavily in developing and enhancing its website and security systems, with strong support and deep engagement from the aviation finance industry.

5.3 The Irish High Court, which has jurisdiction over the Registrar, has handled several cases of disputed registrations. The speed, quality and clarity of the rulings have further increased the confidence of parties in the legal effectiveness of the Treaty.

5.4 Aviareto has recently been reappointed by ICAO to operate the International Registry until February 2021.

— END —