



INTERNATIONAL CIVIL AVIATION ORGANIZATION

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ASSEMBLY — 35TH SESSION

LEGAL COMMISSION

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

PROGRESS REPORT ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT (AIRCRAFT EQUIPMENT)

SUMMARY

This paper presents for the information of the Assembly a progress report on the above subject.

Action of the Assembly is in paragraph 6.

1. BACKGROUND

1.1 The 33rd Session of the Assembly (Montreal, 25 September to 5 October 2001) noted the decision of the Council to convene a Diplomatic Conference in Cape Town from 29 October to 16 November 2001 under the joint auspices of ICAO and UNIDROIT, at the invitation of the Government of the Republic of South Africa, to adopt a *Convention on International Interests in Mobile Equipment* and a *Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment* on the basis of the draft texts which had been reviewed by the Legal Committee during its 31st Session (Montreal, 28 August to 8 September 2000).

2. DEVELOPMENT SINCE THE 33RD SESSION OF THE ASSEMBLY

2.1 The Cape Town Diplomatic Conference adopted the above-mentioned Convention and Protocol, and together therewith adopted, *inter alia*, a resolution (Resolution No. 2) on the subject of the International Registry created under the Convention and the Protocol, where records of title relating to the international interests may be registered. In view of the implications of Resolution No. 2 to ICAO, the Council decided to maintain the item “International Interests in Mobile Equipment (Aircraft Equipment)” on the General Work Programme of the Legal Committee.

(3 pages)

2.2 According to Resolution No. 2, the Diplomatic Conference invited ICAO to accept the functions of Supervisory Authority of the International Registry upon entry into force of the Convention and

the Protocol, when the mechanism for self-funding of the Registry through the charge of user fees on a full cost-recovery basis will be in place. In this regard, it is recalled that the Council, taking into account that the costs of performing the functions of Supervisory Authority shall be fully recovered from the Registry, and following a recommendation made by the 31st Session of the Legal Committee, had decided during its 161st Session to accept, in principle, the role of Supervisory Authority of the International Registry for the purposes of the Aircraft Protocol, and to defer a final decision on this matter until after the Diplomatic Conference.

2.3 Resolution No. 2 further invites ICAO to establish, upon entry into force of the Convention and the Protocol, a Commission of Experts consisting of not more than 15 members appointed by the Council from among persons, having the necessary qualifications and experience, nominated by Signatory and Contracting States to the Convention and the Protocol to assist the Council in the performance of the functions of the Supervisory Authority.

2.4 The Diplomatic Conference, with a view to ensuring that the International Registry will be ready to operate at the latest by the time the Convention and the Protocol enter into force, also decided, in accordance with Resolution No. 2, to set up a Preparatory Commission to act until the entry into force of the Convention and the Protocol as Provisional Supervisory Authority for the establishment of the International Registry, under the guidance and supervision of the ICAO Council; urged States and interested private parties to make available the necessary start-up funding on a voluntary basis for the tasks of the Commission and the related tasks of ICAO; and entrusted ICAO with the task of administering such funds.

2.5 The Preparatory Commission held its first meeting at the ICAO Headquarters in Montreal from 8 to 10 May 2002, during which the Commission established a course of action for the setting up of the International Registry, including an international tendering process for the establishment of the International Registry to be conducted by ICAO; approved a documentation package for the tender; set up a working group to prepare the Regulations for the International Registry; approved a budget for the work envisaged; and approved a tentative schedule for the accomplishment of its task, pending availability of the funding required. This having been made available at the end of December 2003, the Secretary General launched the international tendering process in January 2004, on the basis of which the Preparatory Commission selected the entity which will operate the International Registry (referred to as Registrar) during its second meeting held at the ICAO Headquarters from 27 to 28 May 2004. The firm Aviareto from Ireland was selected from among four candidates.

3. **FUTURE WORK**

3.1 It is envisaged that the establishment of the International Registry will have been completed by the end of 2004. In the meantime, a draft Headquarters Agreement to be concluded between the Supervisory Authority and the State where the Registry is to be located should be prepared; the existing draft Regulations for the International Registry should be finalized; and the Council should be in a position to take at its upcoming 173rd Session a final decision regarding the acceptance of the role of the Supervisory Authority of the International Registry.

4. STATUS OF RATIFICATION OF THE CONVENTION AND THE PROTOCOL

4.1 To date, four States have ratified the Convention and the Protocol (Ethiopia, Nigeria, Panama and Pakistan), and 28 States have signed the two instruments, eight more than at the conclusion of the Diplomatic Conference in Cape Town on 16 November 2001. It is recalled that the entry into force of the Convention and the Aircraft Protocol will occur on the first day of the month following the expiration of three months after the date on which the eighth ratification has been deposited. In this regard, it should be noted that ICAO has prepared, in cooperation with UNIDROIT as depositary of the Cape Town instruments, an administrative package to assist States in considering to ratify the Convention and the Protocol, which was sent to all ICAO Contracting States by the Secretary General under cover of State letter LE 3/41.1-03/12 dated 28 February 2003.

5. FINANCIAL IMPACT OF THE PROPOSED ACTION

5.1 There is no financial impact, since the costs of performing the functions of the Supervisory Authority shall be fully recovered from the Registry, as referred to in paragraph 2.2 above.

6. ACTION BY THE ASSEMBLY

6.1 The Assembly is invited to note this paper.

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