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NOTE

CONCERNING THE STATUS OF THE CAPE TOWN CONVENTION ON
INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT AND
THE PROTOCOL THERETO ON MATTERS SPECIFIC TO AIRCRAFT EQUIPMENT
AND THE CONDITIONS FOR THE ENTRY INTO FORCE THEREOF

(prepared by the Secretariat of UNIDROIT, as Depositary)

Rome, December 2002

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I. BACKGROUND

1. On 4 December 2002 the Secretariat of the International Institute for the Unification of Private Law (UNIDROIT) was, as Depositary, requested by Dr Ludwig Weber, Director of the Legal Bureau of the International Civil Aviation Organization (ICAO), to provide it with elements to be included in an “administrative package” to be sent out by ICAO, under cover of a State letter, pursuant to the discussions that had taken place during the Ninth Meeting of the 167th session of the ICAO Council, held in Montreal on 22 November 2002, with a view to assisting States in ratifying the Convention on International Interests in Mobile Equipment (hereinafter referred to as *the Convention*) and the Protocol thereto on Matters specific to Aircraft Equipment (hereinafter referred to as *the Aircraft Protocol*) opened to signature in Cape Town on 16 November 2001, at the conclusion of a diplomatic Conference organised under the joint auspices of UNIDROIT and ICAO (hereinafter referred to as *the diplomatic Conference*), and in particular informing States as to the current status of the two instruments.

II. STATUS OF IMPLEMENTATION OF THE CONVENTION AND THE AIRCRAFT PROTOCOL

2. According to Article 47(1) of the Convention, it was open for signature in Cape Town on 16 November 2001 by States participating in the diplomatic Conference and will thereafter remain open for signature at the seat of UNIDROIT in Rome until its entry into force in accordance with Article 49. To date 24 States have signed the Convention. Of these Burundi, Chile, China, Congo, Cuba, Ethiopia, France, Ghana, Jamaica, Jordan, Kenya, Lesotho, Nigeria, South Africa, Sudan, Switzerland (*ad referendum*), Tonga, Turkey, the United Kingdom (with declaration) and the United Republic of Tanzania all signed on 16 November 2001 in Cape Town. Since that time Italy, Senegal, Panama and Germany (with declaration) have also signed in Rome, on 6 December 2001, 2 April 2002, 11 September 2002 and 17 September 2002 respectively.

3. According to Article XXVI(1) of the Aircraft Protocol, it was open for signature in Cape Town on 16 November 2001 by States participating in the diplomatic Conference and will thereafter remain open for signature at the seat of UNIDROIT in Rome until its entry into force in accordance with Article XXVIII. To date 24 States have signed the Aircraft Protocol. Of these Burundi, Chile, China, Congo, Cuba, Ethiopia, France, Ghana, Jamaica, Jordan, Kenya, Lesotho, Nigeria, South Africa, Sudan, Switzerland (*ad referendum*), Tonga, Turkey, the United Kingdom (with declaration) and the United Republic of Tanzania all signed on 16 November 2001 in Cape Town. Since that time Italy, Senegal, Panama and Germany (with declaration) have also signed in Rome, on 6 December 2001, 2 April 2002, 11 September 2002 and 17 September 2002 respectively.

4. Reliable information reaching UNIDROIT would lead it to believe that three States have reached an advanced stage in their preparations for ratification of the Convention and the Aircraft Protocol and that the ratification process is well underway in six others.

III. CONDITIONS FOR THE ENTRY INTO FORCE OF THE CONVENTION AND THE AIRCRAFT PROTOCOL

5. According to Article 49(1) of the Convention, it is due to enter into force on the first day of the month following the expiration of three months after the date of deposit of the *third* instrument of ratification, acceptance, approval or accession but only as regards a category of objects to which a Protocol applies, first, as from the time of the entry into force of that Protocol (cf. Article 49(1)(a)), secondly, subject to the terms of that Protocol (cf. Article 49(1)(b)) and, thirdly, as between States Parties to the Convention and that Protocol (cf. Article 49(1)(c)). The term “Protocol” is defined by Article 1(aa) of the Convention as meaning “in respect of any category of object and associated rights to which this Convention applies, the Protocol in respect of that category of object and associated rights”.

6. According to Article XXVIII(1) of the Aircraft Protocol, it is due to enter into force on the first day of the month following the expiration of three months after the date of deposit of the *eighth* instrument of ratification, acceptance, approval or accession, between the States which have deposited such instruments.

7. According to Article 6(1) of the Convention, the Convention and the relevant Protocol are to be read and interpreted together as a single instrument. Read together, this means that the Convention will enter into force in relation to aircraft objects, as defined in Article I(2)(c) of the Aircraft Protocol, once the Convention has itself entered into force in accordance with Article 49(1) of its terms, on the first day of the month following the expiration of three months after the date of deposit of the *eighth* instrument of ratification, acceptance, approval or accession, between the States which have deposited such instruments.

IV. RELATIONSHIP BETWEEN THE ENTRY INTO FORCE OF THE CONVENTION AND THE AIRCRAFT PROTOCOL AND THE OPERABILITY OF THE INTERNATIONAL REGISTRATION SYSTEM

8. According to Article 16(1) of the Convention, an International Registry is to be established for registrations of, first, international interests, prospective international interests and registrable non-consensual rights and interests, secondly, assignments and prospective assignments of international interests, thirdly, acquisitions of international interests by legal or contractual subrogations under the applicable law, fourthly, notices of national interests and, finally, subordinations of any of the aforementioned interests. Pursuant to Article 41 of the Convention, sales and prospective sales may also be registered in the International Registry to be established for aircraft objects, in accordance with Article III of the Aircraft Protocol. The importance of registration under the new international regimen ushered in by the Convention and the Aircraft Protocol is brought out in Chapter VIII (Effects of an international interest against third parties) of the Convention, and in particular by Article 29 (Priority of competing interests), paragraph 1 of which provides that “a registered interest has priority over any other interest subsequently registered and over an unregistered interest”.

9. The diplomatic Conference, by Resolution No. 2 relating to the establishment of the Supervisory Authority and the International Registry for aircraft objects, resolved to set up,

pending the entry into force of the Convention and the Aircraft Protocol, a Preparatory Commission to act with full authority as Provisional Supervisory Authority for the establishment of the International Registry for aircraft objects, under the guidance and supervision of the ICAO Council. The diplomatic Conference, by the same Resolution, further resolved to direct the Preparatory Commission, under the guidance and supervision of the ICAO Council, to ensure that the international registration system be set up and that it be ready to be operated within a target date of one year from the adoption of the Convention and the Aircraft Protocol and, at the latest, by the time of their entry into force.

10. It is understood by UNIDROIT that no further meetings of the Preparatory Commission are planned until such time as ICAO receives the full amount of the voluntary contributions approved by the Preparatory Commission for the work it was directed to carry out by the diplomatic Conference. As Depositary, UNIDROIT, which has significant treaty obligations in that capacity under the Convention and the Aircraft Protocol, not least vis-à-vis the Supervisory Authority and the International Registry, feels itself under a corresponding obligation to emphasise the fundamental importance of the international registration system being ready for operation by the time that the Convention and the Aircraft Protocol enter into force, as envisaged by Resolution No. 2 adopted by the diplomatic Conference.