



**GOVERNING COUNCIL**  
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**Item No. 7(a) on the Agenda : International interests in mobile equipment -  
Cape Town Convention and Aircraft Protocol**

(memorandum prepared by the UNIDROIT Secretariat)

<i>Summary</i>	<i>Update on the implementation of the Cape Town Convention and Aircraft Protocol and the Institute's depositary functions</i>
<i>Action to be taken</i>	<i>See §§ 3, 9, 12, 14 and 16</i>
<i>Related documents</i>	<i>None</i>

1. The Convention on International Interests in Mobile Equipment (*the Convention*) and the Protocol thereto on Matters specific to Aircraft Equipment (*the Aircraft Protocol*) were opened to signature in Cape Town on 16 November 2001. This memorandum provides an update on the implementation of the Convention and the Aircraft Protocol, as well as raising some policy issues for the Council's consideration.

**I. STATUS OF IMPLEMENTATION**

2. Both the Convention and the Aircraft Protocol have five Contracting States: Ethiopia, Nigeria, Pakistan, Panama and the United States. The instrument of ratification of the United States was deposited on 28 October 2004. The Convention had at that stage already entered into force, on 1 April 2004, following the deposit of the third instrument of ratification, *but only as regards a category of objects to which a Protocol applies* (Convention, Article 49(1)). The Aircraft Protocol, and therefore the Convention as applied to aircraft objects, requires a further three Contracting States to enter into force (Aircraft Protocol, Article XXVIII). The UNIDROIT Secretariat understands that the additional ratifications of both the Convention and the Aircraft Protocol necessary to enable the Aircraft Protocol to enter into force may be deposited during the first half of 2005. In addition to the five Contracting States, a further 24 States have signed both the Convention and the Aircraft Protocol. The appendix to this memorandum lists the States that have signed, ratified or acceded to the Convention and the Aircraft Protocol.

3. *The UNIDROIT Secretariat invites members of the Governing Council to note the progress made in the implementation of the Convention and the Aircraft Protocol and to do all in their power to promote early implementation of the same in their countries.*

## **II. RESPONSIBILITIES OF THE UNIDROIT SECRETARIAT FLOWING FROM THE CAPE TOWN DIPLOMATIC CONFERENCE**

### **(a) Depositary functions**

4. UNIDROIT has a number of responsibilities as Depositary under the Convention and the Aircraft Protocol. These include establishing a system for the receipt and notification of all instruments of ratification, declarations and other documents lodged with the depositary, including notifications to the Supervisory Authority and the International Registry for Aircraft Objects (the International Registry). With the prospect of the Aircraft Protocol entering into force within the coming months, the UNIDROIT Secretariat is now well-advanced in the development of this system to enable it to be operational in time for the entry into force of the Aircraft Protocol. In addition, the development of enhancements to the depositary web-page are in the final stages and the updated web-page, which will include the text of all declarations lodged by Contracting States with UNIDROIT, will be publicly available over the coming months.

5. In advance of the possible entry into force of the Aircraft Protocol around the middle of 2005, the UNIDROIT Secretariat will also be liaising with the Supervisory Authority and the International Registry with a view to ensuring the accurate and effective performance of the Institute's depositary functions. The timeliness of the Institute's communications with the International Registry will be critical to the effectiveness of the international registration system. The UNIDROIT Secretariat is therefore currently at work exploring the best means to ensure that its technology is sufficient to enable it to perform these functions.

6. To assist in the performance of these depositary functions and with the implementation of the Convention in general, the UNIDROIT Secretariat has employed a new staff member, Mr John Atwood, who commenced employment with the Secretariat in late September 2004. This position has been funded out of the generosity of four member Governments for the initial 30 month period, with the Institute funding the position for a further six months. Members of the Council will recall that the financial organs of the Institute have previously indicated that they would not consider it appropriate for such a core function of the Institute in future to be funded on an extra-budgetary basis (cf. *Report on the 57<sup>th</sup> session of the Finance Committee, held on 9 October 2003* (AG/Comm.Finances - (57) 6), so that it will be necessary to make the necessary appropriations available under the Institute's budget as from the second half of 2007.

7. The International Civil Aviation Organization (I.C.A.O.) has given its in-principle acceptance of the role of the Supervisory Authority of the International Registry. Resolution No. 2 adopted by the Cape Town diplomatic Conference established a Preparatory Commission to act as Provisional Supervisory Authority for the establishment of the International Registry for aircraft objects, pending the entry into force of the Convention and the Aircraft Protocol. In particular, the Preparatory Commission was tasked with ensuring "that the international registration system ... become ready to be operated ... *at the latest by the time of the entry into force of the Convention and the Protocol*" (italics added). Since the last session of the Governing Council, the UNIDROIT Secretariat has attended meetings of the Preparatory Commission in Montreal on 27 and 28 May 2004 and 17 and 18 January 2005. On 28 May 2004, the Preparatory Commission selected Aviareto, an Irish company, to host the International Registry. At the meeting on 17 and 18 January 2005, the Preparatory Commission approved the Regulations for the International Registry, as well as a range of technical and practical matters related to the establishment of the International Registry. Aviareto has indicated that it expects to be in a position to have the International Registry ready for operation before the end of March 2005.

8. It will be essential for the implementation of the Convention as applied to aircraft objects that the international registration system is capable of full operation from the time that the

Convention as applied to aircraft objects enters into force, which could be as early as the middle of this year. As is noted above, the UNIDROIT Secretariat is well advanced in its preparations to assume its depositary functions under the Convention and the Aircraft Protocol, and the International Registry is expected to be ready for operation from March 2005. However, the position of the Supervisory Authority of the International Registry, which is also central to the operation of the international registration system, is perhaps less certain. As I.C.A.O. has to date only given in-principle acceptance to act as the Supervisory Authority, it will be necessary for the I.C.A.O. Council formally to accept the role of Supervisory Authority before I.C.A.O. can be designated as the Supervisory Authority under the Convention as applied to aircraft objects. Whilst it might be considered technically premature to concern oneself with such a scenario, in the sense that it only becomes incumbent upon the I.C.A.O. Council to make a definitive determination in this regard at such time as the Convention as applied to aircraft objects enters into force, the UNIDROIT Secretariat nevertheless feels itself duty bound to alert the Governing Council to a most unfortunate denouement that might result should the I.C.A.O. Council ultimately decide against accepting that role. In that case, Article XVII(2) of the Aircraft Protocol would require that a Conference of Signatory and Contracting States be convened to designate another Supervisory Authority. And at the most recent meeting of the Preparatory Commission in January 2005, one delegation indicated that it had concerns that I.C.A.O.'s acceptance of the role of Supervisory Authority would expose I.C.A.O. to potential legal and financial risks, and that it intended to raise those concerns when the matter was considered by the I.C.A.O. Council. Although no other delegations to the Preparatory Commission meeting indicated that they shared these concerns, it is possible that concerns raised by this one delegation could affect the I.C.A.O. Council's consideration of formal acceptance of the role of Supervisory Authority. For this reason, the UNIDROIT Secretariat would urge members of the Council to continue to use their good offices, particularly with the representatives of their countries on the I.C.A.O. Council, to ensure that the international registration system for aircraft objects is fully operational by the time that the Convention as applied to aircraft objects enters into force.

9. *The UNIDROIT Secretariat would invite the Governing Council to take note of the progress in the Secretariat's preparations for undertaking its depositary functions under the Convention and the Aircraft Protocol in time for the entry into operation of the International Registry for aircraft objects, whilst at the same time giving thought, in particular in the context of the drawing up of the budgets for the years to come, to the implications of the need to fund these functions, as core functions of the Institute, from budgetary sources as from the second half of 2007 and urging members of the Council to continue to use their good offices, particularly with the representatives of their countries on the I.C.A.O. Council, to ensure that the international registration system for aircraft objects is fully operational by the time that the Convention as applied to aircraft objects enters into force.*

**(b) Official Commentary on the Convention and Aircraft Protocol**

10. The Official Commentary on the Convention and Aircraft Protocol was prepared by Sir Roy Goode pursuant to Resolution No. 5 adopted by the Cape Town diplomatic Conference. Since the last Governing Council meeting, 129 copies of the English version and four copies of the French version have been sold, bringing the total number of copies sold to 342 (323 in English and 19 in French). At the express request of the author, all net revenue earned by sales of the Official Commentary is now being paid to the Uniform Law Foundation.

11. Immediately following the publication of the Official Commentary in December 2002, the UNIDROIT Secretariat devoted considerable efforts over a three-month period to promoting its publication amongst specialist practitioners. However, a lack of resources has prevented further promotion efforts, and the Official Commentary has received very little active publicity since that

time. Nevertheless, the sales figures noted above, which cover the period during which the Convention entered into force, suggest that the expected entry into force later this year of the Convention, as applied to aircraft objects, will potentially increase interest in the Official Commentary, and would provide an opportunity for renewed publicity efforts.

12. *The UNIDROIT Secretariat would invite the Governing Council to take note of the continuing success of the Official Commentary as reflected in the steady increase in sales, while giving thought to the desirability of finding the necessary resources to enable a renewed publicity effort following the entry into force of the Convention as applied to aircraft objects.*

**(c) Acts and Proceedings of the Cape Town diplomatic Conference**

13. A transcription of the proceedings of the Commission of the Whole and Plenary of the Cape Town diplomatic Conference was completed during 2003. However a lack of human resources has, until relatively recently, prevented any further work being undertaken on the preparation of Volume I of the Acts and Proceedings of the Conference, to contain all materials submitted to the Commission of the Whole and Plenary, or on the editing of Volume II, to contain all the proceedings of those same bodies. Following the recruitment of Mr Atwood to assist in the performance of the depositary functions, the preparation of Volumes I and II of the Acts and Proceedings has commenced, and this work is expected to take in the order of between eight to 10 months. However, the timing of the work may be affected by gaps in the source records and the need to translate sections of the proceedings which were recorded in languages for which the UNIDROIT Secretariat has no in-house translating capacity.

14. *The UNIDROIT Secretariat would invite the Governing Council to take note of the proposed schedule for completing the Acts and Proceedings of the Cape Town diplomatic Conference.*

**(d) The giving of publicity to the new international instruments**

15. The UNIDROIT Secretariat continues to employ its best efforts to promote the Convention and the Aircraft Protocol wherever possible, and page 12 of the Annual Report for 2004 cites examples of these efforts. In particular, the Secretariat, in consultation with I.C.A.O. and with the technical assistance of the Aviation Working Group, sponsored a seminar for the Asia-Pacific region in Singapore on 28 and 29 April 2004, and a seminar for new E.U. and accession States in the Czech Republic on 2 and 3 November 2004. The Aviation Working Group, led by UNIDROIT correspondent Mr Jeffrey Wool, has also continued its efforts to promote implementation of the Convention and the Aircraft Protocol throughout the world.

16. *The UNIDROIT Secretariat would invite the Governing Council to take note of its efforts directed toward the giving of publicity to the Convention and the Aircraft Protocol.*

## APPENDIX

**CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT**  
**CONVENTION RELATIVE AUX GARANTIES INTERNATIONALES**  
**PORTANT SUR DES MATERIELS D'EQUIPEMENT MOBILES**

**Adoption:** Place: Cape Town / *Lieu*: Le Cap  
Date: 16-11-2001

**Entry into force:** Yes / *Oui* ≈ Date: 01-04-2004  
**Entrée en vigueur:** Conditions: 3 ratifications but only as regards a category of objects to which a Protocol applies / *mais seulement à l'égard d'une catégorie de biens à laquelle un Protocole s'applique* (Art. 49(1))

**Depositary / Dépositaire:** UNIDROIT

STATE / ETAT	SIGNATURE	RATIFICATION / ACCESS. / ADHES.	ENTRY INTO FORCE / ENTREE EN VIGUEUR	DECL. or RESERV. / DECL. ou RESERVES
Burundi	16-11-01	-	-	-
Canada	31-03-04	-	-	-
Chile / <i>Chili</i>	16-11-01	-	-	-
China / <i>Chine</i>	16-11-01	-	-	-
Congo	16-11-01	-	-	-
Cuba	17-09-02	-	-	-
Ethiopia / <i>Ethiopie</i>	16-11-01	21-11-03	01-04-04	D: Arts. 39(1)(a), 40, 54(2)
France	16-11-01	-	-	-
Germany / <i>Allemagne</i>	16-11-01	-	-	-
Ghana	16-11-01	-	-	-
Italy / <i>Italie</i>	06-12-01	-	-	-
Jamaica / <i>Jamaïque</i>	16-11-01	-	-	-
Jordan / <i>Jordanie</i>	16-11-01	-	-	-
Kenya	16-11-01	-	-	-
Lesotho	16-11-01	-	-	-
Nigeria	16-11-01	16-12-03	01-04-04	D: Art. 54(2)
Pakistan	-	22-01-04	01-05-04	D: Arts. 39(1)(a) – (b), 39(4), 40, 52, 53, 54(2)
Panama	11-09-02	28-07-03	01-04-04	D: Arts. 39, 50, 53, 54(2)
Saudi Arabia / <i>Arabie saoudite</i>	12-03-03	-	-	-
Senegal	02-04-02	-	-	-
South Africa / <i>Afrique du sud</i>	16-11-01	-	-	-
Sudan / <i>Soudan</i>	16-11-01	-	-	-
Switzerland / <i>Suisse</i>	16-11-01	-	-	-
Tanzania / <i>Tanzanie</i>	16-11-01	-	-	-
Tonga	16-11-01	-	-	-
Turkey / <i>Turquie</i>	16-11-01	-	-	-
Ukraine	09-03-04	-	-	-
United Kingdom / <i>Royaume-Uni</i>	16-11-01	-	-	-
United States of America / <i>Etats-Unis d'Amérique</i>	09-05-03	28-10-04	01-02-05	D: Arts. 39, 54

**PROTOCOL TO THE CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT  
ON MATTERS SPECIFIC TO AIRCRAFT EQUIPMENT**  
**PROTOCOLE PORTANT SUR LES QUESTIONS SPECIFIQUES AUX MATERIELS D'EQUIPEMENT  
AERONAUTIQUES A LA CONVENTION RELATIVE AUX GARANTIES INTERNATIONALES  
PORTANT SUR DES MATERIELS D'EQUIPEMENT MOBILES**

**Adoption:** Place: Cape Town / *Lieu:* Le Cap  
Date: 16-11-2001

**Entry into force:** No / *Non*  
**Entrée en vigueur:** Conditions: 8 ratifications (Art. XXVIII(1))

**Depositary / Dépositaire:** UNIDROIT

<i>STATE / ETAT</i>	<i>SIGNATURE</i>	<i>RATIFICATION / ACCESS. / ADHES.</i>	<i>ENTRY INTO FORCE / ENTREE EN VIGUEUR</i>	<i>DECL. or RESERV. / DECL. ou RESERVES</i>
Burundi	16-11-01	-	-	-
Canada	31-03-04	-	-	-
Chile / <i>Chili</i>	16-11-01	-	-	-
China / <i>Chine</i>	16-11-01	-	-	-
Congo	16-11-01	-	-	-
Cuba	17-09-02	-	-	-
Ethiopia / <i>Ethiopie</i>	16-11-01	21-11-03	-	D: Art. XXX(1), (2), (3)
France	16-11-01	-	-	-
Germany / <i>Allemagne</i>	16-11-01	-	-	-
Ghana	16-11-01	-	-	-
Italy / <i>Italie</i>	06-12-01	-	-	-
Jamaica / <i>Jamaïque</i>	16-11-01	-	-	-
Jordan / <i>Jordanie</i>	16-11-01	-	-	-
Kenya	16-11-01	-	-	-
Lesotho	16-11-01	-	-	-
Nigeria	16-11-01	16-12-03	-	-
Pakistan	-	22-01-04	-	D: Arts. XXIX, XXX(1), (2), (3)
Panama	11-09-02	28-07-03	-	D: Art. XXX(1), (2), (3)
Saudi Arabia / <i>Arabie saoudite</i>	12-03-03	-	-	-
Senegal	02-04-02	-	-	-
South Africa / <i>Afrique du sud</i>	16-11-01	-	-	-
Sudan / <i>Soudan</i>	16-11-01	-	-	-
Switzerland / <i>Suisse</i>	16-11-01	-	-	-
Tanzania / <i>Tanzanie</i>	16-11-01	-	-	-
Tonga	16-11-01	-	-	-
Turkey / <i>Turquie</i>	16-11-01	-	-	-
Ukraine	03-03-04	-	-	-
United Kingdom / <i>Royaume-Uni</i>	16-11-01	-	-	-
United States of America / <i>Etats-Unis d'Amérique</i>	09-05-03	28-10-04	-	D: Arts. XIX, XXX

[ Documents 84<sup>th</sup> session Governing Council (2005): Main page ]