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The Draft OHADA Uniform Act on Contracts and the UNIDROIT Principles of International Commercial Contracts

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INTRODUCTION

A highly ambitious harmonisation project is currently in progress in the field of contract law. The sixteen (soon to become 17¹) African member countries of the *Organisation for the Harmonisation of Business Law in Africa* (known by its French acronym, OHADA) will shortly be asked to adopt a Uniform Act on Contracts based on the Principles of International Commercial Contracts elaborated by UNIDROIT.

Following a short overview outlining what is OHADA, how it operates and what it has achieved so far (Section I), Section II will sketch the background of the current project, Section III will explain the nature and significance of the UNIDROIT *Principles* in general, while Section IV will take a closer look at how these Principles may be used as a model for the harmonisation of contract law. Section V will then go on to describe the methods and principles adopted in drafting the project and finally, Section VI will touch upon some of the main issues that will need to be resolved.

I. – OHADA

OHADA (*Organisation pour l'Harmonisation en Afrique du Droit des Affaires*) was instituted by Treaty of 17 October 1993, and its current membership consists of Benin, Burkina Faso, Cameroon, the Central African Republic, Chad, Congo (Brazzaville), Côte d'Ivoire, Equatorial Guinea, Gabon, Guinea, Guinea-Bissau, Mali, Niger, Senegal, Togo and the Union of the Comoros. The Democratic Republic of Congo (Kinshasa) has announced its intention of joining the Organisation in 2004.

Four major institutions have been set in place. The *Council of Ministers*, the Organisation's executive and legislative body, is made up of the member countries' Finance and Justice Ministers and is responsible for adopting the Uniform Acts. The *Permanent Secretariat* is

* Emeritus Professor, former Director of the Centre for the Law of Obligations, Law Faculty, Catholic University of Louvain (Belgium); member of the UNIDROIT Study Group for the Preparation of the *Principles*. The above is a translation of the French version of the article, "Le projet d'Acte uniforme OHADA sur les contrats et les Principes d'UNIDROIT relatifs aux contrats du commerce international", reproduced in *Unif. L. Rev. / Rev. dr. unif.*, 2004, 253.

¹ Following the accession of the Democratic Republic of Congo, scheduled for 2004.

the administrative body that implements the texts adopted. The *Joint Court of Justice and Arbitration*, as the Supreme Court, interprets and applies uniform OHADA law and administers the arbitral procedures that come within its ambit. In addition, OHADA has set up a regional magistrates' school (*Ecole Régionale Supérieure de la Magistrature*).

Article 2 of the Treaty contains a list of subjects for harmonisation, leaving it up to the Council of Ministers to add to these where appropriate. Drafting of the texts is entrusted to experts reporting to the Permanent Secretariat. The texts thus proposed are submitted to member States' Governments. National committees have been set up in all these countries to vet each project. Member States relay their comments to the Permanent Secretariat, upon which the national committees seek a consensus at a plenary session. The member States are then once more invited to comment on the outcome. The draft, together with these comments, is then submitted to the Court of Justice and Arbitration for an opinion and to see whether it squares with the Treaty. It is then adopted by the Council of Ministers and the new Uniform Act enters into force in accordance with the provisions of Article 9 of the Treaty; it is immediately applicable in and binding on all member States.

The harmonisation process is now well in hand. Uniform Acts have already been adopted relating to arbitration, general commercial law, commercial companies and economic interest groups, accounting law, securities, simplified recovery procedures and measures of execution, collective proceedings for wiping off debts, and road transport.²

II. – THE DRAFT UNIFORM ACT ON CONTRACTS

The harmonisation process is proceeding in accordance with a blueprint agreed by the Council of Ministers. At its meeting in Bangui in March 2001, the Council decided that the Programme for the harmonisation of business law would also include " (...) *competition law, banking law, intellectual property law, non-trading company law, co-operative company law and mutual insurance company law, contract law, the law of evidence.*"

As to the contract law project, the Council of Ministers, following its meeting in Brazzaville in February 2002, mandated the OHADA Permanent Secretariat to approach the *International Institute for the Unification of Private Law* (UNIDROIT).

Uniform Law Review readers will require no introduction to UNIDROIT. Its more recent achievements include the widely acclaimed *Principles of International Commercial Contracts*. Small wonder, then, that OHADA decided to turn to UNIDROIT with a view to securing its assistance in preparing a draft Uniform Act on contract law.

UNIDROIT acceded to the OHADA Council of Ministers' request and proposed that the author of this article be entrusted with the preparation of a preliminary draft. The Swiss Government (Development and Co-operation Office) agreed to take on financial sponsorship of the project.

² See, for further information on OHADA and its harmonisation work, J. ISSA-SAYEGH et J. LOHOUES-OBLE, *OHADA – Harmonisation du droit des affaires*, Bruxelles (2002); B. MARTOR / N. PILKINGTON / D. SELLERS / S. THOUVENOT, *Le droit uniforme africain des affaires issu de l'OHADA*, Paris (2004). Also < <http://www.OHADA.com> >, the OHADA website offering all the adopted texts, an extensive bibliography and case law relating to the Uniform Acts.

III. – THE UNIDROIT PRINCIPLES OF INTERNATIONAL COMMERCIAL CONTRACTS

Choosing the UNIDROIT *Principles of International Commercial Contracts* as the model for the future OHADA Uniform Act on Contracts was no doubt a judicious move.

A. Drafting, content and scope of the UNIDROIT *Principles*

The UNIDROIT *Principles*, it will be recalled, were first published in 1994, the fruit of many years' research and debate in the comparative law arena. They were drafted by a special Working Party made up of representatives of the main legal systems in the world; Africa was represented by a Ghanaian³ and an Egyptian expert. The UNIDROIT *Principles* are, in effect, a codification of texts covering the main areas of contract law (formation, validity, interpretation, performance and non-performance) accompanied by detailed comments and illustrations. The second edition, published in 2004, includes further provisions dealing in particular with agency, assignment of rights, obligations and contracts, set-off and limitation periods.⁴

The UNIDROIT *Principles* propose a contract law tailored to the needs of the contemporary international commercial community. They draw inspiration from a wide variety of sources: national law – especially recently reformed national law –, national and arbitral case law, comparative law, and some of the more important solutions enshrined in existing international instruments, such as the 1980 *Vienna Convention on Contracts for the International Sale of Goods*. But the *Principles* do not stop there: they innovate as and where needed. Finally, it should be borne in mind that the UNIDROIT *Principles* are closely related to the *Principles of European Contract Law* (the two instruments were, in fact, drafted in parallel),⁵ which form the bedrock for the law of contractual obligations section to be included in the future European Civil Code.⁶

The UNIDROIT *Principles* are not, of course, a binding instrument. They are intended as a model for legislators, contract parties, judges and arbitrators.

B. Wide recognition of the *Principles*

The UNIDROIT *Principles* proved a success right from the start. Today, just ten years after they were first published, they are widely recognised the world over.

Instances of their use in contractual practice are legion. Single provisions may be used as contractual clauses; or parties may choose the UNIDROIT *Principles* as the law applicable to their contract. As to the latter, some recent model laws prepared by other international organisations

³ S.K. DATE-BAH, Judge at the Supreme Court of Ghana; cf. his contribution on "The UNIDROIT Principles of International Commercial Contracts and the Harmonisation of the Principles of Commercial Contracts in West and Central Africa – Reflections on the OHADA Project from the Perspective of a Common Lawyer from West Africa", *Unif. L. Rev. I Rev. dr. unif.*, 269.

⁴ UNIDROIT Principles of International Commercial Contracts 2004 (Rome) / *Principes d'UNIDROIT relatifs aux contrats du commerce international 2004 (Rome)*. For the text of the new edition, without the comments, in English and French, see *Unif. L. Rev. I Rev. dr. unif.*, 2004, 124-189; cf. also the UNIDROIT website: < <http://www.unidroit.org> > .

⁵ *Principles of European Contract Law*, Parts I and II, O. LANDO / H. BEALE (eds.), The Hague (2000), Part III, O. LANDO / E. CLIVE / A. PRÜM / R. ZIMMERMANN (Eds.), The Hague (2003); cf. O. LANDO, "Principles of European Contract Law", *Revue de droit des affaires internationales* (1997), 189-202. *Principes du droit européen du contrat*, French version prepared by G. Rouhette, Société de Législation Comparée, Paris (2003).

⁶ Cf. Chr. VON BAR, "Le groupe d'études sur un code civil européen", *Revue internationale de droit comparé* (2001), 127-139.

recommend that the UNIDROIT *Principles* be referred to in the applicable law clause,⁷ or that they be taken into account in applying and interpreting the rules in respect of the parties' rights and obligations.⁸

The UNIDROIT *Principles* are frequently referred to in the national, but above all, arbitral case law. Some one hundred such cases have been reported to date,⁹ and their number is increasing.

A great many symposia and seminars have discussed the UNIDROIT *Principles*, either from an academic or a professional angle. The *Principles* are, moreover, increasingly included in academic curriculae relating to international commercial law. Scholarly writings dealing with the UNIDROIT *Principles* abound, analysing the substance of their provisions, their links with national law or other international instruments, and their practical application by economic operators and the courts.¹⁰

Last but not least, the UNIDROIT *Principles* have, since the early 1990s, become an incontrovertible point of reference for national contract law reformers. Their rules have, to varying degrees, provided inspiration in drafting Bills and legislative reforms in countries such as Russia, Estonia, Lithuania, Germany, Argentina and China.¹¹

IV. – THE UNIDROIT *PRINCIPLES* AS A MODEL FOR THE OHADA DRAFT UNIFORM ACT

It was in this context that OHADA, at the request of its Council of Ministers, opted for the UNIDROIT *Principles* as the model for the preparation of a Uniform Act on contracts.

In this way, the Organisation's own harmonised contract law will reflect the solutions offered by a modern instrument using innovative legal techniques developed by legal scholars from the different legal systems around the world; an instrument that, moreover, has already gained a solid international reputation. These are considerable advantages for countries whose contract law has, on the whole, evolved little since independence. Besides, the use of a more universally oriented type of law (rather than one linked to a single legal tradition) is also an important asset in the framework of globalisation, an important point at a time when OHADA may be about to open up to other countries in the region. And finally, the existence of a modern contract law incorporating rules recognised and appreciated world-wide is apt to reassure and attract potential investors.

V. – METHOD OF DRAFTING THE UNIFORM ACT AND GUIDING PRINCIPLES

A. Drafting method

It was deemed opportune for the rapporteur to undertake an extensive round of consultations before embarking on the actual drafting of the future Act. While the UNIDROIT *Principles* were to

⁷ Cf. A. MOURRE / E. JOLIVET, "La réception des Principes d'UNIDROIT dans les contrats modèles de la Chambre de Commerce Internationale", *Unif. L. Rev. / Rev. dr. unif.*, 2004, 275.

⁸ Cf. J.-P. VULLIETY, "Le Contrat-type pour les *Joint Ventures* contractuelles du Centre du Commerce International au regard des Principes d'UNIDROIT et d'autres normes d'unification du droit des contrats", *Unif. L. Rev. / Rev. dr. unif.*, 2004, 295.

⁹ Cf. the decisions published on Internet site < www.unilex.info > .

¹⁰ See, in particular, the bibliographies regularly published in this *Review*.

¹¹ As to these different aspects of the recognition achieved by the UNIDROIT *Principles*, cf. M.J. BONELL, *An International Restatement of Contract Law*, New York, 2nd ed. (1997), 229-254.

serve as the model, it was nevertheless understood that account would have to be taken of certain uniquely African features.

With this in mind, the rapporteur completed three missions to a sample of nine OHADA member States selected by the Permanent Secretariat. A “facilitator” was appointed by the Justice Minister in each country to organise a large number of meetings between the rapporteur and specialists in the various legal communities: senior civil servants, magistrates, lawyers, notaries, academics, representatives of the business world, etc. ... All in all, highly informative talks were held with over one hundred people enabling the rapporteur to collect facts, gauge reactions and gather suggestions on the current state of contract law in the different countries concerned, on the draft Uniform Act itself, on the choice of the UNIDROIT *Principles* as the model, on the uniquely African features to be taken into account, and on the guiding principles to be adopted in drafting the future Act.

The countries visited had perforce to be limited in number. However, UNIDROIT provided the means of conducting more wide-ranging consultations by preparing a questionnaire that was sent to interested parties in the other OHADA member States. A large number of replies were received.

B. Guiding principles

Two basic principles will inform the draft:

(1) Staying close to the model

To begin with, the Uniform Act should stick as closely as possible to the model provided by the UNIDROIT *Principles*

One of the main advantages of drawing on the UNIDROIT *Principles* is that they represent a high-quality codification of international renown. The UNIDROIT *Principles* have already given rise to a sizeable body of legal writings and been widely applied by the courts and tribunals. All this literature (as well as the “comments” that accompany the black letter rules in all official versions) and the case law will be immediately available to the OHADA member countries once their new contract law based on these *Principles* is in place. Moreover, since the UNIDROIT *Principles* have already been used in reforming the contract law of several other countries, OHADA’s new harmonised law will gain its entry into a much larger family engaged upon legal harmonisation world-wide.

A not unimportant point, moreover, as far as the OHADA countries are concerned, is that the *Principles*, which were drafted in English and French, are also immediately available in other language versions, including Spanish and Portuguese.

For all these reasons, most of the provisions of the draft Act will adopt the original wording of the UNIDROIT *Principles*.

(2) Taking account of uniquely African features

That general principle will, however, be appropriately adjusted by the second guiding principle adopted: the draft must make allowance for uniquely African features, especially those peculiar to the OHADA member States.

But what are these “uniquely African features”? This needs clarifying, since the concept may have different meanings depending on the perspective.

(a) Does “uniquely African features” allude to the traditional law of the African countries in question, as it existed prior to colonisation and as it is still applied to this day in several areas?

Whereas traditional law is still in evidence in areas such as family law, it is quite difficult to identify its content in general contract law. While there still exist native rules that govern local contractual relationships, these are certainly not widely known. Studies dealing with traditional African law reveal, moreover, that while such law does propose original contracts in specific areas, it does not appear to have developed any general theory of contract law.¹²

(b) The words “uniquely African features” may also refer to the current legal tradition in the various countries concerned.

The legal systems bestowed by the colonial powers were set in place over a century ago and survived largely unchanged following independence. Contemporary legal scholars in the OHADA countries reason in much the same way as French, Spanish, Portuguese or English lawyers do. It is certainly not inaccurate to say that the “specificity”, or unique features, of the law of countries such as Senegal, Togo or Gabon subscribe to the French legal tradition, or that those of Guinea-Bissau reflect Portuguese legal thinking, and so on.

However, these “unique features” provide no common denominator for the harmonisation that the OHADA countries have in mind. They are little more than a set of different “legal traditions” existing side by side. The legal system in the English-speaking part of Cameroon even belongs to another “legal family”, the common law family.

If we accept that fact, it is clear that there is no common “specificity” that the draft can take into account.

(c) In fact, “uniquely African features” should be understood as meaning a range of *de facto* circumstances and sociological realities prevailing in the different countries and which may affect the choice of “most appropriate legal rules”.

In this regard, two points were repeatedly stressed during the preparatory missions undertaken by the rapporteur. Both strike at the heart of the matter.

– The first point was *wide-spread illiteracy*. While the level of illiteracy may vary according to the country, it is always considerable.

Clearly, then, no legal rule intended to regulate the formation of contract, the modalities of evidence, the implementation of all manner of formalities can fail to make allowance for the fact that a large number of those it addresses are illiterate. We shall return to this point later.

– In most countries, attention was also drawn to the generally poor level of “*legal culture*”. Often, people are unaware of the existence of legal rules or at any rate have only a hazy idea of what they are. When a problem or a dispute arises, most people will eschew the law and the courts and will seek instead other means of redress or resign themselves to their fate. The incompetence, to a greater or lesser degree, of many magistrates is another facet of this phenomenon.

Poor legal culture is, in fact, and unfortunately, another of the “unique features” that characterise many of the OHADA countries. How can this problem be addressed in seeking to harmonise their contract law?

The solution, it would seem, lies not in the provision of a simplified version of contract law relying on a very few, but readily understandable, legal rules. The OHADA member States need a proper legal (infra)structure capable of attracting investors and enabling them to hold their own in international trade.

¹² Cf. S.K. DATE-BAH, “Communication sur le droit des obligations civiles”, *Revue sénégalaise de droit* (1977), 80.

Moreover, the problem is not confined to the specific area of contract law alone. It arises generally, and indeed applies to the Uniform Acts already in existence, the practical implementation of which is not seldom quite problematic.

The remedy, then, would appear to consist in pursuing and indeed, stepping up the initiatives already taken to inform and train. A case in point, and a good example, is the *Ecole Régionale Supérieure de la Magistrature* set up by OHADA. Only in this way, gradually, and by dint of considerable effort, can the problems related to poor legal culture and incompetence even begin to be solved.

What is certain is that a major information campaign will need to be launched after the Uniform Act on contracts is adopted. This work will undoubtedly be facilitated by the plentiful commentaries to which the chosen model, the UNIDROIT *Principles*, have already given rise.

VI. – SOME IMPORTANT QUESTIONS

In drafting the future Act, a number of important questions arise. Four of these stand out in particular. Will the future Uniform Act establish a special law for commercial contracts, or a “common” law applicable to all contracts, both commercial and otherwise? Given the high illiteracy rate, should the contract law be formalistic in approach or not? Are not some of the innovations introduced by the Uniform Act and inspired by the UNIDROIT *Principles* likely to create problems in adjusting to them? And how should the draft deal with matters not covered by the UNIDROIT *Principles*?

We shall now take a closer look at these issues without, however, venturing any predictions as to the solutions that will be adopted in the end.

A. A special law for commercial contracts or a “common” law for all contracts ?

Should the Uniform Act on contract law apply only to commercial contracts or should it be extended to apply to contracts in general and therefore include private, non-commercial contracts (“*contrats civils*”) as well?

The first reply that springs to mind is that the future Act should govern commercial contracts only. After all, OHADA’s avowed aim is to harmonise *business law*. The model chosen, the UNIDROIT *Principles*, deals exclusively with international *commercial* contracts. However, this would perhaps be over-hasty.

First of all, we need to understand the question itself. We are dealing here with a general regimen for contracts, that is to say, with common rules on formation, performance, non-performance, interpretation and so on, not with the fate of particular contracts. Specific regimens will anyhow continue to exist for certain, essentially *non-commercial*, contracts such as the marriage contract, as well as for certain *commercial* contracts such as brokerage and commission contracts. The question here, however, is whether the OHADA countries will, in the future, have a single, *common* contract law applicable to all commercial and non-commercial transactions, or whether the new law will apply only to commercial contracts, leaving other contracts to the respective domestic laws.

Several considerations argue in favour of a single regimen.

First of all, there are precedents for the extension of the scope of application of the OHADA Uniform Acts to non-commercial transactions, *e.g.* as regards arbitration, securities, and recovery procedures.

Then, to have two different contract laws would be asking for problems when deciding which governed what. A case in point are the so-called "mixed" contracts between retailers and consumers. The debate on the commercial nature of contracts seems somewhat out of date. Codes or laws that cover the full panoply of commercial and non-commercial obligations already exist in several countries, such as Italy and Switzerland, but also in Senegal and Mali. Also, there is no general theory of commercial contracts; the only general theory of contracts is that currently incorporated in the Civil Code (at least where most of the civil law countries are concerned), and this serves as a common core for private law as a whole. Unification would ensure that the benefits of modernisation brought by the Uniform Act would not pass non-commercial contracts by.

To limit the new Act to commercial contracts would, moreover, put the OHADA countries in a rather curious position. It would allow the current contract law to continue governing non-commercial contracts and lead to the co-existence of two separate, fully-fledged contract laws that differed substantially. There is, in fact, no historical precedent for such a situation.¹³ Nearly everywhere, and at all times, a single, general contract law has prevailed, applicable to both commercial and non-commercial contracts, with appropriate adjustments to deal with specific issues (for example, in matters of evidence).

Most of those questioned during the rapporteur's preparatory missions favoured a single contract law. Still, the issue remains a delicate one, not least because the solution eventually adopted will affect the extent to which national jurisdictions must defer to the Joint Court of Justice and Arbitration.

B. The question of formalism

Given the high illiteracy rate, should the contract law be formalistic or non-formalistic in approach?

As mentioned earlier, illiteracy is a widespread problem in the OHADA countries, albeit to varying degrees. In most of the countries concerned, the majority of the adult population can neither read nor write. How and to what extent should this affect the drafting of a contract law capable of addressing African realities? The question arises whenever the law prescribes, or might prescribe, written form, whether dealing with formation of contract, requirements relating to evidence or formalities connected with the performance of the contract, such as notifications.

On this point, the UNIDROIT *Principles* reject all formalism. According to Article 1.2, "*Nothing in these Principles requires a contract, statement or any other act to be made in or evidenced by a particular form. It may be proved by any means, including witnesses.*"

Does widespread illiteracy in the OHADA countries automatically point to minimal formalism as the obvious solution? Or should we, on the contrary, accept that illiterates deserve special protection when contracting obligations, and that such protection must perforce derive from requirements of form?

Opinions differ widely on this key issue.

On the one hand, Africa has a strong "oral tradition". Not a few of the most prosperous businessmen in the sub-region are illiterate. Some of those questioned, particularly business people, argued in favour of minimal formalism. Illiteracy, they say, is an African reality; the law

¹³ Except perhaps when some of the European Socialist countries had separate Codes for international commercial contracts; Czechoslovakia even had three such Codes existing side by side: a Civil Code, an Economic Code (for contracts falling under the Central Planning regime) and a Code of International Commerce.

must therefore be kept as simple as possible. In contractual matters, no specific requirements as to form should apply, whatever the amounts involved.

At the other end of the scale, a minority advocated an absolutely general requirement of evidence in writing. This view is held in particular among notaries, who largely favour a high degree of formalism (in regard to which they stress the counselling role that would devolve on them).

Between these two extremes, most of the views expressed were in favour of some degree of formalism in contract law as regards evidence.

What would be the characteristics of such protective formalism in a setting of widespread illiteracy?

Examples may be found in several provisions currently in force, such as Article 20 of the Senegalese law on commercial and non-commercial obligations, which requires two witnesses to confirm, in writing, the identity and presence of the contracting party and to vouch that the party in question is acquainted with the nature and effects of the contract. However, it would appear that such a system works none too well in practice: the parties concerned are loath to resort to this formality which is seen as betraying a lack of trust vis-à-vis the other party to the contract and moreover does not prevent later disputes to arise in bad faith. Cost is another inhibiting factor, as are some of the practical difficulties of involving third parties.

The solution ultimately adopted will depend, in part, on the decision as to the scope of application of the future Uniform Act on contracts. It would, for example, be quite feasible to retain a degree of formalism in non-commercial contracts while having no, or less stringent, formal requirements for commercial contracts. An Act that covered both commercial and non-commercial contracts could provide different rules for each category in this respect. However, it should be borne in mind that there is no reason why any provision incorporated in the Uniform Act on contracts should preclude the provision of specific rules for certain, special types of contract such as real estate sales, certain types of company, and consumer contracts.

The Uniform Act on contracts need not, in fact, take position in the matter. OHADA is currently envisaging the drafting of another Uniform Act on evidence. Were this to materialise, the former would simply refer to the latter in matters of evidence.

C. How will some of the new ideas be received ?

The introduction, in the OHADA countries, of a Uniform Act based on the UNIDROIT *Principles* will bring many changes in the way in which the contract law currently in force is understood and applied. It is therefore legitimate to wonder whether problems might not arise in adjusting to some of these changes.

The situation is not, of course, a new one: it has already arisen in the different sectors regarding which uniform acts have been adopted. However, contract law lies at the core of legal culture and changes in the way of thinking about it may touch sensitive chords.

During his preparatory missions, the rapporteur tested reactions by means of a series of questions pertaining to some of the positions held by the UNIDROIT *Principles*, either in respect of its guiding principles or on specific points. As a rule, reactions were favourable, which augurs well enough for the reception of the new texts. Some issues, however, deserve special attention.

(1) Good faith – Protection of the weaker party

Opinions were positive on many points, such as, for example, the strong emphasis in the

UNIDROIT *Principles* on good faith (Article 1.7) and some of the consequences thereof: duty to co-operate (Article 5.1.3), mitigation of harm (Article 7.4.8), liability for negotiating in bad faith (Article 2.1.15, as well as the provisions dealing with abuse by the dominant party, such as "gross disparity" (Article 3.10), exemption clauses (Article 7.1.6) and "agreed payment for non-performance" (Article 7.4.13).

(2) *Change in circumstances*

The possibility of re-negotiating the contract in the event of a change in circumstances (UNIDROIT *Principles*, Article 6.2.1 to 6.2.3) was generally well-received, whereas some of the legal systems in the OHADA countries, which take their cue from French law, do not accept the notion of hardship. However, several references were made to the devaluation of the CFA franc, which has left a bitter legacy. Re-negotiation of contract in the event of changed circumstances would anyway square with the realities of African life, and a provision to this effect would be especially useful in the climate of instability that characterises Africa. It is also important to remember that there are plenty of safeguards in the regimen instituted by the UNIDROIT *Principles* to protect against abuse.

(3) *Termination for non-performance*

Although a majority also declared themselves in favour of the solution adopted by the UNIDROIT *Principles*, opinions were divided concerning the method of termination of bilateral contracts for fundamental non-performance. The regimen introduced by the French *Code Civil* in many of the OHADA countries requires a court order for termination. The UNIDROIT *Principles*, on the other hand, provide that "*The right of a party to terminate the contract is exercised by notice to the other party*" (Article 7.3.2).

A minority of those who expressed an opinion would prefer to preserve the judicial character of termination. This, they argue, would stand in the way of abuse, of arbitrary, unilateral termination by the stronger party.

The majority, however, favoured termination by simple notification. This was seen as the best way of ensuring speed, simplifying procedures and relieving pressure on the courts. Termination by leave of the court may indeed prevent abuse, but a major drawback is that it can delay the solution of what may be a dire contractual crisis by months or even years, when in fact the aggrieved party often has an urgent need to obtain release from the contract in order to find another partner.

It should be stressed that in comparative law, unilateral termination, with *ex post facto* control by the courts, is the solution most commonly adopted, particularly in German, Swiss and Portuguese law and in the common law countries, as well as by a major international instrument, the *United Nations Convention on Contracts for the International Sale of Goods* (Articles 49 and 64). Belgian law, in its most recent case law upheld by scholarly doctrine, now recognises the validity of termination by unilateral declaration in some circumstances, notwithstanding Article 1184 of the Civil Code which is still in force in Belgium.¹⁴ France now appears to be taking the same road.¹⁵ In practice, anyway, the same result is obtained by means

¹⁴ Cf. S. STIJNS / D. VAN GERVEN / P. WERY, "Chronique de jurisprudence – Les obligations: les sources (1985-1995)", *Journal des Tribunaux* (Bruxelles), 1996, 740-742.

¹⁵ Cf. Chr. JAMIN, "Les conditions de la résolution du contrat: vers un modèle unique?", in M. FONTAINE / G. VINEY (Eds.), *Les sanctions de l'inexécution des obligations contractuelles* (Brussels / Paris), 2001, 451-512.

of express termination clauses.

(4) "Cause" and "consideration"

An issue that probably triggered the most reactions was one which, in practice, is likely to have fewer consequences than others once a Uniform Act on contracts inspired by the UNIDROIT Principles is in force.

The *Principles* refer neither to the concept of "cause" (familiar to some civil law systems) nor to that of "consideration" (typical of the common law systems). This "overlooking" of the concept of "cause" came as a surprise to many of those adhering to the French legal tradition, who could not conceive of a contract law that did not make provision for such a fundamental concept. Yet the reaction of the common law lawyers that the rapporteur met in Cameroon was much the same regarding "consideration" – they seemed quite unable to imagine a contract that did not include this notion.

Looking at these two reactions, we get a good inkling of the kind of difficulties with which the drafters of the UNIDROIT *Principles* had to contend. The concept of "cause" is a key element of the contract in some roman-germanic legal systems (such as France, Spain and Portugal), but not in all: it plays no such role in Germany;¹⁶ and is quite unknown in the common law countries. As to "consideration", this is a typically common law concept unknown in the roman-germanic systems. Clearly, no universal, harmonised contract law can include either of these concepts, since they are too closely linked to specific legal systems. The problem is mirrored at OHADA level: neither of these concepts is common to all countries in the region.

However essential the concept of "cause" and "consideration" may appear to the systems that apply them,¹⁷ it is nevertheless perfectly feasible to construct a viable contract law that includes neither. Such is the case, for example, of Germany, and indeed, of the UNIDROIT *Principles*.

That is not to say that the solutions which French law and common law associate with the notions of "cause" and "consideration", respectively, are discarded; they are achieved by other means. In French law, for example, the notion of "cause" is used among others to invalidate contracts with an unlawful cause. The same result may be more easily attained by including a provision invalidating any contract that is not in keeping with mandatory law, with the *ordre public* or with good moral standards (or some such similar formula) – no need to refer to "cause" of the contract.

D. Matters not covered by the UNIDROIT *Principles*

The first edition of the UNIDROIT *Principles*, published in 1994, dealt with the main chapters of contract law: formation, validity, interpretation, content, performance, non-performance. The second edition, published in 2004, includes some new areas, in particular agency, assignment of rights, obligations and contracts, set-off, and limitation periods. The draft Uniform OHADA Act will incorporate all of these innovations.

Nevertheless, a careful scrutiny will reveal a number of gaps in the UNIDROIT *Principles*. While these will no doubt eventually be filled by another edition of the *Principles*, remedies

¹⁶ Cf. K. ZWIEGERT / H. KÖTZ, *An Introduction to Comparative Law*, ed. 1977, II, 69; German law only refers to the concept of *cause* with regard to enrichment "without *cause*". Cf. also H. KÖTZ / A. FLESSNER, *European Contract Law*, Oxford (1997), I, 54 : "The concept is quite unknown elsewhere in Europe ...".

¹⁷ We do know, however, that the concept of "cause" excites scholarly criticism in the countries that apply it, while the concept of "consideration" is likewise often queried in the common law countries.

must be found to serve the OHADA draft in the meantime.

New provisions will thus be proposed in several areas such as illegality, general provisions on avoidance, certain aspects of performance (loss of benefit of time for performance, performance to the detriment of an attaching creditor, performance by a third party), conditional, joint and several and alternative obligations, protection of creditors and third parties, or confusion of obligations.

These new texts will be drafted drawing on other recent codifications: first of all, the *Principles of European Contract Law* (which have already filled a certain number of gaps), the new Civil Code of the Netherlands (*Nieuwe Burgerlijke Wetboek*) and the 1991 Civil Code of Quebec, which is drafted in a clear and concise fashion eminently suited to its integration into the UNIDROIT *Principles*.

The drafting process of the Uniform Act on contracts is well underway. It looks set to be completed by the end of 2004, when UNIDROIT will submit the text to the OHADA Permanent Secretariat, which in turn will set in motion the consultation and adoption procedure described *supra*. Upon completion of that procedure, seventeen African countries will have at their disposal a uniform contact law broadly reflecting the UNIDROIT *Principles*. There can be no doubt that this achievement will prove to be a landmark in the legal harmonisation movement worldwide.

T T T

Editors' Note

The Editorial Board of the *Uniform Law Review / Revue de droit uniforme* is pleased to inform readers that the Convention on International Interests in Mobile Equipment as applied to aircraft objects entered into force on 1 March 2006, pursuant to the deposit, by Malaysia on 2 November 2005, of the eighth instrument of ratification/accession in respect of the Protocol to the Convention on Matters specific to Aircraft Equipment.* Also, on 1 March 2006 the International Registry for aircraft objects became operational, in accordance with Resolution No. 2 adopted by the Cape Town diplomatic Conference.

The Editorial Board has considered it opportune to mark these historic events by commissioning special articles both on the overall international registration system for aircraft objects ushered in with the entry into operation of the International Registry and on the background to the process whereby the International Registry was established, namely the essential pioneering work carried out during the preparatory intergovernmental consultation process on the Convention and Protocol by the International Registry Task Force (I.R.T.F.). These articles were commissioned of Professor Ronald C.C. Cuming (University of Saskatchewan), a correspondent of UNIDROIT and, as Chairman of the Registration Working Group that carried out a great deal of the preparatory work on the development of the provisions of the future Convention and Protocol relating to international registration, very much the father of the conceptual structure of the new International Registry, and Mr Joseph R. Standell (Aeronautical Center for the U.S. Federal Aviation Administration), as Co-chairman of the I.R.T.F., respectively.

The Editorial Board considered that readers would also find it useful to have access in the same issue to the final text of the *Regulations and Procedures for the International Registry* as approved by the Preparatory Commission set up pursuant to the aforementioned Resolution to act with full authority as Provisional Supervisory Authority for the establishment of the International Registry pending the entry into force of the Convention and the Protocol. For authorising its publication of the Regulations and Procedures, the Editorial Board acknowledges with especial gratitude the co-operation of the International Civil Aviation Organization (I.C.A.O.), which not only co-sponsored the aforementioned intergovernmental consultation process with UNIDROIT but the Council of which is the Supervisory Authority of the new International Registry.

* As at 1 March 2006 a total of 9 instruments of ratification/accession had been deposited, following the deposit by Senegal of its instrument of ratification on 9 January 2006.

Note de la rédaction

La Rédaction de la *Uniform Law Review / Revue de droit uniforme* a le plaisir d'informer ses lecteurs que la Convention relative aux garanties internationales portant sur des matériels d'équipement mobiles telle qu'elle s'applique aux matériels d'équipement aéronautiques est entrée en vigueur le 1^{er} mars 2006, à la suite du dépôt par la Malaisie le 2 novembre 2005, du huitième instrument de ratification / adhésion au Protocole portant sur les questions spécifiques aux matériels d'équipement aéronautiques*. Par ailleurs, le Registre International pour les biens aéronautiques est devenu opérationnel le 1^{er} mars 2006, conformément à la Résolution n° 2 adoptée par la Conférence diplomatique du Cap.

La Rédaction a estimé opportun de marquer ces événements historiques en commissionnant des articles spécialement consacrés à l'ensemble du système d'inscription pour les biens aéronautiques qui verra le jour avec l'entrée en fonctionnement du Registre International, et à la présentation du processus par lequel le Registre International a été établi, à savoir le travail essentiel qui a été accompli durant les consultations intergouvernementales sur la Convention et le Protocole par le Groupe spécial sur le Registre international (G.S.R.I.). Ces contributions ont été fournies par le Professeur Ronald C.C. Cuming (Université de Saskatchewan), correspondant d'UNIDROIT, en sa qualité de Président du G.S.R.I. qui a effectué une partie importante du travail qui a mené à l'élaboration des dispositions sur l'inscription des futurs instruments, ainsi que par M. Joseph R. Standell (Centre de l'aéronautique de l'Administration fédérale de l'aviation des Etats-Unis), en sa qualité de co-président du G.S.R.I.

La Rédaction a estimé utile de mettre à la disposition de ses lecteurs dans le même numéro le texte final du Règlement et des Règles de procédures pour le Registre international (*Regulations and Procedures for the International Registry*) tels qu'approuvés par la Commission préparatoire établie en vertu de la Résolution susmentionnée, et qui a été investie des pouvoirs nécessaires pour faire fonction d'Autorité provisoire de surveillance pour l'établissement du Registre international en attendant l'entrée en vigueur de la Convention et du Protocole. La Rédaction exprime enfin une reconnaissance particulière à l'Organisation de l'Aviation civile internationale (OACI) qui a autorisé la publication du Règlement et des Règles de procédures pour le Registre, pour sa coopération avec UNIDROIT dans les consultations intergouvernementales susmentionnées et dont le Conseil est l'Autorité de surveillance du nouveau Registre international.

* Au 1^{er} mars 2006, le nombre d'instruments de ratification et d'adhésion s'élevait à neuf, le Sénégal ayant déposé son instrument de ratification le 9 janvier 2006.

The Role of the International Registry Task Force (I.R.T.F.) in the Development of the International Registry for Interests in Aircraft

Joseph R. Standell *

BACKGROUND

At least since 1994,¹ advocates of what were to become known as the Cape Town Convention and Aircraft Protocol² have always included an international registry³ as a key component in protecting creditors' rights. It had always been understood that on the day these instruments came into force,⁴ an international registry for aircraft objects would need to be operational.⁵

* Aeronautical Center Counsel for the Federal Aviation Administration (F.A.A.) in Oklahoma City, Oklahoma, U.S.A. In that capacity he is the principal legal advisor to the F.A.A. Civil Aviation Registry. He has been continually involved in matters relating to the Cape Town Convention since 1996. He has been a member of the Registration Working Group; as a U.S. Delegation member, he has attended the three Joint Sessions of governmental experts sponsored by the International Civil Aviation Organization (ICAO) / UNIDROIT; he was co-chairman of the International Registry Task Force (I.R.T.F.), member of the U.S. Delegation at the Cape Town diplomatic Conference, and U.S. member of the Preparatory Commission.

The other co-chairman of the I.R.T.F., Mr Georges GRALL, was, during the mandate of the I.R.T.F., deputy director for airlines (in which the French office for the registration of aircraft is located) in the Directorate-General of Civil Aviation. From 1999, he took part, as a member of the French delegation, in the Joint Sessions of ICAO/UNIDROIT, in the sessions of the ICAO Legal Committee and in the Cape Town diplomatic Conference; in this context, he took part in the work of the Registration Working Group and subsequently in the I.R.T.F. After the Cape Town Conference he was appointed Inspector-General for Civil Aviation.

¹ The author is indebted to Professor Sir Roy GOODE for helping to refresh his recollection as to many key events leading to the establishment of the International Registry. See *Chronology*, beginning at p. 363 of his *Official Commentary* (Rome, 2002).

² The *Convention on International Interests in Mobile Equipment* and the *Protocol thereto on Matters specific to Aircraft Equipment*, as opened to signature in Cape Town on 16 November 2001.

³ Convention, Art. 16(1); Protocol, Art. XVII.

⁴ The Protocol, and the Convention as applied to aircraft objects, entered into force on 1 March 2006, that date being the first day of the month following the expiration of three months after the date of the deposit with UNIDROIT of the eighth instrument of ratification/accession in respect of the Protocol; Convention Art. 49(1), Protocol, Art. XXVIII(1).

⁵ For a detailed presentation of the Registry system, see Ronald C.C. CUMING, "The International Registry for Interests in Aircraft: An Overview of its Structure", reproduced in this issue of *Unif. L. Rev. / Rev. dr. unif.*, 18.

Le rôle du Groupe spécial sur le Registre international (G.S.R.I.) dans la mise en place du Registre pour les garanties internationales portant sur des biens aéronautiques

Joseph R. Standell *

HISTORIQUE

Très tôt durant les travaux préparatoires en 1994 ¹, les rédacteurs de la Convention du Cap et du Protocole aéronautique ² ont estimé qu'un registre international ³ serait un élément essentiel pour assurer la protection des droits des créanciers. Il était entendu qu'au jour de l'entrée en vigueur des instruments ⁴, un Registre international pour les biens aéronautiques devrait être opérationnel ⁵.

* Conseiller juridique, Centre aéronautique de l'Administration fédérale de l'aéronautique (*Federal Aviation Administration – F.A.A.*) à Oklahoma City, Oklahoma, Etats-Unis d'Amérique (U.S.A.). A ce titre, principal conseiller juridique pour le Registre de l'aviation civile au sein de la F.A.A. Il a suivi l'ensemble des travaux préparatoires de la Convention du Cap depuis 1996 ; membre du Comité d'étude sur le Registre ; membre de la délégation des U.S.A. aux trois Sessions Conjointes d'experts gouvernementaux sous les auspices de l'Organisation de l'Aviation civile internationale (OACI) / UNIDROIT ; Co-président du Groupe spécial sur le Registre international (G.S.R.I.) ; membre de la délégation des U.S.A. à la Conférence diplomatique du Cap et membre de la délégation des U.S.A. à la Commission préparatoire.

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L'autre co-président du G.S.R.I., M. Georges GRALL, était pendant le mandat du Groupe spécial responsable de la sous-direction des entreprises de transport aérien – dans laquelle se trouve le bureau du registre français d'immatriculation des aéronefs – à la direction générale de l'aviation civile. Il a participé, en tant que membre de la délégation française, à partir de 1988 aux Sessions conjointes OACI / UNIDROIT, à celles du Comité juridique de l'OACI, et à la Conférence diplomatique du Cap ; il a participé dans ce cadre notamment au Groupe de travail sur le Registre, puis co-présidé le Groupe spécial sur le Registre international. Postérieurement à la Conférence du Cap, il a été nommé inspecteur général de l'aviation civile.

¹ L'auteur remercie le Professeur Sir Roy GOODE dont la partie concernant la *Chronologie* de son *Commentaire Officiel* (Rome, 2002) (p. 385) a été très utile pour la reconstitution des principaux stades qui ont mené à l'établissement du Registre.

² La *Convention relative aux garanties internationales portant sur des matériels d'équipement mobiles* et le *Protocole y relatif portant sur les questions spécifiques aux matériels d'équipement aéronautiques*, ouverts à la signature au Cap le 16 novembre 2001.

³ Convention, art. 16(1) ; Protocole, art. XVII.

⁴ Le Protocole, et de ce fait la Convention telle qu'elle s'applique aux biens aéronautiques, est entré en vigueur le 1^{er} mars 2006, soit le premier jour du mois après l'expiration d'une période de trois mois à compter de la date du dépôt auprès d'UNIDROIT du huitième instrument de ratification du Protocole ou d'adhésion à celui-ci ; Convention art. 49(1), Protocole, art. XXVIII(1).

⁵ Pour une présentation détaillée du système d'inscription, voir Ronald C.C. CUMING, "Le Registre international pour les garanties internationales portant sur des biens aéronautiques : présentation de sa structure", publié dans ce volume de la *Unif. L. Rev. / Rev. dr. unif.*, 18.

Work on legal and technical issues involving an international registry for aircraft objects began in April 1996 in Rome with the first meeting of the Registration Working Group of the Study Group for the preparation of uniform rules on certain international aspects of security interests in mobile equipment, chaired by Professor Ronald C.C. CUMING (Canada). The Registration Working Group⁶ continued to examine the registration provisions of what were then the preliminary draft Convention and preliminary draft Aircraft protocol and technical aspects of an international registry for aircraft objects until September 1999.

At the Third Joint Session of the UNIDROIT Committee of governmental experts and the Sub-Committee of the ICAO Legal Committee held in Rome in March 2000, an *ad hoc* International Registry Task Force (I.R.T.F.) of the Joint Session was formed⁷ pursuant to approval of a joint proposal submitted by the Governments of France and the U.S.A. Approval was conditioned on the requirement that the I.R.T.F. keep ICAO and UNIDROIT informed of its work and that it consult with the Secretariats concerning the composition of the I.R.T.F. Participation was purely voluntary. Fifteen States indicated an interest in the work of the I.R.T.F. Joseph STANDELL (United States) and Georges GRALL (France) were elected as co-chairmen by the initial participants.⁸

The newly formed I.R.T.F. met informally during the Third Joint Session, mindful that its job would be to make recommendations through the UNIDROIT and ICAO Secretariats with respect to developing the basic requirements of the International Registry for aircraft objects.

WORK OF THE I.R.T.F. (JUNE 2000 – OCTOBER 2001)

First Report of the I.R.T.F.

Thirty-one participants from 11 Governments and four Organizations attended the first I.R.T.F. meeting in Paris in June 2000.⁹ The First I.R.T.F. Report was then submitted to the UNIDROIT and ICAO Secretariats on 28 July 2000.

Of immediate concern in Paris was the creation of documents that could be used by the Supervisory Authority¹⁰ to establish, and supervise the operations of, the International Registry. The process would include developing a request for proposals,

⁶ The continuation of the work of the Registration Working Group was approved at the First ICAO / UNIDROIT Joint Session in Rome in February 1999.

⁷ Third Joint Session Report, Agenda Item No. 7, paras 290, 291 and 292. (ICAO Ref. LSC/ME/3-Report and UNIDROIT CGE/Int.Int/Int/3-Report).

⁸ The co-chairmen were elected from countries which were on record as not seeking to operate the International Registry, and which therefore would not enter bids to become the host State of the Registry.

⁹ The Governments of Brazil, Canada, France, Ireland, Japan, Norway, Portugal, Singapore, Sweden, Switzerland and the U.S.A. and ICAO, UNIDROIT, the Aviation Working Group (A.W.G.) and the International Air Transport Association (I.A.T.A.).

¹⁰ The Supervisory Authority is established by Art. 17(1) of the Convention and invested with functions that include the establishment of the International Registry, and the supervision of the Registrar and of the operation of the International Registry.

Les travaux portant sur les questions juridiques et techniques liées au Registre international pour les biens aéronautiques ont démarré en avril 1996, à Rome, à l'occasion de la première réunion du Groupe de travail sur le Registre constitué au sein du Comité d'étude chargé de l'élaboration de règles uniformes sur certains aspects internationaux des sûretés portant sur des matériels d'équipement mobiles, présidé par le Professeur R.C.C. Cuming (Canada). Le Groupe de travail sur le Registre ⁶ a poursuivi jusqu'en septembre 1999 l'examen des dispositions des textes – alors à l'état d'avant-projets – de la Convention et du Protocole aéronautique, ainsi que des aspects techniques du Registre international pour les biens aéronautiques.

A la Troisième Session conjointe du Comité d'experts gouvernementaux d'UNIDROIT et du Sous-comité du Comité juridique de l'OACI tenue à Rome en mars 2000, suite à l'approbation d'une proposition des Gouvernements de la France et des U.S.A., il a été constitué un Groupe spécial *ad hoc* sur le Registre international (G.S.R.I.) de la Session conjointe ⁷, étant entendu que le G.S.R.I. devrait tenir informés l'OACI et UNIDROIT de l'avancement de ses travaux, et que la composition du Groupe serait établie en consultation avec les Secrétariats des deux Organisations. La participation au Groupe était à caractère purement volontaire, et quinze Etats ont marqué leur intérêt pour les travaux du G.S.R.I. MM. Joseph STANDELL (Etats-Unis d'Amérique) et Georges GRALL (France) ont été élus co-présidents par les participants initiaux ⁸.

Le G.S.R.I. nouvellement constitué s'est réuni de façon informelle durant la Troisième Session conjointe, et a pris note que son mandat était de formuler des recommandations par le truchement des Secrétariats d'UNIDROIT et de l'OACI relativement aux caractéristiques principales du Registre international pour les biens aéronautiques.

TRAVAUX DU G.S.R.I. (JUIN 2000 – OCTOBRE 2001)

Premier rapport du G.S.R.I.

Trente et un participants représentant 11 Gouvernements et quatre Organisations ont participé à la première réunion du G.S.R.I. à Paris en juin 2000 ⁹. Le premier rapport du G.S.R.I. a été soumis aux Secrétariats d'UNIDROIT et de l'OACI le 28 juillet 2000.

A la réunion de Paris, l'attention du G.S.R.I. s'est immédiatement portée sur la constitution des documents qui devraient être utilisés par l'Autorité de surveillance ¹⁰

⁶ La poursuite des travaux du Groupe de travail sur le registre a été approuvée à la Première Session conjointe OACI / UNIDROIT à Rome en février 1999.

⁷ Rapport de la Troisième Session conjointe, Point n° 7, paras. 290, 291, et 292 (OACI Ref. LSC/ME/3-Report et UNIDROIT CGE/Int.Int/3-Report).

⁸ Les co-présidents ont été élus en représentation de pays qui ont expressément consigné leur intention de ne pas participer à l'appel d'offres en vue de devenir Etats hôtes du Registre.

⁹ Les Gouvernements des Etats suivants : Brésil, Canada, France, Irlande, Japon, Norvège, Portugal, Singapour, Suède, Suisse et U.S.A.; Organisations : OACI, UNIDROIT, le Groupe de travail aéronautique (G.T.A.) et l'Association internationale du transport aérien (I.A.T.A.).

¹⁰ L'autorité de surveillance est établie par l'art. 17(1) de la Convention ; elle a notamment pour fonctions d'établir le Registre international, et de surveiller le Conservateur et le fonctionnement du Registre.

a requirements document, and a process for soliciting and evaluating proposals.¹¹ A significant addition to the draft text was language in paragraph 3 of the requirements document requiring that States submit proposals to include their business plan for achieving objectives.

The Paris participants concluded that an award should be made shortly after the diplomatic Conference, with a fully operational International Registry no later than 12 months after notice to proceed.¹² It was recommended that a request for proposals be issued six months before the diplomatic Conference. These recommendations proved to be unrealistic.

Among the other key concepts discussed were electronic signatures, website access and how and by whom start up costs and recurring costs would be financed.¹³

Attached to the First Report were solicitation documents and papers on electronic signatures, confidentiality of information and liability of the Supervisory Authority and the Registrar.

Second Report of the I.R.T.F.

At an informal meeting of the I.R.T.F. in Montreal in September 2000, held during the ICAO Legal Committee's 31st session, I.R.T.F. participants agreed jointly to prepare topical papers¹⁴ to be presented and discussed at the following formal I.R.T.F. meeting.

The Second Report was submitted to the UNIDROIT and ICAO Secretariats on 20 February 2001 and described I.R.T.F. work in Dublin (Ireland) and later in Washington, D.C. (U.S.A.).

At the Dublin meeting in January 2001, a core group of States and Organizations again participated.¹⁵

The request for proposals package continued to be scrutinized, particularly the evaluation plan for the International Registry system.¹⁶ It was decided that the request for proposals package needed bolstering and should contain a description of the basic features of the Registry. Such background information would be very valuable to potential offerors. The Aviation Working Group (A.W.G.) agreed to prepare a draft document on the basic features of the proposed International Registry to be presented to the I.R.T.F. in Washington, D.C.

¹¹ I.R.T.F. First Report, p. 3, para. 8.

¹² *Idem*, p. 9, Art. 31.

¹³ *Idem*, p. 7, paras 25 to 30.

¹⁴ *Regulations of the International Registry*: Switzerland and Japan; *Technical evaluation plan for evaluating proposals*: France and the United States; *Proprietary rights in software and hardware*: Singapore and Ireland; *Scope of international legal relations between the Supervisory Authority and the Registrar*: UNIDROIT and France; *Funding – cost recovery methods*: Finland and A.W.G.; *Cost of insurance (force majeure)*: Canada and Sweden.

¹⁵ Nine States and all four organizations that had met in Paris.

¹⁶ Attachment No. 4 to the Request for proposals, as submitted with the 2nd Report.

pour l'établissement et le fonctionnement du Registre international. Il était entendu qu'il faudrait prévoir un questionnaire pour recueillir les propositions, un document sur les critères, et un processus d'évaluation des offres ¹¹. Une précision importante a été incluse au paragraphe 3 du projet de document sur les critères prévoyant que les Etats qui avanceraient des propositions devraient présenter leur plan industriel et leur démarche pour atteindre les objectifs.

Les participants à la réunion de Paris ont conclu que l'adjudication devrait avoir lieu aussitôt après la Conférence diplomatique afin que le Registre soit opérationnel au plus tard 12 mois après que soit donné l'accord au déploiement du système ¹². Il a été recommandé que le questionnaire pour recueillir les propositions soit émis six mois après la Conférence diplomatique, mais cet objectif s'est avéré irréaliste.

On signalera que parmi les questions essentielles débattues se trouvaient celles des signatures électroniques, l'accès par site Internet, et le point de savoir comment et par qui seraient financés les coûts initiaux de lancement puis de fonctionnement ¹³.

Le Premier Rapport reproduisait en annexe les documents d'appel d'offres, et des notes concernant les signatures électroniques, la confidentialité des informations et la responsabilité de l'Autorité de surveillance et du Conservateur.

Deuxième Rapport du G.S.R.I.

Une réunion informelle du G.S.R.I. s'est tenue à Montréal en septembre 2000, à l'occasion de la 31^{ème} session du Comité juridique de l'OACI, lors de laquelle les participants sont convenus de préparer des documents se rapportant à différents sujets ¹⁴ qui seraient présentés et discutés lors de la réunion officielle suivante du G.S.R.I.

Le Deuxième Rapport, soumis aux Secrétariats d'UNIDROIT et de l'OACI le 20 février 2001, rendait compte des travaux des réunions de Dublin (Irlande), et de Washington, D.C. (U.S.A.).

A la réunion de Dublin tenue en janvier 2001 ¹⁵, le document d'appel d'offres a de nouveau été examiné, notamment le plan d'évaluation pour le système du Registre international ¹⁶. Il a été estimé que ce document devrait être étayé et devrait contenir une description des caractéristiques principales du Registre, qui seraient extrêmement utiles pour les soumissionnaires potentiels. Le Groupe de travail aéronautique (G.T.A.) a accepté de préparer un projet de document qui serait présenté au G.S.R.I. à sa réunion de Washington, D.C.

¹¹ G.S.R.I. Premier Rapport, page 3, para. 8.

¹² *Idem*, page 9, art. 31.

¹³ *Idem*, page 7, paras. 25 à 30.

¹⁴ *Règlement du Registre international* : Suisse et Japon ; *Plan d'évaluation technique pour l'examen des propositions* : France et U.S.A. ; *Droits de propriété des logiciels et matériels informatiques* : Singapour et Irlande ; *Etendue des relations juridiques internationales entre l'Autorité de surveillance et le Conservateur* : UNIDROIT et France ; *Modes de financement et de recouvrement des coûts du nouveau Registre International* : Finlande et G.T.A. *Coût de l'assurance (force majeure)* : Canada et Suède.

¹⁵ Neuf des Etats et les quatre Organisations qui s'étaient réunis à Paris.

¹⁶ Pièce jointe n° 4 au Questionnaire pour recueillir des propositions, joint au Deuxième Rapport.

Topical papers¹⁷ were presented and discussed in Dublin. However, it was decided to defer referral thereof to the Secretariats.

In Washington, D.C., in February 2001, the scope of the basic features document, as presented by the A.W.G., was examined. This document unexpectedly raised several significant issues, for example, as to whether to allow *ex ante* intervention by the Registrar with respect to the registrability of interests by parties lacking authority,¹⁸ and admissibility of data concerning Chicago Convention registration numbers.¹⁹

With respect to the submission of the I.R.T.F.'s Second Report, the request for proposals package (which now included the basic features document) superseded the package previously submitted. The new package consisted of a request for proposals with attachments, those attachments being a basic features document, a requirements document; instructions for the submission of proposals and an evaluation plan.²⁰

Third Report of the I.R.T.F.

The core I.R.T.F.²¹ met for the final time in Geneva from 10 to 12 September 2001 to discuss the topics assigned to different members:

- *Regulations of the International Registry (Governments of Switzerland and Japan)*
The International Registry Regulations as drafted in Geneva had 17 chapters. Comparing the I.R.T.F. draft with what the Preparatory Commission finally approved in 2005 as the Regulations²² it appears that the structure and topical content of both are quite similar. What has changed significantly is the detail. For instance, the application process for registrations as described in Chapter 5 of the Geneva draft provides the barest information, whereas Section 5 of the approved Regulations goes into great detail with respect to the information required to effect different types of registration.²³
- *Private law aspects of the relation between the Supervisory Authority and the Registry, including proprietary rights in software/hardware (Governments of France, Ireland and Singapore and UNIDROIT)*

¹⁷ See *supra* note 14.

¹⁸ Second Report, p. 5, para. 16.

¹⁹ *Idem*, p. 5, para. 19.

²⁰ It should be noted that the I.R.T.F.'s documents submitted with the Second Report were later substantially adapted by the Preparatory Commission during the solicitation, evaluation and award process.

²¹ The Governments of Brazil, Canada, Finland, France, Ireland, Japan, Singapore, Sweden, Switzerland and the U.S.A. and ICAO, UNIDROIT, A.W.G. and I.A.T.A..

²² The Regulations form part of the *Regulations and Procedures for the International Registry* which were approved by the Preparatory Commission (see the text reproduced in this issue of *Unif. L. Rev. / Rev. dr. unif.*, 60).

²³ Continuing work on the International Registry Regulations was accomplished by the Draft Regulations Working Group of the Preparatory Commission.

Les documents thématiques ¹⁷ ont été présentés et discutés à Dublin. Toutefois, il a été décidé de ne les transmettre qu'ultérieurement aux Secrétariats.

A Washington, D.C., en février 2001, le document présenté par le G.T.A. sur les caractéristiques principales du Registre a été examiné. Il s'est avéré soulever de nouvelles questions importantes, comme celle de l'intervention préalable du Conservateur concernant la possibilité d'inscrire des garanties par des parties non habilitées à cet effet ¹⁸, et la possibilité d'utiliser les données et numéros d'immatriculation en vertu de la Convention de Chicago ¹⁹.

Pour ce qui est du Deuxième Rapport du G.S.R.I., le nouveau document d'appel d'offres (incluant désormais le document sur les caractéristiques principales du Registre) consistait en un appel à propositions accompagné de pièces jointes, à savoir le document sur les caractéristiques de base, un cahier des charges, des instructions pour la présentation des propositions et un plan d'évaluation ²⁰.

Troisième Rapport du G.S.R.I.

Le G.S.R.I. s'est réuni pour la dernière fois à Genève ²¹ du 10 au 12 septembre 2001 pour discuter des sujets dont l'étude avait été confiée aux différents membres:

- *Règlement du Registre international (Gouvernements de la Suisse et du Japon)*
Le Règlement du Registre international tel que rédigé à Genève contenait 17 chapitres. Si l'on compare le projet du G.S.R.I. avec le texte finalement adopté en 2005 par la Commission préparatoire ²², on constate que la structure et le contenu sont fort semblables, mais que les changements sont nombreux sur les questions de détail. Par exemple, le processus de demande d'inscription décrit dans le Chapitre 5 du projet de Genève prévoit de livrer des informations minimums, alors que la section 5 du texte final approuvé est très détaillée pour ce qui est des informations requises pour effectuer les différents types d'inscription ²³.
- *Les relations de droit privé entre l'Autorité de Surveillance et le Registre, y compris les aspects liés aux droits de propriété des logiciels et matériels informatiques (Gouvernements de France, d'Irlande et de Singapour et UNIDROIT)*

¹⁷ Cf. *supra* note 14.

¹⁸ Deuxième Rapport, page 5, para. 16.

¹⁹ *Idem*, page 5, para. 19.

²⁰ Il convient de souligner que les documents du G.S.R.I. soumis avec le Deuxième Rapport ont été par la suite modifiés substantiellement par la Commission préparatoire au cours du processus d'appel d'offres, d'évaluation et d'adjudication.

²¹ Avec la participation des Gouvernements des Etats suivants : Brésil, Canada, Finlande, France, Irlande, Japon, Singapour, Suède, Suisse et les U.S.A.; Organisations OACI, UNIDROIT, G.T.A. et la I.A.T.A.

²² Le Règlement est inclus, avec les Règles de procédure, dans le document *Regulations and Procedures for the International Registry*, approuvé par la Commission préparatoire (reproduit dans cette *Revue*, 60).

²³ Le Groupe de travail sur le projet de Règlement de la Commission préparatoire a également participé à la préparation du Règlement du Registre international.

This unification of two papers examined liabilities in setting up and operating the International Registry, proprietary rights, infrastructure-related aspects and dispute resolution.

- *Liability and the International Registry*²⁴ (Governments of Canada and Sweden)
Issues relating to the liability of the Registrar for damage-causing errors and omissions were vigorously discussed. Wording was suggested to revise Article 27 of the Convention so as to include the Registrar's liability and expressly to define a *force majeure* exception. However, consensus was not reached and it was left to Task Force members to express their views about Article 27 at the diplomatic Conference.²⁵
- *Funding / cost recovery methods for the new International Registry* (Government of Finland and A.W.G.)

It was the conclusion of the I.R.T.F. that given the many unknowns, it would be difficult for the I.R.T.F. to quantify the eventual cost of the Registry. The paper, nevertheless, provided valuable insights into mechanisms for the funding and recovery of costs. In its Third Report, the I.R.T.F. urged the continuing study of cost and timing issues related to the International Registry.

Papers on all the above topics were submitted with the Third Report to ICAO and UNIDROIT Secretariats.

CONCLUSION

The I.R.T.F. accomplished work during 2000 and 2001 designed to ensure a fully operational and successful International Registry for aircraft objects.²⁶ With the entry into force of the Protocol on 1 March 2006, it is hoped that this work has provided a strong platform to enable the significant, far-reaching benefits of the Convention to be delivered far into the future.

\$ \$ \$

²⁴ This paper began as a study on the cost of insurance.

²⁵ Third Report of I.R.T.F. (10 October 2001), para 21.

²⁶ As co-chairman, the author acknowledges that the I.R.T.F. was indebted to UNIDROIT and ICAO to whom its Reports were submitted, and to those Governments and Organizations that participated in the work of the I.R.T.F., especially the Governments of France, Ireland and Switzerland for graciously hosting the three formal I.R.T.F. meetings, and the individual participants who contributed so generously, on behalf of their Governments and Organizations, their time and expertise as I.R.T.F. members.

Ce document (rassemblant deux études) examinait les droits, devoirs et responsabilités lors de la mise en place et du fonctionnement du Registre, les droits de propriété, les aspects liés à l'infrastructure et le règlement des différends.

- *Responsabilité du Registre*²⁴ (*Gouvernements du Canada et de la Suède*): Les questions liées à la responsabilité du Conservateur pour le préjudice résultant d'erreurs ou d'omissions ont été amplement débattues. La proposition a été faite de réviser l'article 27 de la Convention de telle sorte à y viser la responsabilité du Conservateur et y inclure expressément une exception de force majeure. Toutefois, en raison du manque de consensus, il a été décidé que les membres du Groupe spécial pourraient exprimer leurs points de vue respectifs sur l'article 27 à la Conférence diplomatique²⁵.
- *Modes de financement et de recouvrement des coûts du Registre* (*Gouvernement de la Finlande et G.T.A.*): Le G.S.R.I. a conclu que compte tenu des nombreuses variables encore inconnues à ce stade, il lui serait difficile de quantifier les coûts de fonctionnement du Registre. Le document a toutefois fourni des informations utiles sur les mécanismes de financement et de recouvrement des coûts. Dans son Troisième Rapport, le G.S.R.I. a recommandé de poursuivre l'étude des coûts et des questions en relation avec le calendrier d'entrée en fonctionnement du Registre.

Tous les documents thématiques susvisés ont été soumis avec le Troisième Rapport aux Secrétariats de l'OACI et d'UNIDROIT.

CONCLUSION

Le G.S.R.I., durant ses réunions de 2000 et 2001, a travaillé à la mise en place d'un Registre international pour les biens aéronautiques destiné à remplir avec succès les fonctions qui lui sont assignées²⁶. On peut espérer avec confiance que les éléments sont désormais réunis pour que, avec l'entrée en vigueur du Protocole le 1^{er} mars 2006, la Convention soit en mesure d'offrir au marché durant les années à venir les avantages importants qui sont attendus.

\$ \$ \$

²⁴ Ce document a eu pour origine une étude sur le coût de l'assurance.

²⁵ Troisième Rapport du G.S.R.I. (10 octobre 2001), para 21.

²⁶ En sa qualité de co-président du G.S.R.I., l'auteur marque la reconnaissance due par le G.S.R.I. envers UNIDROIT et à l'ICAO à qui ses rapports ont été soumis, et envers les Gouvernements et Organisations qui ont participé aux travaux du G.S.R.I., notamment les Gouvernements de France, d'Irlande et de Suisse qui ont accueilli les réunions des trois réunions officielles du G.S.R.I., ainsi que sa gratitude pour les personnes qui, en représentation de leurs Gouvernements et de leurs Organisations, ont apporté leur expertise et leur temps comme membres du G.S.R.I.

The International Registry for Interests in Aircraft : An Overview of its Structure

Ronald C.C. Cuming *

I. – BACKGROUND AND CONTEXT

When the *Convention on International Interests in Mobile Equipment* ("the Convention") and the *Protocol on Matters specific to Aircraft Equipment* ("the Protocol")¹ came into effect as international law,² the International Registry for aircraft objects ("the Registry")³ became operational. The Registry, the first of its kind in history, is a central feature of the priority structure of the Convention and Protocol applicable to seven types of transaction⁴ involving property interests in aircraft

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¹ The texts of the Convention and the Protocol are reproduced on the web page of the International Institute for the Unification of Private Law (UNIDROIT): < <http://www.unidroit.org/english/conventions/mobile-equipment/main.htm> > . The background to the Convention and Protocol has been extensively described and documented. See, e.g., Sir Roy GOODE, *Official Commentary on the Convention on International Interests in Mobile Equipment and the Protocol thereto on Matters specific to Aircraft Equipment*, Rome: International Institute for the Unification of Private Law (UNIDROIT), 2002, and Select bibliography on UNIDROIT's work on international interests in mobile equipment: < <http://www.unidroit.org/english/conventions/mobile-equipment/bibliography/bibliography1-main.htm> > .

² In accordance with Art. 49(1) of the Convention and Art. XXVIII(1) of the Protocol, the Protocol, and the Convention as applied to aircraft objects, entered into force on 1 March 2006. See ICAO Doc. PCIR 2/11/05.

³ Convention, Art. 16.

⁴ A security agreement providing for a charge, a sale with reservation of title, a lease agreement, an assignment of any one of these transactions and a sale without reservation of title. Convention, Arts. 1 (definitions), 2(2) and 41 and Protocol, Art. III. Under Art. 40 of the Convention, a Contracting State can elect to have non-consensual rights or interests, as defined in Art. 1(s), treated as

Le Registre international pour les garanties internationales portant sur des biens aéronautiques : présentation de sa structure

Ronald C.C. Cuming *

I. – HISTORIQUE

Lorsque la *Convention relative aux garanties internationales portant sur des matériels d'équipement mobiles* ("la Convention") et le *Protocole y relatif portant sur les questions spécifiques aux matériels d'équipement aéronautiques* ("le Protocole")¹ ont pris effet comme droit international², le Registre international pour les biens aéronautiques ("le Registre")³ est devenu opérationnel. Le Registre, premier de cette nature dans l'histoire, est un élément central pour le système des priorités de la Convention et du Protocole applicable à sept types de droits réels⁴

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La version française ici reproduite est une traduction (par la rédaction de la publication).

¹ Les textes de la Convention et du Protocole sont reproduits sur le site Internet de l'Institut international pour l'unification du droit privé (UNIDROIT): < <http://www.unidroit.org/french/conventions/mobile-equipment/main.htm> >. Les travaux de préparation de la Convention et du Protocole ont fait l'objet de nombreuses descriptions et études. Voir en particulier Sir Roy GOODE, *Commentaire officiel sur la Convention relative aux garanties internationales portant sur des matériels d'équipement mobiles et Protocole y relatif portant sur les questions spécifiques aux matériels d'équipement aéronautiques*, Rome: Institut international pour l'unification du droit privé (UNIDROIT), 2002, et la bibliographie sélectionnée concernant les travaux d'UNIDROIT en matière de garanties internationales portant sur des matériels d'équipement mobiles < <http://www.unidroit.org/french/conventions/mobile-equipment/bibliography/bibliography1-main.htm> >.

² Conformément à l'art. 49(1) de la Convention et à l'art. XXVIII(1) du Protocole, le Protocole, et la Convention telle qu'elle s'applique aux biens aéronautiques, sont entrés en vigueur le 1^{er} mars 2006. Voir Doc. OACI PCIR 2/11/05.

³ Convention, art. 16.

⁴ Un contrat constitutif de sûreté, un contrat réservant un droit de propriété, un contrat de bail, une cession de droits en vertu desdits contrats et une vente sans réserve de propriété. Convention, arts. 1 (Définitions), 2(2) et 41, et Protocole, art. III. En vertu de l'art. 40 de la Convention, un Etat contractant peut

airframes, aircraft engines and helicopters (cumulatively referred to as “aircraft objects”).⁵ Its role is to provide a functionally efficient and commercially acceptable method for setting the priority rights of competing claimants to property interests in aircraft objects. It is a modern, notice registry with many features patterned on the secured transactions registries of the provinces of Canada and the states of the United States. The design of the system makes it possible to effect registrations and obtain searches quickly⁶ at modest cost,⁷ and to minimize the potential for errors in handling registration data or fraudulent manipulation or corruption of the data. Although its principal data base and centre of operations are located in Dublin, Ireland, the Registry is completely electronic and accessible from any place in the world having connections to the internet.⁸

The Registry is not a title registry. Only in a restricted, negative sense does it address ownership rights in aircraft objects. Under prescribed circumstances, the priority rules of the Convention subject the proprietary rights of a secured creditor, or the ownership of a lessor or title reservation seller of an aircraft object to defeat if a registration relating to the security agreement, lease or sale contract is not effected or is effected after a competing interest created under a transaction

registrable interests subject to the priority rules of the Convention. Under Art. 50 of the Convention, a Contracting State may declare that the Convention shall not apply to an internal transaction in relation to that State. An “internal transaction” as defined in Art. 1(n) is a transaction where the centre of the main interests of all parties is situated and the aircraft object is located in the Contracting State making the declaration at the time of conclusion of the contract and where the interest created by the transaction has been registered in a national registry of that State. See also Protocol, Art. IV(2). However, the priority structure of the Convention, including the associated registration requirements of the Convention, applies to the transactions. Convention, Art. 50(2). A registration relating to an internal transaction is referred to as a “notice of national interest”. Convention, Art. 16(1)(d).

⁵ These terms are defined in Art. I(2) of the Protocol. The term “aircraft engine” is defined as an engine (other than one used in military, customs or police services) powered by jet propulsion or turbine or piston technology and, (i) in the case of jet propulsion aircraft engines, having at least 1750 lb of thrust or its equivalent; and (ii) in the case of turbine-powered or piston-powered aircraft engines, having at least 550 rated take-off shaft horsepower or its equivalent; together with all modules and other installed, incorporated or attached accessories, parts and equipment and all data, manuals and records relating thereto. The term “airframe” is defined as an airframe (other than one used in military, customs or police services) that, when appropriate aircraft engines are installed thereon, is of a type certified by the competent aviation authority to transport (i) at least eight (8) persons including crew; or (ii) goods in excess of 2750 kilograms, together with all installed, incorporated or attached accessories, parts and equipment (other than aircraft engines), and all data, manuals and records relating thereto.

⁶ The only significant delay in effecting a registration is caused by the necessity to identify and approve system users and to obtain the requisite consents under Art. 20 of the Convention. See Procedures, ss. 10, 11 and 12.2.

⁷ The fees payable for Registry services are set out in the Fee Schedule to the Procedures.

⁸ Procedures, s. 7.1-7.3.

portant sur des cellules d'aéronefs, des moteurs d'avions et des hélicoptères (visés globalement comme "biens aéronautiques")⁵. Il vise à fournir un moyen fonctionnellement efficace et commercialement satisfaisant pour déterminer le rang de créanciers concurrents relativement à des droits réels portant sur des biens aéronautiques. Le Registre est fondé sur un système moderne d'inscription, dont beaucoup des caractéristiques s'inspirent des registres pour les opérations garanties des provinces du Canada et des états des Etats-Unis d'Amérique. Le système est conçu de telle sorte qu'il est possible d'effectuer des inscriptions et des recherches rapidement⁶ à un coût modeste⁷, et de réduire les risques d'erreurs susceptibles de se produire lors du traitement des données des inscriptions, ou par suite d'une manipulation dolosive ou de l'altération des données. La base de données centrale et le centre d'opérations sont basés à Dublin (Irlande), mais le Registre est complètement électronique et est accessible depuis tout endroit du monde pourvu qu'il y ait une connexion à l'Internet⁸.

Le Registre n'est pas un registre portant sur la propriété. Ce n'est que d'une façon restrictive, négative, qu'il peut concerner des droits de propriété sur des biens aéronautiques. Dans des circonstances déterminées, les règles de priorité de la Convention prévoient que les droits réels d'un créancier garanti, ou le droit de propriété d'un bailleur ou la réserve de propriété d'un vendeur de bien aéronautique

choisir que des droits ou garanties non conventionnels, tels que définis à l'art. 1(s), seront traités comme des droits susceptibles d'inscription soumis aux règles de priorité de la Convention. En vertu de l'art. 50 de la Convention, un Etat contractant peut déclarer que la Convention ne s'applique pas à une opération interne à l'égard de cet Etat. Une "opération interne" telle que définie à l'art. 1(n) est telle lorsque le centre des intérêts principaux de toutes les parties et le bien aéronautique se trouvent dans l'Etat contractant ayant fait la déclaration au moment de la conclusion du contrat et lorsque la garantie créée par l'opération a été inscrite dans un registre national dans cet Etat. Voir aussi Protocole, art. IV(2). Toutefois, le système de priorités de la Convention, y compris les conditions relatives à l'inscription énoncées par la Convention, s'applique à de telles opérations. Convention, art. 50(2). Une inscription relative à une opération interne est désignée comme "avis de garantie nationale". Convention, art.16(1)(d).

⁵ Ces termes sont définis à l'art. I(2) du Protocole. Les termes "moteurs d'avion" sont définis comme des "moteurs (à l'exception de ceux utilisés par les services militaires, de la douane ou de la police) à réacteurs, à turbines ou à pistons qui : i) dans le cas des moteurs à réacteurs, développent chacun une poussée d'au moins 1 750 livres ou une valeur équivalente ; et ii) dans le cas des moteurs à turbines ou à pistons, développent chacun une poussée nominale sur arbre au décollage d'au moins 550 chevaux-vapeurs ou une valeur équivalente, et s'entend en outre de tous modules et autres accessoires, pièces et équipements qui y sont posés, intégrés ou fixés, ainsi que de tous les manuels, les données et les registres y afférents". Les termes "cellules d'aéronef" désignent "les cellules d'avion (à l'exception de celles utilisées par les services militaires, de la douane ou de la police) qui, lorsqu'elles sont dotées de moteurs d'avion appropriés, sont de modèle certifié par l'autorité aéronautique compétente, comme pouvant transporter : i) au moins huit (8) personnes y compris l'équipage ; ou ii) des biens pesant plus de 2 750 kilogrammes, et s'entend en outre de tous les accessoires, pièces et équipements (à l'exclusion des moteurs d'avion) qui y sont posés, intégrés ou fixés, ainsi que de tous les manuels, les données et les registres y afférents".

⁶ Le seul délai pouvant retarder l'inscription dérive de la nécessité d'identifier et d'approuver les utilisateurs du système et d'obtenir les consentements requis en vertu de l'art. 20 de la Convention. Voir Règles de procédure, ss. 10, 11 et 12.2.

⁷ Les redevances payables pour les services du Registre sont établies dans le barème tarifaire joint aux Règles de procédure.

⁸ Règles de procédure, s. 7.1-7.3.

with the debtor, lessee or buyer has been acquired and registered in the aircraft object.⁹ Similarly, the ownership rights of a buyer of an aircraft object can be defeated unless a registration disclosing those rights is effected. However, registration does not entail any legal guarantee or presumption that the lessor, seller or buyer is the owner of the aircraft object identified in the registration. Ownership in this context remains a matter to be determined under the applicable law.

The Registry is the only relevant registry for registrable interests in aircraft objects when competing interests in those interests arise. While there is nothing in the Convention or Protocol to prevent a Contracting State from providing under its domestic law for the registration of these interests in a national registry, the only way a holder of such an interest can protect it from defeat under the priority rules of the Convention and Protocol is to effect a registration relating to that interest in the Registry.

A significant feature of the registration system of the Registry and the associated priority rules of the Convention is the separate treatment of airframes and engines. In this respect, the approach of the Convention differs from the provisions of the *Convention on International Civil Aviation, 1944* ("the Chicago Convention") dealing with nationality registration that do not distinguish between airframes and engines. Where a single transaction providing for or effecting a registrable interest in an airframe and attached engines is involved, it is necessary to effect separate registrations relating to the airframe and each of the engines.

The legal structure providing for the creation and operation of the Registry is contained in four documents: the Convention, the Protocol, the Regulations and the Procedures.¹⁰ While these sources are co-ordinated, they lack systematic organization and contain a certain amount of replication. As a result, a particular feature of the system may be addressed in two or more provisions. This is primarily a product of the structure of the Convention as a base law designed to facilitate international registries for interests in at least three different types of property governed by separate protocols and regulations.¹¹ A contributing factor was the

⁹ Art. 29(1) of the Convention provides that a registered interest has priority over any other interest subsequently registered and over an unregistered interest. Art. 29(3) provides that a buyer of an object acquires its interest subject to a prior registered interest and free from a prior unregistered interest. The same approach is applied to sales of aircraft objects by Art. 41 of the Convention and Arts III and XIV of the Protocol.

¹⁰ The Regulations and Procedures for the International Registry are contained in ICAO Document 9864. See the text thereof reproduced in this issue of *Unif. L. Rev. / Rev. dr. unif.*, 60.

¹¹ Convention, Art. 2(3).

seront sans effet à l'égard des tiers si l'inscription se rapportant au contrat constitutif de sûreté, au contrat de bail ou au contrat de vente n'est pas effectuée, ou est effectuée après qu'un droit concurrent sur le bien aéronautique créé en vertu d'une opération avec un débiteur, un preneur ou un acheteur ait été constitué et inscrit⁹. De la sorte, le droit de propriété d'un acheteur d'un bien aéronautique peut se voir privé d'effet à moins qu'il fasse l'objet d'une inscription. Cependant, une inscription ne fournit aucune garantie juridique ou présomption que le bailleur, le vendeur ou l'acheteur est le propriétaire du bien aéronautique identifié dans l'inscription. La propriété dans ce contexte reste une question relevant du droit applicable.

Le Registre est le seul registre pertinent pour les garanties portant sur des biens aéronautiques qui sont soumises à l'inscription lorsque surgissent des droits concurrents. Si rien dans la Convention ou dans le Protocole n'empêche un Etat contractant de prévoir dans sa législation nationale que de telles garanties doivent être inscrites dans un registre national, la seule façon dont le détenteur d'un tel droit peut s'assurer qu'elle ne sera pas privée d'effet en vertu des règles de priorité de la Convention et du Protocole, est d'effectuer une inscription correspondant à cette garantie dans le Registre.

Une caractéristique importante du système d'inscription du Registre et des règles de priorités de la Convention qui lui sont attachées est le régime distinct qui s'applique aux cellules d'aéronefs et aux moteurs. A cet égard, l'approche de la Convention s'écarte de celle de la *Convention de 1944 relative à l'aviation civile internationale* ("la Convention de Chicago"), dont les dispositions envisagent l'inscription de la nationalité sans distinguer les cellules et les moteurs d'avion. En présence d'une opération créant ou prévoyant des garanties soumises à inscription portant sur une cellule d'aéronef et sur les moteurs qui y sont posés, il faudra procéder à des inscriptions distinctes pour la cellule et pour chacun des moteurs.

Le cadre juridique pour la création et le fonctionnement du Registre est fourni par quatre documents : la Convention, le Protocole, le Règlement et les Règles de procédure¹⁰. Ces sources sont certes articulées, mais pas de façon systématique et elles sont à de maints égards répétitives, de sorte qu'une même question pourra être réglée dans deux ou plusieurs dispositions. Cela tient essentiellement à la structure de la Convention qui fournit une réglementation de base prévoyant l'inscription de garanties portant sur au moins trois différentes catégories de biens régis par différents Protocoles et règlements¹¹,

⁹ L'art. 29(1) de la Convention dispose qu'une garantie inscrite prime toute autre garantie inscrite postérieurement et toute garantie non inscrite. L'art. 29(3) dispose que l'acheteur acquiert des droits sur le bien sous réserve de toute garantie inscrite au moment de l'acquisition de ces droits et libres de toute garantie non inscrite. La même solution est appliquée aux ventes de biens aéronautiques par l'art. 41 de la Convention et les arts. III et XIV du Protocole.

¹⁰ Les *Regulations and Procedures for the International Registry* sont contenus dans le Document de l'OACI 9864, et sont reproduits dans ce volume de la *Unif. L. Rev. / Rev. dr. unif.*, 60. *NDLR* : Ces textes ont été approuvés par la Commission préparatoire en anglais seulement. Les traductions en français des dispositions du Règlement et des Règles de procédure pour le Registre international qui apparaissent dans le présent article n'ont pas de valeur officielle. Les initiales s. et ss. visent les dispositions (sections).

¹¹ Convention, art. 2(3).

logistical complexities associated with developing detailed international legislation and delegated legislation.

Article 26 of the Convention guarantees universal access to the Registry. Anyone who complies with the procedural requirements of the Convention, Regulations and Procedures may access the Registry. This facility is not limited to nationals of Contracting States. However, while there is no requirement that the secured creditor, lessor, seller under a title reservation agreement or buyer be located in a Contracting State, it is not possible to effect a registration relating to an interest under a transaction involving a debtor, lessee, buyer under a title reservation agreement or seller who was not situated in a Contracting State at the time of the conclusion of the agreement creating or providing for an international interest¹² unless the aircraft object in the form of an airframe or a helicopter is registered in a Contracting State pursuant to the Chicago Convention.¹³ Furthermore, it is not possible to access the Registry directly for registration purposes with respect to an interest in an airframe or helicopter that is registered as to nationality in a Contracting State that has designated a mandatory entry point.¹⁴ The registration must be effected through that entry point.

II. – THE CONSTITUTIONAL AND STRUCTURAL FEATURES OF THE REGISTRY

1. The Supervisory Authority

The constitutional elements and operational structure of the Registry and the administrative responsibility for its operation are specified in considerable detail in the Convention and the Protocol.¹⁵

The Registry is established and supervised by the Supervisory Authority.¹⁶ In accordance with Resolution No. 2 of the Final Act of the Cape Town Diplomatic Conference and the decision of the Council of the International Civil Aviation Organization (ICAO), the Council agreed to assume the functions of Supervisory Authority upon the entry into force of the Protocol. As part of its plenary obligation to “do all things necessary to ensure that an efficient notice-based electronic registration system exists to implement the objectives of” the Convention and Protocol,¹⁷ the Supervisory Authority has the legal responsibility to appoint and supervise the Registrar and to prepare and publish regulations relating to the operation of the Registry. Pursuant to Resolution No. 2 of the Final Act, these functions were delegated by the Diplomatic Conference to a Preparatory

¹² Convention, Arts. 3(1) and 4.

¹³ Protocol, Art. IV(1).

¹⁴ For a detailed exposition of this feature, see heading II. 6 *infra*.

¹⁵ Convention, Arts. 16-28; Protocol, Arts. XVII-XX.

¹⁶ Convention, Art. 17.

¹⁷ Convention, Art. 17(2)(i).

un facteur additionnel étant les complexités techniques liées à l'élaboration d'une législation internationale détaillée et à une réglementation dérivée de celle-ci.

L'article 26 de la Convention garantit l'accès universel au Registre. Toute personne se conformant aux procédures prévues par la Convention, le Règlement et les Règles de procédure peut accéder au Registre. Cette possibilité n'est pas limitée aux ressortissants d'Etats contractants. Toutefois, s'il n'est pas requis que le créancier garanti, le bailleur, le vendeur ayant un droit de réserve de propriété sur le bien ou l'acheteur soient situés dans un Etat contractant, il n'est pas possible d'effectuer une inscription d'un droit dérivant d'une opération mettant en présence un débiteur, un preneur, un acheteur dans une vente assortie d'une réserve de propriété ou un vendeur qui n'étaient pas situés dans un Etat contractant au moment de la conclusion du contrat créant ou prévoyant la garantie internationale¹², à moins que le bien aéronautique – une cellule d'aéronef ou un hélicoptère – soit immatriculé dans un Etat contractant en vertu de la Convention de Chicago¹³. En outre, il n'est pas possible d'accéder au Registre directement pour effectuer l'inscription d'une garantie portant sur une cellule d'aéronef ou un hélicoptère immatriculés aux fins de la nationalité dans un Etat contractant qui a désigné un point d'entrée obligatoire¹⁴. L'inscription doit être effectuée à travers ce point d'entrée.

II. – CARACTERISTIQUES ET STRUCTURE DU REGISTRE

1. L'Autorité de surveillance

Les caractéristiques du Registre et sa structure opérationnelle, ainsi que la responsabilité administrative de son fonctionnement sont réglementées de façon très détaillée dans la Convention et le Protocole¹⁵.

Le Registre est établi et surveillé par l'Autorité de surveillance¹⁶. Conformément à la Résolution n° 2 de l'Acte final de la Conférence diplomatique du Cap et à la décision du Conseil de l'Organisation de l'aviation civile internationale (OACI), le Conseil a accepté d'assumer les fonctions d'Autorité de surveillance à compter de l'entrée en vigueur du Protocole. Corollairement à son obligation générale de "faire le nécessaire pour assurer l'existence d'un système électronique déclaratif d'inscription efficace, pour la réalisation des objectifs" de la Convention et du Protocole¹⁷, l'Autorité de surveillance est chargée de nommer et surveiller le Conservateur, et de préparer et publier le Règlement pour le fonctionnement du Registre. Conformément à la Résolution n° 2 de l'Acte final, ces fonctions ont été déléguées par la Conférence diplomatique à une Commission préparatoire, agissant sous la direction et la supervision du Conseil de l'OACI, avec tous les pouvoirs nécessaires pour faire fonction d'Autorité

¹² Convention, arts. 3(1) et 4.

¹³ Protocole, art. IV(1).

¹⁴ Pour une présentation détaillée de cette question, voir le titre II. 6 *infra*.

¹⁵ Convention, arts. 16-28 ; Protocole, arts. XVII-XX.

¹⁶ Convention, art. 17.

¹⁷ Convention, art. 17(2)(i).

Commission, acting under the guidance and supervision of the ICAO Council, with full authority as the Provisional Supervisory Authority to establish the Registry. This entailed creating the Regulations and Procedures and contracting with an entity that assumes the function of the Registrar. The Preparatory Commission became *functus* and full responsibility for the Registry was assumed by the ICAO Council when the Convention and the Protocol (and, therefore, the Convention as applied to aircraft objects) came into force.¹⁸

The Registrar is an entity separate from the Supervisory Authority that carries out, under a term contract with the Supervisory Authority,¹⁹ the functions required of the registrar by the Convention and Protocol. The Registrar for the first five years of operation of the International Registry is AVIARETO Ltd.²⁰ located at Dublin, Ireland.

2. A notice registration system

Article 17(2)(i) of the Convention dictates that, structurally, the Registry must provide for “notice registration”, not contractual document registration. Registration of an interest or prospective interest in an aircraft object is effected by transmitting to the Registry basic, limited information about a transaction or prospective transaction.²¹ A registration does not involve public disclosure of the contract between the parties involved. It is a public record of the existence or potential existence of an interest of the kind addressed in the Convention and Protocol in a specified aircraft object and of the identity of the principal parties involved in the transaction.

This feature of the Registry system reflects the conclusion that there is no commercial need to include extensive details of the agreement or relationship between the parties. In the few circumstances in which these details are relevant, they can be obtained from the secured party, lessor or seller directly or through the debtor, lessee or buyer.²² In the great bulk of cases, the functions of the Registry are fully

¹⁸ For a presentation of the work of the International Registry Task Force in the process of establishment of the Registry, see Joseph R. STANDELL, “The Role of the International Registry Task Force (I.R.T.F.) in the Development of the International Registry for Interests in Aircraft”, reproduced in this issue of *Unif. L. Rev. / Rev. dr. unif.*, 8.

¹⁹ Convention, Arts. 17(3) and 17(5); Protocol, Art. XVII(5).

²⁰ AVIARETO is a joint venture between SITA SC, a global communication services integrator, and the Irish Government.

²¹ In the case of a registrable non-consensual interest, it is a notice of the lien or charge affecting the identified aircraft object.

²² Rarely will a subsequent security interest be taken in aircraft objects without agreement on the part of the secured creditor to subordinate any future enhanced interest it may acquire in the equipment. As a result of Art. 29(2)(b) of the Convention, advances made by a secured creditor to a debtor at any time during the currency of the security agreement have the priority position established by the registration relating to the security interest. Consequently, a third party’s interest in an aircraft object is automatically diminished to the extent that such advances are made unless the secured creditor has agreed to subordinate its interest created by these advances to the interest of the person in whose favour the subordination is given.

provisoire de surveillance pour l'établissement du Registre. Cela a entraîné la préparation du Règlement et des Règles de procédures, et la passation d'un marché avec une entité qui exerce les fonctions de Conservateur. Dès l'entrée en vigueur de la Convention et du Protocole (et donc de la Convention telle qu'elle s'applique aux biens aéronautiques), la Commission préparatoire a été dissoute et la responsabilité sur le Registre a été assumée par le Conseil de l'OACI¹⁸.

Le Conservateur est une entité distincte de l'Autorité de surveillance, qui exécute, en vertu d'un contrat à durée déterminée avec l'Autorité de surveillance¹⁹, les fonctions prescrites par la Convention et le Protocole. Le Conservateur, pour les cinq premières années de fonctionnement du Registre international est AVIARETO Ltd²⁰ qui est situé à Dublin, Irlande.

2. Un système d'inscription déclaratif

L'article 17(2)(i) de la Convention prévoit que, structurellement, le Registre repose sur "un système déclaratif d'inscription" et non sur l'enregistrement du document contractuel. L'inscription d'une garantie ou d'une garantie future portant sur un bien aéronautique s'effectue en transmettant au Registre des informations essentielles, limitées, concernant l'opération ou l'opération future correspondante²¹. Une inscription n'implique pas de divulguer le contrat entre les parties concernées ; elle consiste en une information rendue publique de l'existence d'une garantie, ou de l'existence potentielle d'une garantie relevant de la Convention et du Protocole, portant sur un bien aéronautique déterminé et de l'identité des principales parties concernées par l'opération.

Cette caractéristique du système d'inscription tient à la considération qu'il n'est pas commercialement nécessaire d'inclure des quantités de détails concernant le contrat ou la relation entre les parties. Pour les quelques cas où de telles précisions seraient pertinentes, elles pourront être demandées au créancier garanti, au bailleur ou au vendeur directement ou par l'intermédiaire du débiteur, du preneur ou de l'acheteur²².

¹⁸ Pour une présentation du travail du Groupe spécial sur le Registre international dans le processus, voir Joseph R. STANDELL, "Le rôle du Groupe spécial sur le Registre international (G.T.R.I.) dans la mise en place du Registre pour les garanties internationales portant sur des biens aéronautiques" publié dans ce volume de la *Unif. L. Rev. / Rev. dr. unif.*, 8.

¹⁹ Convention, arts. 17(3) et 17(5) ; Protocole, art. XVII(5).

²⁰ AVIARETO est une co-entreprise entre SITA SC, fournisseur à l'échelle internationale de services intégrés de communication, et le Gouvernement irlandais.

²¹ En cas de garantie non conventionnelle susceptible d'inscription, il s'agira d'un avis concernant le droit ou la sûreté grevant le bien aéronautique concerné.

²² Il est rare qu'une sûreté soit constituée par la suite sur un bien aéronautique sans l'accord du créancier garanti de subordonner le droit qu'il pourra acquérir ultérieurement sur le matériel. En vertu de l'art. 29(2)(b) de la Convention, les avances de fonds que le titulaire de la garantie accorde au débiteur durant la durée du contrat constitutif de sûreté jouissent du rang prioritaire conféré par l'inscription se rapportant à la garantie. En conséquence, le droit d'un tiers sur un bien aéronautique est automatiquement diminué dans la proportion des avances faites, à moins que le créancier garanti n'ait accepté de subordonner son droit découlant des avances effectuées au droit de la personne en faveur de laquelle la subordination est accordée.

served by providing public notice of the existence or potential existence of registrable interests affecting aircraft objects. A person who discovers this fact through a search of the Registry will be able to take the steps necessary to remove the legal risk associated with being subordinate to an existing or potential interest in the aircraft object. That person will refuse to deal further with the person identified in the registration as debtor, lessee or buyer, require a discharge of the registration (in cases where the registration does not support an extant international interest) or go directly to the secured creditor, seller or lessor and offer to buy out or obtain a contractual subordination of its interest.

A notice registration system requiring that only very minimal information be included in a registration offers important benefits. It precludes public disclosure of confidential details of business relations between the secured party, lessor, or seller, and the debtor, lessee or buyer. Furthermore, there is a direct relationship between the amount of data that must be included in the registration and the incidence of error on the part of registrants in assembling and transmitting that data to the Registry.

In a functional sense, the role of the registration is to “give notice” of the interest or potential interest. In a technical sense, this is not the case. While registration provides the facility through which a third party can acquire information as to the existence or potential existence of the registered interest, the priority of the registered interest is not dependent upon the state of knowledge of the third party. The function of registration is to set the priority of the interest of a secured creditor, lessor, seller or buyer. Priority or lack of it does not depend upon the state of knowledge of the holder of a competing interest.²³

3. Registrations relating to existing and potential interests

Article 16 of the Convention and Article III of the Protocol prescribe the types of interests or potential interests in aircraft objects with respect to which registrations in the Registry can be effected.²⁴ In addition, it is possible to effect a registration relating to international interests acquired through legal or contractual subrogation and agreements providing for the subordination of any registrable interest.

A feature that on first impression appears anomalous, but one that is of important practical significance, is the facility to effect a registration relating to a transaction that has not been entered into or an interest that has not come into existence at the date of the registration. Article 16 permits registrations of prospective international interests and prospective assignments of international interests.²⁵ The Protocol extends this concept to prospective sales.²⁶ The practical and legal importance of this facility is

²³ Convention, Art. 29.

²⁴ See *supra*, note 4.

²⁵ These are defined terms. See Convention, Arts. 1(o), 1(x) and 1(y).

²⁶ Protocol, Art. III.

Dans la grande majorité des cas, les fonctions du Registre seront pleinement remplies par la publicité de l'existence ou de l'existence potentielle des garanties soumises à inscription portant sur des biens aéronautiques. Une personne qui prend connaissance d'une telle garantie en procédant à une consultation du Registre pourra prendre les mesures nécessaires afin que son droit ne risque pas d'être subordonné à une garantie existante ou future sur le bien aéronautique. Cette personne pourra refuser de traiter avec la personne identifiée dans l'inscription comme débiteur, preneur ou acheteur, ou bien pourra demander la mainlevée de l'inscription (lorsque celle-ci ne correspond pas à une garantie internationale existante) ou s'adresser directement au créancier garanti, au vendeur ou au bailleur pour lui proposer – le cas échéant contre paiement – une subordination contractuelle de sa garantie.

Un système déclaratif d'inscription qui requiert de ne fournir que des informations très limitées offre de nombreux avantages. Il évite que soient rendus publics des aspects confidentiels de la relation d'affaires entre le créancier garanti, le bailleur ou vendeur d'une part, et le débiteur, preneur ou acheteur d'autre part. En outre, il existe un rapport direct entre la quantité d'informations requises pour l'inscription et le risque d'erreurs lors de la collecte des informations et de la transmission de celles-ci au Registre.

Sur le plan fonctionnel, le rôle de l'inscription est de "donner publicité" de la garantie ou de la garantie future. Sur le plan technique, cela n'est pas le cas. Tandis que l'inscription est le moyen pour le tiers d'obtenir une information concernant l'existence ou l'existence future d'une garantie inscrite, le rang de la garantie inscrite ne dépend pas de la connaissance qu'en a le tiers. La fonction de l'inscription est d'établir la priorité du créancier garanti, du bailleur, du vendeur ou de l'acheteur. La priorité de rang ou le défaut de priorité ne dépend pas du niveau de connaissance du détenteur d'un droit concurrent ²³.

3. Inscriptions de garanties existantes et de garanties futures

L'article 16 de la Convention et l'article III du Protocole prévoient les types de garanties ou de garanties futures portant sur des biens aéronautiques, qui peuvent faire l'objet d'inscriptions dans le Registre ²⁴. En outre, il est possible d'effectuer des inscriptions de garanties internationales constituées par voie de subrogation légale ou conventionnelle, ou en vertu d'accords de subordination de tout droit susceptible d'inscription.

Un aspect qui peut paraître insolite à première vue, mais qui a une importance pratique particulière, est la possibilité d'effectuer une inscription se rapportant à une opération qui n'a pas été conclue, ou à un droit qui n'est pas encore constitué, à la date de l'inscription. L'article 16 de la Convention permet l'inscription de garanties internationales futures et de sessions futures de garanties internationales ²⁵. Le Protocole étend cette possibilité aux ventes futures ²⁶. L'importance pratique et

²³ Convention, art. 29.

²⁴ Voir *supra*, note 4.

²⁵ Ce sont des termes définis. Voir Convention, arts. 1(o), 1(x) et 1(y).

²⁶ Protocole, art. III.

that such a registration establishes a priority position for the interest to which it relates. As a result of Articles 19(4) and 29 of the Convention, priority is not determined on the basis of the date of execution of the contract providing for an international interest or the date when the interest is created, but on the basis of the date when a registration relating to it was effected. The result is that an interest to which a registration relates has priority over a prior, but later registered interest in the same aircraft object. Persons who are engaged in negotiations for a contract involving an international interest in a particular aircraft object may effect a registration as soon as the negotiations begin so as to establish the priority of the international interest should the negotiations be successful.

Article 41 of the Convention and Articles III and XIV of the Protocol prescribe the same approach to prospective sales²⁷ of aircraft objects under contracts that do not provide for retention of title. Consequently, a prospective buyer of an aircraft object who effects a registration relating to a potential sale contract then being negotiated and who later enters into a contract with the seller, is given priority over a person who acquired and registered a property interest in the object under a contract entered into between the date of the registration and the date the sale contract comes into existence.

4. The registration-search criterion

As noted above, the Registry is a notice registry system. Only very minimal information is required or permitted in order to effect a registration. One item of information that must be provided by a registrant is the appropriate registration-search criterion. This comprises the data that are used as key for archiving and retrieving the file containing a registration; it is the criterion under which the registration data are stored in the data base of the Registry and the criterion through which data are recovered through a Registry search. Accordingly, the criterion used to search the data base is identical to the criterion used to in-put and store the registration data.

Articles 19(2) and 19(6) of the Convention incorporate this principle. Together they provide that in order for a registration to be "valid",²⁸ the registration criterion entered in the Registry data base to effect the registration must include the search criterion that permits the registration to be searchable.²⁹ Article 18(1) provides that the registration-search criteria are to be set by the Protocol and Regulations. Section 7.2 of the Regulations refer to three "criteria" specified in Article XX(1) of the Protocol as those required for a "priority search"³⁰ and, by implication, a registration. To the

²⁷ This is a defined term. See Convention, Art. 1(z).

²⁸ More accurately, for a registration to occur.

²⁹ Section 5 of the Regulations requires information in addition to the registration criterion. However, these data do not play a role in the storage and retrieval system of the Registry.

³⁰ Sections 7.3 and 7.5 of the Regulations provide for two other types of search: an informational search and a Contracting State search. However, the issue of validity of a registration does not arise in the context of the information retrieved by these searches.

juridique de cette faculté est qu'une telle inscription établit un rang prioritaire pour la garantie à laquelle elle se rapporte. Conformément aux articles 19(4) et 29 de la Convention, la priorité n'est pas déterminée par la date de conclusion du contrat prévoyant la garantie internationale ou par la date de création de la garantie, mais selon la date à laquelle l'inscription correspondante a été effectuée. En conséquence, une garantie à laquelle l'inscription se rapporte a priorité sur un droit antérieur, mais inscrit ultérieurement, portant sur le même bien aéronautique. Les personnes qui se trouvent dans la phase de négociation d'un contrat comportant une garantie internationale sur un bien aéronautique donné peuvent effectuer l'inscription dès le commencement des négociations de façon à assurer la priorité de la garantie internationale au cas où les négociations arriveraient à bonne fin.

L'article 41 de la Convention et les articles III et XIV du Protocole adoptent la même solution pour les ventes futures²⁷ de biens aéronautiques en vertu de contrats qui ne prévoient pas de réserve de propriété. En conséquence, un acheteur potentiel d'un bien aéronautique qui effectue une inscription se rapportant à un contrat de vente future alors en cours de négociation, et qui conclut ensuite le contrat avec le vendeur, obtient un rang supérieur à celui d'une personne qui a acquis et inscrit un droit réel sur le bien en vertu d'un contrat conclu entre la date de l'inscription et la date où le contrat de vente est formé.

4. Le critère pour l'inscription et la consultation

Comme on l'a observé, le Registre est un système d'inscription déclaratif. Seules des informations minimums sont nécessaires ou prévues aux fins de l'inscription. Les informations requises de la personne qui effectue l'inscription découlent du critère qu'elles puissent être consultées. Seront donc concernées les données clés utilisées tant pour l'archivage que pour la recherche du fichier contenant l'inscription. Les critères déterminant les données à introduire dans la base de données du Registre aux fins de l'inscription seront donc les mêmes que ceux déterminant les données à obtenir en effectuant une consultation du Registre.

Les articles 19(2) et 19(6) de la Convention énoncent ce principe. Ils prévoient que pour qu'une inscription soit "valable"²⁸, les informations introduites dans la base de données du Registre pour effectuer l'inscription doivent permettre à l'inscription d'être consultée²⁹. L'article 18(1) prévoit que les conditions pour effectuer l'inscription et la consultation sont déterminées par le Protocole et par le Règlement. La section 7.2 du Règlement se réfère aux trois "critères" visés à l'article XX(1) du Protocole comme étant ceux qui sont exigés pour une "consultation de priorité"³⁰ et

²⁷ C'est un terme défini. Voir Convention, art. 1(z).

²⁸ Plus précisément, pour qu'il y ait effectivement une inscription.

²⁹ La s. 5 du Règlement requiert des informations supplémentaires aux critères de l'inscription. Toutefois ces données n'ont aucun rôle pour le système de stockage et de recherche dans le Registre.

³⁰ Les ss. 7.3 et 7.5 du Règlement prévoient deux autres types de consultations : la consultation à fins d'information, et la consultation par un Etat contractant. Toutefois, la question de la validité de l'inscription ne se pose pas au regard des informations obtenues par de telles consultations.

extent that this can be read as referring to three separate registration-search criteria, the section is misleading. There is only one registration-search criterion having three components.³¹ The three components specified in the Protocol are the name of the aircraft object manufacturer, the manufacturer's serial number and the model designation.³²

5. Consent to effect or amend a registration

Article 20(1) of the Convention requires that both parties to a transaction or potential transaction to which a registration relates must consent to the registration or any amendment of a registration or extension of its period of effectiveness.³³ Without the requisite consent, data that in every other respect comply with the Convention, Protocol and Regulations transmitted to and accepted by the Registry cannot give rise to a registration.³⁴ However, while provision for obtaining consent (to be given in electronic form) is made in the Regulations and Procedures,³⁵ the Registrar is not under a duty to ensure that consent has in fact been given by the appropriate person.³⁶ Consequently, it is possible that what appears from a search of the Registry to be a registration has no legal significance since the requirements of Article 20 have

³¹ The Protocol provides for "such supplementary information" as "specified in the regulations." However, any such information cannot be an aspect of the registration-search criterion.

³² Section 5.1 of the Regulations and s. 12.1 of the Procedures contemplate a system under which the registrant is given a computerized drop-down list of all aircraft objects from which the appropriate elements of the registration criterion can be selected when effecting a registration. Although there is no requirement that such lists be provided by the Registrar, the author has been informed by Registry officials that all the major aircraft object manufacturing companies have provided the Registrar with the model designations and serial numbers of the objects they have manufactured. These will be set out on the drop-down lists available to users of the system.

³³ No consent is required where the registration being effected relates to a subordination and the registrant is the person giving the subordination, where it relates to the acquisition of an international interest by subrogation and the registrant is the subrogee, or where it relates to a non-consensual right or interest or internal transaction interest and the registrant is the holder of the interest. Convention, Art. 20. Pursuant to section 5.8 of the Regulations, there is no requirement for consent of a debtor, assignor, seller or person subordinating a right or interest to effect a registration of a pre-existing right or interest required as a result of a declaration under Article 60(3) of the Convention.

³⁴ The Convention uses the term "valid registration". However, technically, there is no such thing as an "invalid registration".

³⁵ Convention, Art. 18(1)(a), Regulations ss. 5.3(f), 5.4(b), 5.5(b), 5.6(b), 5.7(b), 5.9(b) and 5.11 and Procedures ss. 2(e), 12.2-12.3. When registration data are transmitted to the Registry (to effect, amend or discharge a registration) each party identified in the data whose consent is required, is electronically requested by the Registry to consent. The data are not entered into the data base until the requisite consents are obtained. Failure on the part of any person to give a required consent within 36 hours of the request being communicated results in the process being aborted. Procedures s. 12.2.

³⁶ Convention, Art. 18(2).

par voie de conséquence, pour une inscription. Dans la mesure où ils peuvent être compris comme se référant à trois critères distincts d'inscription et de consultation, cette disposition prête à confusion. Il n'existe en réalité qu'un seul critère pour l'inscription et la consultation, formé lui-même de trois éléments³¹. Les trois éléments visés dans le Protocole sont le nom du constructeur, le numéro de série du constructeur et la désignation du modèle³².

5. Consentement pour effectuer ou modifier une inscription

L'article 20(1) de la Convention exige que les deux parties à l'opération ou l'opération future à laquelle se rapporte l'inscription consentent à l'inscription ou à toute modification la concernant ou à toute prorogation de sa durée³³. À défaut du consentement requis, des informations même conformes à la Convention, au Protocole et au Règlement, qui auraient été transmises au Registre et auraient été acceptées par lui, n'auraient pas valeur d'inscription³⁴. Cependant, si le Règlement et les Règles de procédure prévoient que le consentement doit être donné (sous forme électronique)³⁵, le Conservateur n'est pas tenu de s'assurer que le consentement a été effectivement donné par la bonne personne³⁶. En conséquence, il serait possible qu'une inscription obtenue par suite d'une consultation du Registre soit dépourvue de valeur juridique si les conditions de l'article 20 n'ont été que

³¹ Le Protocole se réfère à des "renseignements supplémentaires" ... "fixés par le règlement". Cependant de tels renseignements ne peuvent en aucun cas déterminer le critère pour l'inscription et la consultation.

³² La s. 5.1 du Règlement et la s. 12.1 des Règles de procédure envisagent un système selon lequel la personne procédant à l'inscription a accès à une liste déroulante de tous les biens aéronautiques, où sont sélectionnées les données pertinentes au regard des critères d'inscription. Il n'est pas prévu en principe que le Conservateur établisse ces listes, mais l'auteur a été informé par le personnel du Registre que les principaux constructeurs de biens aéronautiques ont fourni au Conservateur les désignations des modèles et les numéros de série des biens qu'ils ont produits. Ces données seront insérées dans les listes déroulantes mises à la disposition des utilisateurs du système.

³³ Aucun consentement n'est exigé lorsque l'inscription se rapporte à une subordination et que la personne qui procède à l'inscription est celle qui accorde la subordination, lorsqu'elle se rapporte à l'acquisition d'une garantie internationale par l'effet d'une subrogation et que l'auteur de l'inscription est le subrogé, ou lorsqu'elle se rapporte à un droit ou à une garantie non conventionnel, ou à un droit créé par une opération interne et que l'auteur de l'inscription est le titulaire de ce droit. Convention, art. 20. En vertu de la s. 5.8 du Règlement, il n'est pas requis d'un débiteur, d'un cédant, d'un vendeur ou d'une personne ayant fait une subordination de droit ou de garantie, qu'ils fournissent leur consentement à une inscription d'un droit ou garantie préexistant requis en vertu d'une déclaration conformément à l'art. 60(3) de la Convention.

³⁴ La Convention parle d'une inscription "valable". Cependant, techniquement, il n'existe pas d'inscription "non valable" ou "nulle".

³⁵ Convention, art. 18(1)(a). Règlement, ss. 5.3(f), 5.4(b), 5.5(b), 5.6(b), 5.7(b), 5.9(b) et 5.11, et Règles de procédure ss. 2(e), 12.2-12.3. Lorsque les informations relatives à l'inscription sont transmises au Registre (pour effectuer, modifier ou donner mainlevée d'une inscription), chaque partie désignée dans ces informations dont le consentement est requis, est sollicitée électroniquement pour donner son consentement. Les informations ne sont pas introduites dans la base de données aussi longtemps que les consentements requis n'ont pas été obtenus. Le défaut de communication du consentement dans les 36 heures de la demande a pour effet d'interrompre le processus. Règles de procédure s. 12.2.

³⁶ Convention, art. 18(2).

only apparently been met,³⁷ although it is important to remember that the Registry has been designed in such a way as to reduce the probability of such cases occurring.

6. Entry points (transmission entities)

Article 18(5) of the Convention contemplates provisions in the Protocol under which a Contracting State may designate an entity or entities in its territory as the entry point or entry points through which registration data shall or may be transmitted to the Registry.³⁸ Pursuant to Section 12.6 of the Regulations, a registration may not be effected other than through the appropriate designated mandatory entry point (entity).³⁹ The Contracting State making a designation may specify the requirements to be satisfied before the data are transmitted to the Registry.⁴⁰

Article XIX(2) of the Protocol and Section 12.2 of the Regulations preclude mandatory use of an entry point (entity) with respect to registrations relating to registrable interests in aircraft engines. The basis for the distinction between registrations relating to airframes and helicopters and those relating to engines alone is historic. Under Chapter III of the Chicago Convention, all aircraft must have nationality and every Contracting State must provide a record of each of its non-military aircraft. Almost all States currently have a recording office operated by a civil aviation authority at which aircraft and helicopters are registered as to nationality. States that are party to the *Geneva Convention on the International Recognition of Rights in Aircraft, 1948* use these offices as registries for interests recognized by that Convention. These existing facilities can be designated under the Protocol as exclusive or non-exclusive transmitters of registration data. However, the Chicago Convention does not distinguish between airframes and engines. It uses the term "aircraft" to refer to a single unit which may or may not have engines. Consequently, there is no need for separate registration of ownership or nationality

³⁷ This is likely to be a very minor issue given the measures taken by the Registrar to identify the persons from whom consent is required. See Procedures ss. 12.2-12.3.

³⁸ See also Regulations s. 12. This section provides for "authorizing entry point[s]" and "direct entry point[s]". An authorizing entry point is one that authorizes transmission of registration data to the Registry while a direct entry point transmits the data on behalf of the registrant. See also Procedures s. 8.

³⁹ Section 12.5 of the Regulations requires the Registrar to provide an electric warning against attempts to effect a registration other than through a mandatory entry point or other than in accordance with procedures required by an authorizing entry point. The nature and extent of the warning is to be "agreed between the International Registry and the Contracting State declaring that entry point." See also Procedures s. 8.

⁴⁰ Pursuant to Art. XIX(1) of the Protocol, a designation of an entry point (transmission entity) does not apply to registrations of notices of national interests or registrable non-consensual rights or interests arising under the laws of another State.

formellement remplies³⁷. Il faut cependant souligner que le Registre a été conçu de telle sorte à limiter le risque que de telles situations se produisent.

6. Points d'entrée (organismes de transmission)

L'article 18(5) de la Convention se réfère à des dispositions du Protocole en vertu desquelles un Etat contractant pourra désigner sur son territoire un ou plusieurs organismes qui seront le ou les points d'entrée chargés de la transmission au Registre des informations requises pour l'inscription³⁸. En vertu de la section 12.6 du Règlement, une inscription devra obligatoirement être effectuée par le biais du point d'entrée approprié qui aura été désigné (organisme)³⁹. L'Etat contractant qui procédera à une désignation pourra préciser les conditions à remplir avant la transmission des informations au Registre⁴⁰.

L'article XIX(2) du Protocole et la section 12.2 du Règlement s'opposent à ce que soit requise l'utilisation obligatoire d'un point d'entrée (organisme) pour les inscriptions se rapportant à des garanties susceptibles d'inscription en ce qui concerne les moteurs d'avion. Les raisons de la distinction entre les inscriptions concernant les cellules d'aéronef et les hélicoptères, et celles concernant les moteurs seulement sont de nature historique. En vertu du Chapitre III de la Convention de Chicago, tous les aéronefs doivent avoir une nationalité et tout Etat contractant doit prévoir l'immatriculation de tous ses aéronefs non militaires. Presque tous les Etats ont actuellement un bureau d'immatriculation géré par une autorité de l'aviation civile où sont immatriculés les aéronefs et les hélicoptères, déterminant ainsi leur nationalité. Les Etats qui sont parties à la *Convention de Genève de 1948 relative à la reconnaissance internationale des droits sur aéronefs* utilisent ces bureaux pour les droits reconnus par cette Convention. Ces bureaux déjà opérationnels peuvent être désignés en vertu du Protocole comme agents exclusifs ou non pour la transmission des données relatives aux inscriptions. Toutefois, la Convention de Chicago ne fait pas de distinction entre les cellules d'aéronef et les moteurs. Elle utilise le terme "aéronef" pour se référer à une unité qui peut avoir ou ne pas avoir de moteurs. En conséquence, il n'est pas nécessaire

³⁷ Cela devrait être très marginal compte tenu des mesures du Conservateur pour identifier les personnes dont le consentement est requis. Voir Règles de procédure, ss. 12.2-12.3.

³⁸ Voir aussi Règlement, s. 12. Cette disposition se réfère aux points d'entrée d'autorisation (*authorizing entry points*) et aux points d'entrée directs (*direct entry points*). Les premiers autorisent la transmission au Registre des informations relatives à l'inscription, tandis que les seconds transmettent les informations pour le compte de la personne qui effectue l'inscription. Voir aussi Règles de procédure, s. 8.

³⁹ La s. 12.5 du Règlement exige que le Conservateur effectue une mise en garde électronique lorsqu'une tentative d'inscription est faite autrement que par un point d'entrée obligatoire, ou d'une façon non-conforme aux Règles de procédure exigée par un point d'entrée qui autorise la transmission. La nature et la portée de la mise en garde doivent être convenues entre le Registre international et l'Etat contractant déclarant ce point d'entrée. Voir aussi Règles de procédure, s. 8.

⁴⁰ Conformément à l'art. XIX(1) du Protocole, la désignation d'un point d'entrée (organisme de transmission) ne s'applique pas à l'inscription d'avis de garanties nationales ou à l'inscription de droits ou garanties non conventionnels susceptibles d'inscription créés en vertu des lois d'un autre Etat.

of engines.⁴¹

While an entry point referred to in Article 18(5) of the Convention or Article XIX of the Protocol need not be a Contracting State's agency for the purposes of registering aircraft under the Chicago Convention, the assumption behind these provisions is that Contracting States that designate entry points may well use their Chicago Convention agencies for this purpose. As there is no requirement to register the ownership of engines under the Chicago Convention, a Contracting State may not require that its agency be a mandatory entry point for registrations affecting engines.⁴²

As noted above, Article 18(5) of the Convention permits a Contracting State not only to designate an entity or entities within its territory through or with the authorization of which registration data must or may be transmitted to the Registry, but, in addition, to specify requirements that must be met before this service is provided.⁴³ These requirements need not relate to any feature of the Convention, Protocol or Regulations. They can be requirements that relate to matters of domestic law. For example, they may be a copy of a sale contract, lease or security agreement to which a registration is to relate. Where the registration sought is to reflect a transfer of ownership, the requirements of the entry point agency could be proof of ownership of the seller. However, verification of the documentation involved in the creation of an international interest is a matter outside the scope and policy of the Convention and Protocol. As noted above, the Registry has no role in verifying the ownership or property rights of the parties to a transaction to which a registration relates or the existence or enforceability of those transactions.

7. Date a registration comes into existence

Article 19(2) of the Convention implicitly dictates an important structural feature of the Registry system: a registration cannot come into existence (or, to use the words of the Convention, cannot be "complete") until it is searchable. Even though the requisite registration data have been transmitted to and received by the Registrar, no

⁴¹ In addition, some States have central national or regional registries for interests in aircraft and aircraft engines created under domestic law. While these may be designated as entry points (entities) they may not be mandatory entry points (entities) for engines.

⁴² Section 12.2 of the Regulations permits the designation of an authorizing entry point or a direct entry point by a Contracting State that has taken regulatory steps to become the State of Registry of an airframe or helicopter where the registration relates to prospective international interests, prospective assignments of international interests, and prospective sales of the object.

⁴³ Presumably these requirements would relate only to requests for registrations relating to international interests in airframes. A Contracting State may not require that registrations relating to international interests in engines be effected through an entry point.

d'effectuer une inscription distincte de la propriété ou de la nationalité des moteurs ⁴¹.

Tandis qu'un point d'entrée visé à l'article 18(5) de la Convention ou à l'article XIX du Protocole ne doit pas nécessairement être un organisme d'un Etat contractant compétent pour l'immatriculation des aéronefs en vertu de la Convention de Chicago, il est supposé dans ces dispositions que de nombreux Etat contractants désigneront comme points d'entrée les organismes créés pour remplir les fonctions d'immatriculation dans le cadre de la Convention de Chicago. Quant aux moteurs d'avion pour lesquels il n'existe pas d'obligation d'immatriculation de la propriété en vertu de la Convention de Chicago, un Etat contractant ne peut exiger que cet organisme soit un point d'entrée obligatoire pour les inscriptions les concernant ⁴².

Comme on l'a observé plus haut, l'article 18(5) de la Convention permet à un Etat contractant non seulement de désigner sur son territoire un ou plusieurs organismes qui seront chargés exclusivement ou non de la transmission – ou qui pourront autoriser une telle transmission – au Registre des informations requises pour l'inscription, mais également de préciser les conditions à satisfaire à cette fin ⁴³. De telles conditions ne sont pas nécessairement liées à une question ou à une autre traitée dans la Convention, le Protocole ou le Règlement. Il peut s'agir de conditions en relation avec le droit interne. Par exemple, cela peut être un exemplaire du contrat de vente, de bail ou de garantie auquel l'inscription se rapporte. Lorsque l'inscription est destinée à refléter un transfert de propriété, l'organisme faisant fonction de point d'entrée pourra exiger la preuve de la propriété du vendeur. Toutefois, la vérification de la documentation qui accompagne la constitution de la garantie internationale ne relève ni de la portée ni des objectifs de la Convention et du Protocole. Comme on l'a observé ci-dessus, le Registre n'a pas pour rôle de vérifier la propriété ou les droits réels des parties à l'opération à laquelle se rapporte l'inscription ou l'existence ou l'opposabilité de ces opérations.

7. Date de la prise d'effet de l'inscription

L'article 19(2) de la Convention énonce implicitement un élément structurel important du système d'inscription : une inscription reste sans effet (ou, pour reprendre les termes de la Convention, n'est pas "complète") si elle ne peut être consultée. Même si les informations relatives à l'inscription ont été transmises au Conservateur et ont été

⁴¹ En outre, certains Etats ont des registres régionaux ou nationaux centraux pour les droits sur aéronefs et les moteurs d'avion créés en vertu du droit interne. Ces registres peuvent être désignés comme points d'entrée (organismes), mais ils ne peuvent pas être désignés comme points d'entrée obligatoires pour les moteurs d'avion.

⁴² La s. 12.2 du Règlement permet la désignation d'un point d'entrée d'autorisation ou d'un point d'entrée direct par un Etat contractant qui a pris les mesures réglementaires pour être l'Etat d'immatriculation d'une cellule d'aéronef ou d'un hélicoptère lorsque l'inscription se rapporte à des garanties internationales futures, à des cessions futures de garanties internationales, et à des ventes futures du bien.

⁴³ De telles conditions ne devraient concerner que les demandes d'inscription se rapportant à des garanties internationales portant sur des cellules d'aéronef. Un Etat contractant ne peut pas exiger que les inscriptions se rapportant à des garanties internationales portant sur des moteurs soient effectuées à travers un point d'entrée.

registration exists until those data are searchable using the appropriate search criterion.⁴⁴

An important question arises as to what constitutes “searchability” in this context. There could be at least two reasons why registration data transmitted to the Registry are not searchable. One is that the data have not been entered into the Registry data base in a manner or form that their retrieval is possible using the appropriate search criterion. The other is that the registration data have been entered so that the registration can be searched but, for some operational reason,⁴⁵ the Registry cannot be accessed for searching purposes. The intention, however, must be that Article 19(2) and (3) of the Convention contemplate only the first of these situations. A registration exists as soon as it can be retrieved using the appropriate search criterion whether or not at that time the Registry is accessible. Under this approach any risk associated with lost functionality of the Registry system will be allocated depending upon the point in the process of registration the loss occurred. If it occurred before the registration data are entered into the data base in a form searchable using the appropriate criterion, the risk is borne by the registrant. If it occurs after this point, it is borne by a person searching the Registry.

As noted above, the Convention provides for registration of prospective interests. In effect, what are involved are registrations relating to security agreements, leases, title retention sales agreements and sales that, at the date the registrations are effected, have not been consummated. Notwithstanding the lack of binding agreements at the dates of the registrations, priority of the interests that are affected by the agreements is determined on the basis of the time the registrations are effected.⁴⁶ In recognition of this feature of the Convention, Articles 18(3) and 19(4) provide that no additional information need be transmitted to the Registry in order for the validity and status of a registration relating to a prospective international interest to apply to the international interest once it comes into existence.

8. Confirmation of registration

Section 6 of the Regulations provides that the Registrar shall give prompt electronic confirmation of a registration to the registrant and to all persons entitled to notice of a registration.⁴⁷ The information in the confirmation is identical to that contained on a registry search certificate issued pursuant to Article 22(2) of the Convention.

⁴⁴ As to the appropriate registration-search criterion, see heading II. 4 *supra*.

⁴⁵ See, *e.g.*, Regulations, s. 3.4 and Procedures s. 7.4.

⁴⁶ Convention, Art. 19(4).

⁴⁷ Persons entitled to notice of a registration are those specified by the registrant in the data transmitted to the Registry to effect a registration as provided in section 5 of the Regulations. See also Procedures s. 12.3.

reçues par lui, l'inscription n'existe pas aussi longtemps que ces informations ne peuvent pas être consultées en utilisant les critères de consultation appropriés ⁴⁴.

Une question importante est de savoir de que l'on entend par "ne peuvent pas être consultées" dans ce contexte. Il pourrait y avoir au moins deux motifs à cela. Un motif est que les informations n'ont pas été introduites dans la base de données du Registre d'une façon ou sous une forme telle qu'il soit possible de les obtenir en utilisant le critère de recherche approprié. L'autre est que les informations ont été convenablement introduites mais que pour une raison tenant au fonctionnement du Registre ⁴⁵, l'accès à celui-ci et la consultation ne sont pas possibles. Il ressort des articles 19(2) et (3) de la Convention que seule la première de ces deux hypothèses est visée. Une inscription existe dès lors qu'elle peut être consultée par le biais du critère de recherche approprié, indépendamment de savoir si à ce moment précis le Registre est accessible. Selon cette interprétation, l'allocation du risque lié au dysfonctionnement du système du Registre dépendra du moment auquel se produit le défaut dans le processus d'inscription. S'il intervient avant l'introduction dans la base de données des informations relatives à l'inscription, sous une forme qui peut être consultée en utilisant le critère approprié, le risque pèse sur la personne qui effectue l'inscription. S'il se produit après ce moment, le risque pèse sur la personne qui consulte le Registre.

Comme on l'a remarqué plus haut, la Convention prévoit l'inscription de garanties futures. En effet, sont visées par là les inscriptions se rapportant aux contrats constitutifs de sûreté, aux contrats réservant un droit de propriété ou aux contrats de bail et aux contrats de ventes qui, au moment où les inscriptions sont effectuées, n'ont pas été conclus. Malgré l'absence d'accord final à la date de l'inscription, les priorités des droits affectés par ces contrats sont déterminées par le moment où l'inscription est faite ⁴⁶. En conséquence de ce principe de la Convention, les articles 18(3) et 19(4) disposent qu'aucune autre information n'a besoin d'être transmise au Registre pour assurer que la validité et le rang d'une inscription se rapportant à une garantie internationale future s'appliqueront à la garantie internationale lorsque celle-ci sera constituée.

8. Confirmation de l'inscription

La section 6 du Règlement dispose que le Conservateur fournit dans de brefs délais une confirmation électronique de l'inscription à la personne qui l'a effectuée et à toutes les personnes en droit de recevoir avis de l'inscription ⁴⁷. Les informations reportées dans la confirmation sont les mêmes que celles contenues dans un certificat de consultation du Registre émis conformément à l'article 22(2) de la Convention.

⁴⁴ Pour ce qui est du critère d'inscription-consultation approprié, voir le titre II. 4 *supra*.

⁴⁵ Voir par ex. s. 3.4. du Règlement et s. 7.4 des Règles de procédure.

⁴⁶ Convention, art.19(4).

⁴⁷ Les personnes en droit de recevoir un avis d'inscription sont celles indiquées par la personne effectuant l'inscription dans les informations transmises au Registre tel que prévu par la s. 5 du Règlement. Voir aussi Règles de procédure s. 12.3.

A confirmation of registration has the important function of informing the registrant of the existence of the registration, the time when it was effected and the registration information.⁴⁸ In this context it relieves the registrant from the necessity to order a registry search certificate to determine whether or not a registration has been successfully effected.⁴⁹ Yet it may be considered best practice for registering parties to order such a certificate, thus confirming that the intended priority has been obtained.

Where a registration relates to an aircraft object, a confirmation (notice of the registration) is sent to persons referred to in any other registration relating to the object.⁵⁰ While there is no definition of “relating”, the intention must be that the concept includes all registrations affecting that object. The effect of this provision is to inform everyone who is named in a registration relating to an aircraft object of the fact of any additional registrations affecting the object.

9. Duration of a registration and discharge of a registration

Article 21 of the Convention provides that a registration “remains effective” (continues to exist) until it is discharged or until expiry of the period specified in the registration. However, registration of a contract of sale (but not of a prospective contract of sale) continues indefinitely and may not be discharged.⁵¹

This feature as it applies to registrations other than those relating to sales of aircraft objects raises an important issue endemic to all registry systems affecting legal rights, particularly those that permit registrations relating to prospective rights. Situations will arise when a security interest has been discharged, the purchase price of goods acquired under a title retention sale agreement has been paid or negotiations fail to produce agreements providing for or effecting international interests. If registrations relating to the performed transactions or the prospective agreements that never materialized remain undischarged, considerable difficulties may be encountered by persons who want to enter into other transactions involving the aircraft objects identified in the registrations. A former debtor that has discharged a security interest in an aircraft object owned by it or a person who was involved in aborted negotiations with a potential creditor to give a security interest in an aircraft object has an interest in insuring that any registration affecting that aircraft object is discharged so as not to impede further commercial dealing with its rights in the object.

⁴⁸ As to the possible significance of a confirmation of registration or notice provided under section 6 of the Regulations in the context of an action against the Registrar, see text following note 75, *infra*.

⁴⁹ Procedures s. 12.5 and 12.6.

⁵⁰ Regulations, 6.3.

⁵¹ Protocol, Art. V(3).

Une confirmation d'inscription a la fonction importante d'informer la personne ayant effectué l'inscription de l'existence de celle-ci, du moment auquel elle a été effectuée et des informations qui y ont trait⁴⁸. De la sorte, elle évite à l'auteur de l'inscription de demander un certificat de consultation du Registre pour s'assurer que l'inscription a bien été effectuée⁴⁹. Cependant il pourrait être considéré préférable en pratique d'obtenir ce certificat afin de confirmer l'obtention de la priorité recherchée.

Lorsqu'une inscription se rapporte à un bien aéronautique, une confirmation (un avis d'inscription) est envoyée aux personnes qui sont visées dans toute autre inscription en relation avec (*relating to*) l'objet⁵⁰. A défaut de définition des termes "*relating to*", il faut les interpréter comme se référant à toutes les inscriptions affectant ce bien. Cette disposition vise à informer toute personne désignée dans une inscription se rapportant à un bien aéronautique de toute nouvelle inscription affectant le bien.

9. Durée de l'inscription et mainlevée de l'inscription

L'article 21 de la Convention dispose qu'une inscription "demeure efficace" (continue d'exister) jusqu'à ce qu'elle fasse l'objet d'une mainlevée ou jusqu'à l'expiration de la durée précisée dans l'inscription. Toutefois, l'inscription d'un contrat de vente (mais non pas d'un contrat de vente future) a une durée illimitée et ne peut pas faire l'objet d'une mainlevée⁵¹.

Cette caractéristique qui s'applique à toutes les inscriptions autres que celles qui ont trait aux ventes de biens aéronautiques soulève une question importante inhérente à tous les systèmes d'inscription portant sur des droits, notamment ceux qui permettent l'inscription de droits futurs. Il y aura des cas où les obligations garanties ont été exécutées, le prix d'achat des marchandises achetées en vertu d'un contrat réservant un droit de propriété a été payé, ou bien les négociations n'ont pas abouti à la conclusion du contrat qui prévoirait ou constituerait la garantie internationale. Si les inscriptions se rapportant à des opérations complètement exécutées ou à des contrats futurs qui ne voient pas le jour ne font jamais l'objet d'une mainlevée, des difficultés considérables se présenteront pour les personnes qui veulent conclure des opérations portant sur les biens aéronautiques identifiés dans les inscriptions. Un ancien débiteur qui a éteint la sûreté portant sur un bien aéronautique lui appartenant, ou une personne dont les négociations avec un créancier potentiel visant à constituer une garantie sur un bien aéronautique n'ont pas abouti, ont un intérêt à s'assurer qu'il a été donné mainlevée de toute inscription portant sur le bien afin de ne pas entraver d'autres opérations commerciales où leurs droits sur le bien sont concernés.

⁴⁸ Pour ce qui est de la valeur éventuelle d'une confirmation d'inscription ou d'avis prévu à la s. 6 du Règlement dans le cadre d'une action formée contre le Conservateur, voir le texte suivant la note 75, *infra*.

⁴⁹ Règles de procédure, s. 12.5 et 12.6.

⁵⁰ Règlement, s. 6.3.

⁵¹ Protocole, art. V(3).

Article 25 of the Convention⁵² embodies recognition of the potential for this problem to develop in the context of the Registry system and provides a partial remedy to address it. It places a legal obligation, invoked by written demand of the person whose interest is affected by the registration, on a secured party in the case of a registration relating to a discharged security agreement or a non-consensual right or interest, on a title retention seller in the case of a performed sale contract, and on the registrant in the case of registrations relating to prospective international interests, to procure discharge of the registration.⁵³ Article XX(2) of the Protocol specifies a short time period (five days after a demand for discharge has been received) for the registrant to discharge a registration relating to a prospective international interest or a prospective assignment of an international interest. Similarly, an obligation is placed on a registrant to discharge or amend a registration in a case where the registration ought not to have been made or is incorrect.

Enforcement of the obligations contained in Article 25 involves jurisdictional issues. Ultimately the only completely effective way to enforce the obligation in a case where the responsible person refuses or fails to comply with the demand made in accordance with the Article is to require the Registrar to discharge or amend the registration, as the case may be. This solution can be readily implemented in the context of a situation in which court orders can be enforced against the Registrar. However, implementation in an international context is much more difficult where the Registry is not likely to be subject to the jurisdiction of the courts where either the registrant or the person seeking correction of the registry records is located.

A partial solution is provided by Article 44 of the Convention. It should be noted that, where litigation related to registrations occurs in courts other than Irish courts, that solution may be convoluted and expensive. The base principle as stated in paragraph 1 of the Article is that the courts of the place in which the Registrar has its centre of administration have exclusive jurisdiction to make orders (including damage awards) against the Registrar. For the period 2006-2011, orders against the Registrar can be made only by the Irish courts.

Where the person who is obligated under Article 25 to discharge or amend a registration fails to do so, Article 44(3) provides that the person entitled to demand that the Registry records be corrected may bring action in the court⁵⁴ having jurisdiction under the Convention, seeking an order requiring compliance with the demand. Under Article 42 of the Convention, this is the court of a Contracting State chosen "by the parties" in the manner required by the law of the chosen forum. In cases where no choice has been made or where the choice made is not recognized as

⁵² Art. III of the Protocol makes Art. 25(2) applicable to registrations relating to prospective sales.

⁵³ The same obligation is placed on the registrant in the case of a registration relating to an internal transaction. Convention, Art. 25(3).

⁵⁴ Pursuant to Arts.1(h) and 53 of the Convention, a Contracting State may declare that a "court" includes an administrative or arbitration tribunal established by the Contracting State.

L'article 25 de la Convention⁵² reconnaît que ce type de problème pourrait se poser dans le cadre du système d'inscription et fournit une solution partielle. Il impose l'obligation, après que demande écrite ait été faite par la personne dont le droit est affecté par l'inscription – un créancier garanti lorsque l'inscription concerne un contrat constitutif de sûreté exécuté ou un droit ou garantie non conventionnel, un vendeur ayant un droit de réserve de propriété en cas de contrat de vente exécuté, et la personne ayant effectué l'inscription lorsque celle-ci concerne des garanties internationales futures –, de donner mainlevée de l'inscription⁵³. L'article XX(2) du Protocole impartit un délai court (cinq jours à compter de la réception de la demande) pour donner mainlevée d'une inscription concernant une garantie internationale future ou une cession future d'une garantie internationale. Une obligation semblable est énoncée pour ce qui est de la mainlevée ou de la rectification d'une inscription qui n'aurait pas dû être faite ou est incorrecte.

La mise en œuvre des obligations visées à l'article 25 a des implications judiciaires. En dernier recours, la seule façon complètement efficace d'exécuter une obligation lorsque la personne qui en a la charge ne donne pas suite à la demande visée par cet article, est de demander au Conservateur de donner mainlevée de l'inscription ou de la modifier, selon les cas. Cette solution est aisément applicable si la décision de justice s'impose au Conservateur. Toutefois, dans le contexte international la mise en œuvre est beaucoup plus difficile, le Registre n'étant probablement pas soumis à la compétence des tribunaux où est situé le titulaire de la garantie ou la personne qui cherche à faire modifier des données du Registre.

L'article 44 de la Convention fournit une solution partielle, quoiqu'il faille reconnaître qu'en cas de litiges relatifs à l'inscription portés devant des juridictions autres que les tribunaux irlandais, la solution pourrait s'avérer compliquée et coûteuse. Le principe de base énoncé au paragraphe 1 est que les tribunaux de l'État sur le territoire duquel le Conservateur a le lieu de son administration centrale sont seuls compétents pour connaître des actions (y compris en dommages-intérêts) intentées à l'encontre du Conservateur. Pour la période 2006-2011, seuls les tribunaux irlandais pourront donc connaître des actions intentées à l'encontre du Conservateur.

Lorsque la personne tenue en vertu de l'article 25 de donner mainlevée ou de modifier une inscription ne le fait pas, l'article 44(3) dispose que la personne en droit de demander la modification des données du Registre peut intenter une action devant le tribunal⁵⁴ compétent en vertu de la Convention, afin d'obtenir une décision ordonnant de donner effet à la demande. En vertu de l'article 42 de la Convention, il s'agira d'un tribunal d'un Etat contractant choisi "par les parties" dans les formes prescrites par la loi du for choisi. A défaut de choix, ou lorsque le choix n'est pas

⁵² L'art. III du Protocole rend l'art. 25(2) applicable aux inscriptions se rapportant aux ventes futures.

⁵³ La même obligation pèse sur la personne qui effectue l'inscription lorsque celle-ci se rapporte à une opération interne. Convention, art. 25(3).

⁵⁴ Conformément aux arts. 1(h) et 53 de la Convention, un Etat contractant peut déclarer qu'un "tribunal" se réfère aussi à une juridiction administrative ou arbitrale établie par un Etat contractant.

valid under the law of the chosen forum, the action may be brought in a court of any Contracting State that concludes it has jurisdiction and is a *forum conveniens* under its procedural rules.

However, what can be obtained from a court other than an Irish court is an order against the registrant, not an order against the Registrar. A registrant who fails to comply with the order will be subject to the coercive powers of the court that has issued it. An award of damages alone, however, may not address the problem unless it is accompanied by a mandatory injunction, enforced through contempt or equivalent proceedings, requiring the registrant to discharge or amend the registration. Article 44(3) suggests the ultimate remedy in cases of non-compliance. An order issued by a court of competent jurisdiction requiring the registrant to correct the registry records may be enforced by the Irish courts through a direction to the Registrar to give effect to it. The Irish implementing legislation confers jurisdiction on Irish courts for these and related purposes.⁵⁵

Article 44(2) of the Convention addresses the situation where the registrant to whom the demand under Article 25 has been made ceases to exist or cannot be found for the purposes of an order to discharge a registration effected by that person. In this case, the Irish courts have exclusive jurisdiction to make such an order. While the matter is not free from doubt, it is reasonable to assume that in such an application the Irish court will be prepared to hear the case even though the parties have included in their contract an exclusive choice of jurisdiction provision.

10. Registry (priority) searches

In practical terms, the function of the Registry system is to provide a person who is considering acquiring an interest in an aircraft object the facility to determine whether or not the object offered for sale or as collateral is subject to a prior proprietary right in the form of a security interest, the ownership of a lessor, seller or other person, or a non-consensual right or interest. Consequently, the Convention provides for searches of the Registry data base⁵⁶ so that a person can accurately assess the legal risk involved in acquiring an interest in an aircraft object.⁵⁷ Article 19(6) of the Convention provides that a registration is searchable according to the criteria (criterion) prescribed by the Protocol. The right to obtain a Registry search and the contents of a search result (search certificate) are elaborated in Article 22 of the Convention and section 7 of the Regulations.

⁵⁵ The scope of jurisdiction “to make orders” under Art. 44(1) is not circumscribed by the Convention. See GOODE, *Official Commentary*, *supra* note 1, 146-148.

⁵⁶ Convention, Art. 22. See also Regulations s. 7 and Procedures s. 13.

⁵⁷ A person requesting a search need not have an interest in the aircraft object that is the subject-matter of the search. Convention, Art. 22(1) and Regulations, s. 7.1.

reconnu comme valable par la loi du for, l'action peut être intentée devant un tribunal de tout Etat contractant qui se déclare compétent et est un for approprié en vertu de son droit de procédure.

Un tribunal non irlandais ne pourra pas prononcer d'injonctions contre le Conservateur, en revanche il pourra en faire à l'encontre de la personne qui a effectué l'inscription. Et si celle-ci ne s'exécute pas, elle sera soumise à l'exécution forcée ordonnée par le tribunal qui a prononcé l'injonction. La seule allocation de dommages-intérêts pourrait en effet ne pas régler le problème sauf si elle est accompagnée d'une injonction dont l'exécution serait le cas échéant assurée par la force publique, exigeant du titulaire de la garantie qu'il donne mainlevée de l'inscription ou qu'il la modifie. L'article 44(3) suggère le dernier recours en cas de non-exécution. Une décision d'un tribunal compétent prononcée à l'encontre de l'auteur de l'inscription pour qu'il modifie celle-ci peut être exécutée par les tribunaux irlandais au moyen d'une injonction au Conservateur de prendre les mesures nécessaires. La législation d'application irlandaise attribue compétence à cet effet, et pour d'autres questions connexes, aux tribunaux irlandais⁵⁵.

L'article 44(2) de la Convention vise la situation où la personne à qui la demande est adressée en vertu de l'article 25 a cessé d'exister ou est introuvable de sorte qu'il n'est pas possible de l'enjoindre de donner mainlevée de l'inscription qu'elle a faite. Dans un tel cas, les tribunaux irlandais sont seuls compétents pour prononcer une telle injonction. On pourrait raisonnablement penser – quoique la question ne soit pas entièrement certaine – que les tribunaux irlandais seront disposés à statuer même si les parties ont inclus dans leur contrat une clause d'élection exclusive de for.

10. Consultations (de priorité) du Registre

En termes pratiques, la fonction du système d'inscription est de permettre à une personne envisageant d'acquérir une garantie sur un bien aéronautique de déterminer si le bien vendu ou donné en garantie est grevé d'un droit réel antérieur comme une sûreté, un droit de propriété d'un bailleur, d'un vendeur ou d'une autre personne, ou d'un droit ou garantie non conventionnel. En conséquence, la Convention prévoit que la base de données du Registre pourra être consultée⁵⁶, de telle sorte qu'une personne pourra évaluer précisément le risque juridique qu'elle encourt en acquérant un droit sur un bien aéronautique⁵⁷. L'article 19(6) de la Convention prévoit qu'une inscription peut être consultée selon les critères (en fait, le critère) établis par le Protocole. Le droit de faire une consultation du Registre et d'obtenir le résultat de la consultation (certificat de consultation) sont énoncés à l'article 22 de la Convention et à la section 7 du Règlement.

⁵⁵ L'étendue de la compétence d' "ordonner des mesures à l'égard du Conservateur" en vertu de l'art. 44(1) n'est pas précisée par la Convention. Voir le *Commentaire officiel, supra* note 1, 156-158.

⁵⁶ Convention, art. 22. Voir aussi : Règlement, s. 7 et Règles de procédure s. 13.

⁵⁷ Une personne qui demande une consultation n'a pas à justifier d'un intérêt particulier sur le bien aéronautique qui fait l'objet de la consultation. Convention, art. 22(1) et Règlement, s. 7.1.

As noted above, the criterion used to effect a registration is the same criterion used to obtain a search certificate. Section 7.2 of the Regulations refer to three “criteria”⁵⁸ specified in Article XX(1) of the Protocol as those required for a “priority search” and, by implication, a registration.⁵⁹ The three components of the search criterion⁶⁰ specified in the Protocol are the name of the aircraft object manufacturer, the manufacturer’s serial number and the model designation.⁶¹

When a “priority search”⁶² has been requested⁶³ in the manner set out in the Regulations, the Registry is required by Article 22 of the Convention to issued a registry priority “search certificate” with respect to the object described in the search criterion set out in the search request, stating all “registration information” relating to that object, along with a statement of the date and time the registration was effected.⁶⁴ The certificate must indicate the name of the secured creditor, title reservation seller, lessor or person who has purchased the object, but may not indicate whether the registration relates to an extant or prospective⁶⁵ registrable interest.⁶⁶ If no registration exists with respect to the object, the search certificate must so indicate. A document in the form of a search certificate is deemed, until proved otherwise, to have been issued by the Registrar, and is *prima facie* proof in legal proceedings of the facts recited in it.⁶⁷

11. Searches without priority significance

Section 7.1 of the Regulations provides that an “informational search”⁶⁸ of the Registry may be requested in connection with an aircraft object using cumulatively a manufacturer’s name, a manufacturer’s generic model designation, a manufacturer’s

⁵⁸ See *supra* note 32.

⁵⁹ See also Procedures s. 13.1(b).

⁶⁰ As noted above, there is only one registration-search criterion with three components.

⁶¹ Drop-down lists will be available for this purpose. See *supra* note 33.

⁶² Regulations ss. 7.2 and 7.4.

⁶³ Section 13.4 of the Procedures provides that the person requesting a priority search must disclose the name of the person or persons “having the benefit of the search.” The section lists such persons as including “(a) parties entering into, planning or forbearing from commercial transactions involving a named party of an aircraft object; or (b) parties providing legal or other professional advice to, or insuring, the parties” referred to in (a). The names of these persons are to be set out in the search certificate.

⁶⁴ Art. 18(4) of the Convention provides that registrations shall be stored and searchable in chronological order of receipt and that each registration file shall indicate the “date and time of receipt.” The reference to the date of receipt should be read as referring to the date the registration is effected since the date of receipt of the registration information is not relevant for priority purposes.

⁶⁵ As noted above, the distinction between an existing and prospective interest is irrelevant under the priority structure of the Convention. See heading II. 3 *supra*.

⁶⁶ A search certificate relating to an aircraft object will disclose all prior registrations of buyers’ interests.

⁶⁷ Convention, Art. 24. See also Procedures, s. 13.5.

⁶⁸ See also Procedures, s. 13.2-13.3.

Comme on l'a observé plus haut, le critère pour effectuer une inscription est le même que celui visant à obtenir un certificat de consultation. La section 7.2 du Règlement se réfère aux trois "critères"⁵⁸ de l'article Article XX(1) du Protocole comme ceux requis pour une "consultation de priorité" (*priority search*) et, donc, pour une inscription⁵⁹. Les trois éléments pour la consultation⁶⁰ visés au Protocole sont le nom du constructeur du bien, son numéro d'identification et la désignation du modèle⁶¹.

Lorsqu'une "consultation de priorité"⁶² a été demandée⁶³ selon les modalités du Règlement, le Registre est tenu, en vertu de l'article 22 de la Convention, d'émettre un "certificat de consultation" pour le bien décrit selon le critère de recherche de la demande de consultation, en fournissant toutes les "informations relatives à l'inscription", ainsi qu'une déclaration portant sur la date et l'heure de la consultation⁶⁴. Le certificat doit indiquer le nom du créancier garanti, du vendeur titulaire d'une réserve de propriété, du bailleur ou de la personne qui a acquis le bien, mais ne précise pas si l'inscription se rapporte à une garantie déjà existante ou bien à une garantie future⁶⁵ susceptible d'inscription⁶⁶. Le certificat d'inscription doit également attester qu'aucune inscription n'a été faite pour le bien. Un document qui se présente comme un certificat de consultation est présumé avoir été émis par le Conservateur, et dans des procédures judiciaires établit la preuve simple des mentions qui y sont portées⁶⁷.

11. Consultation à des fins autres que de priorité

La section 7.1 du Règlement dispose qu'une "consultation à des fins d'information"⁶⁸ du Registre peut être demandée relativement à un bien aéronautique en utilisant cumulativement le nom du constructeur, la désignation du modèle générique du constructeur,

⁵⁸ Voir *supra* note 32.

⁵⁹ Voir aussi Règles de procédure, s. 13.1(b).

⁶⁰ Comme on l'a observé plus haut, il y a un critère de recherche unique formé de trois éléments.

⁶¹ Des listes déroulantes seront accessibles à cet effet. Voir la note 33 *supra*.

⁶² Règlement, ss. 7.2 et 7.4.

⁶³ La s. 13.4 des Règles de procédure dispose que la personne qui demande une consultation de priorité doit révéler le nom de la personne ou des personnes "dans l'intérêt de qui la consultation est faite". Cette disposition indique qu'il peut s'agir notamment de parties qui (a) concluent, prévoient de conclure ou renoncent à conclure des opérations commerciales impliquant une partie désignée pour un bien aéronautique ou (b) qui ont un rôle de conseil juridique ou d'autre nature professionnelle, ou fournissent une assurance pour les parties visées sous (a)". Les noms de ces parties doivent apparaître dans le certificat de consultation.

⁶⁴ L'art. 18(4) de la Convention dispose que les inscriptions sont introduites et peuvent être consultées selon l'ordre chronologique de réception, et que le fichier enregistre "la date et l'heure de réception". La référence à la date de réception doit être comprise comme se référant à la date à laquelle l'inscription est effectuée puisque la date de la réception de l'information relative à l'inscription n'est pas pertinente aux fins de la détermination des priorités.

⁶⁵ Comme on l'a noté plus haut, la distinction entre une garantie existante et une garantie future est sans pertinence dans le système des priorités de la Convention. Voir le Titre II. 3 *supra*.

⁶⁶ Un certificat de consultation concernant un bien aéronautique mettra en évidence toutes les inscriptions précédentes de droits des acheteurs.

⁶⁷ Convention, art. 24. Voir aussi Règles de procédure, s. 13.5.

⁶⁸ Voir aussi Règles de procédure, s. 13.2-13.3.

serial number and, in the case of an airframe or helicopter, a State of registry of an aircraft of which it is a part, or an aircraft nationality or registration mark.⁶⁹ There is no provision in the Convention or Protocol for this type of search. Consequently, the facility to obtain information from the Registry on this basis is a service provided by the Registry and not a legal obligation imposed by the Convention or Protocol.⁷⁰

While the search criterion for an informational search is the same as that for a priority search, the scope of the information disclosed is different. An informational search certificate identifies an aircraft object that is the subject-matter of registration effected using the search criterion. It does not contain the other information required by Article 22 of the Convention.

Sections 7.1 and 7.5 of the Regulations provide for a “Contracting State” search and a “Contracting State Certificate”.⁷¹ This is not a search relating to any particular aircraft object. It is a search for all declarations and designations and withdrawals therefrom made under the Convention and Protocol. Article 23 of the Convention obligates the Registrar to maintain a list of declarations and withdrawals of declarations communicated to the Registry by the Depositary. In addition, the Registrar must maintain a list of all declarations relating to non-consensual rights and interests under Article 39 communicated by the Depositary. The Article requires that the lists be recorded and searchable in the name of the declaring State and be provided to any person requesting it as provided in the Protocol and Regulations.

12. Guarantee of system reliability

As a result of Article 27 of the Convention and Article XVII(3) of the Protocol (which incorporate by reference the legal immunity enjoyed by the International Civil Aviation Organization), the Supervisory Authority (the Council of the International Civil Aviation Organization) enjoys the immunity of an international organization from action brought by any person who has suffered loss or damage as a result of the failure of the Registry to perform the functions prescribed by the Convention and Protocol. However, this immunity does not extend to the Registrar.

Under Article 28 of the Convention, the Registrar is liable for damages for loss suffered by a person directly resulting from an error or omission of the Registrar and its officers and employees or from a malfunction of the Registry system.⁷² This liability

⁶⁹ See also Procedures, s. 13.2.

⁷⁰ Section 13.2 of the Procedures states that “[t]he object of an informational search is to provide the searching person with sufficient information to perform a priority search.”

⁷¹ See also Procedures, s. 13.5.

⁷² Section 14 of the Regulations specifies procedural steps that are conditions precedent to bringing an action against the Registrar under Art. 28 of the Convention. It also authorizes amplification of these steps in the Procedures. Section 15 of the Procedures provides this amplification.

le numéro de série du constructeur et, dans le cas d'une cellule d'aéronef ou d'un hélicoptère, l'Etat d'immatriculation de l'aéronef auquel il appartient, ou la nationalité ou la marque d'immatriculation de l'aéronef ⁶⁹. La Convention et le Protocole quant à eux ne prévoient pas ce type de consultation. En conséquence, la possibilité d'obtenir ces informations de la part du Registre sur cette base est un service fourni par le Registre et non pas une obligation juridique imposée par la Convention ou le Protocole.⁷⁰

Bien que le critère de recherche pour une consultation à des fins d'information soit le même que celui qui vise à établir une priorité, l'étendue des informations fournies est différente. Une consultation à des fins d'information identifie le bien aéronautique qui a été inscrit sur la base du critère de consultation. Elle ne contient pas les autres informations requises par l'article 22 de la Convention.

Les sections 7.1 et 7.5 du Règlement se réfèrent à une consultation par un "Etat contractant" et à un "certificat pour un Etat contractant" ⁷¹. Ce type de consultation ne se rapporte à aucun bien aéronautique particulier. C'est une recherche visant à connaître les déclarations et retraits de déclarations faites en vertu de la Convention et du Protocole. L'article 23 de la Convention oblige le Conservateur à tenir une liste des déclarations et des retraits de déclarations qui lui sont communiquées par le Dépositaire. En outre, le Conservateur doit tenir une liste de toutes les déclarations concernant les droits et garanties non conventionnels communiquées par le Dépositaire en vertu de l'article 39. Il est enfin exigé que la liste soit enregistrée et consultable d'après le nom de l'Etat qui a fait la déclaration et soit mise à la disposition de toute personne qui en fait la demande, selon les modalités prévues par le Protocole et le Règlement.

12. Garantie de la fiabilité du système

En vertu de l'article 27 de la Convention et de l'article XVII(3) du Protocole (qui incorpore par référence l'immunité de droit de l'Organisation internationale de l'Aviation civile), l'Autorité de surveillance (le Conseil de l'Organisation de l'aviation civile internationale) jouit de l'immunité d'une organisation internationale contre toute action formée par toute personne qui aurait subi une perte ou un préjudice en raison du défaut du Registre d'exécuter les fonctions prescrites par la Convention et le Protocole. En revanche, le Conservateur ne jouit pas d'une telle immunité.

En vertu de l'article 28 de la Convention, le Conservateur répond des pertes subies par une personne lorsque le préjudice découle directement d'une erreur ou une omission du Conservateur ainsi que de ses responsables et employés ou d'un dysfonctionnement du système international d'inscription ⁷². Cette responsabilité ne

⁶⁹ Voir aussi Règles de procédure, s. 13.2.

⁷⁰ La s. 13.2 des Règles de procédure dispose qu'une consultation à des fins d'information vise à fournir à l'auteur de la consultation des informations suffisantes pour effectuer une consultation de priorité.

⁷¹ Voir aussi Règles de procédure s. 13.5.

⁷² La s. 14 du Règlement précise les points de procédure préalables à une action contre le Conservateur en vertu de l'art. 28 de la Convention. Elle envisage également des aspects complémentaires à traiter dans les Règles de procédure, ce qu'elles font dans la s. 15.

does not include loss resulting from a malfunction caused by “an event of an inevitable and irresistible nature, which could not be prevented by using the best practices in current use in the field of electronic registry design and operation.”⁷³

An action against the Registrar to obtain compensation for loss referred to in Article 28 must be brought in the Irish courts. Articles 44(1) and (3) give to the courts of the place in which the Registrar has its centre of administration the exclusive jurisdiction to award damages against the Registrar.⁷⁴

Recovery against the Registrar pursuant to Article 28 is limited to persons who have suffered damage “directly resulting” from an error, omission or malfunction. A claimant need not be a registrant or someone who has relied on a misleading registry search certificate or who has received a confirmation or notice of the registration as provided by section 6 of the Regulations. However, a confirmation or notice may have a significant role in litigation brought under Article 28 of the Convention based on allegations of errors or omissions of the Registrar or a malfunction of the Registry system. Article 28(3) provides that the amount recovered from the Registrar “may be reduced to the extent that [the persons who suffered loss or damage] caused or contributed to that damage.” It is conceivable that a court will conclude that when an error or omission on the part of the Registry was disclosed to a registrant in the confirmation, failure on the part of the registrant to take steps before the damage occurred to effect an amendment to the registration to correct the error or omission constitutes conduct that contributed to or resulted in the loss.

An issue that may arise in litigation is whether the failure of the Registry system to prevent unauthorized registrations, amendments of registrations or discharges of registrations constitutes “an error, omission or malfunction” of the system.⁷⁵ Article

⁷³ *Ex abundanti cautela*, Art. 28(2) provides that the Registrar is not liable for factual inaccuracy of registration data transmitted to the Registrar nor for circumstances arising prior to receipt of registration data by the Registry. In case there is any doubt, this is repeated in section 15.1 of the Procedures.

⁷⁴ It is not clear whether, as a result of this feature, Irish law will govern not only the procedures involved in such an action but the substantive aspects as well. For example, it will be necessary for a court to refer to substantive law when determining what constitutes damages “directly resulting” from the error, omission or malfunction.

⁷⁵ Section 13.3 of the Procedures provides that the Registrar “shall not be liable in respect of the content of an informational search listing.” As noted above, an informational search is not the type of search authorized by the Convention. However, it is authorized by s. 7.3 of the Regulations. Art. 28 of the Convention does not limit the liability of the Registrar to situations where there has been loss resulting from reliance on a certificate issued pursuant to the Convention. Consequently, it is open to conclude that any act by the Registrar that is authorized or required by the Regulations falling within the broad wording of Art. 28 of the Convention can give rise to a valid claim against the Registrar under that Article. In any event, it is submitted that section 13.3 of the Procedures has no constitutional validity since it addresses a matter that is not procedural.

comprend par les pertes résultant d'un dysfonctionnement ayant pour cause "un événement de nature inévitable et irrésistible que l'on n'aurait pas pu prévenir en utilisant les meilleures pratiques généralement mises en oeuvre dans le domaine de la conception et du fonctionnement des registres électroniques" ⁷³.

Une action en dommages-intérêts contre le Conservateur pour les pertes visées à l'article 28 doit être intentée devant les tribunaux irlandais. Les paragraphes (1) et (3) de l'article 44 confèrent compétence exclusive aux tribunaux de l'Etat sur le territoire duquel le Conservateur a le lieu de son administration centrale pour connaître des actions en dommages-intérêts intentées à l'encontre du Conservateur ⁷⁴.

L'action en indemnisation contre le Conservateur en vertu de l'article 28 est limitée aux personnes ayant subi un préjudice qui "découle directement" d'une erreur, d'une omission ou d'un dysfonctionnement. La personne qui intente l'action ne doit pas nécessairement être celle qui a effectué l'inscription ou une personne qui a agi sur la base d'un certificat de consultation du registre trompeur ou qui a reçu une confirmation ou un avis d'inscription visé par la section 6 du Règlement. Toutefois, une confirmation ou un avis peuvent avoir un rôle important dans une action en justice formée en vertu de l'article 28 de la Convention dans laquelle sont invoquées des erreurs ou omissions du Conservateur ou un dysfonctionnement du système d'inscription. L'article 28(3) prévoit que l'indemnisation due par le Conservateur "peut être réduite dans la mesure où la personne qui a subi le dommage l'a causé ou y a contribué". On peut concevoir qu'un tribunal considère que lorsque la personne qui a effectué l'inscription a eu connaissance de l'erreur ou de l'omission du Conservateur dans la confirmation de l'inscription, le défaut de sa part de prendre des mesures en vue de rectifier l'erreur ou l'omission avant que ne survienne un préjudice, constituerait un comportement qui a causé ou contribué au dommage.

Une question susceptible de se poser dans une action est de savoir si le défaut du système d'inscription d'empêcher des inscriptions, des modifications d'inscriptions ou des mainlevées d'inscriptions non autorisées constitue "une erreur, omission ou dysfonctionnement" du système ⁷⁵. L'article 18(2) de la Convention prévoit que le

⁷³ *Ex abundanti cautela*, l'art 28(2) dispose que le Conservateur n'est pas responsable des inexactitudes de fait dans les informations relatives à l'inscription transmises au Registre, non plus que des actes et circonstances qui précèdent la réception des informations relatives à l'inscription au Registre international. A toutes fins utiles, cette disposition est répétée dans la s. 15.1 des Règles de procédure.

⁷⁴ On peut se demander si, de ce fait, le droit irlandais sera applicable non seulement pour ce qui est de la procédure, mais également du fond. Par exemple, le tribunal devra se référer au droit matériel pour déterminer ce que constitue un préjudice qui "découle directement" d'une erreur, d'une omission ou d'un dysfonctionnement.

⁷⁵ La s. 13.3 des Règles de procédure prévoit que le Conservateur n'est pas responsable pour le résultat de la consultation à des fins d'information. Comme on l'a observé plus haut, la Convention ne prévoit pas la consultation à fins d'information, mais celle-ci est autorisée par la s. 7.3 du Règlement. L'art. 28 de la Convention ne limite pas la responsabilité du Conservateur aux cas où le certificat émis en vertu de la Convention a été à l'origine du préjudice. En conséquence, on pourrait conclure que tout acte du Conservateur qui est autorisé ou requis par le Règlement comme relevant du libellé large de l'art. 28 de la Convention peut donner lieu à une action contre le Conservateur en vertu de cet article. Il est avancé ici que la s. 13.3 des Règles de procédure est dépourvue de valeur juridique du fait qu'elle concerne une question qui dépasse la sphère procédurale.

18(2) of the Convention provides that the Registrar is not under a duty to enquire whether a "consent to registration under Article 20 has in fact been given or is valid." Article 16(3) provides that the term registration, "includes, where appropriate, an amendment, extension or discharge of a registration." Consequently, Article 18(2) exonerates the Registrar in cases where an apparent registration has been effected or registration has been amended or discharged without the authorization of the person legally entitled under Article 20 to consent to the measure.

A potentially important aspect of Article 28 is the capacity of the Registrar to satisfy a judgment against it. Given the very high unit value of many aircraft objects, such a judgment could require the payment of a large sum of money. In order to ensure that a successful judgment creditor of the Registrar does not get a hollow judgment or to ensure that a large judgment would not result in the insolvency of the Registrar and the consequent (at least temporary) disruption of Registry services, Article 28 requires the Registrar to "procure insurance or a financial guarantee covering the liability" provided in the Article "to the extent determined by the Supervisory Authority, in accordance with the Protocol." Article XX(5) of the Protocol provides that the amount of insurance or financial guarantee "shall, in respect of each event, be not less than the maximum value of an aircraft object as determined by the Supervisory Authority."

The question has been raised as to whether the meaning of Article XX(5) is totally clear. There is no doubt that the Supervisory Authority has a central role in the determination as to the amount of insurance or financial guarantee that the Registrar is required to obtain. What that role is cannot easily be identified. The wording of the Article appears to give to the Supervisory Authority the task of determining what kind of aircraft object is to be used as the basis for setting the amount of insurance or guarantee coverage. However, there are implicit parameters set by the policy of Article 28 within which that determination must be made.

In exercise of the powers of the Supervisory Authority, the Preparatory Commission requested the Registrar to obtain the maximum amount (not less than US \$10 million)⁷⁶ to cover its potential liability under the Convention.

⁷⁶ The Commission authorized its Chairman to approve, with the assistance of the ICAO Secretariat, the amount of insurance to be procured by AVIARETO LTD. By letter dated 4 March 2005, the Chairman approved, for the first year of operation of the Registry, an amount of US \$10 million per loss and in yearly aggregate, with a deductible of US \$1million per claim.

Conservateur n'a pas l'obligation de vérifier si "un consentement à l'inscription prévu à l'article 20 a effectivement été donné ou est valable". L'article 16(3) dispose que le terme "inscription" comprend, selon le cas, "la modification, la prorogation ou la mainlevée d'une inscription". Le libellé de l'article 20(1) ne dit pas si le mot "consentement" se réfère au consentement d'une personne susceptible de procéder à une inscription ou à quelqu'un d'autre que celui qui effectue l'inscription. En conséquence, l'article 18(2) exonère le Conservateur lorsqu'une inscription apparente a été faite ou lorsque l'inscription a été modifiée ou que mainlevée en a été donnée, sans l'autorisation de la personne légalement en droit de donner son consentement à ces mesures.

Un aspect de l'article 28 qui pourrait avoir des effets importants est la capacité du Conservateur de satisfaire une décision de justice prononcée à son encontre. Compte tenu de la valeur unitaire très élevée de nombreux biens aéronautiques, un tel jugement pourrait impliquer le paiement de sommes très élevées. Afin d'assurer qu'un créancier qui a obtenu un jugement contre le Conservateur obtienne satisfaction, ou qu'une condamnation au paiement de sommes élevées ne rende pas le Conservateur insolvable, ce qui risquerait d'interrompre (au moins temporairement) les services du système, l'article 28 exige du Conservateur qu'il contracte une "assurance ou se procure une garantie financière couvrant la responsabilité" visée dans l'article "dans la mesure fixée par l'Autorité de surveillance, conformément aux dispositions du Protocole". L'article XX(5) du Protocole dispose que le montant de l'assurance ou de la garantie financière "pour chaque événement, ne pourra pas être inférieur à la valeur maximum du bien aéronautique telle que déterminée par l'Autorité de surveillance".

On peut se demander si l'article XX(5) est tout à fait clair. Il n'y a pas de doute que l'Autorité de surveillance a un rôle central dans la détermination du montant de l'assurance ou de la garantie financière que le Conservateur est tenu d'obtenir, mais il est difficile de déterminer quel est ce rôle. Le libellé de l'article semble donner à l'Autorité de surveillance la tâche de déterminer le type de bien aéronautique qui devra être utilisé comme référence pour déterminer le montant de l'assurance ou la couverture de la garantie. Toutefois, il y a des paramètres implicites indiqués par le sens de l'article 28 selon lesquels une telle détermination doit être effectuée.

Dans le cadre de ses pouvoirs d'Autorité de surveillance, la Commission préparatoire a demandé au Conservateur de se procurer une couverture d'un montant maximum (non inférieur à US \$10 millions)⁷⁶ pour faire face à sa responsabilité potentielle en vertu de la Convention.

⁷⁶ La Commission a autorisé son Président à approuver, avec l'assistance du Secrétariat de l'OACI, le montant de l'assurance que devra obtenir AVIARETO LTD. Par lettre en date du 4 mars 2005, le Président a approuvé, pour la première année de fonctionnement du Registre, un montant total d'indemnisation de US \$10 millions pour l'année, avec un plafond de US \$1million par demande.

III. – ADMINISTRATIVE FEATURES OF THE REGISTRY

1. Overview

The Registry contains many of the features found in the most advanced modern North American electronic registries for security interests. Access to the Registry is through the internet using a graphical user interface.⁷⁷ There is no administrative involvement on the part of Registry staff in the entry or amendment of registration data in the data base or in the discharge of a registration. Once authority to access the Registry and the requisite consents have been obtained, registration data are transmitted directly to the data base. All amendments and discharges of registrations are effected by the persons with authority to access the data. However, the Registry is a much more controlled system than its domestic counterparts.

An obvious goal of the designers of the administrative structure of the system and the drafters of the Procedures is to ensure that the system is flexible and efficient but, at the same time, as reliable as can reasonably be expected given its international role and the available technology. The need to limit access to the Registry to appropriate persons and to obtain required consents entails administrative measures that slow the process of accessing Registry facilities at least for first time or infrequent users. Use of Registry services is limited to persons who have made prior arrangements with the Registry or who have the authority of such persons. These will be people who have considerable sophistication with respect to its requirements and operational features.

The Procedures, for obvious reasons, provide very different approaches to effecting, consenting to, amending or discharging registrations, on the one hand, and obtaining searches from the Registry, on the other. The former is highly regulated and controlled; the latter is much less so.

2. The players

The terminology used in the Regulations and Procedures to label the various entities or persons who use or participate in the use of the system is somewhat cumbersome. However, it adequately serves the intended function.

The Regulations provide for two types of registry users. A “registry user entity” and a “registry user” are either (i) a “transacting user entity” or “transacting user” if that entity or person is someone “intending to be a named party”⁷⁸ in one or more

⁷⁷ The uniform resource locator for the International Registry is: < www.internationalregistry.aero >

⁷⁸ Defined in s. 2.1.5 of the Regulations as “a transacting user entity named in a registration.”

III. – CARACTERISTIQUES ADMINISTRATIVES DU REGISTRE

1. Présentation générale

Le Registre possède nombre des caractéristiques des systèmes électroniques d'inscription de garanties les plus sophistiqués en Amérique du Nord. L'accès au Registre se fait par Internet au moyen d'un interface graphique⁷⁷. Il n'y a pas d'intervention du personnel du Registre pour l'introduction des données relative à l'inscription, leur modification, ou pour la mainlevée de l'inscription. Lorsqu'une personne est habilitée à avoir accès au Registre et que les consentements requis ont été obtenus, les informations relatives à l'inscription sont transmises directement à la base de données. Toutes les modifications et les mainlevées d'inscriptions sont effectuées par les personnes qui sont habilitées à accéder aux informations. Le Registre international est soumis à bien plus de contrôle que ses équivalents nationaux.

Un objectif évident recherché dans la phase de conception de la structure administrative du système, ainsi que par les rédacteurs des Règles de procédure, était celui d'assurer un système souple et efficace, mais également aussi fiable que possible compte tenu de son rôle international et des possibilités technologiques. La nécessité de limiter l'accès au Registre à des personnes habilitées et celle d'obtenir les consentements requis exigent des étapes administratives qui ralentissent l'accès au système du Registre, au moins la première fois ou pour des utilisateurs occasionnels. L'utilisation des services du Registre est limitée aux personnes qui auront effectué certaines démarches auprès du Registre ou qui disposent de l'autorisation de telles personnes. Il s'agit donc d'utilisateurs qui ont une connaissance approfondie des conditions et des caractéristiques de fonctionnement du système.

Pour des raisons évidentes, tandis que les Règles de procédure soumettent les inscriptions (ainsi que la modification ou la mainlevée de celle-ci, ou le consentement à de telles opérations) à des formalités très strictes et réglementées, les conditions pour effectuer des consultations dans le Registre sont beaucoup plus souples.

2. Les intervenants

La terminologie utilisée dans le Règlement et les Règles de procédure pour désigner les différentes entités et les personnes qui utilisent ou participent à l'utilisation du système est assez compliquée. Toutefois elle sert utilement la fonction recherchée.

Le Règlement prévoit deux types d'utilisateurs du Registre. Une "entité utilisatrice du registre" (*Registry user entity*) et un "utilisateur du registre" (*Registry user*) sont soit (i) une "entité utilisatrice contractuelle" (*Transacting user entity*) ou un "utilisateur contractuel" (*Transacting user*) si cette entité ou cet utilisateur "est destiné à être une partie désignée⁷⁸ dans une ou plusieurs inscriptions"; soit (ii) une "entité

⁷⁷ L'adresse Internet (url) est : < www.internationalregistry.aero >

⁷⁸ Définie à la s. 2.1.5 du Règlement comme "entité utilisatrice partie à l'opération désignée dans une inscription".

registrations” or (ii) a “professional user entity” or “professional user” if that entity is a firm (or other grouping of persons) ⁷⁹ or a person who is a member employee or partner of a firm “providing professional services to transacting user entities in connection with the transmission of information ... relating to registrations.” ⁸⁰ In other words, a registry user can be an entity or person acting on its or his/her ⁸¹ own behalf or acting in an agency capacity in effecting, consenting to, amending or discharging registrations.

A registry user can access the Registry only through or with the authorization of a single, Registrar approved ⁸² “administrator.” This is someone nominated or authorized by a registry user ⁸³ to deal with the Registry ⁸⁴ in effecting, consenting to, amending or discharging registrations.⁸⁵ An approved administrator may give a special purpose entity ⁸⁶ authority to deal with the Registry on behalf of the registry user for whom the administrator acts. An approved administrator is given a range of powers and responsibilities consonant with his/her obligations to ensure that no unauthorized access to registration data occurs and that the Registrar is provided with all relevant information relating to the registry user that appointed the administrator.⁸⁷

The approval process for a person nominated as administrator of a registry user involves the Registrar being satisfied ⁸⁸ on the basis of information provided by a nominating registry user ⁸⁹ and obtained from independent sources as to the identity of the entity that has nominated the person and the identity of the nominee.⁹⁰ An administrator need not be an employee of the registry user entity, but “should” be someone holding “appropriate formal professional qualifications commensurate with

⁷⁹ It is submitted that, in determining the meaning and scope of the terms “firm” and “other grouping of persons”, the latter must be read as being broader in scope than the former.

⁸⁰ It would appear that an individual, other than an employee, partner or member of a “firm”, cannot be a professional registry user.

⁸¹ In the balance of this Article, it is assumed that a registry user is an entity.

⁸² Regulations ss. 2.1.1, 4.1.

⁸³ Procedures ss. 4-5.

⁸⁴ Procedures s. 11.

⁸⁵ Regulations s. 4.2 and Procedures ss. 5.4, 5.7, 5.15, 6.1-6.2 and 12.4. An approved administrator may appoint an acting administrator for periods not exceeding three months. Regulations s. 4.1. However, a registry user may have only one administrator with authority to carry out the functions of the administrator. Procedures s. 5.3.

⁸⁶ Regulations ss. 2.1.10 and 4.3.

⁸⁷ Procedures ss. 5.8-5.12.

⁸⁸ Registry personnel estimate that, on average, this process should take about two business days.

⁸⁹ Procedures s. 10.

⁹⁰ Regulations s. 4.1 and Procedures s. 5.14.

utilisatrice professionnelle” (*Professional user entity*) ou un “utilisateur professionnel” (*Professional user*) si cette entité est une société (ou un autre groupement de personnes) ⁷⁹, ou une personne qui est un membre, employé ou associé d’une société “fournissant des services professionnels à des entités utilisatrices contractuelles pour ce qui est de la transmission d’informations ... relativement à des inscriptions” ⁸⁰. En d’autres termes, un utilisateur du registre peut être une entité ou une personne physique agissant en son propre nom ⁸¹ ou comme représentant pour effectuer ou modifier des inscriptions, en donner mainlevée ou donner son consentement à de telles opérations.

Un utilisateur du Registre ne peut avoir accès à celui-ci qu’au moyen ou avec l’autorisation d’un seul “administrateur” approuvé par le Conservateur ⁸². Il s’agit de quelqu’un qui est désigné ou autorisé par un utilisateur ⁸³ pour traiter avec le Registre ⁸⁴ pour effectuer ou modifier des inscriptions, consentir à celles-ci ou en donner mainlevée ⁸⁵. Un administrateur approuvé peut conférer à une entité constituée à cette fin ⁸⁶ le pouvoir de traiter avec le Registre, pour le compte de l’utilisateur du Registre pour qui l’administrateur agit. L’administrateur approuvé est doté d’un ensemble de pouvoirs et de responsabilités liés à ses obligations, visant à assurer qu’il ne se produira pas d’accès non autorisé aux données de l’inscription et que le Conservateur obtiendra toutes les informations pertinentes en relation avec l’utilisateur du Registre qui a nommé l’administrateur ⁸⁷.

Pour satisfaire aux formalités d’approbation d’une personne comme administrateur d’un utilisateur du Registre, le Conservateur doit exprimer son accord ⁸⁸ sur la base des informations fournies par l’utilisateur du registre ⁸⁹, et obtenues de sources indépendantes pour ce qui est de l’identité de l’entité qui a nommé la personne et de l’identité de la personne désignée ⁹⁰. Un administrateur ne doit pas nécessairement être un employé de l’entité utilisatrice du Registre, mais “devrait” être quelqu’un possédant “des qualifications professionnelles formelles appropriées au regard des

⁷⁹ On interprétera les termes “autres groupements de personnes” comme étant de sens et de portée plus larges que le terme “société”.

⁸⁰ Il semblerait qu’une personne physique autre qu’un employé, un associé ou un membre d’une “société” ne peut pas être un utilisateur professionnel du Registre.

⁸¹ Dans le contexte de cet article, on supposera que l’utilisateur du Registre est une entité plutôt qu’une personne physique.

⁸² Règlement, ss. 2.1.1, 4.1.

⁸³ Règles de procédure, ss. 4-5.

⁸⁴ Règles de procédure, s. 11.

⁸⁵ Règlement, s. 4.2 et Règles de procédure, ss. 5.4, 5.7, 5.15, 6.1-6.2 et 12.4. Un administrateur approuvé peut désigner un administrateur exécutif pour des périodes maximums de trois mois. Règlement, s. 4.1. Toutefois, un utilisateur du Registre ne peut désigner qu’un seul administrateur ayant pouvoir pour exécuter les fonctions d’administrateur. Règles de procédure, s. 5.3.

⁸⁶ Règlement, ss. 2.1.10 et 4.3.

⁸⁷ Règles de procédure, ss. 5.8-5.12.

⁸⁸ Le personnel du Registre estime qu’en moyenne, ce processus devrait requérir deux jours ouvrables.

⁸⁹ Règles de procédure, s. 10.

⁹⁰ Règlement, s. 4.1 et Règles de procédure, s. 5.14.

the requirements of the functions of administrator.”⁹¹ Since the Registrar has the power to approve or disapprove of a person as administrator, it will decide what constitutes appropriate formal qualifications for this purpose.⁹²

When an administrator is approved, he/she is issued a password and digital certificate⁹³ that must remain on “the computer on which it was first installed.”⁹⁴ The administrator may approve the issue of a digital certificate to other users within his/her entity and may authorize a professional user entity to complete a registration on a specific aircraft object on behalf of the entity the administrator represents.⁹⁵ Passwords and digital certificates provide the mechanism through which the Registry seeks to limit access to the data base or consents only to authorized or appropriate persons enjoying such access.⁹⁶

IV. – THE FUTURE

While the concept of an international registry for property interests is novel, the structure of the Registry as prescribed by the Convention and Protocol reflects extensive experience with similar (but much more complex) domestic systems over the last 30 years. The designers of the Registry system were not required to experiment with untried technology or approaches. Given this and its relative simplicity, there is every reason to expect that the Registry will function in an efficient, reliable and cost-effective manner. No doubt, minor adjustments will have to be made during the initial stages of operation. However, these will amount to “fine-tuning” rather than fundamental changes.

The current design of the system does not facilitate or permit the use of a language other than English. Section 7.2 of the Procedures alludes to the possibility of making the system available in other languages “when the necessary financial means are available.” If registry facilities are to be made available in other languages, the Supervisory Authority will have to determine what those languages will be.

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⁹¹ Procedures ss. 5.1-5.2.

⁹² Procedures s. 5.4.

⁹³ The system used for this purpose will employ a Public Key Private Key Infrastructure (PKI) system supplied by Verisign.

⁹⁴ Procedures s. 5.5. If that computer is replaced, permission is required from the Registrar to move the password and certificate to the replacement unit.

⁹⁵ Procedures s. 5.15-16 and s. 10.

⁹⁶ Procedures s. 7.5-7.6.

exigences liées aux fonctions d'administrateur" 91. Etant donné que le Conservateur a le pouvoir d'approuver ou de refuser une personne comme administrateur, il décidera ce que constituent des qualifications formelles appropriées à cet effet 92.

Lorsqu'un administrateur est approuvé, il est mis en possession d'un code d'accès et d'un certificat digital 93 qui doit rester placé dans l'ordinateur où il a été installé en premier lieu 94. L'administrateur peut autoriser que d'autres certificats digitaux soient émis pour d'autres utilisateurs dans son entité, et peut autoriser une entité utilisatrice professionnelle à effectuer une inscription d'un bien aéronautique donné pour le compte de l'entité que l'administrateur représente 95. Les codes d'accès et les certificats digitaux fournissent le mécanisme par lequel le Registre cherche à limiter l'accès à la base de données ou autoriser son accès aux seules personnes qui sont autorisées ou appropriées 96.

IV. – L'AVENIR

Si le concept de registre international pour les garanties est nouveau, la structure du Registre prévue par la Convention et le Protocole reflète une très longue expérience constituée par des systèmes nationaux similaires au cours des trente dernières années. Ainsi, la mise en place du système d'inscription ne requerrait pas de recourir pour la première fois à une technologie ou à des procédés jamais éprouvés. Dans ces conditions, et compte tenu de sa relative simplicité, il y a tout lieu de penser que le Registre fonctionnera de façon efficace, fiable et selon la meilleure rentabilité économique. Bien entendu, des ajustements mineurs devront être effectués durant les phases initiales de fonctionnement. Il devrait s'agir cependant de mises au point plutôt que de changements radicaux.

Le système actuel du Registre ne permet pas l'utilisation d'une langue autre que l'anglais. La section 7.2 des Règles de procédure mentionne la possibilité de rendre le système accessible dans d'autres langues "lorsque les fonds nécessaires seront disponibles". Si le système d'inscription devait fonctionner dans d'autres langues, il appartiendrait à l'Autorité de Surveillance de déterminer de quelles langues il s'agirait.

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91 Règles de procédure, ss. 5.1-5.2.

92 Règles de procédure, s. 5.1.

93 Le système utilisé à cet effet utilisera la technologie PKI (*Public Key Private Key Infrastructure*) fournie par Verisign.

94 Règles de procédure, s. 5.5. En cas de substitution de l'ordinateur, le Conservateur doit autoriser l'habilitation du code d'accès et du certificat pour le nouvel ordinateur.

95 Règles de procédure, s. 5.15-16 et s. 10.

96 Règles de procédure, s. 7.5-7.6.

Regulations and Procedures for the International Registry *

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REGULATIONS

Section 1 – Authority

These “Regulations” are issued by the Supervisory Authority pursuant to Article 17(2)(d) of the *Convention on International Interests in Mobile Equipment* (the “Convention”) and Article XVIII of the *Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment* (the “Protocol”).

Section 2 – Definitions

2.1 Terms defined in the Convention and the Protocol shall have the same meanings in these Regulations. In addition, the following terms shall have the meanings set out below:

2.1.1 “Administrator” means the person with authority to act on behalf of a registry user entity on administrative matters in dealings with the International Registry, and an “acting administrator” has the meaning set out in Section 4.1.

2.1.2 “Authorization” means an electronic authorization given by the administrator of a transacting user entity to one of its transacting users or to a professional user to transmit

* Official version of the final text of the *Regulations and Procedures for the International Registry*, as contained in ICAO Document 9864, which is reproduced with the kind permission of the International Civil Aviation Organization. The *Regulations and Procedures for the International Registry* were issued only in English.

information to the International Registry to effect or consent to a registration on behalf of that transacting user entity.

2.1.3 "Consent" means an electronic consent to a registration.

2.1.4 "Identity" means the name, address and electronic address of the entity or person in respect of whom the identifying information is sought.

2.1.5 "Named party" means the transacting user entity named in a registration, and a "named representative" means a person named in a registration and acting for others in an agency, trust or other representative capacity.

2.1.6 "Professional user entity" means a firm or other grouping of persons providing professional services to transacting user entities in connection with the transmission, to the International Registry, of information relating to registrations, and a "professional user" means an individual employee, member or partner of a professional user entity.

2.1.7 "Registration" means an interest electronically registered with the International Registry. For the purposes of Sections 4.4 and 6, the term has the extended meaning set out in Section 6.1. A "registering person" means the transacting user, professional user or direct entry point transmitting information to the International Registry to effect a registration.

2.1.8 "Registry user entity" means:

- (a) a transacting user entity; or
- (b) a professional user entity.

A "registry user" means a transacting user or a professional user.

2.1.9 "Searching person" means a person making a search in accordance with Section 7 of these Regulations.

2.1.10 "Special purpose entity" means an entity created by a transacting user entity for the limited purpose of entering into transactions to which a registration relates, where the latter entity electronically asserts that it has effective control of, or the exclusive right to service, the former entity.

2.1.11 "Transacting user entity" means a legal entity or natural person intending to be a named party in one or more registrations, and a "transacting user" means an individual employee, member or partner of a transacting user entity.

2.2 The term or terms:

(a) "entry point", "authorizing entry point" and "direct entry point" have the meanings set out in Section 12.1;

(b) "International Registry Procedures" has the meaning set out in Section 15.1;
and

(c) "priority search", "priority search certificate", "informational search listing", "Contracting State search" and "Contracting State search certificate" have the meanings set out in Section 7.

Section 3 – General Provisions

3.1 The International Registry is established as the facility for effecting and searching registrations under the Convention and the Protocol.

3.2 Since the International Registry merely provides notice of registrations, the facts underlying any such registration or registered interest shall determine whether it falls within the

scope of the Convention or the Protocol. Without limiting the foregoing, while there will be no technical impediment to the registration of pre-existing rights and interests, such registrations shall have no legal effect under the Convention and the Protocol, except where, by virtue of a declaration under Article 60(3) of the Convention, registration thereof is required. The contents of this Section 3.2 shall be prominently displayed by the International Registry as a general cautionary note.

3.3 The Registrar shall perform the functions specified in the Convention, the Protocol, these Regulations and the International Registry Procedures.

3.4 The International Registry shall be accessible 24 hours a day, 7 days a week, except if precluded by maintenance performed outside peak periods, or technical or security problems, as set out in the International Registry Procedures.

3.5 Technical support shall be provided to registering persons, searching persons and administrators by a help desk of the International Registry, which shall be available 24 hours a day, 7 days a week, via telephone and/or electronic mail, as set out in the International Registry Procedures.

3.6 The International Registry may be used for no other purpose than that set forth in Sections 3.1 and 3.2, unless approved in advance by the Supervisory Authority and subject to the terms of that approval.

Section 4 – Access to the International Registry

4.1 No registry user entity or administrator of that entity shall have access to the International Registry unless that entity and administrator are first approved as such by the Registrar and are otherwise in compliance with these Regulations and the International Registry Procedures. For the purposes of the preceding sentence, such approval shall be given when the Registrar reasonably concludes:

- (a) that such entity and administrator are who they claim to be; and
- (b) on the basis of information submitted, and without undertaking specific legal analysis, that the latter is entitled to act as administrator of the former, in each case, following the standards and procedures set out in the International Registry Procedures.

An administrator may electronically delegate his/her powers to an “acting administrator” from time to time for periods not to exceed three (3) months.

4.2 No registry user shall have access to the International Registry unless that user is first electronically approved as such by the administrator of the subject registry user entity and is otherwise in compliance with these Regulations and the International Registry Procedures. No approved registry user shall be entitled to transmit information to the International Registry to effect a registration unless that user has first received authorization to do so. For the purposes of the preceding sentence, such electronic approval and authorization may be given at the sole discretion of the relevant administrator and may be revoked by such administrator at any time.

4.3 Notwithstanding the preceding paragraphs:

- (a) the administrator of a transacting user entity approved by the Registrar may electronically approve a special purpose entity as a transacting user entity; and
- (b) in such a case, the rights, powers and obligations of the administrator of the approving transacting user entity and its transacting users, respectively, shall apply equally to the approved transacting user entity.

4.4 Subject to these Regulations and in accordance with the International Registry Procedures, a registration may only be effected, with an authorization, by a registering person, on behalf of the transacting user entity, which is a named party required or permitted to effect that registration under Article 20 of the Convention and Article III of the Protocol.

4.5 No searching person shall have access to the International Registry unless that person is first in compliance with these Regulations and the International Registry Procedures.

Section 5 – Information Required To Effect Registration

5.1 Information required to effect a registration shall be selected from electronic information provided by the International Registry. To the extent such information is not so provided, it shall be electronically entered by a registering person using the format prescribed in the International Registry Procedures, except as regards named parties (other than those whose consent is not required under Section 5.8) because they must be approved transacting user entities.

5.2 Identity information shall be deemed complete only if each of the three elements contained in the definition of identity is provided.

5.3 The information required to effect the registration of an international interest, a prospective international interest, an international interest acquired through subrogation, a notice of a national interest, or a registrable non-consensual right or interest is:

- (a) the identity and electronic signature of the registering person and a statement on whose behalf that person is acting;
- (b) the identity of the named parties;
- (c) the following information identifying the aircraft object:
 - (i) type of aircraft object;
 - (ii) manufacturer's name;
 - (iii) manufacturer's generic model designation; and
 - (iv) manufacturer's serial number assigned to the aircraft object;
- (d) in the case of an airframe or helicopter, the following information, if known:
 - (i) the current and, if different, intended State of Registry for nationality purposes; and
 - (ii) the current and, if different, intended aircraft nationality and registration marks assigned pursuant to the Chicago Convention;
- (e) the duration of the registration, if the registration is to lapse prior to the filing of a discharge;
- (f) in the case of an international interest or a prospective international interest, the consent of the named parties, given under an authorization;
- (g) in the case of an international interest acquired through subrogation, the file number of the registration of that interest; and
- (h) the names and electronic addresses of persons to which the Registrar is required to send information notices pursuant to Section 6.

5.4 The information required to effect the registration of a contract of sale or a prospective sale is:

- (a) the information referred to in Sections 5.3 (a) to (d) and 5.3(h);
- (b) the consent of the named parties, given under an authorization; and

(c) in the case of a prospective sale, the duration of the registration, if that registration is to lapse prior to the time of a discharge.

5.5 The information required to effect the registration of the assignment of an international interest, the prospective assignment of an international interest or the assignment of a registrable non-consensual interest is:

- (a) the information referred to in Sections 5.3 (a) to (d) and 5.3(h);
- (b) the consent of the named parties, given under an authorization;
- (c) if the interest being assigned is a registered interest, the file number of the registration relating to that interest; and
- (d) if the interest being assigned is not a registered interest, a description of the interest assigned and original debtor there under, using the format prescribed by the International Registry Procedures.

5.6 The information required to discharge a registration, other than a registration relating to a contract of sale is:

- (a) the information referred to in Sections 5.3 (a) to (d) and 5.3(h);
- (b) the consent of the named parties benefiting from the registered interest, given under an authorization, but not of the debtor, assignor or person subordinating the registered interest, or of the prospective seller in the case of a registration relating to a prospective sale;
- (c) the file number of the registration to be discharged; and
- (d) the date the discharge is to be effective.

5.7 The information required to effect the registration of the subordination of an international interest, a prospective international interest, a national interest or a registrable non-consensual interest is:

- (a) the information referred to in Sections 5.3 (a) to (d) and 5.3(h), and for the purposes of the foregoing reference to Section 5.3(b) and for the purposes of Section 5.7(b), the "named parties" shall be the registry user entities subordinating their interest and benefiting from that subordination;
- (b) the consent of the named party whose interest is subordinated, given under an authorization;
- (c) if the interest being subordinated or benefiting from the subordination is a registered interest, the file number relating to each such interest; and
- (d) if the interest being subordinated or benefiting from the subordination is not a registered interest, a description of such interest and the original debtor thereunder, using the format prescribed by the International Registry Procedures.

5.8 Notwithstanding Sections 5.3(f), 5.4(b) and 5.5(b), the information needed to effect the registration of a pre-existing right or interest required by virtue of a declaration under Article 60(3) of the Convention need not include the consent of the debtor, assignor, seller or person subordinating the right or interest.

5.9 The information required to amend a registration, defined as any change to the information contained therein, is:

- (a) the information referred to in Sections 5.3 (a) to (d) and 5.3(h);

(b) the consent of the named parties that consented to the registration to be amended, given under an authorization;

(c) the file number of the registration to be amended; and

(d) the amendments to be made.

5.10 Without prejudice to Section 12.6, the lack of information referred to in Section 5.3(d), including where cross-referenced in other sections, does not invalidate a registration.

5.11 The consent requirements of this Section 5 shall be satisfied:

(a) in the case of a registration initiated by a direct entry point in accordance with Section 12.1(b), when the International Registry receives the consent from all parties whose consent is required under the Convention, the Protocol, and these Regulations; and

(b) in the case of a registration authorized in accordance with Section 12.1(a), in respect of the submitting party when the International Registry receives such registration together with the authorization.

Section 6 – Confirmation and Notice of Registration

6.1 In this section, the term “registration” includes, where appropriate, the amendment, extension or discharge of a registration.

6.2 The Registrar shall provide prompt electronic confirmation of a registration to the named parties, the registering person and all other persons entitled to receive notice of that registration under Section 5. A confirmation shall contain the information set forth in Article 22(2)(a) of the Convention.

6.3 When a registration is effected relating to an aircraft object, a notice thereof shall be sent to persons referred to in Section 6.2 in any other registration relating to that object.

6.4 The confirmation and notice referred to in Sections 6.2 and 6.3, respectively, shall include information specified in Section 5 relating thereto and the file number of the registration.

Section 7 – Searches

7.1 Searches of the International Registry may be performed against:

(a) a manufacturer’s name;

(b) a manufacturer’s generic model designation; and

(c) a manufacturer’s serial number of an aircraft object; and

in the case of an airframe or helicopter, against:

(d) the State of Registry of the aircraft of which it is part; or

(e) the nationality or registration mark.

Such information may be searched by means of a priority search or informational search, as set out in Sections 7.2 and 7.3, respectively. A Contracting State search may also be made, as set out in Section 7.5. A search may be performed by any person who complies with the International Registry Procedures, whether or not that searching person has a specific interest. All searches shall be performed by electronic means.

7.2 A “priority search” is a search for registration information using the three criteria specified in Article XX(1) of the Protocol, as set out in Section 7.1 (a) to (c). Such information is searchable for purposes of Articles 19 (2) and (6) of the Convention and Article XX(1) of the Protocol.

7.3 An "informational search" is a search other than a priority search. The results of an informational search, an "informational search listing", shall be a list of all matching aircraft objects, described by the items set out in Section 7.1 (a) to (c) and, if available in the International Registry, the items in Section 7.1 (d) to (e). The facility to perform such an informational search does not make that information "searchable" for the purposes of Articles 19 (2) and (6) of the Convention and Article XX(1) of the Protocol.

7.4 A "priority search certificate" is a certificate issued in response to a priority search. It shall:

(a) set out the information required by Article 22(2) (a) or (b) of the Convention, as applicable, and comply with Article 22(3) of the Convention; and

(b) in the case where Article 22(2)(a) of the Convention applies, list the registered information in both:

(i) chronological order; and

(ii) a manner that indicates the transactional history of each registered interest.

7.5 A "Contracting State search" is a search for all declarations and designations, and withdrawals thereof, made under the Convention and the Protocol by the Contracting State specified in the search. A "Contracting State search certificate" is a certificate issued in response to a Contracting State search. A Contracting State search certificate shall:

(a) indicate, in chronological order, all declarations and designations, and withdrawals thereof, by the specified Contracting State;

(b) list the effective date of ratification, acceptance, approval or accession of the Convention and the Protocol, and of each declaration or designation, and withdrawal thereof, by the specified Contracting State; and

(c) attach, in the electronic form set out in the International Registry Procedures, a copy of all instruments deposited by the specified Contracting State relating to items within the scope of Section 7.5(b).

7.6 Each search certificate and listing shall be issued and made available in electronic form. Upon request, a printed copy of a priority search certificate or Contracting State search certificate shall be provided by the Registrar.

Section 8 – Operational Complaints

8.1 Any person may submit a complaint to the Registrar concerning the operation of the International Registry. If not satisfactorily addressed by the Registrar, that complaint may be further submitted by that person to the Supervisory Authority.

8.2 For the purposes of Section 8.1, a matter "concerns the operation of the International Registry" when the matter relates to the general procedures and policies of the International Registry and does not involve specific adjudication by the Registrar or Supervisory Authority.

8.3 A person making a complaint shall substantiate his/her assertions in writing.

8.4 The Supervisory Authority shall consider complaints, and where, on the basis of that consideration, it determines changes to the procedures or policies are appropriate, it shall so instruct the Registrar.

8.5 The International Registry Procedures shall set out details relating to the procedure contemplated by Sections 8.1 to 8.4.

Section 9 – Confidentiality

All information in the International Registry shall be confidential except where it is:

- (a) provided by the Registrar in response to a search under Section 7;
- (b) made electronically available to enable registry users to effect, amend or discharge registrations;
- (c) provided to the Supervisory Authority at the latter's request; or
- (d) used for the purposes of the statistics required by Section 10.

Section 10 – Statistics

10.1 The Registrar shall maintain updated registration statistics and shall publish them in an annual report. This report shall be electronically accessible to any person.

10.2 The registration statistics under Section 10.1 shall consist of:

- (a) transactional volumes and revenues subdivided in each case by registration type and geographic distribution; and
- (b) other compilations of non-confidential information requested by the Supervisory Authority.

Section 11 – Annual Report to the Supervisory Authority

The Registrar shall prepare an annual report, including statistical data referred to in Section 10, and shall submit it to the Supervisory Authority.

Section 12 – Relations with the Entry Points

12.1 A Contracting State may designate an entry point or entry points ("entry point") under Article XIX(1) of the Protocol:

- (a) which shall or may authorize the transmission of information required for registration under the Convention and the Protocol to the International Registry ("authorizing entry point"); or
- (b) through which information required for registration under the Convention and the Protocol shall or may be directly transmitted to the International Registry ("direct entry point").

12.2 A Contracting State may only designate a mandatory entry point in respect of:

- (a) registrations relating to airframes and helicopters for which it is the State of Registry; and/or
- (b) registrations of prospective international interests, prospective sales or prospective assignments of international interests in any airframe or helicopter for which it has taken regulatory steps to become the State of Registry.

12.3 A Contracting State designating an entry point shall notify the Depository and the Supervisory Authority thereof, indicating whether such entry point is an authorizing or direct entry point. The Supervisory Authority shall keep the Registrar informed of such designations, and the Registrar shall maintain a current list thereof that is electronically accessible to users.

12.4 The Registrar shall establish arrangements applicable to the electronic transmission of registration information from, or authorized by, entry points to the International Registry and, after consultations with each designated entry point, shall specify the procedures applicable to that entry point. The foregoing shall not require the establishment of electronically coordinated systems but rather arrangements designed to enhance the efficient use of the International Registry by entry points.

12.5 The International Registry shall provide an electronic warning against a registration that is not effected:

- (a) through a direct entry point where use thereof is mandatory; or
- (b) in accordance with procedures required by an authorizing entry point;

to the extent agreed between the International Registry and the Contracting State declaring that entry point.

12.6 A registration effected in violation of the terms of a designation under Sections 12.1 and 12.2 is invalid.

Section 13 – Fees

13.1 The Registrar shall collect a fee prior to undertaking services relating to the International Registry.

13.2 Fees, including fees arising from operations through an entry point, must be paid to the Registrar prior to the requested operation unless otherwise agreed between the Registrar and such entry point.

13.3 Fees shall be collected according to a schedule issued by the Supervisory Authority, which shall state the amount of fees payable for each service.

13.4 Fees shall be established and adjusted by the Supervisory Authority, as required by the Convention and the Protocol.

Section 14 – Liability and Insurance

14.1 For the purposes of Article 28(1) of the Convention, “loss suffered” means loss or damage resulting from an error or omission of the Registrar and its officers and employees or from a malfunction of the international registration system, except as provided for by Article 28 of the Convention, but does not include loss or damage resulting from lack of access to the International Registry as a result of measures referred to in Section 3.4 of these Regulations.

14.2 Any claim against the Registrar under Article 28(1) of the Convention:

(a) shall be made in writing within the time period applicable under the laws of the State where the International Registry is located;

(b) shall be subject to consultations between the claimant and the Registrar;
and

(c) if not resolved by such consultations, may be pursued by the claimant in accordance with Article 44 of the Convention.

14.3 The International Registry Procedures shall set out details relating to the procedure contemplated by Section 14.2.

14.4 The amount of insurance or financial guarantee required under Article 28(4) of the Convention and Article XX(5) of the Protocol shall be determined and may be revised by the Supervisory Authority.

Section 15 – International Registry Procedures

15.1 International Registry Procedures addressing items required by these Regulations or otherwise relating to the technical operation and administrative processes of the International Registry shall be established by the Supervisory Authority.

15.2 Without restricting their content, the International Registry Procedures shall set out the technical and administrative processes for:

(a) effecting, amending and discharging registrations and making and obtaining copies of searches; and

(b) obtaining the approvals and authorizations required to access the International Registry.

Section 16 – Publication

16.1 The authentic version of these Regulations and the International Registry Procedures shall be published in an official publication of the Supervisory Authority.

16.2 The Registrar shall make an electronic version of the authentic texts referred to in Section 16.1, as may be amended as contemplated by Section 17, available to the public at no cost.

Section 17 – Amendments

17.1 Requests for amendments to these Regulations or the International Registry Procedures may be submitted by the Registrar to the Supervisory Authority, which shall consider such amendments.

17.2 The authentic version of any amendments to these Regulations or the International Registry Procedures approved by the Supervisory Authority shall be published in an official publication of the Supervisory Authority.

Section 18 – Effective Dates

The present Regulations and the initial International Registry Procedures shall take effect on the date the Protocol enters into force. Any amendments to these Regulations or the International Registry Procedures shall take effect one calendar month after the date of their publication unless otherwise determined by the Supervisory Authority.

PROCEDURES

Section 1 – Authority

(Section 15 of the Regulations)

These "Procedures" are issued by the Supervisory Authority of the International Registry under the *Convention on International Interests in Mobile Equipment* (the "Convention"), the *Protocol to the Convention on Matters Specific to Aircraft Equipment* (the "Protocol"), and the *Regulations for the International Registry* (the "Regulations"). They address administrative items required by the Regulations as conditions to use of the International Registry or otherwise relating to the technical operation and administrative processes of the International Registry.

Section 2 – Definitions

Terms defined in the Convention, the Protocol, and the Regulations shall have the same meaning in these Procedures. In addition, the following terms shall have the meaning set out below:

- (a) "Approval" means either:
 - (i) an electronic approval, by the Registrar, of an entity as a registry user entity and/or of an individual as that registry user entity's administrator, in accordance with Section 10 below; or
 - (ii) an electronic approval, by the administrator, of an individual as a registry user of such registry user entity, in accordance with Section 11 below, and "approve" and "approved" shall be construed accordingly.
- (b) "Confirmation" means an electronic confirmation provided in accordance with Section 6 of the Regulations, automatically issued by the Registrar when a registration, amendment or discharge is searchable.
- (c) "CPS" means the Registrar's certification practice statement, as displayed on the website.
- (d) "Digital certificate" means a digital certificate for use in communications with the International Registry, issued to an administrator or other registry user by the Registrar in accordance with these Procedures and the CPS.
- (e) "Final consent" means the electronic consent of the last of the named parties whose consent is required under Article 20 of the Convention in relation to a registration, amendment or discharge.
- (f) "Private key" means the private key associated with a digital certificate.
- (g) "Website" means the website that provides the public interface of the International Registry and associated content provided by the Registrar under the Uniform Resource Locator (URL): www.internationalregistry.aero

Section 3 – Functions of the Registrar

(Section 3 of the Regulations)

The Registrar shall operate the International Registry and perform the functions assigned to it by the Convention, the Protocol and the Regulations.

Section 4 – Functions of the Registry User Entity

(Section 4 of the Regulations)

For the purpose of using the International Registry, the following functions fall within the scope of responsibility of each registry user entity:

- (a) the proper selection and appointment of its administrator;
- (b) any actions of its administrator, including any acting administrator, and of its registry users taken in relation to the Registry, which shall be deemed to have been duly authorized by that registry user entity;
- (c) the accuracy of the data transmitted to the International Registry on its behalf;
- (d) requesting, through its “back-up contact” referred to in Section 5.12 below, that the Registrar revoke the approval of the administrator acting on behalf of a registry user entity if the administrator ceases to be employed by that registry user entity or otherwise ceases to be authorized to act on its behalf;
- (e) abiding by the applicable terms and conditions in place from time to time governing use of the International Registry. The applicable terms and conditions can be accessed on the website.

Section 5 – Functions of the Administrator of a Registry User Entity

(Section 4 of the Regulations)

5.1 An administrator, who may but need not be an employee of a registry user entity, shall be duly appointed by each registry user entity, with authority to act on its behalf for the purposes of the International Registry, and such authority shall be represented during the approval process.

5.2 An administrator should hold appropriate formal professional qualifications commensurate with the requirements of the functions of administrator.

5.3 Each registry user entity may have only one administrator at any given time.

5.4 The administrator of a transacting user entity, who has been approved by the Registrar, is automatically authorized to effect, amend, discharge or consent to registrations in which that entity is a named party.

5.5 An administrator:

- (a) shall keep his/her password and digital certificate secure; and
- (b) shall not transfer his/her digital certificate from the computer on which it was first installed, except to a replacement computer under his/her control, in which case he/she shall first apply to the Registrar for that purpose.

5.6 Where an administrator electronically delegates his/her powers to an acting administrator in accordance with Section 4.1 of the Regulations, that acting administrator shall be deemed to be the administrator for the purposes of these Procedures.

5.7 Where an administrator electronically approves a registry user to act on behalf of a registry user entity in accordance with Section 4.2 of the Regulations, the Registrar shall issue an email to that registry user containing a link to a digital certificate in accordance with these Procedures.

5.8 An administrator shall, through the website:

- (a) keep up to date the email address and other details of the administrator and each registry user representing such registry user entity held by the International Registry;

(b) promptly revoke the approval of a registry user representing such registry user entity in the event that such registry user leaves the employment of, or otherwise ceases to be associated with, such registry user entity; and

(c) promptly revoke the authorization of a registry user representing such registry user entity in the event that such registry user is no longer authorized to effect, amend, discharge or consent to one or more registrations in which that entity is a named party.

5.9 In the event that an administrator is to leave the employment of the registry user entity on whose behalf he/she is authorized to act or if there is to be a change of administrator, the administrator shall electronically notify the Registrar thereof in a timely fashion. Should the registry user entity wish to appoint a replacement administrator, such appointment shall be subject to a sign-up fee applicable to a new administrator.

5.10 The administrator of a registry user entity shall have the authority, through the website, to block and/or disable the user account of any registry user representing his/her registry user entity. It is the administrator's responsibility to take such action promptly in the event of a security breach relating to any such registry user's user account, of which he/she has actual knowledge, including but not limited to compromise of such registry user's private key.

5.11 The administrator of a registry user entity shall notify the Registrar of any security breach (for example, a breach compromising a private key), of which he/she has actual knowledge, that is expected to result in unauthorized registrations. If the security breach relates to a registry user account, the administrator may block and/or disable the account.

5.12 If the account of an administrator is subject to a security breach that could reasonably be expected to result in unauthorized access to and use of the International Registry, the Registrar and the registry user entity shall cooperate to expeditiously take corrective action appropriate under the circumstances. A registry user entity shall designate a "back-up contact" for these purposes.

5.13 On notification of a security breach, the Registrar may block and/or disable any user account.

5.14 The Registrar may make such reasonable identity checks of a proposed administrator as the Registrar considers necessary in relation to that person undertaking such function. The Registrar may make similar checks of a registry user, where deemed necessary by the Registrar.

5.15 Each administrator may electronically approve further registry users to act on behalf of the registry user entity which that administrator represents (when authorized to do so) and may approve the issue of a digital certificate to each of those registry users.

5.16 The administrator has sole responsibility for the selection of his/her registry user entity's registry users and for ensuring that only individuals who are duly authorized to act on behalf of his/her registry user entity are appointed as registry users from time to time.

Section 6 – Functions of the Registry User

(Section 4 of the Regulations)

6.1 No individual other than an administrator may effect, amend, discharge or consent to registrations with the International Registry until he/she has been approved as a registry user by the administrator of the registry user entity that such person represents.

6.2 No registry user may transmit information to the International Registry to effect, amend or discharge a registration in respect of an aircraft object unless such registry user has first received authorization to do so in relation to such aircraft object either:

(a) in the case of a transacting user, from the administrator of the transacting user entity that represents it; or

(b) in the case of a professional user, from the administrator of the transacting user entity being such professional user's client.

6.3 Each registry user:

(a) shall keep his/her password and digital certificate secure; and

(b) shall not transfer his/her digital certificate from the computer on which it was first installed, except to a replacement computer under his/her control, in which case he/she shall first apply to the Registrar for that purpose.

6.4 Each registry user shall notify his/her respective administrator of any security breach, of which he/she is aware, that is expected to result in unauthorized registrations, including unauthorized use, disclosure or compromise of his/her password or private keys.

6.5 Each registry user acknowledges that his/her respective administrator may make such identity checks as the Registrar considers necessary in connection with such registry user's access to the International Registry.

Section 7 – Access to the International Registry

(Section 4 of the Regulations)

7.1 The International Registry can be accessed via the public Internet under the URL: www.internationalregistry.aero

7.2 The International Registry will initially be available in English only. It is envisaged that other languages will be added when the necessary financial means are available, taking into account the implications thereof as well as advantages for users.

7.3 To access the International Registry, an administrator, registry user or a searching person requires access to the Internet with a compatible browser(s), as specified on the website. Each such person shall establish his/her own arrangements for:

(a) access to the Internet; and

(b) contracting with, and paying the fees of, any third party Internet service provider.

The International Registry extends only to the access point to the Internet located at the Registrar's hosting location.

7.4 The International Registry shall be accessible 24 hours a day, 7 days a week, except if precluded by maintenance performed outside peak periods, or technical or security problems. Advance notice of any interruption in access, and expected resumption of service, shall, to the maximum extent practicable, be provided via the website.

7.5 Access to the International Registry is conditioned on:

(a) in the case of an administrator and a registry user, having a valid digital certificate and complying with the applicable part of the CPS relating to his/her use and, where required, entering the correct password;

(b) following the steps and procedures provided on the website, including acceptance of the website terms and conditions, and of the CPS, and abiding thereby;

(c) paying, in advance, the fees set by the Supervisory Authority and published on the website; and

(d) complying with these Procedures.

7.6 If an administrator's or a registry user's password is entered incorrectly, that person shall be given the opportunity to re-enter the password or terminate the action. If there are three failed attempts to enter the correct password, the corresponding user account will be blocked until contact has been made with the help desk and the issue giving rise to the failure has been corrected.

Section 8 – Entry Points

(Section 12 of the Regulations)

8.1 The Registrar shall establish arrangements applicable to the electronic transmission of registration information from, or authorized by, entry points to the International Registry designated under Article XIX(1) of the Protocol and Section 12 of the Regulations and, after consultations with each designated entry point, shall specify the arrangements applicable to that entry point. The arrangements applicable, designed to enhance the efficient use of the International Registry by entry points, shall be published on the website.

8.2 All registry users making registrations through a designated entry point or entry points under Article XIX(1) of the Protocol shall comply with the arrangements referred to in the preceding Section 8.1.

Section 9 – Help Desk and Technical Support

(Section 3.5 of the Regulations)

9.1 To access the technical support function of the International Registry, an administrator, registry user or searching person may email or call the help desk, as specified on the website. It is recommended that the "help" pages of the website and email be used, where possible. Any person communicating with the help desk via email is requested to:

- (a) specify the nature of the problem or question;
- (b) provide his/her full name and company name;
- (c) identify which type of user he/she is (e.g. administrator, registry user or searching person); and
- (d) provide a main contact telephone number.

The Registrar may, to the extent consistent with applicable privacy law, verify the identity of all callers and log and record all calls to the help desk.

9.2 The terms of Section 3.4 of the Regulations and Section 7.4 of these Procedures shall apply to:

- (a) the hours of operation of the help desk, and exceptions thereto; and
- (b) notice of interruption and resumption of access to the help desk and its services.

9.3 The initial working languages of the help desk will be English, French and Spanish. It is envisaged that other languages will be added when the necessary financial means are available, taking into account the implications thereof as well as advantages for users.

9.4 Help desk response times will depend on demand and cannot therefore be guaranteed.

9.5 The help desk is for technical support only and cannot provide support on other matters, including legal questions. The help desk cannot respond to queries concerning an administrator's, a registry user's or a searching person's:

- (a) computer or network system;
- (b) system security policies;
- (c) Internet access, including its connectivity and performance; or
- (d) browser.

Section 10 – Sign-up and Approval – Registry User Entity and Administrator
(Section 4 of the Regulations)

10.1 In connection with approvals under Section 4.1 of the Regulations, the proposed administrator of a proposed registry user entity shall complete and electronically submit to the Registrar, through the website, the form for approval of:

- (a) a registry user entity; and
- (b) an administrator of that entity.

Information designated as mandatory on the form shall be provided. Information designated as optional on the form may be provided. Names of organizations and persons must be their correct legal names. In exceptional cases (e.g. where the space on the form is insufficient), prior approval of the Registrar for using a name other than the correct legal name must be sought by email. A proposed registry user entity shall also electronically submit to the Registrar, with proper signature, confirmation that a proposed administrator is entitled to act in that capacity. At the specific request of the Registrar, such confirmation shall be provided in hardcopy on the entity's letterhead with proper signature. All applications for approval shall include acceptance of these Procedures and of the website terms and conditions governing the use of the International Registry.

10.2 All applications for approval must be accompanied by full payment (by credit or debit card) of the appropriate non-refundable fee, together with value added tax (VAT), if required by law. The proposed administrator will be presented with a summary of the amount (in U.S. dollars) to be paid and prompted to enter credit or debit card details. Once the card details have been submitted and validated, payment will be taken from the relevant account and that person will be presented with a confirmation screen and the option to save a digital copy of the invoice.

10.3 All applications for approvals will be acknowledged to the electronic mail address provided on the submitted application form.

10.4 The proposed administrator shall promptly reply to requests for additional information from the Registrar in connection with the approval process. Such requests, made at the sole discretion of the Registrar, shall be consistent with applicable privacy laws.

10.5 If satisfied with the information provided, the Registrar shall issue to the proposed administrator, in electronic form, the Registrar's approval and a notification of the URL at which the administrator can access his/her digital certificate, together with appropriate instructions on its use.

10.6 The Registrar shall issue its approval (if given) as soon as is reasonably practicable and will endeavour to complete the approval process within 48 hours of receipt of the application.

10.7 Once the Registrar has issued its approval, the administrator shall test his/her ability to access the website.

10.8 The Registrar shall not approve a registry user entity or an administrator where the Registrar believes that the requirements of Section 4.1 of the Regulations have not been met. In such a case, the Registrar, if requested in writing shall:

(a) specify in writing, via email, the reasons why such requirements have not been met; and

(b) provide the applicant with a reasonable opportunity to take corrective action.

If not corrected, at the sole discretion of the Registrar, the application shall be declined. Refusal of an application shall not prevent an applicant from making a subsequent application for approval, provided that the requirements of these Procedures are fully complied with in respect thereto, and payment of the appropriate fee together with VAT (if applicable) is made.

10.9 The fee for issuing a replacement digital certificate shall be borne by the registry user entity. A person seeking a replacement digital certificate shall apply to the Registrar and follow the instructions specified on the website.

10.10 The Registrar may revoke the approval of a registry user entity and/or an administrator at any time where, in its view, there exists a material risk of fraudulent registrations or other misuse. In such a case, the Registrar and the registry user entity shall take all reasonable steps to cooperate to expeditiously take corrective action appropriate under the circumstances; the back-up contact designated under Section 5.12 may be used as required. The Registrar may block and/or disable any user account of the registry user entity concerned.

Section 11 – Sign-up and Approval – Registry User
(Section 4 of the Regulations)

11.1 In connection with approval of registry users under Section 4.2 of the Regulations, a proposed registry user seeking to act on behalf of an approved registry user entity shall apply through the website, requesting electronic approval from the administrator of that entity.

11.2 An administrator has the sole right to approve one or more registry users employed by a registry user entity to act on his/her behalf. If the administrator elects to approve such registry users, the administrator shall take that action through the “approved registry user” page on the website, specifying the period of validity of a proposed registry user’s access to the International Registry and directing that the associated payment be made.

11.3 Upon receiving the approval of his/her administrator and following successful testing of his/her ability to access the website, a registry user will be issued a digital certificate by the administrator via an email containing a link to the website. The registry user should then download from the website the digital certificate, providing him/her with a private key.

Section 12 – Effecting, Amending and Discharging Registrations
(Sections 5 and 6 of the Regulations)

12.1 To effect, amend or discharge a registration, a registering person shall:

(a) follow the relevant process and instructions specified on the website; and

(b) complete the electronic forms contained on the website, with the relevant information required by Section 5 of the Regulations.

Registration information electronically provided on the website (i.e. on “drop-down lists”) shall be used by a registering person, where possible. To the extent such information is not provided, registration information shall be inserted by a registering person following the instructions specified on the website.

12.2 Each named party, other than the registering party, required to consent under Article 20 of the Convention in order for a registration, amendment or discharge to become effective shall be electronically requested to consent thereto, in accordance with Article 18(1)(a) of the Convention, prior to that registration, amendment or discharge becoming searchable. Once a registering person has entered registration, amendment or discharge information on the website and has digitally signed it, each named party identified in the registration:

- (a) will be notified thereof by electronic mail; and
- (b) shall be given the opportunity to consent thereto, through the website, for a period of 36 hours.

In the event that any such named party fails to give its consent within the 36-hour period, the registration, amendment or discharge will be automatically aborted.

12.3 Upon receipt of the final consent, the Registrar shall automatically issue a confirmation thereof to all named parties on that registration, and a notice thereof to all named parties on other registrations relating to the same aircraft object, and to all other parties entitled to receive a confirmation thereof under Section 6 of the Regulations, provided that the correct email addresses of all such parties have previously been provided.

12.4 An administrator may, at his/her sole discretion, authorize one or more of his/her approved registry users or professional users to effect, amend or discharge a registration. The authorization may cover one or more aircraft objects. Several users may be authorized to work on the same aircraft object or objects, but not simultaneously during the same registration session. An administrator may, at any time, revoke an authorization he/she has given and grant further authorizations to qualifying registry users.

12.5 Upon receipt of a confirmation, any named party wishing to ensure that the respective entry has been correctly made may undertake a priority search.

12.6 Rectification of any error or inaccuracy in a registration, once searchable, may only be effected through an amended registration.

12.7 Initiated, but not completed, registrations, amendments or discharges shall not appear on any search results.

Section 13 – Making Searches and Obtaining Search Results

(Section 7 of the Regulations)

13.1 Any person may, following payment of the required fee, search the International Registry, and that searching person shall:

- (a) follow the relevant process and instructions specified on the website; and
- (b) complete the electronic forms contained on the website, with the relevant information required by Section 7 of the Regulations.

Search information electronically provided on the website (i.e. on “drop-down lists”) shall be used by a searching person, where possible. To the extent such information is not provided, search information shall be inserted by a searching person following the rules specified on the website.

13.2 An informational search may be performed for registration information against a manufacturer’s name, a manufacturer’s generic model designation and a manufacturer’s serial number assigned to an aircraft object and, if available in the International Registry, in the case of an airframe or helicopter, against the State of Registry of an aircraft of which it is part and the nationality or registration mark. The object of an informational search is to provide the searching person with sufficient information to perform a priority search.

13.3 An informational search listing shall be made available in electronic form to the person undertaking the search. For the avoidance of doubt, an informational search will not generate a search certificate. The Registrar shall not be liable in respect of the content of an informational search listing.

13.4 In making a priority search or a Contracting State search, the searching person shall state the name of the person or persons having the benefit of the search. The name of such person or persons shall appear on the priority search certificate or the Contracting State search certificate, as the case may be. Beneficiaries may include:

(a) parties entering into, planning or forbearing from commercial transactions involving a named party of an aircraft object; or

(b) parties providing legal or other professional advice to, or insuring, the parties specified in clause (a) immediately preceding.

13.5 Priority search certificates and Contracting State search certificates will be digitally signed by the Registrar and must be so signed in order to be valid. They shall be stored electronically by the Registrar. An electronic version thereof shall be issued and made available to the searching person. A printed version of either such certificate shall be made available upon payment of the required fee.

13.6 The fees for Contracting State searches undertaken by government authorities in Contracting States for official purposes shall be waived. The fees for other searches performed by such authorities may be waived pursuant to arrangements made with the Registrar.

Section 14 – Operational Complaints

(Section 8 of the Regulations)

14.1 In accordance with Section 8 of the Regulations, any person may submit an operational complaint to the Registrar through the “operational complaints” section of the website or by email as specified on the website. The receipt of an operational complaint shall be promptly acknowledged by the Registrar.

14.2 Operational complaints shall include a written statement containing full details of the facts said to give rise to the complaint.

14.3 The Registrar shall respond to the complaint or state why it is not able to do so, within 15 calendar days of receipt of the complaint or, if later, receipt of the full facts statement. The Registrar shall transmit a copy of its reply to the Supervisory Authority.

14.4 If, within 30 calendar days of making the complaint, the person does not consider that the matter has been or is being satisfactorily addressed by the Registrar, that person may submit the complaint to the Supervisory Authority (with a copy to the Registrar) for further consideration. Submission of the complaint to the Supervisory Authority shall be made stating the full facts of the case either by email to LEB@icao.int or by letter or facsimile to:

International Civil Aviation Organization
Supervisory Authority of the International Registry
c/o Legal Bureau
999 University Street
Montréal, Quebec
Canada H3C 5H7
Fax: +1 (514) 954-8032.

14.5 If the Supervisory Authority determines that changes to the procedures or policies of the International Registry are appropriate, it will instruct the Registrar to carry out such changes.

Section 15 – Claims against the Registrar

(Section 14 of the Regulations)

15.1 Claims may be brought against the Registrar under Article 28 of the Convention for loss suffered as defined in Section 14 of the Regulations. In accordance with Article 28(2), the Registrar shall not be liable for factual inaccuracy of registration information received by the Registrar or transmitted by the Registrar in the form in which it received that information nor for acts or circumstances for which the Registrar and its officers and employees are not responsible and arising prior to receipt of registration information at the International Registry.

15.2 All such claims shall be notified in writing to the Registrar at:

Aviareto Ltd.
Regus Harcourt Centre
Harcourt Road
Dublin 2, Ireland

by post and/or facsimile and by email and shall include a full statement of the facts giving rise to the claim pursuant to Article 28 of the Convention. Such statement shall be provided to the Registrar within three months of the person becoming aware of the existence of the claim.

15.3 All such claims shall be subject to a consultation period during which the claimant and the Registrar will in good faith attempt to resolve the claim. The consultation period shall be three months from the date the Registrar receives notification of the claim, or the statement of facts (if later). The three-month period may be extended by mutual agreement of the parties.

15.4 If, following the consultation period, the claim has not been resolved, the parties are encouraged to engage in mediation, conciliation, arbitration or other dispute resolution process but the claimant may, subject to the procedural requirements of the applicable law, commence proceedings against the Registrar in accordance with Articles 28 and 44 of the Convention.

15.5 Nothing in these Procedures shall:

- (a) operate to extend any limitation period applicable under the applicable law; or
- (b) affect a party's right to commence proceedings where otherwise a limitation period would expire.

Section 16 – Confidentiality

(Section 9 of the Regulations)

The Registrar shall keep all information in the International Registry confidential, except where:

- (a) it is provided in response to a priority search, a Contracting State search or informational search, or made electronically available to enable registry users to effect, amend or discharge registrations;
- (b) it is requested under Article 27, paragraph 5, of the Convention, or provided to the Supervisory Authority at the latter's request; or

(c) it is used for the purposes of the statistics required by Section 10 of the Regulations for the International Registry.

Section 17 – Notifications

The Registrar may notify an administrator or a registry user entity, by email to the current email address provided by or for that person, of any matters affecting the International Registry. Except when a system-generated non-delivery notice is received, any such notification shall be presumed to have been received 24 hours after it is sent.

Section 18 – Fees

(Section 13 of the Regulations)

All applicable fees shall be paid in advance. The current fee schedule is set out in the Appendix to the present Procedures and may be adjusted from time to time by the Supervisory Authority, as provided by the Convention and the Protocol.

Section 19 – Publication

(Section 16 of the Regulations)

19.1 The authentic version of these Procedures shall be published in an official publication of the Supervisory Authority.

19.2 The Registrar shall make an electronic version of these Procedures, as may be amended, available to the public at no cost by publishing it on the website.

Section 20 – Amendments

(Section 17 of the Regulations)

20.1 Requests for amendments to these Procedures may be submitted by the Registrar to the Supervisory Authority, which shall consider such amendments.

20.2 The authentic version of any amendments to these Procedures approved by the Supervisory Authority shall be published in an official publication of the Supervisory Authority.

Section 21 – Effective Dates

(Section 18 Regulations)

These Procedures shall take effect on the date the Protocol enters into force. Any amendments to these Procedures shall take effect one calendar month after the date of their publication unless otherwise determined by the Supervisory Authority.

Appendix

Fee Schedule

1. FEES FOR USING THE INTERNATIONAL REGISTRY

User set-up fee

1.1 No person may register with the International Registry without having paid a "user set-up fee". There shall be three options open to users:

- (a) a five-year subscription;
- (b) a one-year subscription;
- (c) a ten-user, five-year subscription.

1.2 For option (c), the person purchasing the subscription will be nominated as the administrator of the group of users and will be provided with a user credit to set up a further nine individual users in one or more user sessions. Such users will be valid for five years, subject to substitution of individual users through the administrator.

1.3 A user may represent both his/her primary employer and companies controlled by the primary employer (i.e. where a separate company is controlled by an existing registry user, no separate user set-up fees will be required).

1.4 User set-up fees are defined in Table 1. These fees include the provision of a PKI certificate that is installed on the user workstation. In the event of this certificate being lost or destroyed, a new certificate will be supplied on payment of a "lost certificate fee" as set out in Table 1.

Registration fee

1.5 A single registration fee shall be charged for all registrations made during a "registration session", defined to mean one session with the International Registry permitting "all registrations" relating to:

- (a) one airframe and all engines regularly used thereon (or any subset thereof or any individual engine); or
- (b) one helicopter.

For this purpose, "all registrations" means all registrations reflecting transactions relating to the object or objects set out in clauses (a) or (b) entered into with the same effective date, as electronically confirmed by the registering and consenting parties, including those reflecting different or multiple types of registrations permitted under the Convention and the Protocol without limitation in number (e.g. an international interest (leasing agreement), a second international interest (security agreement), a third international interest (a second security agreement), subordination (of the second international interest to the first), and an assignment of one or more of the international interests). A "registration session" will last for up to 24 hours for the purpose of the "registration fee".

1.6 That single registration fee shall be defined as the "registration fee", the amount of which is set out in Table 1.

1.7 Spare engines (i.e. further engines beyond the number normally fitted to an airframe) that are to be registered with an airframe during a single registration session will be subject to an additional "spare engine fee", the amount of which is defined in Table 1.

Search fee

1.8 A single search fee shall be charged for all searches made during a "search session", defined to mean "all searches" relating to:

Table 1. Fees

<i>Description</i>	<i>Fee (in U.S. dollars)</i>
User set-up fee (5 years)	500
User set-up fee (1 year)	200
Ten-user set-up fee (5 years)	2 500
Registration fee	100
Spare engine fee	50
Search fee	35
Lost certificate fee	100

(a) one airframe and all engines to be regularly used thereon (or any subset thereof or any individual engine); or

(b) one helicopter.

For this purpose, "all searches" means all searches relating to the object or objects set out in clauses (a) or (b), as electronically confirmed by the searching party. That single search fee shall be defined as the "search fee," the amount of which is set out in Table 1.

2. PROCEDURE FOR ADJUSTMENT OF FEES

2.1 At the end of the initial period (first year of the operational phase), fees shall be reviewed by the Supervisory Authority, in consultation with the contractor. New fees may then be set by the Supervisory Authority, based upon anticipated volume at that point, taking into account:

- (a) the contractor's cash reserves for working capital;
- (b) the level of insurance required by the Supervisory Authority;
- (c) any litigation budget required by the Supervisory Authority or the contractor above that contained in the cost schedule;
- (d) the Supervisory Authority costs;
- (e) any service enhancements requested by the Supervisory Authority or suggested by the contractor;
- (f) the transaction volume achieved by the Registry and the variation from the transaction volume projected by the contractor;
- (g) any other relevant factors.

2.2 The same review mechanism set out in paragraph 2.1 may be carried out at the end of the second, third and fourth years of operation.

3. IRISH VAT

Users will be invited to state their country of residence as part of their user profile and, if based in the European Union, will be asked for a company VAT number that will determine the application of Irish VAT (applies to Irish and European Union users). Under current legislation, European VAT is not applicable to services delivered to parties outside of Europe (therefore users outside of the European Union are not subject to VAT).

— END —