

The Russian Federation and the Cape Town Convention : the Aviation Protocol

Alexander N. Silikov *

The Ministry of Justice of the Russian Federation has given its approval to a draft Federal Law "On accession of the Russian Federation to the Cape Town Convention on International Interests in Mobile Equipment and the Aircraft Protocol to the Convention", and also to a draft Government Regulation on the accession of the Russian Federation to both these instruments. This information was provided to "Aviaport" by a representative of the JSC "United Aircraft Corporation".¹

The task of examining whether the Russian Federation would accede to the Cape Town Convention was set by the President of the Russian Federation, Mr V. Putin, at a meeting in Ulyanovsk in September 2008. In November of that year, unanimous agreement in support of the accession of the Russian Federation to the Convention was reached at a meeting in the Ministry of Economic Development of Russia in which representatives of other Russian Ministries and companies (the Ministry of Foreign Affairs, the Ministry of Transport, JSC "UAC", "Aeroflot", STC "Russia", "Transaero", the Leasing Company JSC "Illiushin Finance Co" and Rosaviation). The Ministry of Economic Development reported to the Russian Government accordingly.

* Regional Director, JSC "UAC" (Russia).

¹ The *Cape Town Convention on International Interests in Mobile Equipment* ("Cape Town Convention") was adopted on 16 November 2001 at a diplomatic Conference held in Cape Town (South Africa) under the aegis of the International Civil Aviation Organization (ICAO) and the International Institute for the Unification of Private Law (UNIDROIT). The Cape Town Convention currently has 34 Contracting States, including the United States of America, India, Indonesia, Malaysia, Kazakhstan and China. The European Union, pursuant to its Directive dated 28 April 2009, has also acceded to the Cape Town Convention, so that every member State of the Union may now also ratify or accede to the Cape Town Convention.

Subsequently, the Vice-Premier, Mr. S. Ivanov, commissioned the Interministerial Working Group for the drafting of a Federal Law on accession of Russia to the Cape Town Convention and preparation of all necessary accompanying forms. Furthermore, a special consultation meeting was held at the UNIDROIT headquarters in Rome (Italy) in April 2009 organised together with the Russian Ministry of Economic Development, during which leading experts of the Institute, who had taken part in the development of the Convention, conducted expert analysis and discussions about the Convention and its protocols with members of the Interministerial Working Group.

The Cape Town Convention builds upon the principles of the *Chicago Convention on International Civil Aviation* (signed in Chicago on 7 December 1944) and also reflects the theme of the UNIDROIT *Convention on International Finance Leasing* (signed in Ottawa on 28 May 1988) regarding the priority of the proprietary rights of the lessor over claims of unsecured creditors of the lessee (especially in the event of the latter's bankruptcy) to cover the regulation of security rights in mobile equipment that is the subject of an international financing transaction.

One of the most strategically important problems of the modern aviation industry is to attract finance either for internal investment programmes or international aviation projects and agreements. In view of this, one of the most important factors in attracting investment, especially foreign investment, is the existence of universal legal guarantees for the protection of investors' and creditors' rights that would have the effect of reducing creditors' risks and thus reducing financing costs for debtors.

The main goal of the Cape Town Convention is the creation of a unified international legal regime aimed at the protection of the rights of creditors connected with the acquisition and financing of aircraft objects (airframes, aircraft engines and helicopters).

The Cape Town Convention introduces such new concepts as the "international interest" and the need to register such interests in an International Registry, which is established by Article 16 of the Cape Town Convention and, for aircraft objects, is based in Dublin (Ireland).

The Cape Town Convention provides that an international interest is an interest in a uniquely identifiable object that is granted

by the charger under a security agreement, or vested in a person who is the conditional seller under a title reservation agreement or a lessor under a leasing agreement.

The registration of the international interest in the International Registry lowers the level of risk for the creditor by giving the creditor the possibility to establish its priority over other interests, and to exercise several specified remedies. For example, in the event of non-performance of the lessee's obligations under a lease agreement, the lessor has the right to terminate the agreement, to take possession or control of the aircraft, and to procure the de-registration of the aircraft and its export and physical transfer from the territory in which it is situated.

An important feature for the exercise of remedies is the possibility, recognized in Article 54(2) of the Cape Town Convention, that remedies may be exercised by extrajudicial procedures, which may exclude the necessity of an application to the court for the exercise of creditor's remedies, and thus improve the efficiency of the process of exercising remedies (such as taking possession of an aircraft object, or selling or leasing it).

For the purposes of giving Contracting States the choice of obtaining maximum economic advantage from the application of Cape Town Convention, there is a possibility for Contracting States to make declarations about the application of key provisions (such as rights in insolvency, and the provisions related to relief pending final determination). These provisions are specified in Article 56 of the Cape Town Convention. All the necessary declarations listed in Article 56 are provided by the draft Federal Law "On accession of the Russian Federation to the Convention on International Interests in Mobile Equipment and to the Aviation Protocol to the Convention", which is now before the transport committee of the Duma. The Law is expected to come into effect no later than January 2011; it will be finalized by the Government and, afterwards, submitted to the Parliament of the Russian Federation.

During the drafting of the Federal Law, the Interministerial Working Group ascertained that the Cape Town Convention contains norms that differ from those current in Russian legislation (for example, Convention Articles 8, 9 and 10 dealing, respectively, with remedies of chargee, vesting of objects in satisfaction and remedies

of conditional seller or lessor). Taking into consideration the principle of priority of the norms of an international agreement concluded by the Russian Federation over the norms of Russian law, which is provided by the Constitution of the Russian Federation (Item 4, Article 15 of the Constitution), the Interministerial Working Group has decided to present the draft Federal Law to the Government. That decision is based on the norms of the Constitution which provide that generally recognized principles and norms of international law and international agreements of the Russian Federation are to be considered as a constituent part of its legal system.

The Russian Ministry for Economic Development has now prepared the set of abovementioned documents, working jointly with the Ministry of Foreign Affairs of Russia, for submission to the Government of the Russian Federation.

It is currently proposed that, at the time of its accession to the Convention and Aircraft Protocol, the Russian Federation would make declarations under Convention Articles 39(1), 53 and 54(2) and in particular, Aircraft Protocol Article XI, where Alternative A of Article XI will be selected.

The accession by the Russian Federation to the Convention, and the implementation of its principles, will give to Russian aviation manufacturers, airlines and leasing companies the possibility of taking advantage of the economic benefits offered by the Convention and will also create favorable conditions for the export of Russian aircraft produced by enterprises such as the JSC "UAC".

