



DIPLOMATIC CONFERENCE TO ADOPT A MOBILE EQUIPMENT CONVENTION AND AN AIRCRAFT PROTOCOL

(Cape Town, 29 October to 16 November 2001)

PROPOSALS ON REPLACEABLE UNITS

(re Article 28(6) Convention and XIV(2) and (3) Protocol)

(Presented by Germany)

During the deliberations of the Committee of the Whole on Article 28, the German Delegation addressed a problem concerning Article 28(6) of the Convention and Article XIV of the Protocol in relation to replaceable units. The purpose of this paper is to elaborate on this problem and to propose a solution for it.

1. The matter concerns the legal status of replaceable units that are installed on the aircraft, e.g. computer units in the cockpit. These units will often be charged by an individual security interest under national law. There is a danger that the interests in those replaceable units that exist under national law will get lost because the Convention nowhere provides for any rules to safeguard these interests in relation to an international interest constituted in the whole airframe. This would be particularly unfortunate in view of spare parts that are installed on the aircraft as replacements for units that are damaged and need to be exchanged. These replaceable units can have a high economic value that may easily amount to several hundred thousand dollars each. They are often financed separately – for example when they are bought for use as spare parts – and their financing requires security. If no interests (neither national nor under the Convention) can validly be created in those replaceable units, it gets difficult to finance such items. As a result the operation of the aircraft is jeopardized. Additionally, the whole market for spare part financing may break down and seriously endanger the regular functioning of air traffic.

For these reasons it has to be ensured that security rights in replaceable units are not affected by the installation of these units on airframes. Article 28(6) already addresses this problem but only solves it as far as priorities are concerned. To solve the problem entirely, Article 28(6) should read as follows:

“This Convention does not affect the rights in an item, not being an object within a category designated by the Protocol, which is installed or will be installed on such an object.”

2. In this context, the corresponding rules in the Protocol (Article XIV(2) and (3)) also have to be examined. It is not clear how the current draft of Article XIV(2) and (3) relates to replaceable units other than aircraft engines (*argumentum e contrario*). Besides, we do not see what the purpose of Article XIV(2) is: Article XIV(2) addresses the priority between competing interests in one and the same aircraft engine. There is no necessity to have special rules for that; the relevant provisions of the Convention apply. Therefore, Article XIV(2) should be deleted.

In contrast, Article XIV(3) needs to be maintained. However, the wording of this provision should generally clarify that the installation of an engine on an airframe does in no way affect the legal situation of that engine. Airframes and engines are assets in both of which security interests can be created separately.

We therefore propose to substitute Article XIV(2) and (3) by the following wording for a new paragraph 2:

“The rights in an aircraft engine shall not be affected by its installation on an airframe or removal from an aircraft.”

Finally, there is an additional need to clarify the relationship between Article 28(6) and the Protocol: The definition of “airframe” as provided in Article I lit. (e) of the Protocol includes “all installed, incorporated or attached accessories, parts and equipment”. This also covers items charged with a national interest prior to their installment that come under Article 28(6) of the Convention. In order to avoid that the provision of Article 28(6) is overridden by the definition of “airframe” in the Protocol, the applicability of Article 28(6) should be clearly stated. To that effect we suggest the following wording for a new Article XIV(3) :

“For items installed on an airframe or an engine, Article 28(6) applies.”