



Unidroit Committee of governmental experts for the preparation of a draft Convention on International Interests in Mobile Equipment and a draft Protocol thereto on Matters specific to Aircraft Equipment



Sub-Committee of the ICAO Legal Committee on the study of international interests in mobile equipment (aircraft equipment)

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FUTURE ROLE AND STRUCTURE OF THE STEERING AND REVISIONS COMMITTEE ESTABLISHED BY THE UNIDROIT GOVERNING COUNCIL

(at its 77th session, held in Rome from 16 to 20 February 1998):

DISCUSSION PAPER

(submitted jointly by the Unidroit and ICAO Secretariats)

1.- At its 77th session, held in Rome from 16 to 20 February 1998, the Unidroit Governing Council was called upon to consider the most appropriate steps to be taken in respect of the preliminary draft Unidroit Convention on International Interests in Mobile Equipment (hereinafter referred to as **the preliminary draft Convention**) (Study LXXII-Doc. 37), established by an Unidroit study group, and the preliminary draft Protocol thereto on Matters specific to Aircraft Equipment (**the preliminary draft Aircraft Protocol**) (Study LXXIID-Doc. 1), established by a special working group (the Aircraft Protocol Group) organised under the authority of the President of Unidroit and the membership of which had consisted in representatives of the International Civil Aviation Organization (**ICAO**), the International Air Transport Association (**IATA**) and an aviation working group organised jointly by Airbus Industrie and The Boeing Company (**A.W.G.**). Finding that the two texts needed to be further refined before they could be considered ready for submission to governmental experts, the Governing Council decided to make use for this purpose of a body meetings of which had however at that stage not yet been convened, namely the steering committee, composed of representatives of both the Unidroit Study Group and the different working groups responsible for the preparation of the different preliminary draft Protocols contemplated by the decision to divide the future international regimen into a framework Convention and separate supplementary Protocols for each of the different categories of equipment to be contemplated by the Convention. The role of the steering committee was seen by the Unidroit Study Group as being to vet the compatibility and consistency of each successive preliminary draft Protocol with the preliminary draft Convention.

2.- Taking its inspiration from this idea, the Governing Council set up a Steering and Revisions Committee, the immediate task of which was to carry out the refining work on the aforementioned texts (cf. Study LXXII-Doc. 40, p. 41). It was agreed that membership of the Steering and Revisions

Committee should be open not only to representatives of Unidroit, as the intergovernmental Organisation responsible for the preparation of the preliminary draft Convention and having authorised the organisation of the Aircraft Protocol Group, and ICAO, as the intergovernmental Organisation which had participated as a member in the Aircraft Protocol Group and which was to co-sponsor the intergovernmental consultation process in respect of the preliminary draft Aircraft Protocol with Unidroit, but also IATA and A.W.G., as the other two members of the Aircraft Protocol Group (*idem*).

3.- The business of the meeting of the Steering and Revisions Committee, held in Rome from 27 to 29 June 1998, was to complete the refining of the two texts so as to permit their transmission to Governments with a view to the convening of governmental experts. However, the representatives of IATA and A.W.G. took the opportunity afforded by that meeting to recall that the terms of reference given by the Governing Council to the Steering and Revisions Committee also authorised it to “co-ordinate the preliminary draft Convention and Protocol throughout intergovernmental negotiations, in particular so as to reflect decisions taken and comments received, and to deal with other matters relating to the preparation of these texts for adoption at a diplomatic Conference” (*idem*). They took this to mean that the Steering and Revisions Committee was to “meet periodically throughout the intergovernmental consultation process, in between sessions of governmental experts, acting as the vehicle for an expanded secretariat permitting IATA and A.W.G. to participate as full partners with Unidroit and ICAO in that process” (cf. Study LXXII-Doc. 41, p. 5).

4.- Whilst agreeing to participate in the work of the Steering and Revisions Committee for the refining of the texts in such a way as to permit their prompt transmission to Governments, the representative of ICAO at the June 1998 meeting indicated that the question of the future role and structure of the Steering and Revisions Committee, and in particular the notion of joint secretariats, was a matter that must necessarily be left to be decided later (cf. *idem*). For the time being, the decision to set up a Steering and Revisions Committee was a decision that had been taken solely by the Unidroit Governing Council; this decision had not, however, been matched by a corresponding decision of the Council of ICAO (cf. *idem*).

5.- There was general recognition among members of the Steering and Revisions Committee that the Unidroit Governing Council’s decision would, in any event, need to be reviewed by those Governments attending the first session of governmental experts (*idem*), all the more so in that Governments could not be bound by a decision taken by the Governing Council of only one of the two intergovernmental Organisations under the auspices of which the intergovernmental consultation process was being organised.

6.- In recognition of the role being played by IATA and A.W.G. in the development of the two texts, the representative of Unidroit nevertheless indicated Unidroit’s intention to continue to give effect to the Governing Council’s decision pending a decision at the first session of governmental experts and suggested furthermore that the Unidroit and ICAO Secretariats should formulate a joint proposal on the future role and structure of the Steering and Revisions Committee for consideration by Governments on that occasion.

7.- It is the considered opinion of the Secretariats of the two Organisations, after having given much thought to the matter, that it is not for them to make proposals on the future role and structure of the Steering and Revisions Committee. This is essentially a matter for Governments and the proper role of the

Unidroit and ICAO Secretariats cannot, in their opinion, extend beyond highlighting for the consideration of Governments some of the principal factors of which they may care to take account in reaching their decision.

8.- This paper accordingly sets out hereunder what the Secretariats see as four of the relevant factors to be taken into consideration by Governments.

9.- First, as has been mentioned above, it is undoubtedly true that A.W.G. and, albeit to a much lesser extent, IATA have to date made a major contribution to the development of the texts to be considered by Governments, and in particular the preliminary draft Aircraft Protocol. It is desirable that these two Organisations should be afforded a suitable opportunity to give the project the benefit of their expertise.

10.- Secondly, it is important at the same time to recall that the circumstances in which the Steering and Revisions Committee was set up by the Unidroit Governing Council were quite unique. The Governing Council at its 77th session found itself unable to authorise the transmission to Governments of the two preliminary draft instruments laid before them without some further refining, designed essentially to bring the preliminary draft Aircraft Protocol more into line with the preliminary draft Convention. In view of the urgency attached to the speedy completion of the project by the aviation sector, the Council was prepared to countenance an *ad hoc* solution designed to permit the prompt transmission of the texts in question to Governments without their having to be referred back to the Council once the refining was complete.

11.- Thirdly, Governments will clearly need to satisfy themselves as to the compatibility of the role and structure of a steering and revisions committee with the overall structure that they may wish to give to the intergovernmental consultation process that lies ahead, not least as this might impact on the role of the plenary and the drafting committee, the organ traditionally given responsibility for translating the plenary's decisions on questions of principle in drafting terms, as well as on the excellent co-operation between the Unidroit and ICAO Secretariats.

12.- Finally, IATA and A.W.G. have over the past year expended considerable effort in raising the level of awareness of the preliminary draft Convention in its application to aircraft equipment and of the preliminary draft Aircraft Protocol. However, these efforts would appear to have engendered great confusion in the minds of certain Unidroit and ICAO member Governments as to the exact role being played in the process by IATA and A.W.G. These member Governments of Unidroit and ICAO might normally expect to be entitled to assume that their lines of communication regarding the intergovernmental consultation process in respect of the preliminary draft instruments were under the sole direction of those two intergovernmental Organisations. Although this problem was the subject of frank discussion at the June 1998 meeting of the Steering and Revisions Committee (cf. Study LXXII-Doc. 41, §§155-156), it is a problem which has unfortunately continued to interfere with the two Secretariats' preparations for this session of governmental experts. This is accordingly another matter to which Governments might wish to give thought in reaching their decision.