



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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## JOINT SESSION

(Rome, 1 - 12 February 1999)

### THE MAIN OBJECTIVES OF THE DRAFT INSTRUMENTS

(Presentation by the Director of the Legal Bureau, Dr. L. Weber, to the Joint Session of the ICAO Sub-Committee of the Legal Committee on the study of international interests in mobile equipment (aircraft equipment), and the Unidroit Committee of governmental experts, on 1 February 1999)

### INFORMATION PAPER

1. The two draft instruments which will be before this Joint Session for review are the draft Convention related to high-value mobile equipment (the so-called "base Convention"), and the draft Protocol related to aircraft equipment (the so-called "aircraft Protocol").
2. These two instruments are closely interrelated and pursue parallel objectives. We will hear later this afternoon in more detail about the features of these instruments and their interrelationship, namely in presentations from Professor Roy Goode, Mr. Jeffrey Wool and Professor Catherine Kessedjian.
3. Both draft instruments seek to deal with the problems related to non-possessory security rights in mobile equipment, more specifically, with the risk of non-recognition and/or unenforceability of such rights. Non-possessory security rights are security rights which do not require possession of the equipment by the secured party, typically the lender. The non-recognition and/or unenforceability of such non-possessory security rights are rooted in two legal rules, namely the *lex situ* rule under which the law of the jurisdiction where the mobile equipment is momentarily located applies, and secondly the fact that many jurisdictions, in particular civil law jurisdictions, typically do not recognize non-possessory security interests in moveables.
4. The risk that the secured party may not be able to enforce its security interest is thereby compounded, and hence the cost of the underlying transaction, typically the granting of credit, the financing of the equipment, or the granting of a lease, will be significantly increased. This increase can be measured by the cost of default insurance, if the lender or lessor takes out such insurance to cover his risk.

5. It is the objective of both draft instruments to reduce the risk and the related cost of non-recognition and/or unenforceability of non-possessory security rights in mobile equipment, in particular with regard to aircraft and aircraft equipment.

6. The savings for the industry, including manufacturer, airlines and other parties, have been estimated at more than one billion U.S. dollars per year. We will also hear in more detail about the predicted economic impact of the draft instruments later today.

7. The solution to these problems which the base Convention offers, is the creation of an international interest in mobile equipment, which can be registered and enforced in any of the Contracting States Parties to the Convention. The registration of the international interest seeks to satisfy the requirement of transparency and public disclosure with respect to those jurisdictions which normally do not recognize non-possessory security interests in moveables.

8. The aircraft equipment Protocol adapts the rules of the base Convention to the field of civil aviation. It is important to note that an existing international Convention, namely the "*Convention on the Recognition of Rights in Aircraft*", signed at Geneva on 19 June 1948, has partly dealt with the problem of non-recognition and unenforceability of security rights with regard to aircraft, by providing for the mutual recognition of aircraft mortgage security rights. However, such mortgages are created under national law. The enforcement of foreign-law created mortgages under the Convention is still fraught with considerable risk. Furthermore, it should be noted that less than half of all Contracting States of ICAO, namely at present only 81 States, are Parties to the Convention.

9. The draft aircraft Protocol takes account of the existence of the Geneva Convention of 1948, by offering the possibility of creating and registering an international interest in aircraft, airframes or aircraft engines, thereby reducing the non-recognition/unenforceability risk, but leaving the regime of the Geneva Convention unaffected as a possible parallel system. This might be attractive for those States who are Parties to the Geneva Convention and wish to continue to be so, while also wishing to become a party to the new instruments. ICAO felt that such an option might be important to preserve, and the draft texts provide for this course of action.

10. It is believed, in summary, that the two draft instruments, although requiring detailed review by Governments, provide a suitable and adequate basis for the work of the Joint Session.