



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



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

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UNIDROIT CGE/Int.Int./2-WP/13  
(Original: English)

## **SECOND JOINT SESSION**

**(Montreal, 24 August – 3 September 1999)**

## **DRAFT REPORT**

## **PLENARY SESSION**

**24 AUGUST 1999**

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## **Opening**

1. The first Plenary Session of the second Joint Session of the Sub-Committee of the ICAO Legal Committee on the study of international interests in mobile equipment (aircraft equipment), and the UNIDROIT Committee of governmental experts for the preparation of a preliminary draft UNIDROIT Convention on international interests in mobile equipment and a preliminary draft Protocol thereto on Matters specific to Aircraft Equipment was opened by Mr. R.C. Costa Pereira, Secretary General of ICAO, Professor H. Kronke, Secretary-General of UNIDROIT, and Dr. L. Weber, Director of the ICAO Legal Bureau.

2. In his opening address, Mr. Costa Pereira emphasized the co-operation between ICAO and UNIDROIT in their efforts to create an internationally registrable interest in aircraft and an international registry and he mentioned the work to be done in order to conclude a new international regimen. Mr. Kronke outlined the ongoing learning process that had evolved throughout this project, praised the improvements and proposals that had been made and expressed the hope for fruitful discussions during the second Joint Session so that they might lead to a successful conclusion. Dr. Weber mentioned the importance of continuing to build upon the results of the Rome meeting, held in February, 1999, and reiterated the importance of reaching international consensus on the issues contained in these draft instruments.

3. Dr. E. Chiavarelli (Italy) was Chairman of the second Joint Session. The Joint Secretaries were Mr. S. Espinola, Principal Legal Officer (ICAO) and Mr. M.J. Stanford, Principal Research Officer (UNIDROIT). Mr. J. Huang (ICAO), Ms. M. Schneider and Ms. M.-J. Phelan (UNIDROIT) acted as Assistant Secretaries.

4. The second Joint Session was attended by representatives of \_\_\_\_\_ States, \_\_\_\_\_ intergovernmental Organizations, and \_\_\_\_\_ international non-governmental Organizations (Attachment A).

### **Agenda Item 1: Adoption of the Agenda**

5. The agenda was adopted as proposed.

### **Agenda Item 2: Presentation of Current Structures Used in Asset-based Aircraft Financing**

6. A first presentation was given by Mr. Klaus Heinemann, Deutsche VerkehrsBank, Frankfurt, Germany, who offered a banker's point of view on the issue of asset-based aircraft financing. He explained that the aviation industry had evolved from a traditionally government-owned or heavily regulated industry to a privatized and deregulated industry, increasingly governed by an open-skies policy. This trend had resulted in an increase in default history among airlines, which had given rise to the need for new legal regimes for the protection of the interests of creditors. A further presentation was made by Mr. David Shapiro, Senior Counsel, Corporate and Finance Law, Air Canada - Montreal who spoke from the perspective of airlines. According to him, there were two reasons for airlines supporting the Convention: firstly, the Convention would result in reduced transaction costs, and secondly, it would expand sources of funding. A final presentation, entitled "Legal Issues as They Impact on the Draft UNIDROIT Convention and Aircraft Protocol" was given by Ms. Siobh n Lohan, A. & L. Goodbody International, Finance Services Centre, Dublin, Ireland. Ms. Lohan indicated that because of the lack of an international registry

system there was no effective means of finding out whether any outstanding mortgages or liens existed in respect of aircraft. Ms. Lohan put forth the position that the proposed Convention, as a uniform global law, would provide much-needed solutions to these problems.

**Agenda Item 3: Organization of Work**

7. In addition to the Drafting Committee and the Registration Working Group established during the First Joint Session, the Joint Session decided to confirm in existence the Informal Insolvency Working Group, that had been set up by the UNIDROIT and ICAO Secretariats pursuant to the decision taken during the first Joint Session (cf. paragraph 143 of the Report thereon). In determining the composition of this Working Group, it added to the existing eight members of the Informal Insolvency Working Group (namely, France, Germany, Japan, Mexico, Netherlands, Singapore, United Kingdom and United States of America) Canada, Egypt, Russian Federation and South Africa. It was understood that the Aviation Working Group (AWG), and the International Air Transport Association (IATA) would attend meetings of the Informal Insolvency Working Group as advisers. Each Working Group was requested to complete its work by 12 p.m. on 27 August 1999 with a view to reporting to Plenary.

**Agenda Item 4: Consideration of the Structure of the Draft Instruments**

8. A presentation, given by Mr. H. Rosen, Co-ordinator, Rail Working Group, described the growing awareness in the railway industry with respect to the need to have the Convention and a Protocol to protect security interests in railway rolling stock. A second presentation by Mr. P. D. Nesgos, Co-ordinator, Space Working Group, referred to the ongoing work of his group and its contacts with the space industry and the relevant Organizations.

**Agenda Item 5 (ICAO Agenda) and 5 & 6 (UNIDROIT Agenda)**

**Consideration of the preliminary draft UNIDROIT Convention on International Interests in Mobile Equipment / draft Convention on International Interests in Mobile Equipment and the preliminary draft Protocol thereto on Matters Specific to Aircraft Equipment as Reviewed by the Drafting Committee (cf. Appendices I and II respectively to Attachment D of the Report on the First Joint Session) (hereinafter referred to as the *preliminary draft Convention* and the *preliminary draft Protocol*)**

9. The Joint Session considered the text of the preliminary draft Convention and the preliminary draft Protocol. It was decided that the term "States Parties" in the preamble should be referred to the Drafting Committee for reconsideration in order to align this term with the term "Contracting States" used in the preamble to the preliminary draft Protocol. While the Joint Session agreed on the general content of the preamble to the preliminary draft Convention and that of the preamble to the preliminary draft Protocol, it requested the Drafting Group to review the text of both preambles with a view to harmonizing them and eliminating the redundant elements in the preamble to the preliminary draft Protocol.