

DRAFT REPORT

PLENARY SESSION

8 February 1999

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AGENDA ITEM 4: ORGANISATION OF WORK

(b) SETTING-UP OF SUB-GROUPS, AS REQUIRED, AND OTHER MATTERS

65. It was announced that the Registration Working Group (RWG) had held its first meeting and that the delegate of Canada had been elected Chairman and the delegate of South Africa had been elected Vice Chairman.

AGENDA ITEM 5: CONSIDERATION OF THE PRELIMINARY DRAFT UNIDROIT CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT (cont.d)

CONSIDERATION OF THE TEXT OF THE PRELIMINARY DRAFT CONVENTION (cont.d):

ARTICLE 28

66. A number of delegations raised the question of the relationship between Art. 28 and Arts. 16(1), 39 and 40.

67. It was recalled that registration was not a guarantee that the interest was valid (cf. Art. 8). Registration was a necessary condition for the protection of rights against third parties.

ARTICLE 29

68. It was decided that the Drafting Committee should consider the advisability of defining the term “bankruptcy” in the preliminary draft Convention. It should also consider whether a number of issues presently dealt with in the preliminary draft Protocol, in particular insolvency, should instead be dealt with in the preliminary draft Convention. There was general agreement that the provisions of the preliminary draft Convention dealing with bankruptcy should be generally looked at in the light of the 1995 Brussels Convention on Insolvency Proceedings and the UNCITRAL Model Law on Cross-Border Insolvency.

69. In consideration of the possible overlapping between the preliminary draft Convention and the UNCITRAL draft Convention on Assignment in Receivables Financing, to which the attention of the Joint Session had been drawn by a number of delegations as well as by the observer from UNCITRAL, it was decided that an informal working group should be set up to examine this problem. It was decided that this informal working group should report back to Plenary on 10 February 1999.

ARTICLE 30

70. A number of delegations raised doubts as to the utility of Chapter VIII. It was pointed out that it might give rise to difficulties with both national legislation and international conventions. It was however also pointed out that Chapter VIII was necessary, because in the case of an assignment of an interest, it was necessary to be able to determine who the present holder was, that is whose name would appear on the registry in respect of that asset.

71. It was suggested that the word “and” should be added at the end of each *litera* of Art 30(2) to indicate that the conditions were cumulative.

72. It was agreed that the formulation of Art. 30 should be brought into line with that of Art. 8.

ARTICLE 31

73. It was suggested that the Drafting Committee should consider deleting the last part of Art. 31(2)(b) (“at the time of receipt of a notice of the assignment under Article 33”) which it was feared might interfere with the draft UNCITRAL Convention on Assignment in Receivables Financing.

74. It was suggested that Art. 31(2) should require an assignment to be clearly subject to any restrictions or contractual rights in favour of the obligor that were contained in the financial documents between the obligor and assignor.

ARTICLE 32

75. It was pointed out that the term “grantor” in Art. 32 should read “chargor”

76. The question of the utility of Art. 32 was raised, in view of the fact that, with the exception of Art. 22, Chapter V specifically provided for assignments. It was agreed that the Drafting Committee should examine this question.

ARTICLE 33

77. It was decided that the Drafting Committee should reconsider the formulation of Art. 33(1)(c), in particular as regards the reference to “[actual] knowledge”.

ARTICLE 34

78. The delegation of Singapore raised the question whether, under lit. (d), if there was default on the part of the assignor but not of the obligor of the first interest, the default remedy would apply not only to the rights that had been assigned, but to the object itself. It was decided that the Drafting Committee should look into this matter.

ARTICLES 35 AND 36

79. These articles were approved without discussion.

ARTICLE 37

80. It was suggested that this article should be reviewed with reference to general insolvency law.

ARTICLE 38

81. A number of delegations pointed out that this article expressed concepts that were contrary to their national legislation. It was therefore agreed that the issues dealt with should be studied in greater depth.

82. It was decided that the Joint Session should reconsider all the issues raised in relation to Chapter VIII at its second session.

ARTICLE 39

83. It was noted that both Arts. 39 and 40 raised important policy questions which would need to be decided upon by the Joint Session.

ARTICLE 40

84. A number of delegations raised the problem of declarations made by States indicating the non-consensual interests to which they wished to see priority status granted. It was suggested that the article should make it clear that also non-consensual interests created in the future might be included, and that this might be done either by ensuring that the formulation of the list was sufficiently broad to cover them, or by ensuring that the lists could be modified in the future.

ARTICLE 41

85. It was decided to defer consideration of this article until after the question of the relationship between the preliminary draft Convention and the equipment-specific protocols had been decided.

ARTICLES 42 - 43

86. In consideration of the numerous problems that the question of jurisdiction raised, it was agreed that the Secretariats of Unidroit and ICAO would give more thought to these questions in the light of the submissions that the Hague Conference on Private International Law had agreed to transmit to the two Secretariats, in the context of its work on the preparation of a universal Convention on the recognition and enforcement of judgments.

STRUCTURE AND RELATIONSHIP OF THE FUTURE INSTRUMENTS

87. Ms C. Chinkin (Professor of Public International Law, London School of Economics) presented a discussion paper on the legal relationship between the preliminary draft Convention and its equipment-specific protocols, in particular as regards the implications for public international law (Study LXXII – Doc. 47 and ICAO Ref. LSC/ME-WP/12). She also explained the thinking behind the decision to establish a dual Convention/Protocol system.

88. Regarding the German delegation's proposal to consolidate the texts of the preliminary draft Convention and the preliminary draft Protocol in a single instrument (Unidroit CGE/Int.Int./WP/9 and ICAO Ref. LSC/ME-WP/20), *inter alia* on the ground that there would be no guarantee that other preliminary draft Protocols would emerge, it was pointed out that the Intergovernmental Organisation for International Carriage by Rail (OTIF) had already agreed to coordinate the intergovernmental consultation procedure in respect of the preliminary draft Protocol on Matters specific to Railway Rolling Stock and that this preliminary draft Protocol, as also that on Space Property, were at an advanced stage of preparation. Attention was drawn to the letter from the Director General of OTIF urging the maintenance of the dual structure (Unidroit CGE/Int.Int./WP/8 and ICAO Ref. LSC/ME-WP/19). Finally, it was decided that it was premature to decide whether or not to adopt an approach different from the present one as regards the structure of the preliminary draft Convention and its equipment-specific protocols. It was therefore decided that the texts should continue to be examined separately. The German delegation announced that it was reserving its position.