



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

ICAO Ref. LSC/ME/2-WP/14  
UNIDROIT CGE/Int.Int./2-WP/14  
26/8/99

## **SECOND JOINT SESSION**

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

### **DRAFT REPORT**

### **PLENARY SESSION**

25 August 1999

### **Agenda Item 7 : Review of report**

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

4:1 In considering the structure of the proposed instruments, the Joint Session had before it two basic options, namely, the present structure (a Convention supplemented by a Protocol and possibly other future Protocols), and, alternatively, a single text in the form of a stand-alone Convention. The possibility of developing a consolidated text of the Convention and relevant Protocol as a convenient working tool was also mentioned.

4:2 One delegation, supported by two other delegations, expressed the view that they felt it was difficult at the present time to come to a clear decision on this matter. There were a number of factors, in particular whether there was a need of protocols for other equipment sectors, which should be more fully evaluated in the future. Therefore, it was preferable to keep an open mind on this matter and, for the time being, to continue to work on the basis of the present structure. A consolidated text should be developed at the appropriate time as a convenient working tool. Several other delegations also spoke in favour of a multi-equipment and two-tiered structure.

4:3 One delegation felt that it would be preferable to work on the basis of a text for a stand-alone Convention, which would be applicable to aircraft and aircraft equipment. In the view of this delegation, there was a problem of legitimacy if the aviation sector were to develop a base convention which would then be applicable to railway rolling stock, space equipment, agricultural and mining equipment, etc.

4:4 Another delegation also felt that the structure of a stand-alone Convention would be preferable. In addition to the problem of legitimacy, this delegation considered that the acceptability of a complex two-instrument structure, when it came to the ratification process, might be doubtful. A consolidated text should therefore be developed in the near future.

4:5 One observer noted the importance of maintaining aircraft equipment as part of a broad coverage that would be seen as yielding a broader social benefit distributed amongst a broader group of borrowing country citizens.

4:6 In response to the query from the delegation referred to in paragraph 4.3 above regarding the extent to which the Convention could bind Governments concluding future Protocols, it was explained that this was not a problem in so far as it was a key feature of the Convention/Protocol structure that each Protocol was intended to be capable of amending the Convention.

4:7 It was therefore agreed that the meeting should keep an open mind regarding the structure. It was premature to determine the structure of the instruments at this stage. With a view to addressing the concerns raised, it was agreed that it would be useful to envisage the preparation of a consolidated text of the Convention and Protocol. The precise moment at which such an integrated text should be prepared in respect of aircraft equipment was left open for the time being. Thirdly, it was agreed that for the time being, the meeting should continue to work on the basis of the present structure.

**Agenda Item 5 (UNIDROIT Agenda Items 5 & 6): Study of a draft instrument or draft instruments relating to international interests in mobile equipment, with particular regard to aircraft equipment**

**Article 1 of the draft Convention**

5:1 The Drafting Committee was tasked to review the following suggestions: the need for cross references regarding definitions in different languages; the use of “the” and “a” in the definition of “chargee” and others; the need to add “as defined above” after the word “agreement” in the definition of “contract of sale”; the possibility of deleting or revising the definition of “writing”; the removal of square brackets in all definitions, to the extent that such removal did not involve substantive issues. It was noted that some definitions such as “associated rights”, “qualified proceeds” and “registrable non-consensual right or interest” would be reviewed in the context of the substantive text. The definition of “Intergovernmental Regulator”, “International Registry”, “registered”, “registrar” and “regulations” would be revisited after the Registration Working Group had completed its work .

**Article I of the draft Protocol**

5:2 Concerning the definition of aircraft and aircraft engines, a view was expressed that military, customs and police aircraft should not be included. Another view suggested that a reservation clause could be added to the draft Protocol to the effect that each State might declare that the Protocol was not applicable to State aircraft. It was decided that the Drafting Committee should resolve the technical aspects of this definition, without considering the policy issue regarding the question. Suggestions to add “or remove” and “by any competent means” to the definition of “de-reregister the aircraft” were referred to the Drafting Committee. It was determined that the definitions that related to insolvency and registration should only be discussed once the Informal Insolvency Working Group and the Registration Working Group have finished their work and reported to the Plenary.

**Article 2 of the draft Convention**

5:3 The Plenary expressed acceptance of **paragraphs 1, 2, and 3** as written. As for **paragraph 4**, it was referred for review by the Drafting Committee to consider its purpose and whether it should be deleted altogether. The question was put forth whether the term “qualified proceeds” used in **paragraph 5** included both monetary and non-monetary proceeds. It was decided that the Drafting Committee should redraft **paragraph 5** so as to include both monetary and non-monetary proceeds.

**Article 3 of the draft Convention**

5:4 The Plenary considered whether to reincorporate the list of categories of mobile equipment that had been removed from Article 3 at the Rome meeting. The reason for this re-incorporation was in order to avoid any confusion with the UNCITRAL Convention on Assignment and Receivables Financing. The consensus of the Plenary was to avoid re-including the list, and instead to include the notion of “high value” as a limiting factor for determining the application of the Convention. The location and wording of this notion was an issue left to the determination of the Drafting Committee. Otherwise, the Plenary agreed to the wording of **paragraphs 1 and 2 of Article 3** as written.

### **Articles II and III of the draft Protocol**

5:5 Certain members suggested that further clarification be given to the term “national aircraft register” in **paragraph 1** of **Article III**. It was also decided that the square brackets should remain around **paragraph 2** of **Article III** until the Drafting Committee could reach a satisfactory definition of “purely domestic transaction”. Otherwise, it was agreed that **Articles II** and **III** should remain as they were written.

### **Article 4 of the draft Convention**

5:6 Several delegates expressed confusion regarding the meaning of “registered office”, “centre of control” and “place of business”. It was decided that the Drafting Committee should attempt to align these terms with their meaning in each respective language. The Drafting Committee was left to decide whether **paragraph 2** should be maintained. Its inclusion would depend on whether the term “place of business” were to be retained in **sub-paragraph (d)** of **paragraph 1**.

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