

**DRAFT REPORT**

**PLENARY SESSION**

9 February 1999

	<i>paragraphs</i>
AGENDA ITEM 6: CONSIDERATION OF THE PRELIMINARY DRAFT PROTOCOL TO THE PRELIMINARY DRAFT [UNIDROIT] CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT ON MATTERS SPECIFIC TO AIRCRAFT EQUIPMENT	
GENERAL DISCUSSION	89
CONSIDERATION OF THE TEXT OF THE PRELIMINARY DRAFT PROTOCOL	
PREAMBLE	90
ARTICLE I	91-92
ARTICLE II	93
ARTICLE III	94-96
ARTICLE IV	97
ARTICLE V	98
ARTICLE VI	99
ARTICLE VII	100
ARTICLE VIII	101-103
ARTICLE IX	104
ARTICLE X	105
ARTICLE XI	106
ARTICLE XII	107
ARTICLE XIII	108
ARTICLE XIV	109
ARTICLE XV	110

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GENERAL DISCUSSION

89. Mr J. Wool (Chairman, Aircraft Protocol Working Group) introduced the preliminary draft Protocol to the preliminary draft [Unidroit] Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment.

CONSIDERATION OF THE TEXT OF THE PRELIMINARY DRAFT PROTOCOL

PREAMBLE

90. In view of the potential overlap between the text of the preamble to the preliminary draft Protocol and the new preamble to the preliminary draft Convention, it was decided that the preamble of the preliminary draft Protocol should be simplified by the Drafting Committee, which should decide which provisions should be absorbed by the preamble to the preliminary draft Convention.

ARTICLE I

91. A number of delegations queried some of the definitions contained in Art. I of the preliminary draft Protocol. In particular, it was felt that the definitions of “aircraft”, “aircraft engines”, “aircraft objects”, “Chicago Convention”, “deregister the aircraft”, “helicopters” and “primary insolvency jurisdiction” should be reconsidered in the light of existing international instruments. The exclusion of airframes and helicopters used in military, customs and police services was also queried by some delegations, who felt that they should be included within the sphere of application of the preliminary draft Protocol. Other delegations instead wanted to see them excluded, but preferred a wording closer to that of the 1944 Chicago Convention on International Civil Aviation.

92. It was finally decided that it was premature to decide whether or not airframes and helicopters used in military, customs or police services should be included within the sphere of application of the preliminary draft Protocol.

ARTICLE II

93. This article was approved without discussion.

ARTICLE III

94. It was agreed that the Drafting Committee should reconsider the formulation of this article, so as to align it with the modifications that had been made to the preliminary draft Convention, in particular Art. 4 thereof.

95. It was also agreed that, with reference to Art. III(3), the Drafting Committee should take into consideration the fact that Art. X of the preliminary draft Protocol, to which reference was made in that provision, was addressed to Contracting States and not to the parties to the transactions under consideration.

96. Finally, it was agreed that the Drafting Committee should consider defining the term “purely domestic transaction”.

ARTICLE IV

97. It was suggested that the use of the term “*mutatis mutandis*” should be reconsidered.

#### ARTICLE V

98. It was agreed that Art. V should be brought into line with Art. 8 of the preliminary draft Convention as modified. It was also pointed out that the words “by or” in Art. V(3) should be deleted.

#### ARTICLE VI

99. This article was approved without discussion.

#### ARTICLE VII

100. It was pointed out that regulations would need to provide the details necessary to identify the aircraft object, in particular as the manufacturer’s serial number and model designation were not sufficient for this purpose.

#### ARTICLE VIII

101. A number of delegations raised the question of the extent of the autonomy of the parties as to the choice of the law that should govern their rights and obligations under the Convention. It was suggested that regional instruments, such as the Convention on the Law Applicable to Contractual Obligations (Rome, 1980) and the Inter-American Convention on the Law Applicable to International Contracts (Mexico, 1994) should be taken into consideration in the formulation of this provision.

102. In relation to Art. VIII(2), it was suggested that the words “unless otherwise agreed by the parties” be added at the beginning of the paragraph, so as to cover also the case where the parties did wish to include the rules of private international law of the law they had chosen to govern their rights and obligations under the Convention, as these would otherwise be excluded by the words “other than its rules of private international law”.

103. It was agreed that the Drafting Committee should find an expression more suitable to express what was intended by “rules of law” in Art. VIII(2). Furthermore, it was decided that the expression “designated State” should be clarified in a specific federal State clause.

#### ARTICLE IX

104. It was agreed that the Drafting Committee should provide clarification regarding the concept of “disruption of air transport”.

#### ARTICLE X

105. There was general agreement on the need to provide for speedy relief, but the manner in which the preliminary draft Protocol sought to attain it encountered many difficulties as a result of the different standards that were applicable in the different countries. It was therefore agreed that the Drafting Committee should find a more suitable wording for this article.

#### ARTICLE XI

106. A number of delegations stressed that the adoption of this very detailed article would require substantial modifications to national insolvency laws. Other delegations instead stressed the economic importance of the provision and its centrality in the preliminary draft Protocol system. It was therefore agreed that the Drafting Committee should prepare two alternative formulations of this article for the next session of the Joint Session.

## ARTICLE XII

107. It was agreed that the Drafting Committee should reconsider the formulation of this article so as to take into consideration the fact that a number of States required specific bilateral agreements or multilateral conventions for cooperation between their courts and the courts of other States to be possible. In its consideration of this issue, the Drafting Committee should take existing instruments, such as the UNCITRAL Model Law on Cross-Border Insolvency and the 1995 Brussels Convention on Insolvency Proceedings, into consideration.

## ARTICLE XIII

108. It was agreed that in its consideration of Article XIII, the Drafting Committee should clarify how it was linked to Arts. IX, X and XI. It was not clear at what time the submissions had to be made to the civil aviation authorities and what obligations ensued for those authorities. It was pointed out that there was no provision that provided for the removal of the form and that this possibility should instead be provided for.

## ARTICLE XIV

109. This article was approved without discussion.

## ARTICLE XV

110. It was suggested that the formulation of Art. XV(4) be reconsidered, in particular as regards the effects of the omission of the words after “not held with an international interest” in Art. 36 of the preliminary draft Convention.

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