



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/18  
27/8/99

## **SECOND JOINT SESSION**

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

### **DRAFT REPORT**

### **PLENARY SESSION**

26 August 1999

The attached constitutes material on Agenda Item 5.

**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 5 of the draft Convention**

5:7 This Article was approved without discussion.

**Article 6 of the draft Convention**

5:8 A proposal was made to include a reference to the preamble in **paragraph 2**, as well as a proposal for the preparation of an explanatory document to accompany the Convention.

**Article 7 of the draft Convention**

5:9 In the light of the use of the word “writing” in **Article 7**, it was agreed that the definition of “writing” in **Article 1** be re-drafted to take into account the implications of the use of computer systems. It was proposed to replace the word “person” with “sender” in order to provide more generic terminology that would reflect the technical aspects of computer use.

**Articles IV and V of the draft Protocol**

5:1 The Plenary engaged in a discussion regarding the necessity of including the registration of outright sales in the Convention. The Plenary agreed that it was established practice in the aviation industry to allow registration of contracts of sale, and it would be counter-productive to exclude sales from the Convention. It was decided, therefore, to maintain **Article 39** in the Convention as drafted, as well as **Articles IV** and **V** of the Protocol. It was further agreed that there was no conflict between **paragraph 2** of **Article V** and the provisions of the Vienna Convention on the International Sale of Goods since the latter was silent on the issue of the passing of ownership and did not apply to aircraft.

**Article VI of the draft Protocol**

5:2 This Article was approved without discussion.

**Article VII of the draft Protocol**

5:3 It was decided that the Drafting Committee should re-draft this Article so that the methods of description it contained did not appear as an exhaustive list. The session agreed that the methods of description for the purposes of registration should not be exclusively limited to the manufacturer’s serial number, the name of the manufacturer and its model designation. Finally, the Plenary approved a proposal that **Article VII** be referred to the Registration Working Group to consider a definition or uniform description of the term “serial number.” It was further proposed that the Registration Working Group provide a list of appropriate means of registration in the form of an addendum.

### **Article 8 of the draft Convention**

5:13 One delegation expressed concern that the remedies contained in **Article 8** were in potential conflict with the future Convention on jurisdiction and recognition of judgments being prepared by the Hague Conference on Private International Law, as well as the Brussels and Lugano Conventions. Another delegation questioned whether it was necessary to include the remedies in the Convention, or whether it would be more practical to move them to the Protocol. It was nevertheless agreed that these remedies should remain in the Convention until the effect of **Article 8** on other Protocols could be determined. It was further agreed that **paragraph 1** be referred to the Drafting Committee to clarify **subparagraph (a)**, so as to be able to determine the moment in time that “possession or control” takes place. It was proposed that the words “at any time” be added. The Drafting Committee was also directed to consider whether to retain, or drop the terms “and by lawful means” in **paragraph 2. Article 8** in its entirety was otherwise accepted.

### **Article 9 of the draft Convention**

5:14 Errors in cross references in **paragraphs 4 and 5** were pointed out and referred to the Drafting Committee for correction.

### **Article 10 of the draft Convention**

5:45 This Article was approved without discussion.

### **Article 11 of the Convention**

5:16 It was agreed that the words “at any time” be added after the words “may agree” in **paragraph 1**. The Article was referred to the Drafting Committee to make the necessary changes.

### **Article 12 of the draft Convention**

5:17 The Session agreed to a modification of **Article 12** to provide a more neutral approach to self-help remedies, which may be incompatible with some legal systems. One observer proposed the deletion of **paragraph 2**, and a further change to **paragraph 1** to read “subject to paragraph Y”. He further proposed that Article Y of the Convention be reformulated so that Contracting States be required to declare whether or not the self-help remedies of **Articles 8 to 10** were available in their territory. These proposals were accepted. The observer in question was invited to submit to the Drafting Committee both a draft text reflecting the proposed changes as well as a report on the consequences of the proposed changes on other articles of the Convention, such as **Article 8, paragraph 2**.

### **Article 13 of the draft Convention**

5:18 This Article was approved without discussion.

### **Article 14 of the draft Convention**

5:195 One delegation raised the question whether cases under **Article 14** would be subject to the provisions of **Article 8** of the draft Convention regarding the exercise of a right in a commercially reasonable manner and the reasonable prior notice of interested persons. Another delegation suggested that **Article 14** should take into account the Convention for the Unification of Certain Rules Relating to the Precautionary Attachment of Aircraft (Rome, 1933) referred to in Article XXIII of the draft Protocol. It was decided that these questions should be dealt with by the Drafting Committee.

5:20 Some delegations considered that the measures envisaged in **paragraph 1 (d)** and **(e)** were different in nature from those contained in **sub-paragraphs (a), (b)** and **(c)** and should not therefore be treated together. It was explained that the orders referred to in **sub-paragraphs (d)** and **(e)** were required as measures to ensure the preservation of the economic value or utility of the object. They should be regarded as preventive rather than curative measures. Proposals to exclude specification of forms of interim judicial relief in **paragraph 1**, leaving them to national law, and to delete **paragraph 2** were not accepted. In opposing such proposals, one observer, supported by a number of delegations, noted the link of Article 14 and Article X of the draft Protocol and expressed the view that these provisions contained a fair balance for the protection of the parties to the transaction and were necessary for the effectiveness of the proposed legal regime. It was decided to send **paragraphs 1** and **2** to the Drafting Committee to consider footnote 2 and the deletion of square brackets.

5:21 **Paragraphs 3** and **4** were approved. However, reference to “the preceding paragraph” in **paragraph 3** should be amended to “paragraph 1” if **paragraph 2** were to be retained.

### **Article IX of the draft Protocol**

5:62 This Article was approved without prejudice to the issues covered therein which were under consideration by the Working Groups.

### **Article X of the draft Protocol**

5:23 Some delegations voiced concern regarding the establishment of a fixed period of time for courts to issue orders, because this was incompatible with the constitutional law of their States. Two observers, supported by two delegations, expressed the view that such incompatibility should not be a problem for States, because **Article X** was optional. They added that if a time-frame was not provided for courts to act on speedy judicial relief, uncertainty would remain, therefore not permitting what was the main objective of the proposed legal regime. One delegation requested the revision of the term “calendar days” in the Spanish version, in **paragraph 1**.

5:24 It was decided to keep **paragraphs 1** and **2** in square brackets until a solution could be found. **Paragraphs 3** and **4** were not addressed, because they were under consideration by the Working Groups.

### **Article 29 of the draft Convention**

5:25 It was agreed to delete the square brackets in **paragraph 2 (c)** and approve the entire Article.

### **Article 30 of the draft Convention**

5:26 It was decided to send **paragraph 2** to the Drafting Committee and to approve **paragraphs 1, 3 and 4**. It was further agreed to revisit this Article if necessary with a view to rationalizing efforts with the work on a future Convention on Assignment in Receivables Financing under preparation within UNCITRAL.