



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/20
27/8/99

SECOND JOINT SESSION

(Montreal, 24 August – 3 September 1999)

DRAFT REPORT

PLENARY SESSION

27 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 (continued)

Article 27 of the draft Convention

5:27 An observer expressed the need to cross-reference **Article 27** with the Protocol. To that effect, it was proposed that the Drafting Committee consider including a reference to **Article 27** in Article IV of the Protocol. Reservations were made with respect to **paragraph 2** of **Article 27** since, as it currently read, paragraph 2 allowed for the acquisition of priority even when a party was in bad faith. Reservations were also made with respect to **paragraph 5** and as regards whether the use of the term "qualified proceeds" was sufficiently broad in order to describe the various types of proceeds. Further reservations were made with respect to **paragraph 6**, on the ground that it created an unjustified burden on non-consensual interests. It was decided that paragraphs 2, 5 and 6 should remain in the Convention, but that the Drafting Committee should examine the Article from a technical point of view, and keep in mind the various reservations that were made. It was further agreed that the Drafting Committee consider either omitting paragraph 6, or re-drafting it so that the requirement of giving notice for non-consensual interest holders would not otherwise affect the issue of priority.

Article XIV of the draft Protocol

5:28 It was pointed out that the reference to **Article 27 paragraph 4** was erroneous, and the Drafting Committee was directed to change the reference to **paragraph 3**.

Article 31 of the draft Convention

5:29 It was agreed that the Drafting Committee should consider re-drafting **paragraph 1** so that it reflected the same approach as the Protocol in its treatment of assignments of international interests. It was proposed, therefore, that the Drafting Committee consider the merits of omitting subparagraph (c) of paragraph 1, and substituting it for a requirement that, in order to constitute a valid assignment, the obligor must consent in writing.

Articles 32, 33, 34 of the draft Convention and Article XV of the draft Protocol

5:30 These Articles were accepted by the Plenary as written.

Article 36 of the draft Convention

5:31 It was decided that the Drafting Committee should consider the technical question of whether this Article should be included in the Convention, or instead, transferred to the Protocol.

Articles 37 and 38 of the draft Convention (Chapter IX)

5:32 The Session debated at length the policy issues surrounding non-consensual interests. While some delegations proposed that these Articles should be excluded completely, others expressed the view that non-consensual interests were of great importance for the Convention. Another proposal called for the drafting of a definition of "non-consensual interests," or at least, a provision providing limiting factors to determine what types of non-consensual interest of a State would be included for the purposes of the

application of the Convention. It was also proposed that, instead of providing a definition of "non-consensual interests," the issue should be decided by each Contracting State in the form of a declaration. In making their declarations, it was suggested that States be allowed to provide either a general description or a specific list of the types of non-consensual interest under each nation's laws that would have priority under **Article 38 paragraph 2**. Also, it was suggested that, in making their declarations, States be allowed to determine whether the Convention applied to current as well as future non-consensual interests arising under national laws. Yet another proposal called for the possibility of Contracting States to opt out of Articles 37 and 38. It was agreed that non-consensual interests were of great importance and should remain in the Convention. In order to accommodate those States that expressed reservations on this issue, it was decided that this chapter should be redrafted in order to allow greater flexibility. The Drafting Committee was called upon to take into account the various proposals. Finally, it was decided that the Plenary Session would reconvene on this issue once the Drafting Committee had completed its work.

Articles 40 and 41 of the draft Convention

5:33 It was decided to establish a Jurisdiction Working Group. The Working Group should examine whether the bases of jurisdiction for the purposes of Article 14 (1) could be considered appropriate for the purpose of general jurisdiction under Article 4 1, bearing in mind the distinction between jurisdiction *in rem* and *in personam*. The Group should also consider the issues relating to exclusive jurisdiction, the scope of the International Registry's immunity from jurisdiction of the court under Article 41 in conjunction with Article 8(1), Article 26 and Article 27, and other issues relating to jurisdiction, including Chapter IV of the draft Protocol. It was noted that waivers of sovereign immunity under Article XXI of the draft Protocol required further research and study. The composition of the Working Group would be determined at a later time.

Chapter V of the draft Protocol (Articles XXII to XXIV)

5:34 With respect to the relationship of the Protocol with the other Conventions mentioned in Chapter V, questions were raised whether the Protocol, which itself would form an integral part of a Convention, could amend or override other Conventions. It was explained, however, that there was widespread practice to this effect. It was concluded that further consideration of this matter was necessary with the assistance of experts in the law of treaties.

Article U and Article V of the draft Convention

5:35 The Plenary decided to establish a Final Clauses Working Group. Its composition and terms of reference would be determined at a later stage. A number of issues had been identified for the consideration of the Group. The Secretary General of UNIDROIT referred to WP/2 and invited the Group to consider further the issues identified in that paper. One delegation pointed out that the number of ratifications required for the entry into force of the Convention should be as small as possible in order to provide immediate benefit to the financial market. It was considered that the most important objective of this Working Group was to achieve the financial infrastructure required by industry. Another delegation underlined the need to establish transitional arrangements for the protection of existing interests. A third delegation suggested that the Working Group should consider the final clauses of the Convention and the Protocol together. Another delegation suggested that in Article V of the draft Convention, declarations should be made at the time when a State signed or ratified the Convention, not at the time when it signed or ratified the Protocol.

5:36 With respect to the term “[purely domestic transaction]” in Article 5, the Plenary undertook intensive discussions. Some States preferred to remove the square brackets in this Article. In their view, the future Convention and Protocol should cover transnational situations only and States should be allowed to exclude purely domestic transactions from the application of these instruments. Other States emphasized that the very essence of the Convention was to offer the holders of international interests clear predictability of their rights. It would defeat the purposes of the Convention and of the Protocol if purely domestic transactions were excluded from these instruments. This fundamental issues should be resolved before the Session considered other matters.