



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



Sub-Committee of the ICAO Legal Committee on the study of international interests in mobile equipment (aircraft equipment)

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SPECIAL WORKING GROUP ON ARTICLE 3 OF THE PRELIMINARY DRAFT CONVENTION

REPORT

A special Working Group was convened on Tuesday 21 March 2000 at 8 p.m. to try to find a compromise drafting for Article 3 of the preliminary draft Convention. The special Working Group was composed of the delegations of Canada, France, Mexico and the United Kingdom as well as the co-ordinators of the Aviation Working Group and the Rail Working Group.

The special Working Group considered that it would not be possible to reach a compromise on Article 3 without considering Article V. The basic elements that served to reach a solution were as follows:

- a) neither the Convention nor the Protocols were intended to modify the internal security laws of other categories of mobile equipment;
- b) it was in the framework of the Protocol that specific solutions were to be sought because of the specificity of the different categories of mobile equipment such as aircraft, railroads, space objects and, in future, oil-rigs, containers and so on.

It is very difficult to try to draft common rules for each category.

The points of agreement were as follows:

Article 3

1. - This Convention shall apply when, at the time of the conclusion of the agreement creating or providing for the international interest, the debtor is situated in a Contracting State.

2. - The fact that the creditor is situated in a non-Contracting State does not affect the applicability of this Convention.

The special Working Group would suggest deleting Article 3(1)(b) because the connecting factor contained in this provision causes only confusion and is too internally inconsistent to be considered as an appropriate element to determine the sphere of application of the Convention. The key element is and should be the situation of the debtor in a Contracting State.

Article V

If the Protocol so provides, a Contracting State may declare at the time of signature, ratification, acceptance, approval of, or accession to the Protocol that it will not apply this Convention in relation to a purely internal transaction. [In such a case, that Protocol shall specify which types of transaction are to be considered as purely internal transactions] [In such a case, a transaction is a purely internal transaction if the creditor, the interested parties and the object are situated in the same Contracting State, at the time of the conclusion of the agreement].

Article III (2) of the preliminary draft Aircraft Protocol should be deleted.

The special Working Group considered it desirable to avoid a situation in which States would be obliged to make conflicting declarations which would create many difficulties in enforcing the Convention.

Finally, the delegations of Canada, Mexico and the United Kingdom and the Aviation Working Group do not intend at this session to propose any modifications to the preliminary draft Aircraft Protocol in this regard.

The Aviation Working Group also suggests that (i) Article 5 of the preliminary draft Convention be amended to permit transaction parties to exclude the preliminary draft Convention regarding matters *inter se*, and (ii) a provision be added confirming that, subject to the primacy of Article 27 of the preliminary draft Convention, nothing prevents the filing of national security documents with national authorities. The French delegation considers that a debate on Article 5 would be useful.

* The German delegation made a proposal for Article 27(1). The proposal is reproduced as an appendix to this document.

APPENDIX

PROPOSAL FROM THE GERMAN DELEGATION

Article 27 (1)

1.- If an interest arising under a purely internal transaction is registered in a national registry, this interest has priority over an international interest entered into the International Registry subsequent to the national registration, provided that notice of such national interest is given in the International Registry.