



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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OPENING

1. In opening the third Plenary Session of the Joint Session of the 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 and the Sub-Committee of the ICAO Legal Committee on the study of international interests in mobile equipment (aircraft equipment), Mr H. Kronke, Secretary-General of UNIDROIT, welcomed participants on behalf of the President of UNIDROIT, Mr B. Libonati, and the UNIDROIT Governing Council. He underlined the considerable progress that had been made since the second Joint Session, held in Montreal in August/September 1999, and thanked all those who had contributed to making this progress possible.

2. Mr Kronke stated that the envisaged structure of a “parent” Convention with equipment specific Protocols was no longer a source of concern to States, also as a result of the efforts that had been made to move provisions that made sense for more than one type of equipment to the Convention, which had produced a greater equilibrium between the Convention and the Protocols. There was also a growing awareness that the Protocols were not intended to over-ride the Convention as a whole, but that the Convention instructed users to look for equipment-specific details in the Protocols.

3. The concern about time expressed at the beginning of the process by the aviation Organisations was a legitimate one and provided an incentive to proceed with the greatest speed possible. He stressed that work on the *Protocol on Matters relating to Railway Rolling Stock* and on the *Protocol relating to Matters specific to Space Property* was progressing rapidly. In fact, a Steering and Revisions Committee for the Rail Protocol had met the previous week. He stressed that work on the other Protocols did not interfere with the work on the Aircraft Protocol. Mr Kronke concluded by indicating that a diplomatic Conference for the adoption of the draft Convention and draft Aircraft Protocol might confidently be expected to be held early in 2001.

4. In his opening statement, Mr S. Espínola, Principal Legal Officer of the ICAO Secretariat, welcomed participants on behalf of Mr R.C. Costa Pereira, Secretary General of ICAO, and Mr L. Weber, Director of the ICAO Legal Bureau. He recalled that this third Joint Session was expected to finalise the draft instruments under consideration in order to be submitted to the ICAO Legal Committee. He however drew attention to the fact that the legal and practical implications of a number of provisions had not yet been defined. The provisions that were of more concern [~~to ICAO~~] were those relating to the exercise of self-help remedies and judicial interim relief by the creditor, the broad field of derogation and choice of law, and the plethora of reservations and declarations required or permitted. Mr Espínola suggested that a more balanced approach was needed. In this regard he announced that two working papers prepared by the ICAO Secretariat, one on declarations and derogations (UNIDROIT CGE/Int.Int./3-WP/11; ICAO Ref. LSC/ME/3-WP/11), the other on remedies and interim relief (UNIDROIT CGE/Int.Int./3-WP/12; ICAO Ref. LSC/ME/3-WP/12) were being distributed for the consideration of the meeting. He suggested that attention should be focussed on the outstanding issues so as to arrive at texts capable of obtaining broad acceptance by States, and underlined that in the view of ICAO acceptability and ratifiability were overriding objectives in the finalisation of the texts.

5. Mr Espínola recalled that at the second Joint Session the ICAO Secretariat had been invited to illustrate the ICAO position as to its possible involvement in the future International Registry system for aircraft objects. He stated that the required indications would be provided in the course of the discussions on the Registry.

AGENDA ITEM 1: ADOPTION OF THE AGENDA

6. The Agenda was adopted as proposed.

AGENDA ITEM 2: ORGANISATION OF WORK

7. It was decided that in order to facilitate the work of the Drafting Committee it would meet in the same composition as the restricted Drafting Group that had met in Rome from 25 to 27 November 1999 (Mr M. Deschamps (Canada), Mr R.M. Goode (United Kingdom/Rapporteur), Mr C.W. Mooney, Jr. (United States of America) and Mr O. Tell (France)). In conformity with the decision taken by the second Joint Session (cf. ICAO Ref. LSC/ME/2-Report / UNIDROIT CGE/Int.Int./2-Report, § 6:2) Mr K. El Hussainy (Egypt) and Mr H.-G. Bollweg (Germany) were also invited to attend, and in addition Mr J. Wool (Aviation Working

Group) was invited to attend the meetings as an adviser. It was further decided that the Drafting Committee would be convened in Plenary by its Chairman, Mr K.F. Kreuzer (Germany), as appropriate.

PRESENTATION OF THE PROGRESS MADE IN RELATION TO THE PRELIMINARY DRAFT PROTOCOL ON MATTERS SPECIFIC TO RAILWAY ROLLING STOCK

8. A presentation of the progress made with respect to the preliminary draft Rail Protocol was made by Mr H. Rosen, Co-ordinator of the Rail Working Group. He stressed the differences that existed between the rail and the aircraft sectors by reason of the traditionally heavy involvement of States in national railways and of the difficulties that privatisation had given rise to. He announced that a study assessing the economic impact of the preliminary draft Protocol would be prepared shortly. Mr Rosen indicated that the Rail Protocol would soon be ready for consideration by a Committee of Governmental Experts.

9. The observer from the Intergovernmental Organisation for International Carriage by Rail (OTIF) stressed the changes that the privatisation process had brought with it in the railway sector. He expressed the strong support of his organisation for the presently envisaged structure of a “parent” Convention with equipment-specific Protocols.

PRESENTATION OF THE PROGRESS MADE IN RELATION TO THE PRELIMINARY DRAFT PROTOCOL ON MATTERS SPECIFIC TO SPACE OBJECTS

10. Mr D. Panahy, representing the Space Working Group, illustrated the progress made with respect to the preliminary draft Space Protocol and the importance that the protocol would also have in economic terms.

11. Mr G. Lafferranderie (European Space Agency) also stressed the economic importance of the preliminary draft Space Protocol and the need to consider the interests of all parties in the process. He observed that both the Convention and the Space Protocol would be well received by States as well as by the private sector. He indicated that it would however be necessary to ensure appropriate co-ordination between the future Convention in its application to space property and the existing body of international space law.

12. Mr M. Stanford (UNIDROIT) mentioned the different initiatives in which the UNIDROIT Secretariat had participated with a view to publicising awareness of the issues involved in the preliminary draft Space Protocol.

GENERAL DISCUSSION

13. In relation to the presently envisaged Convention/Protocol structure, a number of delegations expressed their support, one delegation indicating that the reservations it had previously had no longer had reason to exist, although a draft informal integrated text would be make it easier to understand the regime. One delegation however suggested that a single structure might be preferable, and another that it would prefer to keep options open.

14. Several delegations and observers from the Aviation Working Group, Rail Working Group and IATA expressed their strong objection ~~concern~~ in relation to the opening statement made by Mr Espínola (ICAO), which appeared to reopen discussion on the philosophy underlying the instruments. It was stressed that the purpose of the instruments under preparation was to make aircraft or equipment financing more available and at much lower cost, primarily in the markets that were in need of such financing and that the means to achieve this purpose was the introduction of modern asset-based financing laws. The Secretariat’s recommendations were directly in conflict with established and important standards in aircraft and rail transactions, and would have the effect of undermining the effect of the proposed Convention. These proposals would, by disallowing current practices, eliminate advantages to be created by the Convention. The primary effect would be to significantly reduce benefits to developing countries. A number of Some

delegations however stated that they were not in a position to take a stand on the ICAO comments as they had not yet examined the papers that ICAO was submitting.

15. One delegation expressed the view that the draft instruments had so far been creditor-oriented and that they should be looked at in more depth.

16. Mr Espínola (ICAO) indicated that the intention of the ICAO Secretariat's papers was to assist the discussion of the Joint Session, in particular by flagging the concerns his Organisation had with respect to the lack of an adequate balance between the protection given to the creditor and the defences permitted to the debtor. The ICAO considered that a better balance could facilitate acceptance of the draft instruments.

16A. A number of delegations raised fundamental questions about the assumptions being made by Mr Espinola, involving whether the Convention would achieve its objectives. It was also pointed out that the suggested use of abstract principles needed to be considered in the specific context of the Convention, namely financing of big-ticket items among sophisticated parties, many of which are State entities.

17. The observer of the International Air Transport Association (IATA) stressed IATA's commitment to the rapid progress of the Aircraft Protocol and expressed strong support for the work underway in relation to the Rail and Space Protocols. He stated that the reports on the progress made with respect to these Protocols clearly showed that the only international Organisation capable of pulling together all the different strands was UNIDROIT. The central role of UNIDROIT must, he stated, be maintained also in relation to the Rail and Space Protocols.

AGENDA ITEMS 3 AND 4: CONSIDERATION OF THE PRELIMINARY DRAFT UNIDROIT CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT, AND OF THE PRELIMINARY DRAFT PROTOCOL THERETO ON MATTERS SPECIFIC TO AIRCRAFT EQUIPMENT AS REVIEWED BY THE AD HOC DRAFTING GROUP, CONSTITUTED BY THE SECOND JOINT SESSION AT ITS MEETING HELD IN ROME FROM 25 TO 27 NOVEMBER 1999 AND IN THE LIGHT OF THE REPORT ON THE SESSION OF THE PUBLIC INTERNATIONAL LAW WORKING GROUP, HELD IN CAPE TOWN AND ON THE BLUE TRAIN FROM 8 TO 10 DECEMBER 1999

18. It was decided that Agenda Items 3 and 4 would be dealt with in parallel.

PREAMBLE OF THE PRELIMINARY DRAFT CONVENTION

19. It was decided to delete the clause of the Preamble in square brackets in the preliminary draft Convention, and to defer consideration of its possible inclusion in the Space Protocol to the discussions on that Protocol.

PREAMBLE OF THE PRELIMINARY DRAFT PROTOCOL

20. The Preamble of the preliminary draft Protocol was adopted without modification.

ARTICLE 1 OF THE PRELIMINARY DRAFT CONVENTION

21. Modifications or suggestions were made *inter alia* in relation to the following definitions and referred to the Drafting Committee:

(b) “assignment” – it was suggested that the Drafting Committee examine whether the definition was broad enough to cover pledges of receivables;

(n) “insolvency administrator” – it was suggested that the Drafting Committee consider replacing “appointed” by “authorised”, or combining the two terms: “appointed or authorised”;

(p) “interested persons” – it was suggested that the Drafting Committee consider whether the reference to “insolvency administrator in (n) should be included in (p), or whether it should be inferred that the reference to the debtor in Article 28 included a reference to the insolvency administrator;

(x) “proceeds” – it was suggested that it should be made clear that partial as well as total loss was covered;

(bb) “protocol” – it was decided that the question of whether the definition of category of object dealt with in the Protocols could have geographic scope should be dealt with in the context of the Protocols;

(ff) “Registrar” – it was suggested that the words “or body” should be added after “person” so as to cover both legal and physical persons;

(mm) “title reservation agreement” – it was suggested that the Drafting Committee re-examine this definition in the light of the inter-relationship of the definitions of the different terms used in the definition;

(oo) “writing” – it was suggested adding the words “where required” after “which indicates” and that the following words should be amended to read “by reasonable means the approval of the record and the initiator of it”.

ARTICLE I OF THE PRELIMINARY DRAFT PROTOCOL

22. Modifications or suggestions were made in relation to the following definitions:

(a) “aircraft” – it was suggested that the definition of “aircraft” in the Annexes to the Chicago Convention should be followed, although it was also suggested that in following the Chicago Convention definition the technical definitions of “aircraft engines” and “airframes” should not be extended;

(c) “aircraft objects” – it was suggested that this definition should be reconsidered, as in accordance with this definition and the definition of “aircraft” helicopters constituted both aircraft and aircraft objects;

(f) “Chicago Convention” – it was suggested to add the words “and its Annexes” after “Chicago Convention”;

(h) “de-register the aircraft” – it was suggested to add “or from a common mark registering authority”;

(m) “insolvency-related event” – it was suggested that the reference to Chapter III of the Convention in sub-paragraph (ii) should be deleted. In relation to the commencement of the insolvency proceedings in sub-paragraph (i), it was suggested that the provision should be brought into line with Article XI, Alternative A, paragraph 2;

(o) “national registry authority” – it was suggested that the definition should specify that this reference was to the national authority and the common mark registering authority “as defined in Annex VII to the Chicago Convention”;

(p) “primary jurisdiction” – it was felt that the footnote to this provision was misleading and needed to be re-examined by the Drafting Committee;

(q) “State of registry” – it was suggested that reference should be made to the State of registry or the State where the common mark registering authority was located.

— END —