



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

ICAO Ref. LSC/ME/2-WP/23
UNIDROIT CGE/Int.Int./2-WP/23
1/9/99

SECOND JOINT SESSION

(Montreal, 24 August – 3 September 1999)

DRAFT REPORT

PLENARY SESSION

31 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)

Proposed new Article G of the draft Protocol

5:56 It was agreed that the Drafting Committee should consider whether this Article should be placed in the draft Convention. Otherwise, it was accepted as written.

Proposed new Article H of the draft Protocol

5:57 This Article was referred to the Drafting Committee to make the necessary changes to paragraph 2 to include the term “officers”. It was agreed that the Drafting Committee should consider whether the definition of “Registrar” should include both legal and physical persons. The Drafting Committee was further tasked to harmonize this Article and Article 26 of the Draft Convention, and to draft alternative provisions covering strict and fault liability. It was proposed that the words “insured against” in paragraph 3 be modified in order to require the Registrar to provide full insurance coverage.

Proposed new Article I of the draft Protocol

5:58 While some delegations supported the use of the words “joint regional registry,” it was also proposed that the terminology should be aligned with that used in ICAO documentation “Chicago Convention, Annex 7 and Council Resolution of 1969”. Another delegation proposed that more flexible terminology be used in order to permit a Contracting State to designate the registry of its choice. The Drafting Committee was requested to review this matter in order to achieve some flexibility. It was agreed that the Drafting Committee should reconsider the utility of paragraph 2(a), and should consider whether the square brackets around paragraph 2(b) should be removed. It was also agreed that the Drafting Committee should correct drafting errors in paragraph 3, with a view to replacing the term “International Registry” by the term “Registrar.” The Plenary also requested the Drafting Committee to consider whether these same corrections should be made to paragraph 2(b).

Proposed new Article J of the draft Protocol

5:59 Discussions on this Article were postponed until a later date.

5:60 The Plenary reviewed the Report by the Insolvency Working Group (IWG) presented by its Chairman (WP/19). It was agreed that the Plenary would not reopen discussion on the points addressed by the Informal Insolvency Working Group during the Rome meeting that had taken place in July 1999, and that the recommendations made on that occasion (cf WP/10, §§ 9-21) would be referred directly to the Drafting Committee. In its work during the Second Joint Session, the IWG had proposed two draft versions of Article XI of the Draft Protocol, one that would reflect a “hard rule” on insolvency issues (Option A), and the other a more flexible “soft rule” (Option B) which would allow judicial discretion under national insolvency laws. Contracting States would then have the choice of adopting Option A or Option B.

Article XI, Option A, paragraph 1 (WP/19, Appendix 1)

5:61 Paragraph 1 was accepted without any comments.

Article XI, Option A, paragraph 2

5:62 The Session accepted the comments of the IWG made in points 2.6.3 and 2.6.4 of its report.

Article XI, Option A, paragraph 3

5:63 In response to a query as to why paragraph 3 referred to the obligor who “is not eligible for or subject to insolvency proceedings under applicable law”, it was explained that the provision was intended to cover State-owned airlines which might not be subject to insolvency proceedings. Accordingly, the Drafting Committee was tasked to review this provision in order to clearly reflect the intention. It was agreed that the Drafting Committee should consider the length of time that should be included in the “waiting period.”

Article XI, Option A, paragraph 4

5:64 It was agreed that the Drafting Committee should consider whether not only the obligor, but also the insolvency administrator should be subject to paragraph 4. It was further proposed that the term “preserve” should not preclude the operation of the aircraft by the obligor, nor should paragraph 4 preclude the availability of other forms of interim relief under national laws.

Article XI, Option A, paragraph 5

5:65 The Plenary accepted the IWG’s proposal to delete paragraph

Article XI, Option A, paragraph 6

5:66 It was agreed that paragraph 6 be referred to the Drafting Committee in the light of the comments made under point 2.6.11 of the IWG report.

Article XI, Option A, paragraph 7

5:67 The Plenary accepted the proposed draft of paragraph 7.

Article XI, Option A, paragraph 8

5:68 It was agreed that paragraph 8 should be deleted, as proposed by the MG.

Article XI, Option A, paragraph 9

5:69 The Plenary accepted the comments of the IWG made under point 2.6.13 of the IWG report.

Article XI, Option A, paragraph 10

5:70 It was noted that paragraph 10 was essential to the purpose behind the “hard rule” of Option A. It was further agreed that the alternative draft prepared by the IWG under point 2.6.14 of WP/19 should be referred to the Drafting Committee for further consideration. Several reservations were made to paragraph (b) of the proposed revision on the ground that it did not seem to serve any effective purpose and did not address the issue of the modifying powers of national courts. Other delegations questioned the utility of laying out a specific list of exceptions in paragraph (b). It was agreed that the structure of paragraph (b) should therefore be changed to contain general terms and provide greater flexibility to the insolvency administrator.

Article XI, Option B, paragraph 11

5:71 It was agreed that the reference to “non-consensual interest” must be changed once the Session reached a decision regarding Articles 37 and 38 of the draft Convention.

Article XI, Option B (WP/19, Appendix II)

5:72 One observer proposed a modification to Option B of Draft Article XI (ICAO Ref LSC/ME/2-UNIDROIT CGE/Int.Int./2 - Flimsy No.4). This proposed modification was intended to provide greater flexibility by maintaining certain aspects of the “hard rule” in Option A even when Option B was chosen by a Contracting State. Another proposal called for a re-examination of paragraph 4, which appeared to promote a “hard rule” by enabling the obligee to take possession of the aircraft at the end of the “waiting period”. Although the Session did not have the time to engage in a full discussion of the provisions of “Option B”, it was agreed that the Plenary’s discussion on this issue should provide sufficient guidance for the Drafting Committee.