



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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### **THIRD JOINT SESSION**

(Rome, 20 – 31 March 2000)

## **SPECIAL WORKING GROUP ON ARTICLE 14 OF THE PRELIMINARY DRAFT CONVENTION AND SELECTED ASPECTS OF ARTICLE X OF THE PRELIMINARY DRAFT AIRCRAFT PROTOCOL**

### **REPORT**

1. The above-mentioned Special Working Group held its meeting on Wednesday 22 March 2000 from 5:30 p.m. to 8:00 p.m. to try to find a compromise drafting for Article 14 of the preliminary draft Convention and selected aspects of Article X of the preliminary draft Aircraft Protocol. The Special Working Group was composed of representatives of the following delegations: Canada, France, Japan, Singapore and Sweden. A representative of the Aviation Working Group also attended the meeting. Thanks to the fruitful co-operation of all members, the Special Working Group was able to reach a consensus on a proposal to amend those Articles, the text of which is attached herewith with explanatory notes.

2. Finally, the delegation of Singapore specifically requested to record a note in this report concerning an ambiguity in Article 14(1) in respect of the role and discretion of the national court in granting interim relief requested by the creditor. This Special Working Group decided not to deal with this matter and the delegation of Singapore reserved its position on the role and discretion of national courts under Article 14(1).

**SPECIAL WORKING GROUP ON ARTICLE 14 OF THE PRELIMINARY DRAFT  
CONVENTION AND SELECTED ASPECTS OF ARTICLE X OF THE PRELIMINARY  
DRAFT AIRCRAFT PROTOCOL**

New wording proposed

Article 14  
*Relief pending final determination*

1. – A Contracting State shall ensure that a creditor who adduces *prima facie* clear evidence of default by the debtor may, pending final determination of its claim and to the extent that the debtor has at any time so agreed, obtain speedy judicial relief in the form of such one or more of the following orders as the creditor requests: <sup>1</sup>

- (a) preservation of the object and its value;
- (b) possession, control or custody of the object;
- (c) immobilisation of the object <sup>2</sup>; and/or
- (d) sale, lease or management of the object and the income therefrom.
- ~~(e) application of the proceeds or income of the object.~~

2. – [ In making any order under ~~sub-paragraphs (d) or (e)~~ of the preceding paragraph, the court may impose such terms, including the giving of prior notices, as it considers necessary to protect the interested persons in the event that the creditor:

- (a) in implementing any order granting such relief, fails to perform any of its obligations to the debtor under this Convention or the Protocol; or
- claim. ]<sup>3</sup> (b) fails to establish its claim, wholly or in part, on the final determination of that

~~[[3. ] Prior notice of any application under paragraph 1 shall be given in writing to the interested persons.]~~

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<sup>1</sup> It was noted that there may an ambiguity in the text as to the degree of judicial discretion permitted by Article 14(1). While the English version seems for some representatives to impose an obligation on the judge to grant speedy judicial relief if the creditor so requests, the French version would rather leave upon the judge to decide whether or not to grant the relief.

<sup>2</sup> It was proposed that the comment by a delegation seeking to ensure that Article 14(1)(c) should not run counter to any other international instrument on the subject should be dealt with at the appropriate time in the Final Provisions; cf. also footnote to Article XXIII of the preliminary draft Aircraft Equipment Protocol.

<sup>3</sup> The Special Working Group did not take a decision on whether or not this paragraph should remain in the text of the Article

~~\_\_\_\_\_ [3. ] [4.] Ownership or any other interest of the debtor passing on a sale under paragraph 1 is free from any other interest over which the creditor's international interest has priority under the provisions of Article 27.~~

~~[4. ] [5.] [ 3. - ]~~ Nothing in this Article affects the application of Article 8(2) or limits the availability of forms of interim judicial relief other than those set out in paragraph 1.

#### Article X<sup>4</sup>

##### *Definition of speedy judicial relief*

[1.– For the purposes of Article 14(1) of the Convention, “speedy” in the context of obtaining judicial relief means within such number of calendar days from the date of filing of the application for relief as is specified in a declaration made by the Contracting State in which the application is made.]<sup>5</sup>

[2.] - Article 14(1) of the Convention applies with the following being added immediately after sub-paragraph (d) :

“(e) sale and application of proceeds therefrom”.

[3.] - Ownership or any other interest of the debtor passing on a sale under the preceding paragraph is free from any other interest over which the creditor's international interest has priority under the provisions of Article 27 of the Convention.

[2. 4. – An agreement between the debtor and the creditor to exclude the application of Article 14(2) of the Convention shall be binding upon all interested persons.]<sup>6</sup>

[3.] 5]. - The remedies specified in Article IX(1) shall be made available by the national registry authority and other administrative authorities, as applicable, in a Contracting State no later than [...] calendar days after the judicial relief specified in paragraph 1 is authorised or, in the case of judicial relief authorised by a foreign court, approved by courts of that Contracting State.<sup>7</sup>

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<sup>4</sup> Contracting States shall be entitled to “opt-in” to this provision, wholly or in part.

<sup>5</sup> The Special Working Group did not address this paragraph.

<sup>6</sup> The Special Working Group did not feel entitled to make suggestions on this paragraph.

<sup>7</sup> The Special Working Group did not address this paragraph.