



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)

#### ***DRAFTING COMMITTEE / RESTRICTED GROUP***

***Saturday 25 March 2000***

#### **PUBLIC INTERNATIONAL LAW PROVISIONS**

##### ***Introduction***

The restricted group of the Drafting Committee met on 24 and 25 March pursuant to the request addressed to it by the Chairman of Plenary at the conclusion of the discussions within Plenary on 23 March regarding the report submitted by the Public International Law Working Group. The restricted group of the Drafting Committee had been asked by the Chairman of Plenary to seek to give effect to the decisions taken by Plenary in relation to that report with a view to reporting back to Plenary on 27 March. The restricted group completed the task entrusted to it by the Chairman of Plenary on 25 March. However, in view of the absence, from its deliberations on 25 March, for unavoidable reasons, of two members of the restricted group, it has been decided to submit the restricted group's report to Plenary in two parts. The first part refers to the work accomplished by the restricted group on 24 March. This is the subject of this document. The work accomplished on 25 March will be the subject of a second document to be distributed later when the two members absent on 25 March have had the opportunity to consider the drafting proposals made by their colleagues (UNIDROIT CGE/INT.INT./3-WP/28 Add. - ICAO Ref. LSC/ME/3-WP/28 Add.).

The amendments proposed by the restricted group on 24 March are set out hereunder under the relevant provisions of the preliminary draft Convention and the preliminary draft Aircraft Protocol.

*Preliminary draft Convention*

**CHAPTER [XIV]**

**[OTHER] FINAL PROVISIONS** <sup>30</sup>

Article W

~~[Insert provision for accelerated procedure to finalise further Protocols]~~ <sup>32</sup>

*Protocols on Railway Rolling Stock and Space Property*

1. – The International Institute for the Unification of Private Law (UNIDROIT) shall communicate the text of any preliminary draft Protocol relating to a category of objects falling within Article 2bis (1)(b) or (c) prepared by a working group convened by UNIDROIT to all Contracting States Parties to the Convention through their adherence to any existing Protocol, all Member States of UNIDROIT and all Member States of any intergovernmental Organisation represented in the working group. Such States shall be invited to participate in intergovernmental negotiations for the completion of a draft Protocol on the basis of such a preliminary draft Protocol.

2. – UNIDROIT shall also communicate the text of any preliminary draft Protocol prepared by a working group to relevant non-governmental Organisations as UNIDROIT considers appropriate. Such non-governmental Organisations shall be invited to submit comments on the text of the preliminary draft Protocol to UNIDROIT or, as appropriate, to participate as observers in the preparation of a draft Protocol.

3. – Upon completion of a draft Protocol, as provided by the preceding paragraphs, the draft Protocol shall be submitted to the Governing Council of UNIDROIT for approval with a view to adoption by the General Assembly of UNIDROIT and such other intergovernmental Organisations as may be determined by UNIDROIT .

4. – The procedure for the adoption of Protocols covered by this Article will be determined by the States participating in their preparation.

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<sup>30</sup> Of this Chapter only Articles V and Y were reviewed by the Drafting Committee during the second Joint Session.

<sup>32</sup> ~~These provisions are to be the subject of consideration by the Public International Law Working Group.~~

Article W bis  
Other future Protocols

1. – UNIDROIT may create working groups to assess the feasibility of extending the application of this Convention, through one or more Protocols, to objects of any category of high-value mobile equipment, other than a category referred to in Article 2bis (1)(a)-(c), each member of which is uniquely identifiable, and associated rights relating to such objects.

2. – The Protocols referred to in the preceding paragraph shall be prepared and adopted in accordance with the procedures provided for under Article W.

***Preliminary draft Aircraft Protocol***

Article II  
*Application of Convention as regards aircraft objects*

1. – The Convention shall apply in relation to aircraft objects as provided by the terms of this Protocol.

2. – The Convention and this Protocol shall ~~be read and interpreted together as one single instrument and shall~~ be known as the [UNIDROIT] Convention on International Interests in Mobile Equipment as applied to aircraft objects.

Article XXII  
*Relationship with 1948 Convention on the International Recognition  
of Rights in Aircraft*

~~1. — Where a Contracting State is a party to the Geneva Convention:~~

~~(a) the reference to the “law” of such Contracting State for the purposes of Article I (1)(d)(i) of the Geneva Convention should be to such law after giving effect to the Convention;~~

~~(b) for the purposes of the Geneva Convention, the term “aircraft” as defined in Article XVI of that Convention shall be deleted and replaced by the terms “airframes,” “aircraft engines” and “helicopters” as defined in this Protocol; and~~

~~(c) registrations in the International Registry shall be deemed to be regular recordings “in a public record of the Contracting State” for the purposes of Article I (1)(ii) of the Geneva Convention.~~

~~2. — Subject to paragraph 3, the Convention shall, for the Contracting States referred to in the preceding paragraph, supersede the Geneva Convention to the extent, after giving effect to the preceding paragraph, of inconsistency between the two Conventions.~~

~~3. — The provisions of the preceding paragraph shall not apply to Articles VII and VIII of the Geneva Convention where an obligee elects to exercise remedies against an obligor in accordance with those Articles [and provides the court with written evidence of that election].~~

The Convention shall, for a Contracting State that is a party to the Geneva Convention, supersede that Convention as it relates to aircraft and aircraft objects.

### Article XXIII

#### *Relationship with 1933 Convention for the Unification of Certain Rules Relating to the Precautionary Attachment of Aircraft*

~~The Convention shall, for Contracting States that do not make a declaration under Article Y(2)<sup>22</sup> of the Convention, supersede the 1933 Convention for the Unification of Certain Rules Relating to the Precautionary Arrest of Aircraft.~~

1. — The Convention shall, for a Contracting State that is a Party to the 1933 Convention for the Unification of Certain Rules Relating to the Precautionary Attachment of Aircraft, supersede that Convention as it relates to aircraft.

2. — A Contracting State Party to the above Convention ~~may declare~~, at the time of ratification, acceptance, approval of, or accession to this Protocol, that it will not apply this Article.<sup>22bis</sup>

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<sup>22</sup> ~~— If Alternative B of Article Y(2) is adopted, this will need to be amended accordingly.~~

<sup>22bis</sup> This paragraph will be moved to the final provisions in due course.

