



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

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SECOND JOINT SESSION

(Montreal, 24 August – 3 September 1999)

DRAFT REPORT

PLENARY SESSION

2 September 1999

The attached constitutes material on Agenda Item 3, 5 and 6.

Agenda Item 3: Organization of work

3:3 It was agreed that the Chairman of the Drafting Committee should be delegated the task of completing the work of the Drafting Committee by the end of the year. It was further agreed that such work would concern only on the issues already referred to the Drafting Committee by the Plenary, and should result in a text to be distributed by the Secretariats as the basic working document of the next Joint Session.

3:4 The Plenary discussed the composition and task assignment of the PILWG. In addition to the members and observers/advisers appointed to the PILWG on 30 August 1999 (cf. WP/22 paragraph 3:2), it was decided to appoint Austria, Canada, Japan, UNCITRAL and United Nations Office for Outer Space Affairs. It was explained that, as with all bodies of the Joint Session, those States which were not members could attend meetings as observers. It was further decided, that the Secretariats would draft a flimsy indicating the topics within the mandate of the PILWG and the order of priority among these. It was agreed that this flimsy would be reviewed by the Plenary at its final meeting of the second Joint Session.

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)

5:73 The Plenary reviewed the Report by the Jurisdiction Working Group (JWG) presented by its Chairman (WP/27). The Chairman informed the Plenary that the Group had not attempted to present new drafting proposals but rather to provide further guidance for the future work of the Drafting Committee.

5:74 In reviewing paragraphs 2.2 and 2.3 of the Report, one delegation expressed concern that the bases of jurisdiction listed in **Article 40(1)** were not appropriate in contexts of interim relief such as *in personam* orders. The Chairman of the JWG explained that it had been the intention of the Working Group to leave to the party concerned as many jurisdictional choices as possible, and noted that the list referred to in **Article 40(1)** should not be construed as an exhaustive list. The same delegation recalled that that there had been no consensus as to the acceptability of the bases of jurisdiction listed in **Article 40(1)**, particularly subparagraph (a).

5:75 In examining the issues referred to in paragraph 2.4 of the Report, comments were made with respect to the basis for the determination of the defendant's location as set out in the Brussels and Lugano Conventions and **Article 3** of the Draft Hague Convention, and the need to identify suitable concepts contained therein for the purpose of integration with Article 4 of the draft Convention. One delegation suggested the criterion of "domicile" be the basis for the obligor's location.

5:76 In relation to paragraph 2.6 of the Report, the Secretary General of UNIDROIT suggested clarifying in the Report that the reference to *lex fori* should be substituted with "the law applicable to the *lex fori*". In the subsequent discussion, views were expressed as to whether the parties should be given full autonomy with respect to choice of forum agreements. It was agreed that the Convention would not include criteria for validity, nor would the term "validity" appear. The JWG had decided not to address the issue of exclusivity. One delegation expressed dissatisfaction with this decision and pointed out that choice of jurisdiction clauses are expressly given exclusivity in the Brussels and Lugano Conventions.

5:77 With respect to paragraph 2.8 of the Report, one delegation reiterated its reservations with respect to the unilateral measures of **Article 8(1)** of the draft Convention.

5:78 The Plenary thereafter reviewed paragraph 2.9 of the Report. The issues that had already been identified earlier in connection with paragraph 2.6 of the Report (validity of forum selection, exclusivity of forum), were considered equally relevant to paragraph 2.9. The Chairman of the JWG restated the intent behind the first part of Article 41, which was to give effect to the basis of jurisdiction according to the law applicable under the *lex fori* where no forum was chosen by the parties. One delegation pointed out that where the choice of the parties was not clear, then the jurisdiction rules of the forum of the defendant should be applicable. Another delegation noted that, even if it was not wished to take here the criterion of “domicile”, this criterion was the most common basis of jurisdiction under both the Brussels Convention and in private international law.

5:79 With respect to paragraphs 2.11 of the JWG Report, the Plenary confirmed the common understanding that the issues referred to in points 1.) and 2) should be considered as a cumulative requirement, which described one particular factual situation. In the ensuing discussion with respect to Article 25(3) of the draft Convention, the Plenary decided that this clause required further examination, particularly as this clause had yet not been reviewed by the Drafting Committee.

5:80 With respect to the issues referred to in paragraphs 2.13 and 2.14 of the Report, it was noted that the proposals contained therein were made on the assumption that the International Registry would be located in a Contracting State.

5:81 The Plenary reviewed the Final Provisions of the draft Convention in order to provide some guidance to the Public International Law Working Group (PILWG) in their future work.

Article U of the draft Convention

5:82 This Article had been previously discussed by the Plenary on 27 August 1999 (cf. WP/20, paragraph 5:35).

Article V of the draft Convention

5:83 It was decided that this Article should not be moved to the scope provisions of the Convention, but should remain in the final provisions because it was an exceptional provision. The problem regarding the meaning of “purely domestic transaction” had been raised earlier in the Plenary.

Article W of the draft Convention

5:84 One delegation emphasized the importance of completing this Article, and the necessity to assure the progress of future Protocols.

Article X of the draft Convention

5:85 Some delegations expressed concern regarding the jurisdiction issues that were raised by this Article. It was explained, however, that the Article was intended merely to enable Contracting States to designate which of its courts would have jurisdiction for the purposes of application of the Convention, and did not concern jurisdiction issues.

Article Y of the draft Convention

5:86 The Plenary considered this Article in the context of its discussions on Article 12 of the draft Convention. One delegation proposed that the PILWG analyse how this Article may be affected by the rule of public international law on the binding nature of International Treaties. Chapter 6 of the draft Protocol.

5:87 The Plenary then considered the **Final Provisions** in the Addendum to the draft Protocol (Chapter VI). These provisions were referred to the PILWG for further consideration.

5:88 The observer from UNCITRAL addressed the Plenary on the issue of the relationship between the draft Convention and UNCITRAL's draft Convention on Assignment in Receivables Financing, and the potential overlap in their respective spheres of application. It was decided that the Plenary would cooperate with UNCITRAL in the reaching of a solution. For this purpose, the PILWG was charged with the task of finding means to harmonise these draft Conventions.

5:89 The Plenary reviewed the Report of the Drafting Committee, presented by its Chairman (WP/24). The Drafting Committee had been under severe time constraints to complete the heavy workload referred to it by the Plenary, and had therefore been unable to complete its work. Since the Drafting Committee's Report was not complete, it was agreed that a review of the Report by the Plenary was premature. Nevertheless, some interventions were made on the contents of the Report. One delegation expressed its satisfaction with the footnote attached to the removed words "and by lawful means" in **Article 8** of the draft Convention, but reserved the right to alter its position at a later date. Another delegate expressed the view that the Drafting Committee's treatment of "commercially reasonable" was inadequate.

5:90 With respect to paragraph 5:30 of WP/20, one delegation requested that the record reflect the fact that the Plenary did not have the opportunity to discuss the substance of Articles 32, 33, and 34 of the draft Convention since it was preferable that these provisions be reviewed in the presence of the observer from UNCITRAL. In paragraph 5:32, a grammatical error was pointed out in the sentence beginning "Yet another". It was suggested that the sentence should be changed to read "the possibility for," In paragraph 5:33, one delegation requested the removal of the references to Articles 26 and 27 since they were not mentioned in the debate on Articles 40 and 41. In paragraph 5:34, it was agreed to delete the second to last sentence, and replace it with the following: "It was explained, however, that there was a practice whereby a Protocol could alter relationships as between the parties. There was a proposal that the record make mention, in paragraph 5:35, to the fact that the name of the Final Clauses Working Group was changed to the Public International Law Working Group. It was further agreed that the words "It was" in the sixth sentence of paragraph 5:35 be changed to read: "One delegation." In paragraph 5:36, one delegation proposed removing the second to last sentence and replacing it with the following: "The attempt to define purely domestic transactions could defeat the purposes of the Convention and Protocol." It was further proposed that the last sentence be deleted and replaced with: "Some delegations pointed out the advantage of addressing the matter on an equipment-specific basis."

5:91 In WP/21, it was pointed out that paragraph 5:40 inaccurately reported the discussions on the ICAO's involvement in the International Registry. It was agreed that the matter would be rectified by the Secretariats. One delegation requested the addition of the following sentences to paragraph 5:47: "Some delegations proposed adding a provision to Article 26 regarding the legal personality of the Registrar.", "One delegation proposed a provision allowing for the right of the obligor to make corrections in the event of a mistake by the Registrar." In paragraph 5:53, one delegation drew attention to an inaccuracy relating to the term "regulation," and it was agreed that the matter would be rectified by the Secretariats

Agenda Item 6: Future work

6:1 The Plenary reviewed the draft Report of the second Joint Session contained in WP/13, 14, 18, 20 and 21. In regard to WP/13, corrections were requested regarding the reference in paragraph 6 to the topic of Mr. Shapiro's presentation. It was also pointed out that, in paragraph 7, the record should reflect the fact that the Informal Insolvency Group was made formal during the second Joint Session.

6:2 In WP/14, paragraph 5:2, one delegation proposed adding the words “which are technical issues that relate to aircraft objects” after the words “Insolvency and registration” in the last sentence.

6:3 In WP/18, paragraph 5:13, one delegation requested that the second to last sentence be replaced with: “One delegation called for the retention of the term ‘and by lawful means’, and the Drafting Committee was given the task of deciding whether or not it should be deleted”. In paragraph 5:17, it was suggested to replace the word “He” in the third sentence with “The observer.” One delegation requested that the following sentence be added to paragraph 5:20: “One delegation raised its concern regarding the implication of Article 14 on the role of a judge.”

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