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)

UNIDROIT CGE/Int.Int./3-WP/33
ICAO Ref. LSC/ME/3-WP/33
29/03/00
(Original: English/French)

THIRD JOINT SESSION

(Rome, 20 – 31 March 2000)

DRAFT REPORT

PLENARY SESSION
23 March 2000

paragraphs

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 *CONTD.*

ARTICLE 21 OF THE PRELIMINARY DRAFT CONVENTION

92. With reference to the bracketed language in Article 21, several delegations and one observer expressed a preference for the second alternative.

93. One delegation suggested that the Article also state that the registration of an international interest ceased in the event of total destruction of the object.

94. The Rapporteur indicated that Article 27(5) extended priority to proceeds. If the object were destroyed, the security would extend to those proceeds, so that it was necessary to maintain registration until the proceeds had been paid, after which the registration would effectively cease.

95. It was suggested that Article 27(5) should be applied first, after which Article 21 should be applied.

96. It was decided to approve Article 21 provisionally, and that Article 21 should be re-examined if Article 27(5) were not retained.

ARTICLE 22 OF THE PRELIMINARY DRAFT CONVENTION

97. One delegation referred to the proposal it had put forward in Working Paper 16 (UNIDROIT CGE/Int.Int/3-WP/16; ICAO Ref. LSC/ME/3-WP/16) and indicated that the wording it proposed was intended to clarify that, in order to be able to conduct a search, it was not necessary for the person who intended to conduct the search to prove a special interest.

98. Whilst the sense of the proposal was approved, it was agreed that the Drafting Committee should improve the wording.

PRESENTATION OF THE REPORT OF THE PUBLIC INTERNATIONAL LAW WORKING GROUP

99. The Chairman of the Public International Law Working Group presented the Report of the meetings of the Working Group that had taken place on 20 and 21 March 2000 (UNIDROIT CGE/Int.Int/3-WP/18; ICAO Ref. LSC/ME/3-WP/18).

100. A number of delegations proposed amendments to the Report. The Chairman of the Joint Session pointed out that it was not for Plenary to modify the Report of the Working Group, which had to remain unchanged in so far as it represented the conclusions reached by that Group. Delegates' comments on the Report would be reflected in the Report on the Joint Session.

101. In relation to paragraph 5 of the Report, the Rapporteur indicated that the last sentence should be deleted, as it was inconsistent with the remaining text of the paragraph.

102. It was suggested that the question of the inclusion of spare parts under the Convention/Protocol system, having regard to the provisions of the 1948 Geneva Convention on the International Recognition of Rights in Aircraft should be considered.

103. With reference to the single or dual system of registration, whilst one delegation stressed the importance of a single registration system, another delegation supported a dual registration system for the registration of national and international interests, considering also the system presently in force under the Geneva Convention. In support of this view, the delegate indicated that for developing countries the fees under the new system would be very high and, depending on where the Registry was located, access might also be difficult. He furthermore considered the word "impracticable" in paragraph 7 of the Report to be too strong.

104. One delegation insisted on the role of national registries as correspondents for the International Registry, indicating that these bodies would themselves be required to distinguish between their national and international roles.

105. One delegation reiterated its preference for the inclusion of aircraft as such in the list of equipment in Article 2.

106. It was decided that the Drafting Committee should consider the inclusion of a new opt-out provision relating specifically to the 1933 Rome Convention for the Unification of Certain Rules relating to the Precautionary Attachment of Aircraft.

107. In relation to the Convention/Protocol structure envisaged for the preliminary draft Convention and Protocol, it was agreed that one delegation and Mr Kronke would provide the Joint Session with a list of the precedents indicated in paragraph 9 of the Report.

108. With reference to the procedure to be adopted for additional Protocols, the options envisaged in addition to the traditional diplomatic Conference procedure were a fast-track opting-in procedure and an expedited form of the traditional diplomatic Conference procedure. One possibility considered was that the General Assembly of UNIDROIT might be empowered to adopt the instruments under such an expedited form of the diplomatic Conference procedure.

109. The question was raised whether the fast-track approach was only intended for the future Rail and Space Protocols, or whether it had also been considered to be appropriate for other possible future Protocols. There was general agreement that a differentiation had to be made between the future Rail and Space Protocols, on the one hand, and other possible future Protocols on the other. Some delegations however felt that it was too early to decide upon the procedure to be employed in respect of additional future Protocols.

110. Whilst one delegation favoured the fast-track approach at least as regards the future Rail and Space Protocols, others questioned the possibility of opting for such an approach considering the fact that Governments had not participated in their preparation and stated a clear preference for a traditional diplomatic Conference procedure.

111. As regards the possibility that UNIDROIT might be called upon to act as depositary for the future Convention and Protocols, some delegations indicated that other solutions should also be kept open.

112. One delegation suggested that the sentence in paragraph 10 of the report "[h]owever, this was balanced by concerns about the political acceptability of a process that would substantially reduce the scope for governmental control" should be reformulated so as to read "[h]owever, it was recognised that a balance needed to be established with the appropriate governmental processes".

113. As regards the number of ratifications that should be necessary for the entry into force of the future Convention/Aircraft Protocol, there was general agreement that it should be kept low.

114. As regards the entry into force of amendments, one delegation indicated that there had not been a consensus within the Public International Law Working Group regarding the words inside brackets in paragraph 16 ("and in any case less than 50%"). Other delegations agreed on this point and stated that more traditional percentages (75% of Contracting States) should be adopted instead.

115. In relation to the chapeau of Article U(1), one delegation indicated that the word "accession" caused problems and suggested that it be deleted.

116. As regards the question of whether States could be a party only to the Convention, without being a party to one of the Protocols, opinions were divided. Whilst one delegation stated that as States had to be Parties to a Protocol for the Convention to become operative, the future Convention would not in itself constitute a treaty as understood by the 1969 Vienna Convention on the Law of Treaties, another delegation indicated that it was not apparent why a State should not be able to ratify the Convention itself. The only importance this question had was, in that delegation's opinion, the fact that the Convention would not produce legal effects unless, and only to the extent that, a State had ratified a Protocol.

117. As regards the three months that the Report (paragraph 18) proposed should be required for the entry into force of the instruments following the deposit of a State's instrument of ratification, one delegation expressed a preference for the customary six months, as the three months proposed would cause constitutional problems. It was decided that this question should be left for the diplomatic Conference to decide.

118. In relation to the international liability, immunity and privileges of the Supervisory Authority and Registrar, one delegation suggested that the Convention should be modified to make it clear that the power given to the Supervisory Authority to give directions to the Registrar did not include the power to make the Registrar change what was on the Registry.

119. One delegation suggested that Article 26(4)(a) might be deleted.

120. In relation to whether the immunity and privileges should be specified in the future Convention or in the future Headquarters Agreement of the Supervisory Authority or Registrar, one delegation stated that minimal requirements needed to be spelled out in the future Convention or in the future Protocol, but that a Headquarters Agreement would in any case be necessary. The same delegation felt that the possible circumscription of the control to be exercised by the Supervisory Authority over the Registrar to administrative matters as indicated in paragraph 20 of the Report, was too restrictive, as the Supervisory Authority would be expected to have certain regulatory functions.

121. As regards the relationship between the future Convention/Aircraft Protocol and the 1944 Chicago Convention on International Civil Aviation, one delegation suggested that it be made clear that this relationship, as well as that between the future Convention/Aircraft Protocol and the Geneva Convention system, would not change. This was particularly relevant for registration, as it was likely that filing in both registries would be required for some time to come for parties to ensure maximum protection for their rights.

122. As regards the relationship between the future Convention/Aircraft Protocol and the 1988 UNIDROIT Convention on International Financial Leasing, one delegation indicated that it was not in a position to take a final stand and that this question needed further study. He suggested that this applied also to the relationship between the future Convention/Aircraft Protocol and the 1988 UNIDROIT Convention on International Factoring.

123. As regards the question of the priority of pre-existing interests and the two options that the Working Group had submitted to Plenary (paragraph 28 of the Report, Options A and B), a number of delegations indicated that further consideration would be necessary.

124. Whilst a couple of delegations indicated a preference for Option B, one delegation observed that airlines would not be in favour of that Option.

125. With reference to the Federal State clause, one delegation suggested that States with an interest in this regard should meet to identify the terms in the future Convention and Protocol that required definition.

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

126. The Chairman of the Special Working Group on Article 14 of the preliminary draft Convention and selected aspects of Article X of the preliminary draft Aircraft Protocol (Japan) introduced the Report of the Working Group (UNIDROIT CGE/Int.Int/3-WP/24; ICAO Ref. LSC/ME/3-WP/24), which submitted proposed revised texts of the two articles.

127. One delegation expressed its serious concern in relation to the results of the deliberations of the Working Group. It suggested that Article X(4) would be essential if Article 14(2) were to be included, and that without Article X(4) the benefits of the future Convention/Protocol would be lost. Its understanding was that originally the Articles had been intended to refer to final remedies, and as proposed they did not fulfil that task.

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