



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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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 *CONTD.*

128. With reference to the Report presented by the Special Working Group on Article 14 of the preliminary draft Convention and selected aspects of Article X of the preliminary draft Aircraft Protocol (UNIDROIT CGE/Int.Int./3-WP/24; ICAO Ref. LSC/ME/3-WP/24), which contained a proposed new wording for those provisions, there was general agreement with the deletion of the words *prima facie* in Article 14(1). A number of delegations indicated that the word “clear” which had been put in their place was acceptable, but that they could also consider not including it at all.

129. There was general agreement that Article 14 of the future Convention should be an “opt-out” provision, whereas Article X of the future Protocol should be an “opt-in” provision. It was suggested that the Drafting Committee might reword Article X to ensure that this was clear.

130. One delegation expressed support for a suggestion made by an observer to move the sale-related elements of Article 14(1) to the Protocol.

131. With reference to Article 14(2), under which the court “may impose such terms, including the giving of prior notices, as it considers necessary to protect the interested persons”, one delegation indicated that it should be clear that the notices were to be given to the interested persons. Furthermore, with respect to Article X(4) of the preliminary draft Protocol, it stated that it had thought that there was agreement that a waiver in an agreement between a debtor and creditor could not be binding upon third parties.

132. Three delegations supported the removal of the brackets around Article 14(2).

133. A lengthy discussion took place with regard to a proposal submitted by a delegation (UNIDROIT CGE/Int.Int./3-WP/25; ICAO Ref. LSC/ME/3-WP/25) for an opt-in Annex to, or Article in, the future Aircraft Protocol. While the paragraphs (2) and (3) of the proposal raised no objections, paragraph (1), according to which “[a] Contracting State shall ensure that judicial proceedings relating to the remedies under the Convention will be completed within the period set forth in a declaration to this Protocol”, was found to be highly controversial.

134. Several delegations indicated that their countries would have constitutional problems with such a provision. Furthermore, even if some delegations would have been prepared to accept the addition of such a provision in the context of Article X of the Protocol and on the understanding that the provision would be an opt-in provision, a clarification from the delegation proposing the provision that what it was intended to cover was not only speedy or interim relief but all judicial proceedings raised considerable doubt among delegates as to the appropriateness of such a solution.

135. Another issue raised concerned whether it was in the discretion of the court to choose the remedy granted, irrespective of which remedy had been requested by the creditor, or whether the court’s discretion only extended to choosing an option within the category of remedies requested.

136. In view of the issues raised in the course of the discussions, an observer suggested that Article 14 should be retained in the Convention with a few drafting changes, and that no attempt should be made at this stage to push the discretion of the courts in either direction. He also suggested that Article X of the future Protocol should be retained without brackets and that paragraph (4) thereof should be modified to take account of the observation raised in relation to waivers. He suggested that a footnote should be added to the effect that one delegation had proposed a rather more comprehensive approach, but that the proposal had raised concern. This suggestion was accepted.

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 27 OF THE PRELIMINARY DRAFT CONVENTION

137. In relation to Article 27(3), one delegation asked for clarifications as regards the manner in which the preliminary draft Convention resolved conflicts between competing interests, namely, whether in the case of an international interest arising under a conditional sale or leasing agreement, but which was not

registered, the third party, based on Article 27(3), was the buyer and would be able to take the object free of the interest of the conditional seller.

138. The *Rapporteur* gave an affirmative reply to both hypothetical cases.

139. With reference to Article 27(3)(b), one delegation indicated that the fact that a buyer of an object could acquire its interest in an object free from an unregistered interest even if it had actual knowledge of such an interest was a source of major concern, and proposed that a requirement of good faith be introduced.

ARTICLE 28 OF THE PRELIMINARY DRAFT CONVENTION

140. In relation to Article 28(3), one delegation suggested that the language in square brackets be deleted.

PRESENTATION OF THE REPORT OF THE SPECIAL WORKING GROUP ON ARTICLE 3 OF THE PRELIMINARY DRAFT CONVENTION *CONTD.*

141. The Chairman of the Special Working Group on Article 3 of the preliminary draft Convention indicated that a compromise had been reached and was put forward in the Report of the Group (UNIDROIT CGE/Int.Int./3-WP/27; ICAO Ref. LSC/ME/3-WP/27). He suggested that the Drafting Committee might take this compromise solution as a basis for its redrafting.

142. It was agreed that the Drafting Committee insert into the Article or the preliminary draft Aircraft Protocol a reference to the connecting factor to aircraft registration in the Contracting States, as it had inadvertently been omitted.

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