



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/38
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(Rome, 20 – 31 March 2000)

DRAFT REPORT

PLENARY SESSION

30 March 2000

paragraphs

AGENDA ITEMS 3 AND 4 (ICAO AGENDA ITEM 3): 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.*

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ARTICLE XX OF THE PRELIMINARY DRAFT PROTOCOL

260. One delegation pointed out that Articles 40 and 41 of the preliminary draft Convention had been modified, and that Article XX of the preliminary draft Protocol should take those changes into account. It also pointed out that, in cases of common mark registries, for the purpose of determining the competent jurisdiction, reference should be made to the State where the register was located.

ARTICLE XXV OF THE PRELIMINARY DRAFT PROTOCOL

261. One delegation observed that neither the preliminary draft Convention nor the preliminary draft Protocol provided details as to the procedure to be followed for the adoption of amendments to the instruments, and expressed the hope that it would be possible to consider such a procedure at the diplomatic Conference.

ARTICLE XXX OF THE PRELIMINARY DRAFT PROTOCOL

262. One delegation recalled that it had been decided to re-examine in the context of Article XXX the possibility of States selecting either Alternative A or Alternative B, or neither Alternative under Article XI of the future Protocol. The delegation expressed a strong preference for allowing such a possibility. Three other delegations supported this view.

263. One delegation, while supporting the view expressed by the other delegations, referred to the paper it had submitted to the Joint Session (UNIDROIT CGE/Int.Int./3-WP/19; ICAO Ref. LSC/NE/3-WP/19) in which it had sought confirmation that a single Contracting State would be able to select Alternative A for certain types of insolvency proceedings and Alternative B for other types.

264. It was observed that it should not be possible for the Alternatives to be split and reassembled as thought best by Contracting States, and that they should apply in their entirety or not apply at all.

ARTICLE XXXI OF THE PRELIMINARY DRAFT PROTOCOL

265. One delegation referred to a recommendation it had made earlier in the discussions to either have a parallel Article to Article XXXI in the preliminary draft Convention, or to move Article XXXI to the Convention. The reason for this was that at present the impression was that a Contracting State had to make all declarations at the time it acceded to the instruments, whereas this was not the case.

ARTICLE XXXIII OF THE PRELIMINARY DRAFT PROTOCOL

266. With reference to paragraph (2), one delegation observed that it had been the general feeling in the Public International Law Working Group that a denunciation should take effect after a short period of time after its deposit, for example six months. With reference to paragraph (3), it had been agreed by the Public International Law Working Group that a prospective international interest should be converted into a full international interest on the date the denunciation took effect.

ARTICLE XXXIV OF THE PRELIMINARY DRAFT PROTOCOL

267. With reference to paragraph (1), one delegation suggested that the words in square brackets should be deleted, as consultations between the Organisations would be conducted as a matter of course. It was decided that the Drafting Committee should consider this proposal.

PROPOSAL FOR REVISED TEXT OF CHAPTER IX OF THE PRELIMINARY DRAFT CONVENTION

268. The three delegations that had been appointed assistants to the Chair with respect to Chapter IX of the preliminary draft Convention (Canada, France and the United States of America) submitted two alternative drafts of the relevant provisions to Plenary for consideration (UNIDROIT CGE/Int.Int./3-WP/31; ICAO Ref. LSC/MIE/3-WP/31).

269. One of the three delegations introduced the proposal and suggested that, considering the preliminary character of the drafts, the Working Paper should be appended to the Report on the Plenary of the Joint Session.

270. One observer supported by five delegations suggested that Alternative A of the proposed Articles be inserted into the text of the preliminary draft Convention with an explanatory note referring to Alternative B.

271. One delegation supported by ten other delegations opposed the insertion of Alternative A into the text, as the Joint Session had not had the opportunity to discuss it in depth and it would not be possible to take a final view at this Joint Session. It suggested appending Working Paper 31 to the Report on the Joint

Session and inserting a footnote in the draft. Two of the proponent delegations also stated their acquiescence to this proposal.

272. The observer from UNCITRAL expressed his appreciation for the improvements made to the text in the proposal. He suggested, however, that the key issue was in Article 34, as the risk was that, if more than one regime existed, the cost of transactions would increase dramatically if parties had to examine a number of different registries to discover which of the regimes applied to their interests.

273. It was decided that the text of Chapter IX should be retained as presently in the text, and that a footnote should be added making reference to the solutions contained in Working Paper 31. The final text should be considered by the diplomatic Conference. It was also decided that any drafting changes should be made in accordance with what in the course of the discussion had appeared to be necessary.

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