



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)

### ***PRELIMINARY DRAFT UNIDROIT CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT***

*and*

### ***PRELIMINARY DRAFT PROTOCOL TO THE PRELIMINARY DRAFT UNIDROIT CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT ON MATTERS SPECIFIC TO AIRCRAFT EQUIPMENT:***

#### **COMMENTS**

*(submitted by the Government of the United States of America)*

#### **1. General observations and support for the Convention's basic purposes**

The United States believes that substantial initial progress was made toward achieving a multilateral system which will permit those countries that wish to do so to join a Convention system that can make more possible the acquiring of equipment important for infrastructure or production, lower the cost of such equipment over the next decades and increase available commercial credit to their enterprises through modern finance methods.

Such a system, paralleling developments in modern finance, will need to focus on “asset-based” financing and commercial law techniques. This can enhance the access to many countries, especially developing States and States in transition, to mobile equipment which is increasingly a cornerstone of infrastructure development. A shift to modern asset-based financing laws also permits a country to absorb the continuing reduction in the use of sovereign guarantees, a process that will accelerate in the coming decade.

Having reviewed the results of the First Joint Session, we continue to support a basic Convention containing a regime for secured financing of equipment, as well as provisions covering financings structured as leasing agreements and title reservation agreements. Protocols for each specific type of equipment would need to be completed to provide the necessary certainty as to scope of application and to assure that financing practices particular

to each type of equipment are recognised. Since the special needs of different equipment types cannot be accommodated in general rules that apply in all cases, the Protocols will need to be able to vary the terms of the base Convention.

In order to assure that the Convention's final text as modified by Protocols achieves the necessary uniformity in practice, composite texts for each equipment category should be prepared on an informal basis along with the work on the base Convention and Protocols. The process for formal completion of each of these documents should be agreed to at the diplomatic Conference. This work should proceed informally during Joint Session meetings and otherwise as appropriate.

## **2. Importance of retaining a multi-equipment approach to the base Convention and specialised equipment Protocols**

The United States believes it is very important for States involved to develop the base Convention so as to accommodate Protocols that can be negotiated for a number of types of equipment which are important for the development of infrastructure, as well as the ability of business interests in each State to provide modern services and effectively to enter world markets. This is especially so for developing States and States in transition, for whom the benefits of this Convention can be more pronounced.

We believe this can be carried out consistently with the commitment to complete the base Convention and the first equipment Protocol on aircraft by the end of 2000. While each type of equipment may have specialised financing requirements, completion of the base Convention's provisions and the first Protocol can pave the way to more rapid conclusion of Protocols on other types of equipment. Preliminary work can begin on other equipment areas, and the needs of receiving States, supplier States and the finance markets focussed on with regard to areas such as railroads, cargo containers, satellite and space services, trucking, agricultural and construction equipment, and other types of equipment as the needs of States develop. A renewed commitment toward this end can assure that States in all regions and at all levels of economic development can share in the benefits of this international process.

## **3. Importance of certain optional provisions to allow States to maximise their economic benefits under the Convention**

As with any change in laws and regulations, States need to balance their overall needs with the effects of their laws on both sovereign debt and the market place, and in this case, the availability of important equipment and the costs of credit. We believe it is critical for the Convention to retain special optional provisions which have a known and direct effect on credit availability and costs, so that States which wish to do so can achieve the maximum benefits of the Convention. While no State would be obligated to select any such options, the economic potential of the Convention calls for us to ensure that options are drafted so as to meet actual, known credit market needs.

As an example, two key points that are essential significantly to lowering costs of asset-based financing, in most markets, and therefore need to be available as options for States that wish to obtain the financing benefits are (1) the substantive insolvency provisions for application to bankruptcy reorganisation (rather than only liquidation) proceedings which ensure recovery in the event of default and (2) the timetable aspects of the expedited remedies and the insolvency provisions.

These proposals are based not on general ideas or legal traditions but rather on known international credit factors that apply today in extending large credits at lower costs. The important task is to ensure that the Convention provides these, and other options that actually meet finance market requirements, so as to empower States that wish to do so to access financial markets on more favourable terms than they otherwise could, and so achieve the proper level of sovereign risk and credit support.

#### **4. Comments on other major provisions**

We wish to amplify certain issues not covered by our Preliminary Observations prior to the First Joint Session, but which emerged during that Session.

##### **(a) Relationship of an international finance filing system and existing national civil aviation registries**

Effective, modern finance notice filing systems (called registry systems here for convenience) are a modern key to securing credit finance, especially for States with less advantaged ratings for large-value financial undertakings.

That said, we also believe it important that the Convention embrace the principle that Contracting States may, if they so choose, designate their own registries as the recipients and transmitters of information to an International Registry. This principle is reflected in the base Convention's draft Article 17(2) and Article XVIII of the draft Aircraft Protocol (see the report of the Registration Working Group, Appendix I, Article 17(3)). In the context of civil aircraft, in particular, it is important that the Convention's registry system not mandate changes in existing national registries that perform other functions, and allow States that wish to do so either to retain their existing systems as points of input, or to migrate in whole or in part to an international finance filing system. At the same time, the International Registry will need to set its own standards as to its functions, and provide uniformity in matters such as filing fees so as to ensure operation on a cost-recovery basis.

##### **(b) Relationship to other international projects**

Concurrent with the efforts now underway in this draft Convention and its specialised Protocols, at least two other international bodies are at different stages of work on related areas of modern finance and commercial law. It is essential that the Convention's provisions on assignments of associated rights protect current practices in aircraft finance, as well as other areas of equipment finance such as railroads, space satellites and services, containers, agricultural and construction equipment, etc., but at the same time do not unreasonably interfere with receivables financing in other contexts, such as that contemplated in work at the United Nations Commission on International Trade Law and the Organization of American States. Associated rights that are integral to the equipment transaction itself need to be dealt with differently from those that are not (see, for example, Aircraft Protocol, Article XV(3), footnote 9). A separate analysis for each category of equipment covered should be undertaken to determine the proper course.

## **5. The path forward**

As noted above, the rapidly growing importance of mobile equipment for infrastructure development as well as the ability of commercial sectors in many developing countries to expand beyond older limits can be materially affected by such a treaty system. The increasing shift by international lending agencies and others away from sovereign-backed guarantees and away from public funded development programmes should also be an important factor.

We believe this can be done by a commitment to complete this work in several phases. The first phase, as noted above, should be completion of the base Convention, together with the proposed Aircraft Protocol, by the end of 2000. To bring that about and assuming progress at the Second Joint Session at Montreal, States should strive to ensure that a Third Joint Session take place not later than March 2000. This would permit a host country to be selected and a diplomatic Conference to be set in place by the end of that year.

At the same time, a schedule for follow-on intergovernmental meetings on other types of equipment should be planned, to the extent that preliminary work has progressed sufficiently on any other modes of equipment, thus expanding the economic benefits of this Convention system for many States and regions. All States should be encouraged to participate in that process, depending on their development interests.

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These views supplement the "Preliminary Observations of the United States" distributed by UNIDROIT and ICAO prior to the First Joint Session at Rome, along with the observations of other States and Organisations. We would welcome the opportunity to exchange views prior to or at the August 1999 meeting at Montreal.