



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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PROPOSAL

(submitted by the French Delegation)

Relationship between the draft UNIDROIT Convention (and draft Protocols thereto) and the draft UNCITRAL Convention

As a first approach, it may be considered that, since the draft UNCITRAL Convention (Article 36) provides that it will not prevail over any other international agreement which may be entered into and which contains provisions concerning the matters governed by it, it would suffice to provide that the UNIDROIT Convention prevails over any other such instrument for the matter to be settled to the benefit of the system which is being prepared by UNIDROIT and ICAO.

A provision reflecting such an approach would indeed be useful. However, considering the wording of Article 36 of the draft UNCITRAL Convention, a conflict may arise between these two instruments.

Chapter VIII of the UNIDROIT draft Convention deals with assignments where the secured obligation is the accessory of the security interest, whereas the draft UNCITRAL Convention deals with the assignment of international receivables, with the security interest being an accessory thereto.

Under these circumstances, States wishing to adopt both instruments should decide which is to prevail over the other.

Among the various possible solutions to overcome this problem, it may be envisaged that each Protocol provide that a State ratifying the Protocol will apply for the relevant kind of equipment, the assignment provisions contained in the UNIDROIT Convention, or in the Protocol, or both in the Convention and the Protocol, rather than those contained in the UNCITRAL Convention.

