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INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW

THE INTERNATIONAL PROTECTION OF CULTURAL PROPERTY

Unidroit draft Convention providing a Uniform Law on the
Acquisition in Good Faith of Corporeal Movable (LUAB, 1974)

Rome, January 1989

DRAFT CONVENTION PROVIDING A UNIFORM LAW ON THE
ACQUISITION IN GOOD FAITH OF CORPOREAL MOVABLES⁽¹⁾

The States signatory to the present Convention,

Desiring to establish a uniform law on the acquisition in good faith of corporeal movables,

Have resolved to conclude a Convention for this purpose and have agreed upon the following provisions:

Article I

1. - Each Contracting Party undertakes that not later than six months after the date of entry into force of this Convention in respect of that Party it shall introduce into its law the rules on the acquisition in good faith of corporeal movables set out in the Annex to this Convention.

2. - Each Contracting Party may introduce the provisions of the Annex into its law either by reproducing the actual text, or by translating it into its official language or languages.

3. - Each Contracting Party may introduce into its law such further provisions as are necessary to give the provisions of the Annex full effect in its territory.

4. - Each Contracting Party shall submit to the Depository Government the text of the rules introduced into its national law in order to implement the provisions of this Convention.

Article II

[No reservation shall be admitted to this Convention or to its Annex].

Article III

1. - The present Convention shall be open for signature at
from until

(1) Text established by a committee of governmental experts convened by Unidroit.

2. - The Convention shall be subject to ratification.

3. - Instruments of ratification shall be deposited with the Government of, which shall be the Depository Government.

Article IV

1. - The Convention shall be open indefinitely for accession.

2. - Instruments of accession shall be deposited with the Depository Government.

Article V

1. - The present Convention shall enter into force six months after the date of deposit of the fifth instrument of ratification or accession with the Depository Government.

2. - In the case of each State which ratifies this Convention or accedes to it after the fifth instrument of ratification or accession has been deposited, this Convention shall enter into force six months after the deposit of its own instrument of ratification or accession.

Article VI

1. - Any Contracting Party may denounce this Convention by written notification to the Depository Government.

2. - Such denunciation shall take effect twelve months from the date on which the Depository Government has received the notification.

Article VII

1. - Two or more Contracting States may declare that they agree to consider themselves as the same State for the purpose of the requirements as to place of business laid down in paragraphs 1 and 2 of Article I of the Uniform Law, because they apply to the situations, which in the absence of such a declaration would be governed by the Uniform Law, the same or closely related legal rules.

2. - Any Contracting State may declare that it does not consider one or more non-Contracting States as different States from itself for the purpose of the requirements of the Uniform Law which are referred to in paragraph 1 of this Article, because such States apply to situations, which in the absence of such a declaration would be governed by the Uniform Law, legal rules which are the same as or closely related to its own.

3. - If a State which is the object of a declaration made under paragraph 2 of this Article subsequently ratifies or accedes to the present Convention, the declaration shall remain in effect unless the ratifying or acceding State declares that it cannot accept it.

4. - Declarations under paragraphs 1, 2 or 3 of this Article may be made by the State concerned at the time of the deposit of its instrument of ratification or of accession to the present Convention or at any time thereafter and shall be addressed to the Depositary Government. The declaration shall take effect three months after the date of its receipt by the Depositary Government or, if at the end of this period the present Convention has not yet entered into force in respect of the State concerned, at the date of such entry into force.

Article VIII

[1. - Two or more Contracting States may agree that, for the application of Article 6 of the Uniform Law, a registration carried out in a single register shall be considered as having been carried out over the entirety of their territories.

2. - Two or more Contracting States may agree that, for the application of Article 6, the publication of bankruptcy or any similar proceedings carried out in a single official publication shall be considered as having been carried out over the entirety of their territories.

3. - The agreements provided for in paragraphs 1 and 2 of this Article shall be communicated to the Depositary Government.]

Article IX

1. - Any State may, when it deposits its instrument of ratification or accession or at any time thereafter, declare, by a notice addressed to the Depositary Government, that this Convention shall apply to all or part of the territories for the international relations of which it is responsible.

2. - Such declaration shall have effect six months after the date on which the Depositary Government shall have received notice thereof or, if at the end of such period the Convention has not yet come into force, from the date of its entry into force.

3. - Each Contracting Party which has made a declaration in accordance with paragraph 1 of this Article may, in accordance with Article VI, denounce this Convention in relation to all or part of the territories concerned.

Article X

1. - If a State has two or more territorial units in which different systems of law apply in relation to matters respecting the acquisition in good faith of corporeal movables, it may at the time of signature, ratification, or accession, declare that this Convention shall extend to all its territorial units or only to one or more of them, and modify its declaration by submitting another declaration at any time.

2. - These declarations shall be notified to the Depositary Government and shall state expressly the territorial units to which the Convention applies.

Article XI

If a Contracting Party has two or more territorial units in which different systems of law apply in relation to matters respecting the acquisition in good faith of corporeal movables, any reference to the law of the country where a public register for registration of rights is kept or to the country where the bankruptcy or any similar proceedings have been officially published shall be construed in accordance with the constitutional system of the Party concerned.

Article XII

1. - The original of the present Convention, in the languages, each version being equally authentic, shall be deposited with the Government of which shall transmit certified copies thereof to each of the signatory and acceding States and to the International Institute for the Unification of Private Law.

2. - The Depositary Government shall give notice to the signatory and acceding States, and to the International Institute for the Unification of Private Law, of:

- (a) any signature;
- (b) the deposit of any instrument of ratification or accession;
- (c) any date on which this Convention enters into force in accordance with Article V;
- (d) any communication received in accordance with Article I, paragraph 4 of the present Convention;
- (e) any declaration received in accordance with Article VII, paragraph 2, and the date on which such declaration takes effect;
- (f) any communication received in accordance with Article VIII, paragraph 2;
- (g) any declaration received in accordance with Article IX, paragraph 2, and the date on which such declaration takes effect;
- (h) any denunciation received in accordance with Article VI, paragraph 1, or Article IX, paragraph 3, and the date on which the denunciation takes effect;
- (i) any declaration received in accordance with Article X, paragraph 2, and the date on which the declaration takes effect.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries, being duly authorised to that effect, have signed the present Convention.

DONE at the

UNIFORM LAW ON THE ACQUISITION IN GOOD
FAITH OF CORPOREAL MOVABLES

Article 1

1. - The present law shall apply to the acquisition for value, by way of, for example, sale, exchange, pledge, of rights in rem over corporeal movables provided that the movables, or a document representing them, have been handed over to a person acquiring such rights (transferee) on the territory of a State Party to the Convention of unless at the time of the handing over, the person disposing of the rights (transferor) and the transferee both had their place of business in that State.

2. - The places of business of the transferor and transferee are deemed to be situated in the same State when they are situated in two States in respect of which a valid declaration has been made, as provided for in Article VII of the Convention

3. - Where a party does not have a place of business, reference shall be made to his habitual residence.

4. - The application of the present law shall not depend on the nationality of the parties.

Article 2

The present law shall not apply to the acquisition:

- (a) of stocks, shares, investment securities, negotiable instruments or money;
- (b) of any vessel, ship, hovercraft or aircraft, which is registered or is required to be registered;
- (c) of movables sold on execution or otherwise by authority of law.

Article 3

The present law shall not affect rights conferred on third parties by laws relating to industrial property or to literary and artistic property.

Article 4

The present law shall apply regardless of the commercial or civil character of the parties or of the contract.

Article 5

Subject to the provisions of Article 6,

(a) an acquisition of rights in movables shall be valid although the transferor had no right to dispose of them, provided that the transferee acted in good faith and that the movables have been handed over to him;

(b) the limited rights of any third parties to the movables shall be extinguished on fulfilment of the same conditions.

Article 6

1. - Rights registered in a public register shall continue to be available against a transferee when the movables have been handed over in the country where the register is kept and when, according to the law of that country, their registration makes them available against the transferee.

2. - The bankruptcy of the transferor or any similar proceedings shall continue to affect the transferee when the movables have been handed over in a country where these proceedings have been officially published.

Article 7

1. - Good faith consists in the reasonable belief that the transferor has the right to dispose of the movables in conformity with the contract.

2. - The transferee must have taken the precautions normally taken in transactions of that kind according to the circumstances of the case.

3. - In determining whether the transferee acted in good faith, account shall, inter alia, be taken of the nature of the movables concerned, the qualities of the transferor or his trade, any special circumstances in respect of the transferor's acquisition of the movables known to the transferee, the price, or provisions of the contract and other circumstances in which it was concluded.

Article 8

Good faith must exist either at the time the movables are handed over to the transferee or at the time the contract is concluded if it is concluded after the handing over of the movables.

Article 9

Good faith is also required in the negotiation or conclusion of the contract, on the part of any person who is acting in the name of or on the account of the transferee, provided he was authorised or ostensibly authorised to act or the contract was ratified by the transferee.

Article 10

1. - The movables shall be considered as having been handed over to the transferee when they or a document representing them are in his hands.

2. - They shall also be considered as having been handed over to the transferee when they are in the hands of a third party who unequivocally holds them on behalf of the transferee.

Article 11

The transferee of stolen movables cannot invoke his good faith.