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U n i d r o i t

INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW

STUDY GROUP FOR THE PREPARATION OF UNIFORM RULES ON CERTAIN INTERNATIONAL ASPECTS OF SECURITY INTERESTS IN MOBILE EQUIPMENT:

SUB-COMMITTEE FOR THE PREPARATION OF A FIRST DRAFT

(First session: Rome, 14 - 16 February 1994)

Summary report

(prepared by the Unidroit Secretariat)

Rome, March 1994

1. — A sub-committee of the Study Group for the preparation of uniform rules on certain international aspects of security interests in mobile equipment, set up pursuant to a decision taken by the Governing Council at its 71st session (Genoa, June 1992), met in Rome at the seat of Unidroit from 14 to 16 February 1994. The objective of the sub-committee was essentially the preparation of a first draft. Its meeting was opened at 10.10 a.m. on 14 February by Mr R. Monaco, President of Unidroit. Mr R.M. Goode, Professor of English Law in the University of Oxford and, as a member of the Governing Council, Chairman of the Study Group, was elected Chairman of the sub-committee on a proposal by Mr Monaco.

2. — The meeting was also attended by the following experts and representatives of intergovernmental and international non-governmental Organisations:

Members of the sub-committee

Mr R.C.C. Cuming	Professor of Law in the University of Saskatchewan
Mr V. A. Kouvshinov	Vice-Chairman, General Legal and Treaty Department, Ministry of Foreign Economic Relations of the Russian Federation
Mr K.F. Kreuzer	Professor of Law in the University of Würzburg
Mr C.W. Mooney, Jr.	Professor of Law in the University of Pennsylvania, representing the Department of State of the United States of America
Mr H. Synvet	Professor of Law in the University of Paris II (Panthéon - Assas)
Mr T.J. Whalen	Partner, Condon & Forsyth, Washington, D.C., representing the Department of State of the United States of America

Observers

INTERGOVERNMENTAL ORGANISATIONS

European Bank for Reconstruction and Development	Mr J.-H. Röver, Project Adviser in the Office of the General Counsel
Hague Conference on Private International Law	Mr M. Pelichet, Deputy Secretary-General

INTERNATIONAL NON-GOVERNMENTAL ORGANISATIONS

European Federation of Equipment Leasing Company Associations (Leaseurope)	Ms D. Israel, Chairperson of the Legal Committee
European Federation of Finance House Associations (Eurofinas)	Mr F.J.T. Price, Deputy Head of Legal Services, Lombard North Central PLC, Redhill
International Bar Association	Ms L. Curran, Vice-Chairperson, Sub-committee of the Banking Law Committee of the Section on Business Law on the Taking of Security in International Transactions
International Maritime Committee	Mr R. Herber, Professor of Commercial Law, University of Hamburg

In view of the special interest the Institute's project in this area of the law had generated in the aviation finance community, as reflected *inter alia* in the comments submitted by The Boeing Company to the sub-committee, Mr J. Wool, of Perkins Coie, Seattle, Washington, was also invited to attend the meeting as a special guest with a view to illustrating the concerns of this community.

3. — The sub-committee was seised of the following materials:

(1) Memorandum (for the attention of the Study Group at its first session): addendum (comments of the European Federation of Equipment Leasing Company Associations (Leaseurope)) (Study LXXII – Doc. 6 Add. 3);

(2) Study Group for the preparation of uniform rules on certain international aspects of security interests in mobile equipment (first session: Rome, 8-10 March 1993): summary report (prepared by the Unidroit Secretariat) (Study LXXII – Doc. 7);

(3) Memorandum on a proposed Unidroit Convention on Security Interests in Mobile Equipment prepared by Professor R.C.C. Cuming (Study LXXII – Doc. 8);

(4) Comments by Mr Thomas J. Whalen to the Memorandum by Professor R.C.C. Cuming on a proposed Unidroit Convention on Security Interests in Mobile Equipment (Study LXXII – Doc. 9);

(5) Comments by Professor C.W. Mooney, Jr. concerning the test of internationality to be employed in the proposed Unidroit Convention on Security Interests in Mobile Equipment (Study LXXII – Doc.10);

(6) Comments by Mr J.-H. Röver (European Bank for Reconstruction and Development) to the Memorandum by Professor R.C.C. Cuming on a proposed Unidroit Convention on Security Interests in Mobile Equipment (Study LXXII – Doc. 11);

(7) Extract from the Report of the 72nd session of the Governing Council (Rome, 15 to 18 June 1993) (Misc.1);

(8) Comments by Professor R.D. Vriesendorp (Catholic University of Brabant at Tilburg) to the Memorandum of Professor R.C.C. Cuming regarding a proposed Convention on Security Interests in Mobile Equipment (Misc. 2)* ;

(9) Comments by The Boeing Company to the Memorandum of Professor R.C.C. Cuming regarding a proposed Convention on Security Interests in Mobile Equipment (Misc. 3) *;

(10) Addendum to the comments by The Boeing Company to the Memorandum of Professor R.C.C. Cuming regarding a proposed Convention on Security Interests in Mobile Equipment (Misc. 3 Add.) *;

(11) Model Law for Security Rights prepared by the European Bank for Reconstruction and Development: working draft (Misc. 4) *;

(12) International Convention on Maritime Liens and Mortgages (Geneva, 6 May 1993) (Misc. 5);

(13) Draft Article concerning the connection of a secured transaction with a Contracting State: proposal by Professor C.W. Mooney, Jr. (Misc. 6).

4. —The sub-committee approved the agenda which is set out in Appendix I to this report.

5. — In introducing the business of the meeting, the Chairman indicated that he anticipated it would be difficult for the sub-committee on this occasion to go beyond the complex matter of the sphere of application of the proposed Convention. The possibility of addressing other matters, such as priorities, would depend on the progress made on this fundamental question.

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* English only

The first objective to be addressed under this general heading would be to define the scope of the proposed Convention in terms of what was meant by the term "mobile equipment". Related to this was the question as to whether this definition would need to be completed by an additional criterion of internationality. It would then be necessary to define the international security interest to be created under the proposed Convention. The sub-committee would also have to decide how it intended to treat proceeds and perhaps also products of equipment, including insurance proceeds. Then there was the question of how the sub-committee wished to treat income and lease rights and other associated rights. Finally the sub-committee would need to look at the appropriate connection to a Contracting State.

Professor R.C.C. Cuming, in introducing his paper (Study LXXII-Doc. 8), indicated that it was not intended as a ready-made draft but rather to facilitate analysis of the key issues needing to be addressed, in the light of the deliberations of, and tentative decisions taken by the Study Group at its first session.

He had sought in his paper to identify the six critical areas which in his opinion needed to be settled before drafting could begin. The first of these raised the question of what type of property should be subject to the proposed Convention, and in turn the question as to how "mobile equipment" should be defined for the purposes of the proposed Convention, and what property other than mobile equipment, if any, should be covered by the proposed Convention, that is, was to be treated as other original collateral or proceeds collateral.

The second critical area concerned the types of transaction that were to be within the scope of the proposed Convention. This involved the question not only of defining what was to be regarded as constituting a security agreement and a security interest for the purposes of the proposed Convention, but also of determining which non-security devices, if any, might usefully be brought within the scope of the proposed Convention. The classic example of such a non-security device was what North American jurisdictions termed a "true lease" as opposed, that is, to a security lease.

The third major question to be addressed, as he saw it, was the test of internationality to be employed in the proposed Convention. This test was necessary to determine when the priority rules, and, perhaps, the enforcement rules to be embodied in the proposed Convention would apply. While the Convention had never been intended to displace domestic law, there was a point at which there would be a potential overlap between domestic security interests and security interests taken in two or more jurisdictions.

The fourth important question to be addressed was that of the priority structure to be adopted in respect of competing interests, and the related question of identifying these competing interests. He imagined that the priority structure to be embodied in the proposed Convention would deal with competing security interests in the collateral, the interests of subsequent purchasers and judgment and execution creditors and the position of the secured creditor in insolvency proceedings involving the debtor.

The fifth crucial issued to be addressed was that of the type of registry system required in order to ensure the proper functioning of the priority structure to be established under the proposed Convention. In his paper he had sought to describe the type of registration system already in operation in some Canadian jurisdictions, some characteristic features of which were the fact that it was centralised, that it was fully computerised and readily accessible from any place in the world.

Finally, there was the question as to whether the proposed Convention should address the enforcement of security agreements, that is whether there was to be a Convention regimen to regulate the enforcement rights of the secured party in the event of default by the debtor or whether the Convention should defer to some other source of law to deal with these questions.

He recommended that, as a matter of priority, the sub-committee seek at this meeting to reach some firm decisions on the first three of these issues, pointing out that it was only then that it would be in a position to embark on the other three.

It was pointed out that another issue that would have to be considered at each and every stage as the sub-committee proceeded through the substantive issues to be addressed in the proposed Convention, at least, that is, those issues not involving third party rights, was the question of the parties' freedom of contract, that is the extent to which the parties were intended to be free to vary the proposed Convention rules either by agreement or by reference to municipal law.

Some members of the sub-committee drew attention to the need for the regimen to be established under the proposed Convention to be kept relatively simple. Otherwise there was a danger that its chances of being acceptable to a certain number of States might well be jeopardised. One member of the sub-committee suspected that the greatest source of difficulty could well prove to be the definition of what should constitute a security interest for the purposes of the Convention, warning against an over-ambitious definition of this concept. Members of the sub-committee also stressed the importance of the Convention being drafted in language that rendered it comprehensible to the States to which it was addressed.

6.— The sub-committee reached a number of conclusions in the course of its meeting. In submitting the text of these conclusions, the Chairman of the sub-committee noted that they were however provisional only and might have to be revised in the light of the rules on enforcement and priorities yet to be formulated. These provisional conclusions were as follows:

(i) There should be a broad approach to the definition of mobile equipment, covering mobile equipment generally with specific exclusions rather than defining mobile equipment in terms of a limited list.

(ii) The proposed Convention should primarily be devoted to mobile equipment held for business use, but an effort should be made to find a formula to cover high value equipment for personal use (pleasure boats, for example) which are of a kind also normally used in business and moving from one State to another in the course of business.

(iii) Registered ships should be excluded but this exclusion should be in brackets, denoting that the decision was not final, because there might turn out to be provisions in the proposed Convention which would be useful to shipping interests.

(iv) There should be an international register of security interests and the secured party should be entitled to register any security interest in mobile equipment (as defined) or with the consent of the debtor any intention to take security over mobile equipment. For the purpose of effecting registration it should not be necessary to satisfy any other test, e.g. internationality of the transaction. However:

(a) if all the elements of a later dispute situation were found to be domestic, the proposed Convention's rules on enforcement and priorities should not apply and the secured party would be dependent on the security interest (if any) taken and perfected under domestic law;

(b) in any event the proposed Convention's rules would not be triggered unless a question of enforcement or disputed priority arose;

(c) in principle the issue would not be domestic if:

(I) at the time of the conclusion of the security agreement, the secure party and the debtor carried on business in different States; or

(II) the security agreement by its terms expressly envisaged that the equipment would move from one State to another; or

(III) the equipment had in fact moved from one State to another.

(v) A broad functional approach to security interests envisaged that the proposed Convention should also embrace retention of title under a conditional sale, a lease with an option to purchase or a lease for a term exceeding, say, three years. However, since jurisdictions outside North America did not at present regard such interests as security interests and the leasing industry was very concerned to ensure that they were not so treated, it was agreed that the proposed Convention should be expressed as laying down uniform rules for *Interests* (as opposed to *Security* Interests) in mobile equipment and should distinguish two categories of interest, namely security interests and interests arising by retention of title and leases as stated above. To the extent that the rules applicable to the two groups were the same, it would not matter into which group any particular type of transaction fell and the categorisation could be left to be dealt with by the applicable law. However, to the extent that there were differences in the treatment of security interests and other interests it would be necessary to address the question as to what types of transaction were to be treated as security interests and what types as other interests.**

(vi) The international interest should have the legal categorisation given by the proposed Convention and should not be defined in terms of particular types of interest under national law.

(vii) The function of the security agreement and the provisions of the proposed Convention relating thereto would be to emphasise that the proposed Convention was confined to consensual security and to lay down minimum rules (e.g. writing) for the creation of security interests.

(viii) The registration should be able to cover *classes* of mobile equipment, including after-acquired equipment.

(ix) The proposed Convention should allow for registration of successive interests in mobile equipment in favour of different creditors.

(x) As to proceeds:

(a) if these took the form of other mobile equipment within the filed description, such proceeds would be covered by the filing and not by reason of being proceeds as such;

(b) the proposed Convention should provide that an interest in insurance proceeds which under the insurance policy were payable to the secured party should have the same priority as the security interest in the equipment itself, while leaving the secured party's rights against the insurer to be dealt with by the insurance contract and the applicable law. This should be without prejudice to any wider rights to such proceeds given by the applicable law;

(c) claims to any other types of proceeds should not be within the purview of the proposed Convention even as to claims between the secured party and the debtor. Thus there should be no right to trace proceeds into the debtor's bank account as this would give rise to too many complications.

(xi) Though registration was envisaged as being primarily against the debtor, the possibility should not be precluded of providing for registration against the equipment where it was of a kind that lent itself to such registration.

(xii) The proposed Convention should not cover priority issues relating to products resulting from the commingling of the equipment with other equipment.

(xiii) In principle the proposed Convention should not cover rights under lease assignments or related rights. The sub-committee nevertheless recognised that certain special supplementary rules might have to be prepared for aircraft to ensure that the proposed Convention pragmatically addressed, in a comprehensive manner, the needs of the international aviation finance community and took into account customary financing structures in the aviation industry.

** For convenience the terms "secured party" and "security agreement" are hereinafter used to cover both types of transaction.

(xiv) The proposed Convention should be restricted to security for money obligations, that is obligations which were primary money obligations, not secondary obligations by way of damages.

(xv) Provisionally, security should be allowed to be taken for all sums payable to the secured party, including further advances, although this should be reviewed for fairness to subsequent secured creditors in the light of priority rules.

(xvi) Decisions on the connection with a Contracting State should be deferred until after the substantive rules on enforcement and priorities had been formulated.

(xvii) Provisionally, the elements leading to a perfected security interest (a security agreement, value and registration) should be able to be provided in any order, with priority going back to the time of filing - but this would need to be re-examined in the light of the priority rules.

(xviii) As regards remedies against the debtor, care should be taken to avoid reference to recovery of possession, which in the case of a security interest is not in principle allowed under Civil law systems. Accordingly the remedy should be formulated in terms of the secured party's right to look to the equipment for satisfaction of the debt and for that purpose to have the equipment realised and the proceeds applied towards satisfaction of the debt.

(xix) The effect of registering an interest would be to give notice to third parties dealing with the equipment. There was an inconclusive discussion as to the effect of failure to register, some taking the view that this should invalidate the interest against subsequent interests while others considered that the secured party should be able to rely on any security interest established under the applicable law.

7. — The observer representing the European Bank for Reconstruction and Development introduced the latest Working Draft of the Model Law for Security Rights being prepared by the Bank designed to assist Central and Eastern European countries in their attempts to draft their own legislation in the field of security rights. The Model Law was virtually completed, requiring only a further two sessions of the drafting team. The speed with which the Bank had proceeded with this project was explained by the urgent need for a workable system of law governing security rights in Central and Eastern European countries. The European Bank's objective with this project was to avoid the risk of foreign credit drying up after initial enthusiasm for foreign investment in the countries of Central and Eastern Europe and to establish a sound credit system in these countries. While the Model Law was essentially couched in a Civil law form, it sought at the same time to provide that flexibility known under Common law systems. The Model Law provided for a unitary security right covering all sorts of property. It left the parties flexibility as regards the description of the secured debt and as regards the description of the property given as security. There were three ways in which a charge could be created under the Model Law: first, a charge that had to be registered, secondly, the traditional possessory charge and,thirdly, something with which Civil law systems were unfamiliar, an unpaid vendor's charge, i.e. the charge of a party selling goods to another under a retention of title clause redefined as giving a charge to the party selling the goods. It was intended that the Model Law, accompanied by a short commentary, would be presented at the Annual Meeting of the Board of Governors of the European Bank, to be held in St Petersburg in April 1994.

8. — In the light of the Unidroit Governing Council's decision at its 1993 session to authorise the Secretariat to make a study of the feasibility and desirability of Unidroit itself in due course drawing up a model law in the more general field of security interests, the sub-committee recommended that a number of its members be co-opted to compile a check list of the kind of issues to be addressed in such a model security law as a first stage. This exercise should be designed in such a way as to benefit from the experience being acquired by other Organisations, such as the European Bank, in this field. Once the check list had been compiled and consultation had taken place with interested parties, Unidroit would be able to decide whether the time was ripe for it to begin work on the drafting of such a model law. It was agreed that a one-day seminar should be arranged, which might usefully be timed to coincide with the second session of the sub-committee, tentatively scheduled for November 1994, focussing on the different initiatives in

progress for the modernisation of the law governing personal property security. In this context the sub-committee took note of the model laws on secured transactions being sponsored by the World Bank in a number of Central and South American jurisdictions. Professor Cuming himself was involved in a project to develop a personal property security law for Mexico. All these initiatives pointed up the marriage of Common law and Civil law ideas already taking place on this subject. It would of course be important for Unidroit, in aiming in its own model law to build on these regional model laws, to dispel any idea that its own project was in any way intended to impede or interfere with these other efforts. The usefulness of such an exercise by Unidroit might in particular be seen in its ability to incorporate the lessons to be drawn from the operation of these first-generation laws and to offer these to the wider world business community. Unidroit could also play an important role in filling a need that had manifested itself as these various regional initiatives had developed, namely in bringing together the various Organisations engaged in these efforts so as to ensure the maximum co-ordination between these various projects. The harmonisation that might result from Unidroit's preparation of a model law on this subject could only enhance the chances of the uniform rules to be embodied in its proposed Convention on mobile equipment finding acceptance.

9. — The Unidroit Secretariat invited participants at the sub-committee's first meeting to submit comments in writing on points which they deemed to be of especial importance for inclusion in the summary report. In the event comments were received from the observer representing the Hague Conference on Private International Law and from the European Federation of Equipment Leasing Company Associations (Leaseurope). These are annexed to the present report (cf. Appendices II and III respectively).

APPENDIX I

STUDY GROUP FOR THE PREPARATION OF
UNIFORM RULES ON CERTAIN INTERNATIONAL ASPECTS OF
SECURITY INTERESTS IN MOBILE EQUIPMENT:

SUB-COMMITTEE FOR THE PREPARATION OF A FIRST DRAFT

(Rome, 14 – 16 February 1994)

AGENDA

1. — Election of the Chairman.

2. — Approval of the draft agenda.

3. — Preparation of a first draft of uniform rules on certain international aspects of security interests in mobile equipment in the light of:

(a) Study Group for the preparation of uniform rules on certain international aspects of security interests in mobile equipment (first session: Rome, 8 – 10 March 1993): summary report (prepared by the Unidroit Secretariat) (Study LXXII – Doc. 7);

(b) Memorandum on a proposed Unidroit Convention on Security Interests in Mobile Equipment, prepared by Professor R.C.C. Cuming (University of Saskatschewan) (Study LXXII – Doc. 8).

4. — Any other business.

APPENDIX II

REFLECTIONS BY MR M. PELICHET

(Hague Conference on Private International Law)

ON THE DEVELOPMENT OF THE PROPOSED UNIDROIT CONVENTION ON SECURITY INTERESTS IN MOBILE EQUIPMENT

(Omissis)

At the end of the meeting of our sub-committee on security interests, you invited those who held particular views on the development of the proposed Unidroit Convention to submit a summary of their comments in writing. What follows is a brief summary of the thoughts which this thorny problem has raised in my mind.

I always believed, from the time when Unidroit set out on the preparation of a Convention on international security interests, that its intention was to create a legal regimen, distinguished by its originality and boldness, which would not be binding on the States ratifying the Convention but would be available alongside the different national regimens already in place (a system along the lines of that adopted by Uncitral in the Convention on International Bills of Exchange and International Promissory Notes). In other words, I believed that Unidroit, in a highly original initiative, was seeking to create an "international security interest", independent of any national regimen, with its own rules, an independent regimen the application of which would be determined exclusively by the intention of the parties, this intention in particular being evidenced by the international security interest's registration in a *centralised* public register. This approach would mean that, where the parties failed to register the international security interest in the register set up for the sole purpose of governing this instrument, the Convention would not be applicable, either externally in relation to third parties or *inter partes*.

It was my understanding that several experts did not share this view, believing that, in relations between the secured creditor and the debtor, the Convention should apply — therefore to the exclusion of the national regimens otherwise applicable — once the element of internationality defined in the Convention had been satisfied. This is naturally a much more ambitious solution and one that I see as carrying with it a multitude of difficulties.

Under this alternative approach, where the parties fail to register the international security interest in the central registry, it will have the same effects *as against third parties* as under my conception: these third parties will be unaware that the collateral is subject to an international security interest and any potential purchaser of this collateral will be able to assert his good faith, subject to any requirement there may be for him to check a national register, which, however, can only offer at the most limited protection at the international level and may offer no protection at all. On the other hand, the regimen established by the Convention would be applicable as between the creditor and the debtor, even if the international security interest was not registered in the central register, once the element of internationality has been satisfied.

So long as it is to be provided that this element of internationality is to reside in the fact that the creditor and the debtor have their places of business in different States, the difficulties need not be insurmountable, although it would also be necessary in that case to provide that the Convention would only be applicable if both States were Parties thereto. However, if the element of internationality is to reside in the movement of the collateral from one State to another, then we are really up against a surrealist situation. We know in fact that this movement may occur after the conclusion of the agreement whereby the security

interest is created, regardless of whether or not this was contemplated by the parties: this would mean that up until the movement of the collateral, the proposed Unidroit Convention would not be applicable but that it would be applicable once the collateral is moved, even though this movement will more often than not take place without the creditor knowing! What is more, the sub-committee agreed that, where the collateral was moved from State A to State B for a short period of time, for example a month, before returning to State A, the Convention would be applicable merely by reason of this temporary movement, even if the creditor might be totally unaware of such movement.

Such a system would, I believe, at the very least prove a source of uncertainty and could open the way to an endless stream of cases to determine the Convention's applicability. For my part I would regard such a development as regrettable, for I believe that the proposed Convention can only have a future if the rules determining its applicability are kept simple, both for the parties to the agreement by which the security interest is created and for the third parties who must be able to rely on the registrations contained in the central registry.

We are not yet ready to face this problem of the proposed Convention's applicability; we shall only really be in a position to discuss it at such time as we know the contents of the proposed Convention, that is the legal regimen to be made available to international businesspeople. The problem calls for thought, but I am convinced that we must at all cost avoid setting up a system which would make the applicability of the proposed Unidroit Convention hinge on contingencies; such legal uncertainty would not enhance the proposed treaty's chances of being ratified.

(Omissis)

APPENDIX III

POSITION OF THE EUROPEAN FEDERATION OF EQUIPMENT LEASING COMPANY ASSOCIATIONS (LEASEUROPE)

IN RESPECT OF THE PROPOSED UNIDROIT CONVENTION ON SECURITY INTERESTS IN MOBILE EQUIPMENT

Leaseurope wishes to confirm the position adopted both by its Legal Committee and by its Executive Committee.

The Unidroit Convention on International Financial Leasing, adopted on 28 May 1988, contains those rules on which agreement could be reached with a view to making international financial leasing more widely available, whilst at the same time maintaining a fair balance of interests between the different parties to such transactions.

Thus Article 7 of this Convention lays down requirements governing the enforceability of the lessor's real rights in the equipment. Recognition of their interests within the different legal systems should, it would seem to us, be sought in the context of the Unidroit Convention and/or by such rules, if any, as may be drafted to extend this Convention.

A functional approach to the law governing the taking of security, such as that taken in the United States of America, concentrating on the function and ignoring the form of a financial leasing transaction could under no circumstances be supported by our Federation.

To entertain such an idea would be to disregard the fact that, under the law of nearly all the States of Europe, a security interest is a guarantee predefined by national law and that it would not be for a private law contract to define it. Thus the parties may only conclude a security agreement where the security interest granted thereunder is one already provided for and regulated by law and may not themselves create a security interest without such a security interest first having a statutory basis.

To set out to harmonise in one and the same Convention legal situations which are fundamentally and conceptually different would seem to us to be an assignment that will be difficult to complete.

Whatever the actual situation may be in the United States of America and Canada, law and policy must needs work together in order to ensure the survival of financial leasing as well as its individuality.

The Federation takes the view that what is involved in the financial leasing transaction from an economic point of view must not prevail over its legal nature. European financial lessees, in almost all European countries, are holders not of real rights over the leased asset but rather of a right *in personam* vis-à-vis the financial lessor.

Possession is a condition which arises from the facts of a given situation and is not a condition arising by virtue of a right given under a contract; a lessee is not recognised as having possession save as a right given under a contract.

The hire contract does not grant the lessee a right of economic ownership.

Finally, as indicated in its letter of 9 March 1993, the Federation is opposed to any assimilation, however unintentional, of the concepts of ownership and security which are fundamentally opposed to one another and which, to its way of thinking, must needs be treated separately.

Leaseurope wishes to be kept informed of the development of Unidroit's work - in other fields - in which it expresses its keen interest and which offers great promise for the future, a future which it hopes will not be delayed.