

UNIDROIT 1994
Study LXXII - Doc. 13
(Original: English/French)

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

Proposals for a first draft
(drawn up by the Chairman and a member of the
sub-committee on the basis of the provisional conclusions
reached by the latter at its first session)

Rome, August 1994

INTRODUCTION

1. - Pursuant to the first session of the sub-committee of the Unidroit Study Group for the preparation of a first draft of its proposed uniform rules on certain international aspects of security interests in mobile equipment, held in Rome from 14 to 16 February 1994, a small drafting group met in Paris on the premises of the Ministry of Higher Education and Research on 11 July 1994 in order to prepare a first draft of articles designed to reflect the provisional conclusions reached by the sub-committee at that session (cf. Study LXXII - Doc. 12, § 6). This group was manned by two members of the sub-committee, namely its chairman, Mr R.M. Goode, Professor of English Law in the University of Oxford and member of the Unidroit Governing Council, and its French member, Mr H. Synvet, Professor of Law in the University of Paris II (Panthéon-Assas), assisted by the Unidroit Secretariat.

2. - For reasons of convenience the articles drawn up by the drafting group were divided into three parts. Part I, comprising one article, was entitled *Sphere of application and general provisions*, Part II, comprising two articles, *Registration* and Part III, also comprising two articles, *Recognition and effects of international interests in mobile equipment*. These articles, set out hereafter, are submitted to the sub-committee as proposals for a first draft:

PROPOSALS FOR A FIRST SET OF DRAFT ARTICLES OF A FUTURE UNIDROIT CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT

PART I

SPHERE OF APPLICATION AND GENERAL PROVISIONS

Article 1

Sphere of application

1. - This Convention governs the recognition and effects of international interests in mobile equipment [other than registered ships].

2. - For the purposes of this Convention:

(a) mobile equipment means equipment of a kind normally moved from one State to another in the course of business;

(b) an interest in mobile equipment is an interest arising under a security agreement or a title reservation agreement;

(c) an international interest is an interest which has been registered in conformity with this Convention;

(d) a security agreement is an agreement which secures performance of an existing or future money obligation owed by one person ("the debtor") to another ("the secured party");

(e) a title reservation agreement is an agreement by which mobile equipment is supplied on lease (with or without an option to the lessee to buy the equipment) or is agreed to be sold on terms that ownership does not pass from the seller to the buyer until payment of the sums specified by the agreement.

3. - This Convention does not apply to mobile equipment which is to be used primarily for the personal, family or household purposes of the debtor, lessee or buyer except [pleasure craft].

4. - This Convention does not govern the recognition or effects of interests in proceeds of a disposition by the debtor, lessee or buyer of mobile equipment which do not themselves constitute mobile equipment.

PART II

REGISTRATION

Article 2

International register of interests

1. - An international register shall be established for the purpose of registering interests in mobile equipment under this Convention.

2. - The international register shall be located in such place and managed by such body as shall be determined from time to time by the Governing Council of the International Institute for the Unification of Private Law and shall be operated in accordance with rules made by that body.

3. - [Other provisions to be inserted subsequently]

Article 3

Requirements for registration

An interest in mobile equipment may be registered as an international interest where:

(a) the agreement to which it relates is in writing signed by or on behalf of the debtor, lessee or buyer;

(b) this agreement describes the mobile equipment or classes of mobile equipment in which the interest subsists in a manner sufficient to enable such equipment to be identified;

(c) this agreement states money obligations secured by or arising under it;

(d) a notice in writing ("registration notice") is filed [stating ... and signed by or on behalf of the debtor, lessee or buyer and] conforming with rules laid down by the body referred to in Article 2(2) and accompanied by such documents as those rules may specify.

[to be completed]

PART III

RECOGNITION AND EFFECTS OF INTERNATIONAL INTERESTS
IN MOBILE EQUIPMENT

Article 4

Application of this Part

1. - This Part applies to the recognition and effects of international interests in mobile equipment only if the issue before the court is a non-domestic issue.

2. - For the purposes of this Part an issue is a non-domestic issue where:

(a) at the time the security agreement or title reservation agreement is made the parties have their places of business in different States or

(b) the agreement by its terms expressly envisages that the equipment will move from one State to another or

(c) at the time of the proceedings the equipment is in a State other than that in which it was situated when the agreement was made.

Article 5

*Recognition of international interests
in mobile equipment*

In any proceedings for enforcement of an international interest in mobile equipment, the courts of a Contracting State shall recognise the validity and effects of that interest where the issue before the court is a non-domestic issue.⁽¹⁾

(1) *Note by the drafting group:* this proposed rule is not intended to affect national bankruptcy law rules.