

UNIDROIT 1995
Study LXXII - Doc. 19
(Original: English)

Unidroit

INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW

STUDY GROUP FOR THE PREPARATION OF
UNIFORM RULES ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT:
SUB-COMMITTEE FOR THE PREPARATION OF A FIRST DRAFT

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

(drawn up by the drafting group on the basis of the provisional conclusions
reached by the sub-committee at its second session):

COMMENTS

(by a member of the drafting group)

Rome, July 1995

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Subsequent to the finalisation of the revised proposals for a first set of draft articles of a future Unidroit Convention on International Interests in Mobile Equipment by the drafting group after its second session, held in Oxford on 29 and 30 June 1995, the Unidroit Secretariat received a proposal for the revision of Article 1(3) of the revised proposals by a member of the drafting group, Professor R.C.C. Cuming. This proposal with the supporting comments is reproduced hereunder.



PROFESSOR R.C.C. CUMING

I have only one small point which I should have raised at the Sub-committee meeting. This relates to para. 3 of Article 1. The paragraph makes reference to an "interest arising under a security agreement or an interest arising under a title reservation agreement." The provision is accurate to the extent that it refers to a security agreement since under this type of agreement the secured party acquires an interest (charge) in the equipment of the debtor. Accordingly, in this context the secured party's interest can be seen as "arising" under the agreement. However, the situation is quite different where a title reservation agreement is involved. The "interest" that is the focus of the paragraph is the interest of the lessor or seller. However, this interest does not "arise" under the title reservation agreement; it is an interest that exists before the agreement is executed. The only interest that arises under the agreement is the interest of the buyer or lessee. This being the case, there is a danger that the paragraph might be read as referring to the buyer's or lessee's interest.

This minor problem could be addressed by modifying the paragraph to read as follows:

"3. - For the purposes of this Convention, an interest in equipment is an interest of a secured party arising under a security agreement and the interest of a lessor or seller under a title reservation agreement."