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INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW

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

(Third session: Rome, 11-13 October 1995)

*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):

*HYPOTHETICAL SCENARIOS DESIGNED TO TEST  
THE APPLICABILITY OF THE REVISED PROPOSALS TO  
GIVEN FACTUAL SITUATIONS*

(suggested by Mr Thomas J. Whalen)

Rome, October 1995



The following scenarios are suggested to test the applicability of the Convention to varying factual situations. I wish to acknowledge that several of these factual patterns were developed from Professor R.C.C. Cuming's memorandum of November 1993 (Unidroit Doc. 8), Professor C. W. Mooney, Jr.'s draft paper of September 26, 1995 and a helpful discussion I had with a U.S. Department of State student intern last week.

For the purposes of each of these examples, the term "international security interest" will be deemed to be a security interest which meets the standards provided by the Convention, and the mobile equipment described will be deemed equipment which qualifies for Convention coverage. In addition, a central international registry will be deemed to have been established to record international security interests.

1. - *BASIC FACTS*: Briggs Company manufactures containers and has sold a container to B&O Railroad for \$100,000. B&O financed the purchase of the container with a loan of \$50,000 from Atlantic Bank. As a security for the loan, B&O granted Atlantic Bank a purchase money mortgage in this container. The purchase money mortgage is a security interest which satisfies the standards of the Unidroit Security Interest Convention. B&O, Briggs and Atlantic Bank have their principal places of business in State X.

*Alternative A*: The security interest was registered in the international registry. The sale took place in State X and the container never left State X. B&O sells the container to General Movers in State X. B&O defaults and Atlantic sues in State X to repossess the container.

On these facts, does the Unidroit Convention apply in any respect and specifically does the Convention govern (1) whether the security interest is valid and (2) whether the Convention remedies govern? Does General Movers have any rights?

*Alternative B*: The security interest was registered in the international registry. The sale took place in State X and shortly thereafter the container was transported by B&O to State Y, which is not a Contracting State to the Unidroit Convention. B&O defaults and Atlantic Bank sues in State Y to repossess the container. While in State Y, B&O sells the container to General Movers.

Does the Convention apply to this transaction and are the courts of State Y required to apply the Convention to determine the right of Atlantic Bank to repossess the container? What are the rights of General Movers?

*Alternative C*: The security interest was registered in the international registry. The sale took place in State X and shortly thereafter the container was transported by B&O to State Y which is not a Contracting State. While it is in State Y, B&O sells it to General Movers. B&O defaults and Atlantic Bank brings an *in personam* action against B&O in State X to seek repossession of the container.

Does the Convention apply to this transaction and are the courts of State X required to apply the Convention to the right of Atlantic Bank to repossess the container? What are the rights of General Movers and the status of any *in rem* action General Movers might bring in State Y?

*Alternative D:* The security interest was registered in the international registry. The sale took place in State X and shortly thereafter the container was transported by B&O to State Y which was not a Contracting State to the Unidroit Convention. B&O declares bankruptcy in State X, defaults and a trustee in bankruptcy is appointed. Atlantic Bank sues in the bankruptcy court of State X to repossess the container.

Does the Convention apply to this transaction and govern the rights of Atlantic to repossess the container notwithstanding the applicable laws of bankruptcy in State X?

*Alternative E:* The security interest was registered in the international registry. The sale took place in State X and shortly thereafter the container was transported by B&O to State Y, which was not a Contracting State to the Unidroit Convention. While the container was in State Y, B&O sold it for \$90,000 to Second Marine Co., which has its principal place of business in State Y but also has a place of business in State X and can be sued in State X. B&O defaults on the loan and Atlantic Bank sues B&O in State X on the note and Second Marine in an *in personam* action to repossess the container subject to its security interest.

Does the Convention apply and give Atlantic Bank a right to repossess the container in State X?

Thereafter, Second Marine moves in State Y to enjoin Atlantic Bank from continuing its action in State X, claiming that it obtained title and ownership under the national law of State Y which is not a Contracting State to the Unidroit Convention.

*Alternative F:* The sale took place in State Y which is not a Contracting State. Nevertheless, the security interest in favour of Atlantic Bank was registered in the central registry. While it was in State Y, it was sold to General Movers. The container moved to State X which is a Contracting State. B&O defaults.

Does the Convention give Atlantic Bank any rights or remedies? What are the rights of General Movers?

2. - *BASIC FACTS:* Prime Leasing Company, a business whose principal place of business is in State X, leases a crane to BZ Builders in State X for use on a project in State Y. The lease is for 10 years and at the end of the lease BZ Builders can purchase the crane for one pound sterling.

*Alternative A:* Prime Leasing registers its lease in the central register. Within the first year of the lease BZ Builders sells the crane to Cullane Construction Company in State Y and fails to pay Prime Leasing. State X is a party to the Unidroit Convention. State Y is not.

Does the Convention give any rights or offer any protection to Prime Leasing in State X or in State Y?

*Alternative B:* Bonus Bank located in State X with offices in State Y lends money to BZ Builders in State Y and takes a security interest in the crane which is registered under the national registry of State Y. BZ Builders defaults on the loan and Bonus Bank seeks to foreclose upon its security interest. State X is a party to the Unidroit Convention. State Y is not.

Does the Convention give any rights or protection to Prime Leasing in State X or State Y?

*Alternative C:* Bonus Bank located in State X with offices in State Y lends money to BZ Builders in State Y and takes a security interest in the crane which is registered under the national registry of State Y *and* in the central registry. BZ Builders defaults. The crane is located in State Y. State X is *not* a party to the Unidroit Convention. State Y is a party. Prime Leasing has not registered in the Central Registry.

To what extent will the Convention govern and affect Prime Leasing's rights if it sues in State X or in State Y?

3. - *BASIC FACTS:* Bemini Aircraft Corporation sells an aircraft (Aircraft A) with two engines to Atlas Airlines. AB Financial finances the purchase and takes a purchase money security interest. The sale takes place in State X where Bemini has its headquarters. AB Financial files its interest in the central registry on both the aircraft (Aircraft A) and engines. While in State Y, Atlas switches the engines to another aircraft (Aircraft B) which Atlas sells, with the Aircraft A engines installed, to Cook Island Airways. State Y is not a party to the Convention. State X is. Atlas defaults and AB Financial seeks to repossess the aircraft and engines.

Cook Island Airways is based in the Cook Islands which is not a party to the Convention, but flies its aircraft to several States which are parties to the Convention, including State X.

Is Cook Islands' engine subject to the Convention remedies? Can AB Financial foreclose on the engines?