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Unidroit

INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW

STUDY GROUP FOR THE PREPARATION OF
UNIFORM RULES ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT

SECOND MEMORANDUM

prepared jointly by
Airbus Industrie and The Boeing Company
on behalf of an aviation working group:

SUMMARY OF PRINCIPAL CONCEPTS

prepared by
Mr Jeffrey Wool
(expert consultant to the Study Group
on international aviation finance matters)

Rome, March 1996

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1. - *Certain additional provisions should be included in the proposed Convention that, if agreed to by Contracting States in the ratification process, would very significantly assist in the facilitation of asset-based financing in their respective countries.* Technically speaking, these would be provisions on which reservations would be expressly permitted by the proposed Convention. The general point is to give Contracting States the choice on these important, yet broad, provisions.

The subject matter of these provisions would address (i) the ability of the parties to select the law to govern their contractual relationship, (ii) the position of a chargee, seller or lessor upon the insolvency of its contract counterparty, (iii) a timetable for remedies and (iv) the availability of non-judicial remedies. The first, second and (to a degree) fourth points would - in addition to agreement by the relevant Contracting State - be conditional upon the specific agreement of the transaction parties.

2. - *The proposed Convention, through its terms, implementing/ongoing regulations and/or official comments/explanatory reports, would provide a sufficient level of detail as to its meaning and application so as materially to enhance the certainty of risk assessment in asset-based financing.*

Provisions that fall within this principle include those that (i) are designed to enhance certainty on priority disputes (by setting forth rules regulating competition between Convention interests and non-Convention interests, and rules providing more information as to the nature of preferred national creditors), (ii) may remove other potential obstacles to asset-based financing as such (e.g., by addressing matters relating to the deregistration of aircraft), (iii) prevent significant qualifications to the anticipated application of specific Convention rules (e.g., by deference to undefined mandatory or (with limited exceptions relating to jurisdictional provisions) public policy rules) or its

(1) This summary of the principal concepts involved in the proposals made by the Aviation Working Group, in particular the Draft Aviation Text (Study LXXII - Doc. 23), was prepared, at the request of Unidroit, with a view to facilitating the Study Group's consideration of these proposals at its second session.

dispute resolution provisions (i.e., through sovereign immunity defences - where the same have been contractually waived), (iv) further elaborate on the concept and consequences of creating an international interest and (v) relate to the consequence of denunciation of the proposed Convention by a Contracting State and changes to its preferred national creditors for Convention purposes. The particulars set forth in the annexure to the Draft Aviation Text may be viewed as serving this certainty objective.

3. - *The scope of the proposed Convention should be broadened to include transfers of property, and security and outright transfers of certain associated contract rights (lease assignments).* These rules are necessary to ensure that the proposed Convention governs the central elements of integrated aircraft finance transactions.

This expansion in scope is feasible in view of the Sub-committee's move to an asset registry. It will also have the important benefits of ensuring greater certainty in respect of priority disputes and facilitating transactions of used property (inclusion of transfers) and accessing an enormous source of wealth and value as security in international commercial transactions (inclusion of contract rights/lease assignments).

4. - *The proposed Convention should include clear rules regarding its relationship to other public international law instruments in order further to enhance certainty.* As a general proposition, but subject to the more detailed recommendations applicable to the Geneva Convention of 1948, the rules contained in the proposed Convention - which it is hoped will functionally address air finance issues - will prevail over conflicting provisions to the extent of any inconsistency.

5. - *The international registration system, making use of both a central registrar and satellite registrars (which will likely be existing national aviation regulation authorities), should provide a means of permitting limited, factual reviews by national authorities and regulators (though pursuant to uniform, international regulations) whilst at the same time creating an advanced, international notice-based registration system.*