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INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW

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

*REVISED DRAFT ARTICLES OF A FUTURE UNIDROIT CONVENTION
ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT*

(proposed by the Drafting Group in the light of the Study Group's reading at its second session of the first set of draft articles established by the Sub-committee in conjunction with the recommendations of the Aviation Working Group):

COMMENTS

(by the Aviation Working Group and the International Air Transport Association)

Rome, December 1996

INTRODUCTION

The revised draft articles of a future Unidroit Convention on International Interests in Mobile Equipment, as proposed by the Drafting Group of the Study Group in December 1996, were subsequently circulated for comment among members of the Study Group and those international Organisations, professional associations and other bodies represented thereon by observers. On 16 December 1996 the Secretariat received a memorandum, submitted jointly by the Aviation Working Group and the International Air Transport Association, setting forth certain recommendations regarding the structure of the proposed future Convention. This paper reproduces this memorandum hereunder.



CERTAIN RECOMMENDATIONS RELATING TO AIRCRAFT EQUIPMENT

submitted jointly by
the Aviation Working Group and the International Air Transport Association

Paragraph 126 of the Report on the 12-16 April 1996 meeting of the Study Group for the preparation of uniform rules on international interests in mobile equipment records the request of the Study Group that continued efforts be made to build further consensus in the aviation industry and community for the work currently being undertaken on the above-mentioned uniform rules ("proposed Convention").

As an important step in that process, the Aviation Working Group jointly organised by Airbus Industrie and The Boeing Company ("A.W.G.") and the International Air Transport Association ("I.A.T.A.") have agreed to cooperate on this project and to communicate a resulting commonality of views to the Study Group and other interested parties. This memorandum, which will be supplemented by joint A.W.G./I.A.T.A. comments on the next draft of the proposed Convention, *sets forth an outline of certain key joint recommendations relating to the structure of the proposed Convention*. A.W.G./I.A.T.A. would respectfully ask your consideration of these recommendations at the 15-21 January 1997 meeting of the Study Group.

1. First Recommendation: Base/Umbrella Convention Plus Equipment-Specific Protocols

Work on the proposed Convention over the last several years, as well as a realistic assessment of what is likely to be required to produce a commercially acceptable Convention, reveal the following in our view. First, there is a need for specific rules applicable to different types of equipment (e.g., rules that (a) reflect specific industry consensus on particular points and/or customary industry financing techniques and (b) are

needed to coordinate with other international instruments applicable to one type of equipment but not others). Second, there is a need to organise and encourage appropriate industry and specialised regulatory contribution to the project. Third, it is essential to ensure that potential Contracting States have the opportunity to adopt and ratify the proposed Convention on an equipment-specific basis (rather than, broadly, with respect to all equipment). Fourth, it is important to anticipate the possibility that different industries may require different timetables to reach a sufficient level of consensus to render the Convention commercially and politically acceptable and to put in place a framework which will provide flexibility should this be the case.

Our first recommendation, therefore, is that the format of the proposed legal instrument be modified such that the same is comprised of a base/umbrella agreement which sets forth the basic legal framework applicable to all categories of equipment ("base/umbrella Convention") accompanied by equipment-specific protocols, established from time to time, ⁽¹⁾ each of which contains rules specifically applicable to a particular category of equipment covered by the proposed Convention ("protocols"). Once a protocol enters into force, which it would do without reference to other protocols, it shall automatically incorporate the base/umbrella Convention, i.e., signature and ratification of a protocol both include the base/umbrella Convention, and is not conditioned on or linked to signature and/or ratification of any other protocol.

2. Second Recommendation: Process and Terms of Reference for Aircraft Equipment Protocol

Our second recommendation addresses the process for producing the aircraft equipment protocol. We propose that the Study Group and Unidroit Secretariat authorise the A.W.G. (through the consultancy role to the Study Group of its representative, and in consultation with the Chairman of the Study Group) to set up and organise an expert working group relating to the aircraft equipment protocol at this time. When appropriate, other working groups relating to the various other protocols could also be set up. ⁽²⁾ The aircraft equipment protocol working group is to be charged with preparing (a) the protocol applicable to aircraft equipment ("aircraft equipment protocol"), and (b) the explanatory report in respect of such aircraft equipment protocol and presenting the said instrument and report to the Unidroit Secretariat and the Chairman of the Study Group.

We propose that Jeffrey Wool chair the aircraft equipment protocol working group and, in his capacity as the Unidroit consultant on international aviation finance matters, act as liaison with the Unidroit Secretariat and the Chairman of the Study Group. We believe the working group should include (i) two members of the Study Group (to ensure

⁽¹⁾ It is also evident that the level of emerging consensus in the air transport industry is well ahead of that in other industries at this stage. We have separately suggested, therefore, that the initial protocol to be developed (which may serve as an example for other industries) and adopted diplomatically be the aircraft equipment protocol.

⁽²⁾ The Study Group and Unidroit Secretariat might consider whether the concept of equipment-specific protocols and the creation of expert working groups to prepare such protocols may also assist in consensus building in other industries and, in particular, whether it may help meet the objections of the ship finance regulatory community and provide a vehicle for facilitating their constructive involvement in the project.

appropriate coordination with the base Convention) to be selected in consultation with the Chairman of the Study Group, (ii) a representative of the International Civil Aviation Organization (to take advantage of its expertise on, among other things, the relationship between the proposed Convention/aircraft equipment protocol and international aviation treaties, as well as on regulatory matters in general) if available to work on this project and (iii) a representative of I.A.T.A. In addition, the working group may identify *liaison observers* from certain countries (which have in place appropriate fora for consideration of aviation matters of this kind) for the purpose of advising their respective constituencies of the work of the aircraft equipment protocol working group.

The initial terms of reference for the aircraft equipment protocol working group would be to set forth the appropriate provisions specifically applicable to aircraft equipment, and/or the financing thereof or international regulation applicable thereto, with reference to (a) the draft aviation text submitted by the A.W.G. to the Study Group (see UNIDROIT 1996, Study LXXII - Doc. 25 and (b) the relevant provisions in the draft of the proposed Convention currently in preparation.

3. Third Recommendation: Relating to the International Registry System

The current version of the proposed Convention contemplates a determination by the Unidroit Governing Council of the body (bodies) which will regulate and operate the international register. See Articles 4(h) and (k) and 5(2) of UNIDROIT 1996, Study LXXII - Doc. 24. The draft aviation text proposes that the international registry system should be comprised of satellite (or auxiliary) registries to be operated by existing national aviation authorities and a central registry. The operation of both the central and satellite registries would be subject to regulations promulgated by the regulatory body appointed by the Unidroit Governing Council. See Articles 4(2)-(4) and §(7), (37) and (40) of the Annexure, UNIDROIT 1996, Study LXXII - Doc. 23. This proposed modification (as it relates to aircraft equipment) was well received by the Registry Working Group.

The Study Group is well aware of the multiplicity of issues, including technical and systemic issues, raised by an international registry system of this kind and has created a registry working group under the leadership of Professor Ronald Cuming to study these matters. Having participated in the work of the Registry Working Group and, at the request of such group, having continued to explore the relevant issues, we would make our **third recommendation** as follows:

- A distinction should be made between (a) the inter-governmental regulator of the international registry system (appointed by the Unidroit Governing Council) and (b) the actual operator of the central registry (regulated by and reporting to the inter-governmental regulator).
- The actual proposed operator of the central registry should be identified as promptly as possible so that such entity may undertake the necessary design and organisational work, bringing the relevant technical information to the attention of the Study Group and Registry Working Group. This hard data, in our view, is essential to informed decision-making on registry questions.

• In order to promote broad acceptance of the proposed Convention in the international aviation community and to accelerate and facilitate the development of a functioning registry system, we would recommend that, as relates to aircraft equipment, I.A.T.A.⁽³⁾ be proposed as the entity that will have responsibility for operating the central registry for a fixed initial term subject to the control and oversight of the appropriate inter-governmental body.

Representatives of the A.W.G. and I.A.T.A. look forward to the opportunity to discuss these joint recommendations at the upcoming Study Group meeting.

⁽³⁾ To ensure international acceptability, I.A.T.A. would create a new, wholly-owned legal entity, restricted under its organisational documents to acting as the entity having responsibility for operating the central registry for aircraft equipment. This entity would be organised so as to have no greater duty (fiduciary or otherwise) to I.A.T.A. members than to any other person or entity in the performance of its function as the entity having responsibility for the operation of the central registry.