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INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW
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COMMITTEE OF GOVERNMENTAL EXPERTS FOR THE PREPARATION OF A DRAFT
CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT AND
A DRAFT PROTOCOL ON MATTERS SPECIFIC TO AIRCRAFT EQUIPMENT

*PRELIMINARY DRAFT UNIDROIT CONVENTION
ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT:*

COMMENTS

(submitted by the Government of Canada)

Rome, December 1998

INTRODUCTION

(by the Unidroit Secretariat)

Subsequently to its receipt of the preliminary observations by the Government of the United States of America on the preliminary draft Unidroit Convention on International Interests in Mobile Equipment (Study LXXII – Doc. 42) reproduced in Study LXXII - Doc. 43/Study LXXIID – Doc. 4, the comments from the Government of Australia (Study LXXII – Doc. 44) and the comments submitted jointly by the International Air Transport Association and the Aviation Working Group) (Study LXXI – Doc. 45/Study LXXIID – Doc. 6), the Unidroit Secretariat also received comments from the Government of Canada on the preliminary draft Convention. This paper reproduces these comments set out hereunder.



PRELIMINARY DRAFT UNIDROIT CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT:

COMMENTS

(submitted by the Government of Canada)

The Canadian authorities would like to extend their congratulations to Unidroit and I.C.A.O. for their time and effort in preparing materials of high quality for this first consultation on the *preliminary draft Convention* and *Aircraft Protocol*. As Canadian consultations with federal, provincial and territorial authorities, interested industries and legal practitioners are still ongoing, the following comments are preliminary. Furthermore, as the structure and content of both instruments may change in the future, the following comments are not definitive; they are preliminary comments meant to encourage dialogue and the sharing of ideas.

I - Preliminary general comments

Preliminary results of Canadian consultations recognise the value and legitimacy of the present Convention-Protocols structure in achieving both harmonisation of private law of States in relation to asset-based financing in general and the harmonisation of different legal norms of various industries in relation to the same subject-matter. However, the innovative form and structure of these instruments should not be an obstacle to their implementation by States and effective use by members of the industry. In this regard, the preliminary results of Canadian consultations indicate that before endorsing this proposed approach, wide support and comfort by all States and industries involved should be clear in order to achieve broad implementation of these instruments once they are completed.

As Canadian consultations on this subject are not finalised, there is no clear indications from interested Canadian industries on what is the preferred option - the Convention framework with equipment-specific Protocols or equipment-specific Conventions. It would seem that both approaches are legally feasible. However, a generally expressed comment in our consultations is that the combined reading of both instruments is not user-friendly and may not achieve

transparent and plain language drafting norms. On that basis, the Canadian authorities feel that each Protocol should include a provision stating that a consolidated text of the Convention, as amended by a Protocol, should be prepared. This could alleviate some difficulties resulting from the Convention framework with equipment-specific Protocols and ease the dissemination of the information contained in both documents.

The Canadian authorities understand that the current draft of the *preliminary draft Convention* contains no Preamble, as it was understood that one would be drafted in the course of the diplomatic Conference. The Canadian authorities are of the view that it would be desirable to commence development of appropriate recitals in advance of the Conference. Article headings and a table of contents should also be developed to aid the reader as was done for the *preliminary draft Aircraft Protocol*. Finally, consideration should be given to the preparation and publication by the International Secretariats of aids to interpretation, such as reports containing the travaux préparatoires, a Commentary.

II - Preliminary specific comments

Re Article 1

The word “agreement” is used in different ways throughout the text of both the *preliminary draft Convention* and *Aircraft Protocol*. It is for consideration whether a definition of the term “agreement” and other terms should be used where it has a different meaning.

It is for consideration whether there is a need for a clearer definition of “non-consensual interest”.

Re Article 5

It is for consideration whether the term “party” should be replaced by the term “obligor”.

Re Article 6

It is for consideration whether this provision should also include securities for third parties.

It is for consideration whether Article 6 should read “parties to a transaction”.

Re Article 12(1)

Article 12 is an example of a provision where the term “agreement” has different meanings. It is sometimes used in the sense of “contract” and at other times as the “meeting of the minds”. It is for consideration whether use of the term “agreement” should be limited to the proposed definition and that other terms be used where it has a different meaning.

Re Article 15

It is for consideration whether the ambiguity in Article 15 should be removed with language that would make it clear that any and all of the enumerated remedies as pleaded by the obligee would be available.

It is for consideration whether the term "pending" should be replaced by "subject" or "in waiting".

Re Articles 16 - 27

Canadian consultations indicate that more work needs to be done on the Registry. All options should be carefully assessed and many questions remain to be answered. In view of this need, the Canadian authorities would encourage the formation of a Registry Working Group during the February joint Unidroit-I.C.A.O. session of governmental experts.

Re Article 29

It is for consideration whether the commencement of a bankruptcy should be defined.

Re Article 37

This Article is not clear.

Re Article 43

It is for consideration whether the second portion of Article 43 should be revisited or deleted.