

International Interests
Study Group
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U n i d r o i t

INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW

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

(Third session: Rome, 15 - 21 January 1997)

PROPOSALS BY THE DRAFTING GROUP

Rome, 22 January 1997
(morning)

PROPOSALS BY THE DRAFTING GROUP

On 17 and 20 January 1997 the Drafting Group met at the seat of Unidroit to consider those drafting amendments necessary in the light of the Study Group's reading at its third session of the *revised draft articles of a future Unidroit Convention on international interests in mobile equipment* (Study LXXII - Doc. 30). The Drafting Group's proposals for the articles which it was able to consider in the time available are as follows:

REVISED DRAFT ARTICLES OF A FUTURE UNIDROIT CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT ^(*) ⁽¹⁾

CHAPTER I

SPHERE OF APPLICATION AND GENERAL PROVISIONS

Article 1

1. – This Convention provides for the creation and effects of an international interest in mobile equipment.

2. – For the purposes of this Convention an international interest in mobile equipment is a right in or over an object of a kind listed in Article 2:

- (a) granted by the chargor under a security agreement; or
- (b) vested in a person who is the seller under a title reservation agreement; or
- (c) vested in a person who is the lessor under a leasing agreement.

[3. – An interest which under the applicable law falls within sub-paragraph (a) of the preceding paragraph does not fall within sub-paragraph (b) or(c) of that paragraph for the purposes of this Convention.]

Article 2

1. – This Convention applies in relation to an object of any of the following kinds:

- (a) airframes;

^(*) The use of an asterisk (*) against a particular provision indicates that the provision in question is envisaged as part of the Final Clauses of the future Convention.

⁽¹⁾ It was noted that it will be necessary in due course to prepare a draft preamble to the future Convention.

- (b) aircraft engines;
- (c) helicopters;
- (d) [registered ships];
- (e) oil rigs;
- (f) containers;
- (g) railway rolling stock;
- (h) satellites [;
- (i) objects of any other category each member of which is uniquely identifiable and habitually moves from one State to another in the ordinary course of use].

* 2. – This Convention shall not come into force as regards any category of object until there is in force a protocol relating to such category. The Convention shall take effect subject to the terms of that protocol.

* 3. – [Add provision for procedure for making of protocols].⁽²⁾

Article 3

[Add provision on connection to a Contracting State]

Article 4

Terms used in this Convention and defined in the Appendix have the meanings there stated.

Article 5

In their relations with each other, the parties may by agreement in writing derogate from or vary the effect of any of the provisions of this Convention except as stated in Articles [...]

Article 6

1. – In the interpretation of this Convention, regard is to be had to its international character and to the need to promote uniformity and predictability in its application and the observance of good faith in international trade.

2. – [[The official comments to this Convention shall be considered by courts as authoritative when interpreting and applying the terms of this Convention.

⁽²⁾ It may be necessary to distinguish between protocols containing no more than a definition and those containing substantive provisions.

3. –]] Questions concerning matters governed by this Convention which are not expressly settled in it are to be settled in conformity with the general principles on which it is based [or, in the absence of such principles, in conformity with the law applicable by virtue of the rules of private international law].

CHAPTER II

CONSTITUTION OF AN INTERNATIONAL INTEREST

Article 7

An international interest takes effect under this Convention where the agreement creating or providing for the interest:

- (a) is in writing;
- (b) relates to an object in respect of which the chargor, seller or lessor has power to enter into that agreement;
- (c) identifies the object;
- (d) in the case of a security agreement, identifies the secured obligations expressly or by reference to another document.

CHAPTER III

DEFAULT REMEDIES

Article 8

1. – In the event of default in the performance of a secured obligation, the chargee may exercise any one or more of the following remedies:

- (a) take possession of any object charged to it;
- (b) sell or grant a lease of any such object;
- (c) collect or receive any income or profits arising from the management or use of any such object;
- (d) apply for a court order authorising or directing any of the above acts.

2. – Any remedy given by sub-paragraph (a), (b) or (c) of the preceding paragraph shall be exercised in a commercially reasonable manner. In determining what is reasonable the court shall have regard to any terms of the security agreement relating to the manner of exercise of such remedies.

3. – A chargee proposing to sell an object under paragraph 1 otherwise than pursuant to a court order shall give reasonable notice of the proposed sale to interested persons.

4. – Any sum collected or received by the chargee as a result of exercise of any of the remedies set out under paragraph 1 shall be applied towards discharge of the amount secured by the security interest.

5. – Where the sums collected or received by the chargee as a result of the exercise of the remedies given in paragraph 1 exceed the amount secured by the security interest, then unless otherwise ordered by the court the chargee shall pay the excess to the holder of the interest registered immediately after its own or, if there is none, to the chargor.

6. – In this Article and in Article 9 “interested persons” means:

- (a) the chargor;
- (b) any surety under a guarantee given to the chargee;
- (c) any person entitled to the benefit of any interest which is registered after that of the chargee;
- (d) any other person having rights in or over the object of which notice in writing has been given to the chargee within a reasonable time before exercise of the remedy given by sub-paragraph (b) of paragraph 1 of this article or paragraph 1 of Article 9, as the case may be.

Article 9

1. – At any time after default in the performance of a secured obligation, all the interested persons may agree, or the court may on the application of the chargee order, that ownership of any object covered by the security interest shall vest in the chargee in satisfaction of all or any part of the secured obligation.

2. – The court shall grant an application under the preceding paragraph only if the amount of the secured obligation to be satisfied by such vesting is reasonably commensurate with the value of the object after taking account of any payment to be made by the chargee to any of the interested persons.

3. – At any time after default in the performance of a secured obligation and before sale of the charged object or the making of an order under paragraph 1, the chargor may redeem the object by paying the amount secured by the security interest, subject to any lease granted by the chargee under paragraph 1 of Article 8. Where, after such default, the payment is made by an interested person, he is subrogated to the rights of the chargee.

4. – Ownership passing on a sale under paragraph 1 of Article 8 or passing under paragraph 1 of this Article is free from any other interest over which the chargee’s security interest has priority under the provisions of Article 25.

Article 10

In the event of default by the buyer under a title reservation agreement or by the lessee under a leasing agreement, the seller or lessor, as the case may be, may terminate the agreement and/or take possession of any object to which the agreement relates.

Article 11

1. – In the absence of an agreement within paragraph 2, “default” for the purposes of Articles 8 to 10 means a material default.

2. – The parties may provide in their agreement for any other kind of default, or any event other than default, as giving rise to the rights and remedies specified in Articles 8 to 10 and 15.