



**UNIDROIT COMMITTEE OF GOVERNMENTAL EXPERTS FOR
THE PREPARATION OF A DRAFT CONVENTION ON
SUBSTANTIVE RULES REGARDING INTERMEDIATED
SECURITIES**

UNIDROIT 2007
Study LXXVIII – Doc. 73
English only
April 2007

Observations on transitional rules

(submitted by the Delegation of the Czech Republic)

Priority of interests granted before the entry into force of the Convention

We believe that the priority of interests granted before the entry into force of the Convention should be protected and any chosen method should be cost-effective and should provide legal certainty and predictability. As regards the proposed solution dealing with the transitional problem, we prefer the latter one based on a grandfathering clause.

In the Czech Republic there is no special need for transitional rules. According to the Czech law any other subsequent securities interest based on an agreement may not be created in the same securities and all proceeds from the pledged securities belongs to the pledgee (collateral taker). Nevertheless, we generally agree that transitional rules are needed.

As to the other transitional problems, the question could arise in the following situation:

A security collateral agreement has been concluded before the entry into force of the Convention. This agreement includes an obligation to deliver additional collateral securities. This obligation is fulfilled by making a designating entry after the entry into force of the Convention. We would like to know if this delivery of additional collateral securities might be regarded as creation of a security interest in accordance with article 8 of the Convention (with all consequences regarding priority rules) or not. To complicate the situation described above, assume that these additional collateral securities are pledged to the relevant intermediary (in compliance with article 8) before being delivered to the collateral taker, so there are two competing interests in the same securities.

In other words, might the provisions of the Convention apply also to legal relationships that arose before the entry into force of the Convention? However, rise of these relationships as well as claims arisen therefrom before the entry into force of the Convention should be considered according to the hitherto regulation – law of the relevant Contracting State.