

Rapporteur's report on Committee II (Secured Transactions)

REPORT OF THE RAPPORTEUR OF COMMITTEE II INTERNATIONAL LOAN CONTRACTS OF A PRIVATE NATURE, IN PARTICULAR, THE UNIFORMITY AND HARMONIZATION OF SECURED TRANSACTIONS LAW

(As submitted by the Rapporteur on June 10, 2002)

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I

In the first plenary session of the Sixth Inter-American Specialized Conference on Private International Law (CIDIP-VI), celebrated on the 4th of February 2002, Committee II was assigned Topic II of the agenda: international loan contracts of a private nature, in particular, the uniformity and harmonization of secured transactions law.

In the first meeting on February 4, 2002, the Committee elected its Chair, Jose Luis Siqueiros (Mexico), its Vice-Chair, Boris Kozolchyk (United States), and its Rapporteur, Ronald Herbert (Uruguay).

II

In its working sessions, the Committee considered documents CIDIP-VI/doc.4/02, a joint project prepared by the Mexican and United States Delegations concerning a Model Inter-American Law on Secured Transactions, and CIDIP-VI/doc.15/02, Proposed Amendments Prepared by Common and Civil Law Experts in the Canadian Delegation Concerning a Model Inter-American Law on Secured Transactions. Mexico and the United States had been named Co-Chairs of the Working Group established on this topic at the Meeting of Experts on February 14-18, 2000 at OAS headquarters in Washington, DC. These versions of the draft Model Inter-American Law on Secured Transactions constituted the basic documents that were submitted to the delegations comprising Committee II.

III

The Vice Chair of the Committee proposed that, given the complexity of the work, a smaller Drafting Committee be formed. Since Committee II was not large, it was agreed that all of its members would participate in the Drafting Committee, and various delegations named representatives to it, appointing the Rapporteur as Chair of the Drafting Committee.

The Canadian delegation emphasized that document CIDIP-VI/doc.15/02 was only intended to bring greater clarity to document CIDIP-VI/doc.4/02, particularly given the Canadian experience in maintaining balance in private law between the civil and common law traditions.

At the suggestion of the Vice Chair, there was agreement that the Committee would take the US/Mexico draft, document CIDIP-VI/doc.4/02, as the working basis, without affecting its comparison to the document revised by Canada, document CIDIP-VI/doc.15/02.

It was also agreed that the basic draft would be considered article by article, a method that was maintained until the end of the work of Committee II. The text of each article was individually considered in the plenary, entrusting the Rapporteur to take note of the observations made by the delegations to incorporate them into the definitive text. To the extent possible, the Drafting Committee prepared documents with the changes arising from the observations to be delivered in the subsequent plenaries of Committee II.

IV

The study of various chapters of the basic text by the plenary of Committee II, was preceded by a general account by the Vice-Chair for the better understanding of certain details in the text.

However, from the beginning, Committee II agreed that the following objectives should be prioritized in the Model Law:

a) to facilitate access to credit through the maximum possible extension of the spectrum of goods which can constitute a security (in this regard, refer to Article 4);

- b) to simplify the procedures for setting up the secured transactions procuring a reduction of costs (in this regard, refer to Articles 5 to 9);
- c) to establish clear criteria for the publicity of different types of secured transactions as a functioning instrument to determine the rank of priority between creditors (in this regard, refer to Articles 10 to 34);
- d) to standardize the documentary and registry aspects concerning the security (in this regard, refer to Articles 35 to 46)
- e) to assure the efficacy of the security through the establishment of foreseeable and detailed criteria on the order of priority of the securities (in this regard, refer to Articles 47 to 53)
- f) to procure speed in execution proceedings on the security itself, avoiding unnecessary loss and offering reasonable security to the secured debtor (in this regard, refer to Articles 54 to 67).

The Committee decided to leave presentation of the final draft of the Model Law on Secured Transactions to the Drafting Committee, for direct transmittal to the Plenary Session.

The Committee considered the draft Model Law on Secured Transactions and approved it.

The Rapporteur, in his final report, stressed that this Model Law must be followed by a deeper analysis on the possibilities of standardizing the registry system in the region, with the inclusion of the study of registry techniques and the use of electronic means to these effects for registration and information.

Various delegations took note of the enormous contributions made by the individuals involved in the Drafting Committee. The Chair and Vice Chair of Committee II thanked the Drafting Committee and all other delegates for their diligence and leadership. The Committee thanked the Rapporteur for his tireless efforts in leading the Drafting Committee, and in guiding the redrafting of the Model Law.

The Chair then adjourned Committee II.

