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INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW

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STEERING AND REVISIONS COMMITTEE

(Rome, 27-29 June 1998):

REPORT

(prepared by the Unidroit Secretariat)

Rome, September 1998

Background

1. – At its 77th session, held in Rome from 16 to 20 February 1998, the Unidroit Governing Council was seised of a preliminary draft Unidroit Convention on International Interests in Mobile Equipment (Study LXXII - Doc. 37), established by the Unidroit Study Group for the preparation of uniform rules on international interests in mobile equipment (hereinafter referred to as the Study Group) at the conclusion of its fourth session, held in Rome from 3 to 7 November 1997, and a preliminary draft Protocol thereto on Matters specific to Aircraft Equipment (Study LXXIID - Doc. 1), established by a working group (hereinafter referred to as the Aircraft Protocol Group) organised, at the invitation of the President of Unidroit, by Mr J. Wool, expert consultant to the Study Group on international aviation finance matters, at the conclusion of its second session, held in Geneva from 19 to 21 November 1997. The Council decided that the two texts should be further refined by a Steering and Revisions Committee (hereinafter referred to as the Committee) before and with a view to their submission to governmental experts (cf. Study LXXII - Doc. 40, at p. 41). It was envisaged in particular that those provisions of the preliminary draft Protocol capable of application to the generality of equipment encompassed by the preliminary draft Convention be moved into the body of the preliminary draft Convention and that the preliminary draft Protocol be generally aligned, as to both style and terminology, with the preliminary draft Convention (*idem)*. The Council decided that the business of the Steering and Revisions Committee would be to prepare clean texts of the preliminary draft Convention and Protocol in English and French such as to permit their prompt transmission to Governments with a view to a first session of governmental experts (*idem)*. The Council further decided that membership of the Steering and Revisions Committee should be open to representatives of Unidroit, as the Organisation under the auspices of which the preliminary draft Convention had been established, the International Civil Aviation Organization (I.C.A.O.), as the Organisation under the joint auspices of which, together with Unidroit, the intergovernmental consultation process on the two preliminary draft instruments was intended to be organised, and, as core members, together with I.C.A.O., of the Aircraft Protocol Group, the International Air Transport Association (I.A.T.A.) and an Aviation Working Group (A.W.G.) organised jointly, at the invitation of the Study Group, by Airbus Industrie and The Boeing Company (*idem*). It was further agreed that the Steering and Revisions Committee should be able to co-opt such experts as might be required to deal with special aspects of the texts (*idem*).

Opening of the meeting

2. – The Steering and Revisions Committee met at the seat of Unidroit in Rome from 27 to 29 June 1998. The meeting was opened at 10.15 a.m. on the 27th by Mr W. Rodinò, Acting Secretary-General of Unidroit. Mr R.M. Goode, Q.C., Professor of English Law in the University of Oxford, member of the Unidroit Governing Council and Chairman of the Study Group, was elected Chairman, on a proposal by Mr Rodinò.

3. – The meeting was attended by the following representatives of Unidroit, I.C.A.O., I.A.T.A. and A.W.G., as members of the Steering and Revisions Committee, as well as the following experts invited to advise on certain special aspects of the two texts:

Members of the Committee

Unidroit	Mr R.M. Goode, Q.C. (cf. *supra*)
	Mr P. Widmer, Professor of Law in the University of St. Gallen; Director of the Swiss Institute of Comparative Law, Lausanne-Dorigny; *member of the Unidroit Governing Council*

	Mr W.Rodinò (cf. *supra*) / Mr H. Kronke, Professor of Law in the University of Heidelberg; *Secretary-General elect of Unidroit*
International Civil Aviation Organization	Mr L. Weber, Director, Legal Bureau
International Air Transport Association	Mr A. Charlton, Director, Legal Department, Geneva
Aviation Working Group	Mr J. Wool, Partner, Perkins Coie, London; *co-ordinator of A.W.G.*

Experts

Re: private international law aspects of the texts	Ms C. Kessedjian, Deputy Secretary-General, Hague Conference on Private International Law
Re: relationship between the and other Conventions	Ms C. Chinkin, Professor of Public International Law, *texts* London School of Economics

4. – In opening the meeting, *the Acting Secretary-General* voiced the Institute's especial gratitude to Mr Goode and Mr Wool for all the work they had put into revising the preliminary draft Convention and Protocol with a view to facilitating the Committee's work.

Whilst expressing his keen appreciation of all the efforts being made by I.A.T.A. and A.W.G. with a view to disseminating awareness of the preliminary draft Convention and Protocol world-wide, he indicated that the imminence of their transmission to Governments in connection with the launching of the intergovernmental consultation process made it indispensable that the Committee take time to consider the best means of ensuring the necessary degree of co-ordination in future between the educational exercises being promoted by I.A.T.A. and A.W.G. and the governmental consultation process that would be launched in each country once the texts were transmitted to Governments by Unidroit and I.C.A.O. The need for improved co-ordination had been pointed up by the problems which both Unidroit and I.C.A.O. had experienced of late in their relations with certain member Governments as a result of confusion that had arisen as to the precise nature of the role being played by I.A.T.A. and A.W.G. in relation to the preliminary draft Convention and Protocol. He suggested that a solution needed to be found that would make it clear to those to whom I.A.T.A. and A.W.G.'s exercises were addressed that the finalisation of these texts, hitherto prepared under the auspices of Unidroit, was being organised at intergovernmental level under the joint auspices of Unidroit and I.C.A.O. and that the aforementioned efforts of I.A.T.A. and A.W.G. were limited to the provision of educational support for Governments designed to supplement the formal intergovernmental process being co-ordinated under the auspices of Unidroit and I.C.A.O.

He expressed his and the Institute's gratitude to Mr Widmer for agreeing to represent the particular interests of Civil law jurisdictions in relation to the texts, to the Hague Conference on Private International Law for designating Ms Kessedjian, Deputy Secretary-General of that Organisation, to assist the Steering and Revisions Committee with the private international law aspects of the texts and to Ms Chinkin for agreeing to assist the Committee with those questions relating to the relationship of the future instruments with existing international instruments.

He recalled that the terms of reference of the Committee on this occasion, as defined by the Unidroit Governing Council, were further to refine the texts established by the Study Group and the Aircraft Protocol Group, in particular by giving effect to the observations made by Council members during the Council's consideration of the texts at its 77th session, so as to permit their prompt transmission to Governments with a view to a first session of governmental experts in January 1999.

Materials before the Committee

5. – The Steering and Revisions Committee was seised of the following materials:

(1) Draft agenda (S.R.C. Agenda);

(2) Preliminary draft Unidroit Convention on International Interests in Mobile Equipment (as established by the Study Group at the conclusion of its fourth session, held in Rome from 3 to 7 November 1997) (Study LXXII - Doc. 37);

(3) Preliminary draft Unidroit Convention on International Interests in Mobile Equipment (as established by the Study Group at the conclusion of its fourth session, held in Rome from 3 to 7 November 1997): preliminary draft Protocol on Matters specific to Aircraft Equipment (as established by a working group organised by Mr J. Wool, expert consultant to the Study Group on international aviation finance matters, at the invitation of the President, at the conclusion of its second session, held in Geneva from 19 to 21 November 1997) (Study LXXIID - Doc. 1);

(4) Governing Council (77th session: Rome, 16-20 February 1998): extract from the Report on the session (*Re:* item n° 8 on the agenda: International interests in mobile equipment) (S.R.C. Misc. 2);

(5) Preliminary draft Unidroit Convention on International Interests in Mobile Equipment (as established by the Study Group at the conclusion of its fourth session, held in Rome from 3 to 7 November 1997, and revised by the Chairman of the Study Group) (Study LXXII - Doc. 39);

(6) Preliminary draft Unidroit Convention on International Interests in Mobile Equipment (as established by the Study Group at the conclusion of its fourth session, held in Rome from 3 to 7 November 1997, and revised by the Chairman of the Study Group): preliminary draft Protocol on Matters specific to Aircraft Equipment (as established by a working group organised and chaired by Mr J. Wool, expert consultant to the Study Group on international aviation finance matters, at the invitation of the President, at the conclusion of its second session, held in Geneva from 19 to 21 November 1997, and revised by the Chairman of the Study Group in collaboration with Mr Wool) (Study Group LXXIID - Doc. 2);

(7) Proposal by the Aviation Working Group (S.R.C. Misc.1) (in English only);

(8) Discussion paper prepared by Professor C. Chinkin and Professor C. Kessedjian (S.R.C. Misc.3) (in English only);

(9) United Nations Commission on International Trade Law: report of the Working Group on International Contract Practices on the work of its 28th session (New York, 2-13 March 1998) (A/CN.9/447);

(10) Convention of the European Union on Insolvency Proceedings (Brussels, 23 November 1995);

(11) Uncitral Model Law on Cross-Border Insolvency (Vienna, 30 May 1997).

Approval of the agenda

6. – With two amendments, the Committee approved the draft agenda. The amendments were designed to enable the Committee to consider, first, the important question of fast-track procedures, short of full diplomatic Conferences, for the adoption of new Protocols and amendments to the future Convention and Protocol(s) and, secondly, the role of explanatory reports in clarifying the purpose and effect of provisions of the future Convention and Protocol and avoiding the need to clutter up the texts with unnecessary detail. The agenda, as thus amended, is reproduced in Appendix I to this report.

Future modus operandi of the Committee

7. – *Mr Wool*, whilst agreeing with the Acting Secretary-General that the finalisation of the preliminary draft instruments with a view to their transmission to Governments constituted the primary business of the meeting, noted that the terms of reference of the Committee, as set forth in the conclusions of the Governing Council's deliberations on this subject at its 77th session, were however broader. Whilst it was true that these terms of reference would be subject to ratification by Governments at the first session of governmental experts, as at present drafted they authorised the Committee to "co-ordinate the preliminary draft Convention and Protocol throughout intergovernmental negotiations, in particular so as to reflect decisions taken and comments received, and to deal with other matters relating to the preparation of these texts for adoption at a diplomatic Conference" (Study LXXII - Doc. 40 at p.41). He indicated that A.W.G. saw this as meaning that, in addition to the specific task of preparing the texts for transmission to Governments, the Committee would meet periodically throughout the intergovernmental consultation process, in between sessions of governmental experts, acting as the vehicle for an expanded secretariat permitting I.A.T.A. and A.W.G. to participate as full partners with Unidroit and I.C.A.O. in that process. A.W.G. believed that it followed from this that it would be appropriate for the Committee to assume responsibility for preparation of the future commentaries. He echoed the Acting Secretary-General's concern as to the urgency of the Committee reaching an understanding as to the most appropriate manner for it and I.A.T.A. to approach Governments in the context of the intergovernmental consultation process so as to avoid the risk of confusion and provide effective support for the Unidroit/I.C.A.O. intergovernmental process.

Mr Charlton indicated that I.A.T.A. fully supported Mr Wool's statement, in particular concerning the conception of the Committee's role as a sort of expanded secretariat. He believed that it would be important for the Committee to take time to consider such issues as the venue of future meetings of the Committee, the frequency of these meetings and the Committee's own rules of procedure.

Referring to Mr Wool's vision of the Committee's role, *Mr Weber* indicated that he saw the decision to set up the Committee taken by the Governing Council at its 77th session as being in the first place designed to permit the establishment of texts that could be judged ripe for submission to governmental experts. The plan was to lay such texts before a first session of governmental experts, to be held in January 1999, to be organised jointly by Unidroit and I.C.A.O. Both intergovernmental Organisations would therefore be sending out invitations to their respective member Governments, representatives of which would be meeting in joint

session to consider both the international private law and the public international law/ international civil aviation law aspects of the subject at the same time.

Whereas there was general agreement as to the role of the Committee up to this point, namely the preparation of texts ripe for submission to the first joint session of governmental experts, he felt it necessary to recall that the Committee had been set up by the Unidroit Governing Council and that there had still not been any corresponding decision by the Council of I.C.A.O. as to the future composition and *modus operandi* of the Committee. A first decision by the I.C.A.O. Council was expected in September 1998. The question of the Committee's future composition and *modus operandi,* and in particular the notion of joint secretariats, remained accordingly to be defined. While confirming I.C.A.O.'s willingness to associate those non-governmental parties who had contributed so amply to the development of the two preliminary draft instruments in the process that lay ahead, he considered it was therefore too early for the moment to define these matters in any greater detail.

The *Acting Secretary-General* suggested, in the light of Mr Weber's remarks, that the Unidroit and I.C.A.O. Secretariats, should, following the I.C.A.O. Council meeting in September 1998, formulate a proposal on the future composition and *modus operandi* of the Committee for the consideration of Governments at the first session of governmental experts. In the meantime he confirmed Unidroit's recognition of the importance of the role being played by the non-governmental parties in the development of the texts and its intention to go on giving effect to the decision of the Governing Council on this subject pending a decision by Governments in January 1999.

The *Chairman* suggested that the Unidroit and I.C.A.O. Secretariats should liaise on this matter with a view to the forthcoming I.C.A.O. Council session.

Mr Wool requested that I.A.T.A. and A.W.G. be consulted informally in the run-up to the I.C.A.O. Council session with a view to the avoidance of misunderstandings.

Business of the meeting: Chairman and Mr Wool's introductions

8. – In introducing the business of the meeting, *the Chairman* recalled that the Committee's role was further to refine the texts laid before the Governing Council, albeit without interfering with the substance, and that, in doing so, the Committee should take account of the views expressed by Council members at the 77th session of that body (cf. S.R.C. Misc.2). In carrying out the task given to it by the Council, namely the alignment of the preliminary draft Protocol, as to both style and terminology, with the preliminary draft Convention, it would be appropriate for the Committee to iron out any inconsistencies between the two texts. It would be for the Committee to consider whether there were provisions in the preliminary draft Protocol that could be made of general application and brought into the body of the preliminary draft Convention.

With a view to facilitating the work of the Committee he had revised the text of the preliminary draft Convention and that of the preliminary draft Protocol considered by the Governing Council at its 77th session. In this task he had derived considerable assistance from Mr Wool, in relation to aircraft equipment in general and as regards the preliminary draft Protocol in particular. He had also introduced certain minor amendments which, while not affecting the substance, had appeared to him to be necessary or which might be considered to be necessary (these last had been submitted for consideration in square brackets). He had appended notes both to the preliminary draft Convention and the preliminary draft Protocol in order to explain the thinking behind the changes he had made. In line with the Council's instructions, he had

provisionally moved a number of provisions, which he had judged to be potentially capable of general application, from the preliminary draft Protocol into the body of the preliminary draft Convention for the Committee's consideration. Where he had done so, he had signalled the fact by presenting the relevant provision inside square brackets, a technique only previously used in the preliminary draft Convention to signal points judged by the Study Group to be beyond its terms of reference and to that extent to raise policy questions for Governments (for example, Articles 20 and 42).

In revising the preliminary draft Protocol he had been able to eliminate a great deal of the detail which had characterised the text which had gone before the Council, detail which had, however, been extremely useful in identifying those matters needing to be covered. In this revision he had sought in part to align the style of the preliminary draft Protocol more closely with that of the preliminary draft Convention and in part to do away with provisions that might be considered to be unnecessary or repetitive.

He indicated that the Committee would also have to consider an A.W.G. proposal for the establishment of an aircraft registry contact group as a technical adjunct to the Committee (cf. § 146 *infra*). He was grateful to Mr Wool and his A.W.G. colleagues for having identified a number of important questions needing to be considered, in particular concerning the role of the registry (was it to be considered purely as an administrative body registering virtually everything presented to it, provided that it appeared to be in order, or rather as having the function of validating what was presented to it and thus having to satisfy itself, for example, that what was presented to it fell within the future Convention as a registrable interest?). While these issues were essentially technical in nature, they also therefore raised significant policy issues.

Mr Wool noted that his agreement with the Chairman to delete certain provisions of the preliminary draft Protocol had been predicated on the basis that the points covered would be taken up in the explanatory materials to be prepared in respect of that text.

9. – *The Chairman* introduced some of the principal changes he had made to the preliminary draft Convention (cf. Study LXXII - Doc. 39) (the text of the preliminary draft Convention as revised by the Chairman is reproduced for ease of reference in Appendix II to this report). It would also in due course be necessary to draw up a preamble but this was a matter only normally tackled at an advanced stage and probably only at the diplomatic Conference, when the shape of the future instrument was reasonably definite.

Referring to Article 1, he sympathised with those who found a list of definitions a rather intimidating way of commencing an international instrument but felt on balance that it was logically the best place to locate such definitions so as to ensure that a reader, looking at the substantive provisions of the future Convention for the first time, would already be aware that certain terms were used with defined meanings.

He had added somewhat to the already fairly long list of definitions set forth in the text of Article 1 established by the Study Group; he had done so in order to gather together in one place, as far as possible, those additional definitions relevant not just to one or two provisions but to a number thereof left strewn throughout the text of the preliminary draft Convention. For example, he noted that he had brought forward the definitions of "assignment" and "surety" from Articles 33 and 9(5) respectively.

He noted that he had also deleted that part of the definition of "associated rights" referring to "rights relating to ownership, possession, use or control of an object as defined in the Protocol" on the ground that this would extend associated rights into the international interest

itself. It had been inserted at the suggestion of the Space Working Group and could accordingly be reconsidered in the context of the preliminary draft Protocol on matters specific to space property under preparation.

He had inserted new definitions of "buyer," "contract of sale," "prospective sale" and "sale" to link up with the new Article 43 he had inserted (cf. *infra*).

He had introduced new definitions of "conditional buyer" and "conditional seller" in order to avoid the awkwardness of definitions within definitions that had previously characterised the definition of "title reservation agreement" and to permit easier finding.

In Article 1(m) he had completed the definition of "international interest" in order to make it clear that it had to be properly constituted.

The definition of "leasing agreement" had been amended, at the suggestion of Mr Wool, *inter alia* in order to bring it more into line with the text of Article 11 dealing with default remedies in the case of leasing agreements.

The words "whether or not upon the occurrence of an uncertain event" had been added, at the suggestion of Mr Wool, to the definitions of "prospective assignment" and "prospective international interest" in order to bring them into line with the definition of the new term "prospective sale."

The definition of "security agreement" had been amended by the moving of the term "security interest" to a separate definition so as once again to avoid the awkwardness created by definitions within definitions.

The definition of "unregistered interest" had been amended by the addition of the words "whether or not it is registrable under this Convention," at the suggestion of Mr Wool.

He had restored, in a second sentence to Article 2(3), a feature of an earlier draft which had mistakenly been thought to be rendered unnecessary by the first sentence of that paragraph.

In Article 2(4) he had introduced a rule, taken from the preliminary draft Protocol, designed to emphasise the autonomous character of the international interest and to ensure that rules of national law governing national interests were not superimposed upon an international interest under the future Convention so as to impose additional requirements (say, of a notarial character) regarding the creation, perfection and priority of such interests and thus interfere with the Convention's rules on these issues, which the Study Group had sought to make as comprehensive as possible.

In Article 3(2) he had essayed a definition of "mobile object," in which he had built on an earlier draft.

He had revised the drafting of Article 5 with a view to making its purpose and effect clearer.

In Article 8(d) he had added the words "but without the need to state a sum or maximum sum secured" in order to make it clear that it was not a requirement for the constitution of an international interest that a sum or maximum sum secured be stated.

In line with the preliminary draft Protocol, he had, by moving the former Article 9(2) to a new Article 15, made what was previously a rule limited in scope to the exercise of default remedies in the context of security agreements a rule applicable to the exercise of default remedies in the context of all international interests.

In Article 16(3)(a) he had added the words "or is physically controlled from" in square brackets in order to cover the special situation of space property. In Article 16(3)(b) he had added the location of the obligor as an alternative basis of jurisdiction, in square brackets, since it seemed unduly indulgent vis-à-vis the obligee to allow his location to establish jurisdiction. A further question to which the Committee would need to address its intention concerned whether the reference in Article 16(3)(c) to a jurisdiction agreement as a basis of jurisdiction was intended to be exclusive or not.

Article 17, dealing with jurisdiction in respect of all proceedings relating to the future Convention and not just interim relief under Article 16, had been transferred from the preliminary draft Protocol.

Chapter IIIbis concerning waivers of sovereign immunity had also been tentatively moved from the preliminary draft Protocol, although he suggested that it could perhaps be deleted altogether in that the rule which it embodied would seem to follow automatically under public international law.

Referring to Chapter IV, he indicated that Article 19(2) was a reformulation of the rule previously located in what had become Article 20. He also drew attention to Article 20, to which he had either transferred various provisions from the preliminary draft Protocol, in particular Article 20(5), or effected amendments inspired by the preliminary draft Protocol, for example in Article 20(6). In Article 20(4) he had altered the conjunction "and" linking the Protocol and the regulations, so as to allow for the matters in question to be prescribed directly in the regulations without the need for any provision in the Protocol. The square brackets placed around this entire Article by the Study Group reflected the feeling that it raised policy questions best left to be addressed by Governments. It would therefore be for Governments to decide *inter alia* who should be given responsibility for administering the International Registry and who responsibility for supervisory control thereof. This raised the question, debated within the Aircraft Protocol Group, as to whether these responsibilities should be exercised by one and the same body or whether, as proposed by the Study Group, they should be exercised by distinct bodies.

In relation to Chapter V, he indicated that he had transferred Article 23(2) from the preliminary draft Protocol. In Article 24 he had recast and simplified the corresponding Article (Article 21) of the text established by the Study Group. In Article 25 he had introduced an alternative rule on the question of the time during which a registration should remain effective, the effect of which was to allow the parties to select the period of registration. The addition to the second sentence of Article 27 had been taken from the preliminary draft Protocol. Article 29(1) and (2), dealing with the liability of the International Registry, had also been taken in a simplified form from the preliminary draft Protocol. Article 29(3) and (4) reformulated the wording of an earlier draft making the immunity of the International Registry subject to the terms of an agreement with the host State. He submitted that this Article merited a chapter of its own in that it was not concerned with modalities of registration.

In Chapter VI he drew attention to the words he had added onto Article 31(5) in square brackets; these had been taken from the preliminary draft Protocol. In Article 32(3) he had deleted the words "or other interest" to reflect the fact that Article 32(1) was confined to international interests.

He had introduced a new Article (Article 41) in Chapter VII, in the form of an abbreviated version of a provision that had originally featured in the preliminary draft Protocol, and a corresponding expansion of the title of that chapter to deal with concern expressed at the second session of the Aircraft Protocol Group, held in Geneva from 19 to 21 November 1997 and therefore after the final session of the Study Group, at the failure of the preliminary draft Convention to deal with the question of rights of subrogation. The complexities of the issues involved in rights of subrogation had persuaded him not to seek to draft a substantive rule but rather simply to indicate that nothing in the future Convention affected rights of subrogation created by law (that is, the future Convention only purported to deal with competing consensual transfers) (cf. Article 41(1)), while recognising the right of the holder of an interest arising by operation of legal subrogation and the holder of a competing interest to agree to vary the priority of their respective interests, that is, in those cases where they happened to know of one another's existence (cf. Article 41(2)).

In Article 34 he had made a new paragraph 3 out of the opening words ("[e]xcept as otherwise agreed by the obligor") of paragraph 2 as established by the Study Group at its final session.

He had placed Article 36(1)(c) in square brackets to signal the fact that the concept of actual knowledge seemed to be inconsistent with the concept of the integrity of the international registration rules under Article 31(2)(a) and (3).

He had amended Article 42(1) to reflect the fact that it was considered more fitting that the Protocol, rather than the Convention, should be the source of such declarations extending the latter's application to non-consensual rights and interests.

He had also introduced a new chapter (Chapter IX) and a new Article 43, extending the application of the future Convention and, in particular, the facilities of the international registration system, to outright transfers (as opposed to transfers under retention of title or security agreements), designed to accommodate the preliminary draft Protocol's extension of the Convention's terms to such transactions. He recalled that the Study Group had been unwilling simply to tack such transactions onto the transactions listed in Article 2(2) on the ground that outright transfers belonged to a different species of transaction from the others listed in that paragraph, all of which could be considered either security or quasi-security agreements.

He indicated that the Committee would be grateful to its experts on public and private international law for their guidance as to the most appropriate approach to be followed in Chapter X (Relationship with other Conventions). He noted that the practice had developed in the drafting of international Conventions of including a provision stating that the Convention concerned would not affect other Conventions in the same field, whether concluded prior or subsequent to that Convention. This meant that it only needed two such Conventions each deferring to the other for an impasse to arise.

He explained that the Final Provisions included in the preliminary draft Convention in no way purported to represent the full complement of final provisions traditionally found in international Conventions: this was a task traditionally reserved for the diplomatic plenipotentiaries attending the diplomatic Conference. The final provisions drafted to date dealt only with specific issues that had arisen during the Study Group's consideration of the substantive rules of the preliminary draft Convention, such as the relationship between the future Convention and a given Protocol (Article T was designed to make it clear that the former could never operate in respect of a particular category of equipment until a Protocol was in place and

had entered into force in respect of that category of equipment and that the Convention could only operate at such time subject to the terms of the Protocol). Both Article W and Article Z had been transferred from the preliminary draft Protocol. Articles W and Y he had again amended to reflect the fact that it was considered that the Protocol rather than the Convention was the relevant source for such declarations.

10. – In introducing the preliminary draft Protocol (cf. Study LXXIID - Doc. 2) (the text of the preliminary draft Protocol as revised by the Chairman is reproduced for ease of reference in Appendix III to this report), *.Mr Wool,* as Chairman of the Aircraft Protocol Group, emphasised how every effort had been made by that group to minimise the changes made to the structure of the preliminary draft Convention. The definitions, for instance, essentially dealt with technical issues specific to aircraft, aircraft engines, helicopters, the Chicago Convention on International Civil Aviation and the Geneva Convention on the International Recognition of Rights in Aircraft. The substantive provisions of the preliminary draft Protocol built on issues treated by the preliminary draft Convention, for instance, providing additional connecting factors and extending its application to cover outright sales. The reasons why it had been decided to extend the preliminary draft Convention's application to sales were two in number. First, it tended to be normal aircraft practice throughout the world to register such transfers and most legal systems that did not provide for the registration of transfers generally did make provision for the registration of such transfers in the context of aircraft. Secondly, the inadequacy of the *lex rei sitae* rule applied just as much to the sale of mobile assets as it did to the taking of security over such assets. A number of elective provisions (on insolvency, choice of law and certain procedural matters, including deregistration of aircraft) designed to facilitate asset-based financing had been added. These provisions raised fundamental policy questions as reflected in the possibility given to States to make a reservation in this regard (cf. Article XXV). He noted that the benefits of the future international regimen in relation to aircraft equipment as identified in the Economic Impact Assessment study commissioned by I.A.T.A. and A.W.G. on behalf of the Aircraft Protocol Group were seen as being very closely tied to these elective provisions. The priority rules of the preliminary draft Convention had been slightly modified in order to reflect the fact that outright sales could be registered under the preliminary draft Protocol whereas they could not be registered under the preliminary draft Convention. Other provisions were designed to strengthen the principle of freedom of contract in the context of aircraft financing, on the basis of the very high degree of commercial sophistication of the parties. One half of the preliminary draft Protocol was designed to supplement the registration provisions of the preliminary draft Convention. A number of these provisions had been transferred to the latter as part of the Chairman's revision. The preliminary draft Protocol also contained provisions dealing with its relationship with a number of existing Conventions. The Final Provisions prepared to the preliminary draft Protocol reflected the opinion of the Aircraft Protocol Group on a number of principles which it had felt to be important in the overall context of the future Protocol but had been set out in an addendum thereto in deference to the fact that this was a task normally reserved for diplomatic plenipotentiaries at a moment when the shape of the substantive rules was at a more definitive stage.

He noted that he had worked with the Chairman on an informal basis in streamlining the preliminary draft Protocol. A fair amount of detail had as a result been deleted. His co-operation in this process had been given on the basis that, in the interests of achieving the measure of commercial predictability necessary to guarantee the realisation of the economic objectives of the exercise, this detail would be taken up in commentaries on the future international instruments. He accordingly proposed the deletion of Article III with its idea of a separate interpretative note for the future Protocol in exchange for the insertion of a provision in Article 7 of the preliminary draft Convention enjoining that regard should be had to such commentaries (cf. § 24 *infra*). He further proposed that responsibility for the preparation of concise commentaries on an Article-by-Article basis be attributed to the Committee, in the first place with a view to filling the gaps

that had been opened up by the Chairman's revision. He believed that to attribute responsibility for preparing these commentaries to the Committee could only enhance their ultimate persuasive authority, while not going to the extreme length of requiring its adoption by States at the future diplomatic Conference.

Decisions taken by the Committee regarding the preliminary draft Convention (Study LXXII - Doc. 39)

Re preliminary issues

Headings for Articles and Chapters

11. – While taking note of the negative balance of experience concerning the use of Article headings and titles, both in international Conventions and national legislation (it was noted in particular that, for such headings and titles to be properly didactic, they tended to need to be long, giving practising lawyers overmuch scope to interpret such headings and titles by reference to the content of individual provisions, whereas short headings and titles tended to be more misleading than helpful), it was nevertheless agreed that, in view of their potential didactic value, a trial should at some stage in the future be made to draft headings for Articles and Chapters of the preliminary draft Convention, along the lines of those used in the preliminary draft Protocol, even if ultimately it might well be judged undesirable to include them in the final texts.

Re Article 1

12. – The Committee agreed, for reasons of presentation, to delete the individual numbering given to each definition appearing in Article 1 of the preliminary draft Convention. For the same reasons, it was agreed that these definitions should be listed in the French text by alphabetical order, as in the English text.

13. – The Committee agreed to delete the word "précis" in the French text of the chapeau of Article 1 so as not to give the impression that the French text was saying something more than the English text, which had no equivalent for the word "précis".

14. – The Committee agreed that an attempt should be made to find an alternative word for "contrat" in the French text of Article 1(a), (d) and (j), to distinguish it more as a defined term.

15. – The Committee agreed, in Article 1(c) of the preliminary draft Convention (definition of "assignment"), to replace the term "an outright transfer by agreement" in English and the term "un transfert simple" in French by the terms "a consensual transfer" and "un transfert contractuel" respectively, since the term "agreement" was a defined term and in order to bring the French text more into line with the English text. The term "outright" was deleted in so far as the future Convention contemplated not only outright but also partial assignments (cf. Article 33).

16. – The Committee agreed to insert the words "by the obligor" after the word "performance" in Article 1(d) (definition of "associated rights").

17. – In Article 1(j) (definition of "contract of sale") the Committee made two amendments to reflect the fact that the term "agreement" was a defined term. First, it agreed in the English text to replace the words "an agreement" by the words "a contract". In the French text it was recalled that an attempt was to be made to find an alternative word for "contrat" (cf. §

14 *supra, sub* Article 1(a), (d) and (j)). Secondly, it agreed that the defined term "agreement" should replace the term "title reservation agreement".

18. – The Committee agreed to introduce a definition of the term "International Registry", indicating that this term referred to the international registry referred to in Article 19(3).

19. – The Committee agreed to delete the word "mobile" in Article 1(o) on the ground that it could be seen as importing an additional requirement of actual movement into the conditions for the application of the future Convention, especially when considered in the context of Article 3(2), whereas, subject to the wholly domestic transaction exception contained in Article U, the Convention's sphere of application *ratione materiae* was essentially intended to be delimited by reference to the categories of object listed in Article 3(1) as such, regardless of whether there was any actual movement across national frontiers or beyond national jurisdiction in a given case. The typically mobile character of each of these categories of object was felt to be sufficiently brought out by the employment of the term "mobile equipment" in Article 2.

Re Article 2

20. – With a view to aligning the French text of Article 2(1) with the English text, that part of the French text which previously read "La présente Convention *institue* une garantie internationale..." was amended so as to read "La présente Convention *institue un régime pour la constitution et les effets d'*une garantie internationale.."

21. – It was agreed that a clearer solution than that offered by the Chairman's proposed new Article 2(4) would be either to reformulate the rule in question so as to read "Rules of law otherwise applicable to an agreement shall not apply in respect of the creation, perfection or priority of an international interest" and to move it to become a new paragraph of Article 7 immediately after the gap-filling provision contained in Article 7(2) of the text established by the Study Group or to introduce separate new paragraphs in Article 8 and the other relevant Articles indicating that Contracting States should not impose any additional requirements to those laid down in the future Convention regarding the constitution, perfection and priority of an international interest.

Re Article 3

22. – In line with the decision noted *supra* in respect of Article 1(o), it was agreed to delete the word "mobile" in Article 3(1) (cf. § 19 *supra*). It was further agreed to amend Article 3(1)(i) so as to read "other categories of uniquely identifiable object." Again in line with the decision already noted in respect of Article 1(o), it was finally agreed to delete Article 3(2) as a whole.

Re Article 6

23. – It was noted that the effect of Article 6, as drafted, was to permit derogation from Article 37(2) whereas the intention of the Study Group had all along been to make the provisions of that Article mandatory. It was accordingly decided to modify the text of Article 37(1) by the addition of a new sub-paragraph (c), thus permitting the deletion of Article 37(2) as also of the reference thereto in Article 6 (cf. also *sub* Article 37(1) and (2) *infra*).

Re Article 7

24. – It was agreed that, in line with the proposal made by Mr Wool (cf. § 10 *supra*), a new paragraph be provisionally inserted in Article 7, after paragraph 1, for the consideration of Governments, providing that, in the interpretation of the future Convention and Protocol, regard should be had to commentaries to be prepared on those texts. It was proposed, at the suggestion of Mr Wool, that responsibility for the preparation of these commentaries should be attributed to the Committee with a view to enhancing their persuasive authority (*idem*). It was noted that there were certain European precedents for such a provision (in particular, the Jenard and Lagarde Reports on the Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters and the Rome Convention on the Law Applicable to Contractual Obligations respectively, which, while not binding on courts, were regularly cited in proceedings and were in general likely to be followed), although the Study Group had stressed that such precedents all related to Conventions worked out between a relatively limited number of States linked by institutional ties (cf. Study LXXII - Doc. 27, §9).

25. – It was noted that such a provision would have the merit of avoiding a considerable amount of detail having to be carried in the text of the future Protocol on Aircraft Equipment. It was suggested that such commentaries might be seen as simplifying access to the kind of information which would otherwise have to be sought through the length and breadth of the *travaux préparatoires* of the future instruments. Mindful, though, of the fact that the Study Group had regularly turned down proposals for regard to be had to such commentaries where these would have had the effect of requiring their adoption by States at the same time as the future international instruments, on the ground that this could mean multiplying by as much as six times the amount of time that would be needed to secure agreement at intergovernmental level (*idem*), the Committee agreed that there could be no question of the content of such commentaries having to be adopted by Governments.

Re Article 8(b)

26. – It was agreed to replace the words "détient les droits nécessaires pour conclure ce contrat" in the French text of Article 8(b) by the words "a le pouvoir de conclure un tel contrat" so as to bring it into line with the English text.

Re Article 9(1)

27. – In the French text of Article 9(1) and elsewhere in the future Convention it was agreed to replace the term "recours" by the term "sanctions" or its singular form.

Re Article 9(2)

28. – It was agreed to reinstate the text of Article 9(2) as established by the Study Group on the ground that it would not be right to interfere with the substance of that provision as established by the Study Group. Article 15, amended so as to restore the text established by the Study Group, was accordingly reinstated as Article 9(2).

Re Article 9(5)

29. – It was agreed to replace the words "le terme "personnes intéressées" désigne" in the French text of Article 9(5) by the words "on entend par "personnes intéressées" " in the interest of bringing the French text more into line with the English text.

Re Article 10(1)

30. – It was agreed to insert the words "the chargee and" in Article 10(1) before the words "all the interested persons," in so far as, under Article 9(5), the term "interested persons" was not drafted to include the chargee and it was agreed that it should be necessary for both the chargee and the other interested parties to agree to strict foreclosure.

Re Article 10(2)

31. – It was suggested that consideration be given in due course to the question as to whether the words "correspond raisonnablement" in the French text of Article 10(2) could not be improved upon, for example by replacing the phrase "que si le montant des obligations garanties qui seront réglées par cette attribution correspond raisonnablement à la valeur du bien" by something along the lines of "que s'il existe entre le montant....et la valeur du bien une proportion raisonnable".

Re Article 11

32. – It was agreed to insert the word "the" before the word "lessor" in the two places in which it appeared in Article 11 so as to make it clear that the term "conditional" did not also qualify the term "lessor".

Re Article 12(1)

33. – It was agreed, in the interest of clarity, to replace the word "any" appearing before the words "kind of default" in the English text of Article 12(1) by the word "the" and in the same provision to replace the words "as giving rise" by the words "that will give rise".

34. – In the French text of Article 12(1) the word "autre" appearing after the word "tout" and before the words "cas d'inexécution" was deleted in order to bring the French text into line with the English text.

Re Article 12(2)

35. – In the French text of Article 12(2) it was agreed to amend the opening phrase ("Sans préjudice des dispositions visées au paragraphe précédent") so as to read "En l'absence d'une telle stipulation" in order to bring it into line with the English text.

Re Article 14

36. – It was confirmed that the reference to additional remedies permitted under the applicable law in Article 14 would also cover additional remedies permitted under other international Conventions, such as the 1948 Geneva Convention on the International Recognition of Rights in Aircraft, that is, in cases where the applicable law was that of a Contracting State to such a Convention. It was agreed that it would be necessary in due course to amend Article 14 so as to preserve the exercise of those additional remedies permitted under other international Conventions that would otherwise be excluded as being inconsistent with mandatory provisions of Chapter III of the future Convention, on the ground that, if such remedies were provided under international Conventions, then it was legitimate to assume at the international level that they did not offend against public policy.

37. – It was further agreed that an attempt should be made in due course to clarify the reference in Article 14 to the "applicable law," since, as it stood, it could be argued not to make very much sense in that, in so far as the international interest was a creation of the future Convention, no additional remedies could obviously exist in respect of that interest under

national law. The idea to be captured by the clarification was that, where an international interest also constituted an interest under national law, as in most cases it would, then nothing in the Convention was to preclude the parties from exercising the remedies permitted by the applicable law in relation to that national interest in addition to those remedies they were entitled to exercise in relation to that interest *qua* international interest.

Re Article 15

38. – Cf. *sub* Article 9(2) *supra*.

Re Article 16(1)

39. – It was agreed that attention would in due course need to be given to the removal of a potential ambiguity in the wording of Article 16(1). This concerned the different meanings that might be given to the words "one or more of". The intention of the Study Group had not thereby been to give Contracting States the possibility to restrict the power of their courts to make *only one or more* of the different kinds of order set forth in sub-paragraphs (a)-(e) of that provision but rather to ensure that in every Contracting State the courts had power to make orders of *any of those kinds*. The intention had been that, provided that a Contracting State did not make a declaration under Article Y and the parties did not decide to opt out of this provision, the choice of order should be determined by the cause of action pleaded by the chargee. It was agreed that it would not be a suitable solution simply to remove the words that were at the origin of this ambiguity, as this would produce the absurd result that a court might be argued to have to apply all the aforementioned orders cumulatively.

40. – In the French text of Article 16(1) it was agreed to replace the term "ordonnance," which had a very precise meaning known only in certain countries, by the term "mesure," which was a more neutral term and moreover the one used in the majority of international instruments concerned with the unification of the law of procedure.

Re Article 16(3)

41. – A number of questions relating to Article 16(3) were referred to Governments as policy questions (cf. §§ 118-123 *infra*). In addition, the Committee agreed that the reference to "the obligor" in Article 16(3)(b) should be one to "the defendant". The alternative of the defendant's location had been added to avoid a situation where, failing agreement by the parties, it would be possible for the plaintiff's location to determine jurisdiction: the general tenor of Conventions on jurisdiction was to favour the defendant's and not the plaintiff's location as founding jurisdiction in cases where the parties were not able to agree.

Re Article 16(4)

42. – It was agreed by the Committee that the reference in Article 16(4) to Article 16(1) should be replaced by one to Article 16(3) in that Article 16(1) was not concerned with the attribution of jurisdiction but rather with the interim relief measures that could be ordered by the court where there was *prima facie* evidence of default by the obligor.

Re Article 17(1)

43. – The Committee agreed to delete the term "general" referring to jurisdiction in Article 17(1). It was found to be misleading and capable of leading to litigation in that what was contemplated was only general jurisdiction *in proceedings arising under the future Convention*: it was submitted that a more accurate rendering of the drafters' intentions would be to replace the words "has general jurisdiction in other proceedings relating to this Convention" by the words "has jurisdiction in all other proceedings relating to this Convention." It was noted, moreover, that the effect of Article 17(1) as thus amended would be to go against the current international trend by providing for a *forum arresti*, a jurisdiction known only to a very small number of States and one which had been widely criticised as exorbitant, on the ground that it had a very specific link with only one aspect of the dispute, usually only an order, for instance a seizure of an asset.

Re Article 17(2)

44. – It was agreed by the Committee that Article 17(2), requiring a reasonable connection to a transaction beyond the agreement of the parties, should be deleted, first, as being potentially prejudicial to the future Convention's objective of giving the parties the maximum degree of certainty and predictability, in this case as regards the grounds of jurisdiction to be applied in respect of proceedings brought under the future Convention, secondly, given that the existence of such a link was automatically implied once States had agreed to make provision for a particular ground of jurisdiction in an international Convention and then gone on to adopt that Convention and, thirdly, in that it would be extremely unusual to see public policy applied in relation to grounds of jurisdiction. It was submitted that the concern addressed by this provision could in any case be covered under Article Y, which would ensure that the twin factors of certainty and predictability were safeguarded.

Re Article 18

45. – The Committee agreed to delete Article 18. It failed to see why this provision, transferred to the text of the preliminary draft Convention from the preliminary draft Protocol, was necessary in so far as, once a sovereign State waived immunity from jurisdiction, such a waiver would be binding under general principles of customary international law. Moreover, there would be a strong argument in national jurisdiction that any issue arising on this score under the future Convention would fall within the commercial exception to sovereign immunity, in any case. Given, however, the importance attached to such a provision in aviation circles, concerned lest certain airlines (more than half the world's airlines were Government-owned and a significant proportion of these did not have corporate status) might seek to plead sovereign immunity *on the basis of national law*, it was agreed to reinstate the provision in the preliminary draft Protocol, on the understanding, though, that it would be necessary in due course to reformulate the provision, say, in two sentences, so as to reflect more clearly the fact that, under most national laws of sovereign immunity, a waiver of jurisdictional immunity and a waiver of enforcement immunity were two different things.

Re Article 19(2)

46. – The Committee confirmed that it was contemplated that there could be separate Registries for each of the different categories of equipment to be covered by the future Convention (cf. Article 19(3)) and that each such Registry would have its own international legal personality. It was agreed that, in view of its new form, this provision should be presented in square brackets.

Re Article 20(1)

47. – It was agreed that the footnote to Article 20(1) should reproduce the text of Alternative A of Article XVII(1) of the preliminary draft Protocol, offering an unitary International Registry Authority for aircraft equipment as an alternative to the binary approach, involving the splitting up of the functions of Intergovernmental Regulator and International Registry between two distinct bodies, reflected in Article 20(1). This would, it was agreed, alert Governments to the policy question raised thereby (cf. § 128 *infra*).

Re Article 20(4)

48. – It was agreed that the words "[s]ubject to paragraph 5" should be deleted as being inappropriate. It was further agreed to replace the concluding words of this provision ("...in regulations ("the Regulations") from time to time made by the Intergovernmental Regulator as provided by paragraph 7 and Articles 21, 22 and 25-28") by the words "from time to time in the regulations" and by making "regulations" a defined term in Article 1. It was agreed that the reference to Articles 21, 22 and 25-28 was inappropriate in that it gave an inadequate idea of the range of issues to be covered in the regulations.

Re Article 24

49. – It was agreed that it would not be appropriate further to amend Article 24, already considerably recast from the form in which it had been agreed by the Study Group, in such a way as to abolish the distinction drawn in Article 24(1) between the registration of international interests that were security interests, of prospective international interests and of assignments and prospective assignments of international interests, on the one hand, and the registration of international interests arising under title reservation and leasing agreements, on the other. The Study Group had always worked on the basis that the written consent of the debtor to registration should only be required in respect of the registration of a security interest and that it would not be appropriate to seek to impose an analogous requirement on a conditional seller or a lessor who was owner of the asset. It was accordingly agreed that any change on this point should be a matter for Governments to consider (cf. § 131 *infra*).

Re Article 29

50. – It was agreed that this Article should be presented inside square brackets in order to highlight its provisional nature. It was further agreed that it should be the subject of a separate Chapter, to be entitled "Liabilities and immunities of the International Registry", given that it treated of matters that were quite distinct from those ("Modalities of registration") dealt with in Chapter V. It was suggested that it should be divided into two separate Articles, to reflect the fact that paragraphs 1 and 2 dealt with liability rules for errors and omissions while paragraphs 3 and 4 dealt with the immunities to be enjoyed by the International Registry, typically under an agreement to be concluded with the host State. It was finally agreed that it would be in line with customary international practice regarding immunity for the immunities conferred upon institutions under Article 29(3) to be clearly indicated to include the staff of those institutions. It was noted that it would be for the host State Agreement to spell out which staff were to be covered by such immunity.

Re Article 32(1)

51. – It was confirmed that the rule in Article 32(1) was not intended to interfere with any special rules of bankruptcy law, for example regarding the avoidance of preferences.

Re Article 32(2)

52. – It was agreed that the definition of "trustee in bankruptcy" in Article 32(2) should be extended also to cover Article 40.

Re Article 32 (3)

53. – It was confirmed that the purpose of Article 32(3) was to make it clear that Article 32(1) was a validating and not an invalidating provision, that is, the requirements of bankruptcy law could be met either by compliance with Article 32(1) or by reliance on the applicable law. Thus, in addition to any ground on which an international interest might be upheld as valid under national law, it would be valid under the future Convention where it met the requirements of Article 32(1). Article 32(3) was by extension designed to avoid Article 32(1) being construed as meaning that an international interest was valid against the trustee in bankruptcy of the obligor *only if* it was registered in conformity with the future Convention prior to the commencement of the bankruptcy.

54. – It was agreed that it was not necessary to qualify the reference to "the applicable law" in Article 32(3): this reference would in most cases mean the domestic bankruptcy law rules of the bankruptcy court but in certain cases could also mean the bankruptcy law rules of another State by virtue of the operation of the rules of private international law.

Re Article 33(2)(a)

55. – Cf. § 136 *infra.*

Re Article 34(1)(b)

56. – Cf. § 134 *infra.*

Re Article 34(2)

57. – Cf. § 137 *infra.*

Re Article 34(2) and (3)

58. – It was agreed that the words "[s]ubject to paragraph 3" should be added at the beginning of Article 34(2) in order to make it clear that the rule set out in that paragraph was subject to the parties' freedom of contract.

Re Article 36(1)(c)

59. – Cf. § 138 *infra.*

Re Article 37(1) and (2)

60. – It was noted that the effect of Article 6, as drafted, was to permit derogation from Article 37(2), whereas the intention of the Study Group had been that Article 37(2) was to be mandatory. In order to correct this unintended error, it was decided to modify Article 37(1) by the addition of a new sub-paragraph (c) to read "to the holder of the international interest were references to the holder of the assignment; and" with the existing sub-paragraph (c) being

consequently renumbered sub-paragraph (d), thus permitting the wholesale deletion of Article 37(2), in so far as the new Article 37(1)(c) taken in conjunction with Article 37(1)(b) would be sufficient to extend the mandatory character of the duty incumbent on the chargee under Article 9(4) to an assignee in an analogous situation (cf. also *sub* Article 6 *supra*).

Re Article 39(d)

61. – It was agreed that it would be more appropriate for the contents of paragraph (d) to be integrated in the text of Article 39 rather than being listed with the three *alternatives* set out in paragraphs (a)-(c) in that paragraph (d) contained an *additional* requirement to those set out in paragraphs (a)-(c).

Re Article 40 (cf. also *sub* Article 32(2))

62. – It was agreed that a provision corresponding to Article 32(3) should be added to Article 40 as a new paragraph 2.

Re Article 41

63. – It was agreed that Article 41 should be presented in square brackets and that in Article 41(1) the words "an interest in the object" should be replaced by the words "rights or interests" in order to reflect the fact that subrogation might result in the right to receive payment.

64. – It was further agreed that the French text of Article 41(1) should be brought into line with the English text by using the term "subrogation légale" (to correspond to the term "legal subrogation" employed in the English text).

65. – It was explained that the reference to "the applicable law" in Article 41(1) was intended as a reference to the law applicable by virtue of the rules of private international law of the forum.

Re Article 42

66. – It was agreed that it would be more appropriate that the two paragraphs of Article 42 should be the subject of separate Articles. With reference to the proposal made by a member of the Unidroit Governing Council that the scope of the second of these paragraphs be extended to cover "Organisations of a public law character entitled to levy taxes and duties, in particular in respect of aircraft" (cf. Study LXXII - Doc. 40, p. 31), it was further agreed that it would not be appropriate so to expand its scope in that it was difficult to see how such Organisations, for instance Eurocontrol, could become Parties to the future Convention.

Re Chapter X

67. – It was agreed that, with only limited exceptions (the Unidroit Convention on International Financial Leasing and, possibly, also the Unidroit Convention on International Factoring) the non-equipment-specific nature of which argued in favour of the relationship between the future Convention and those Conventions being regulated in Chapter X, the relationship of the future Convention to other Conventions was a matter that would best be dealt with on an equipment-specific basis in the relevant Protocol, as it might otherwise prove impossibly difficult to identify all the Conventions that might be potentially relevant. (Cf. also *sub* Article XXIV of the preliminary draft Protocol, *infra.)*

Re Article T

68. – It was agreed to make the wording of Article T reflect more accurately the intention of its drafters in a number of ways. First, it was agreed to reintroduce the words "subject to the terms of that Protocol" in paragraph (b) to make it clear that it should be possible for Protocols to vary and not merely to supplement the future Convention and thus, in cases where there might be a conflict between the latter and a Protocol, that the latter should be the controlling instrument.

69. – Secondly, à propos of Article T(a), it was agreed that it was inaccurate to refer to an international instrument that had once "entered into force" then "entering into force" afresh for a particular category of equipment. It was agreed that it would be more accurate to distinguish more clearly the two processes involved in the case of the future Convention and each of the Protocols thereto, namely the Convention's *entry into force*, pursuant to the depositing of the requisite number of instruments of ratification of, or accession to that Convention, and its *application* as regards a particular category of equipment, pursuant to the depositing of the requisite number of instruments of ratification of, or accession to the Protocol covering that category. It was agreed that the future Convention should enter into force pursuant to the depositing of the necessary number of ratifications and accessions but should only apply in relation to any category of equipment as from the moment of the entry into force of the first Protocol to be adopted. It was noted that the procedure to be complied with for the future Convention to enter into force for categories of equipment other than that covered by such a first Protocol would be not unlike the process whereby a Party to an international instrument extended the application of that instrument to other territories of that State, that is, the sphere of application of the Convention would be progressively extended to other categories as the relevant Protocols entered into force.

Re Article V

70. – The Committee considered possible fast-track procedures for the adoption of post-diplomatic Conference Protocols, review procedures for the future Convention and Protocols and amendment procedures for the future Convention and Protocols, on the basis of a discussion paper prepared, at the invitation of the Chairman, by Ms Chinkin and Ms Kessedjian (S.R.C. Misc. 3). Ms Kessedjian was able to reflect in this paper the specialist practical experience acquired over the years by the Hague Conference on Private International Law in the matter of review conferences. By way of explanation of the way in which the authoresses of this paper had proposed what might appear radical departures from the traditional procedures employed for these purposes, it was noted that the paper had in this fashion sought to reflect certain distinctive features of the exercise.

71. – As regarded the suggestion made in the discussion paper for a fast-track procedure to bring post-diplomatic Conference Protocols to adoption, the fear was voiced that with the strategically important assets contemplated by the future Convention, Governments might be reluctant to abandon altogether the idea of separate diplomatic Conferences for each Protocol, all the more so once they had taken a decision that the subject-matter justified the effort of drawing up a Protocol in the first place, since this would indicate that they considered that the financial implications were important. It would not perhaps be prudent in a project where Governments were already being called upon to accept major substantive innovations to their legal systems to expect them also to stomach major procedural innovations in the method whereby these substantive innovations were to be brought into force. It was agreed that the

traditional procedure involving diplomatic Conferences should therefore be considered alongside the more radical alternative procedure proposed in the discussion paper. With regard to the role in the final approval of post-diplomatic Conference Protocols which the discussion paper proposed conferring upon the Unidroit Governing Council, it was pointed out that the vocation of the Unidroit General Assembly as the ultimate decision-making organ of that Organisation bringing together all its member Governments might perhaps make it a more appropriate body upon which to bestow such a power of final approval.

72. – Concerning the review procedure proposed in the discussion paper, it was noted that this was more in line with traditional thinking in that it was general practice to provide for review conferences. It was agreed that the complex structure of the new international regimen, made up as it was of a base Convention and an expanding number of Protocols, made provision for a continuing review procedure essential if due account were to be taken of the overall situation evolving in the wake of the successive modifications that would be introduced through the different Protocols. Such a review procedure would, in this sense, constitute a means for ensuring the ongoing life of the future Convention. It was recognised, moreover, that there was a case for a review procedure not only in respect of the overall Convention/ Protocol structure but also on an equipment-specific basis. It was accordingly agreed that consideration of a review procedure in the overall context of the future Convention need not prejudice consideration of the Review Board and the Conference of Contracting States, proposed under Article Z, in the particular context of aircraft equipment. It was noted that a review board could be an useful tool for the preparation of review conferences.

73. – In relation to the fast-track procedures for amendments to the future Convention and Protocols suggested in the discussion paper, it was noted that opt-out procedures were practised in respect of only very specific types of provision. In I.C.A.O., for instance, this was accepted practice only for annexed provisions and not for provisions of a Convention. It was considered doubtful whether States would be prepared to forego the right to participate directly in the adoption of amendments. Doubts were also entertained as to their willingness to contemplate amendments to the future international regimen being effected by means of adjustment procedures normally only used for accessory matters, for example to adjust figures for inflation. Regarding the procedure to be followed for the making of amendments to the future Convention in particular, it was agreed that allowance would need to be made for the point of view of appropriate representatives of the different sectors concerned by the different Protocols, in view of the controlling role which it was anticipated that the Protocols would have in relation to the future Convention. It was noted that one way of ensuring that an amendment to the Convention did not adversely affect such sectoral interests would be to delay its entry into force until representatives of the particular sector or sectors had had the opportunity to amend the relevant Protocol or Protocols in such a way that their interests were not prejudiced.

74. – The Committee agreed that the discussion paper should be revised, in the light of its comments, prior and with a view to its transmission to Governments. This revision should in particular take account of the controlling role that future Protocols were intended to have in relation to the future Convention and seek to reflect all the relevant alternative solutions. It was suggested that the paper also take greater account of the unique role being played in the development of the future international regimen by representatives of the private sector, namely I.A.T.A. and A.W.G., although there was at the same time recognition of the need to balance such a move against the additional strains that this might place on traditional notions of public international law. It was agreed that any comments which members of the Committee might have on specific technical aspects of the discussion paper should be communicated to the Unidroit Secretariat as soon as possible for forwarding to Ms Chinkin and Ms Kessedjian.

75. – Prior to its transmission to Governments, the revised discussion paper should be circulated by the Unidroit Secretariat amongst all members of the Committee for comment with a view to ensuring that the final version of the paper reflected agreement amongst all the members thereof. It was agreed that, at such time as the paper was ready for transmission to Governments, it should be explained that the Committee had considered its preparation advisable so as to focus the attention of Governments on the issues involved sufficiently early in the preparation of draft international instruments but that it was submitted purely as a basis for discussion, in the event that Governments might feel the desire to depart from the traditional procedures employed for the adoption of Protocols, the review of international instruments and the amending of the same. It was acknowledged that it would be important to avoid giving the impression that the Committee was suggesting that Governments should make such a departure.

Re Article W

76. – Cf. § 125 *infra*.

Re Article Z

77. – The procedure proposed under Article Z, a provision which had been transferred from the preliminary draft Protocol, was criticised from the point of view of its acceptability to Governments on the ground that the administrative structure that it provided for was unduly complex, cumbersome and financially onerous (establishment of a five-member review board; preparation of annual reports by this board) and for its failure to provide any specific role for Unidroit, the Secretariat of which, as the Organisation responsible for the development of the Convention, might generally be expected to be entrusted with responsibility for any revision procedure regarding that instrument. It was submitted that, should such responsibility be attributed to Unidroit, the Secretariat of that Organisation should be left relatively free to organise such a revision procedure as it best saw fit, albeit subject to certain guiding principles that might be given by Contracting States.

78. – It was agreed that it would accordingly be better for the provisions of Article Z to be deleted from the preliminary draft Convention. It was noted that the review procedure contemplated under Article V (cf. § 72 *supra*) would inevitably be relevant in further consideration of Article Z. On this understanding, it was agreed that, for the time being, it would be appropriate for the provisions of Article Z, conceived after all as equipment-specific, to be reinstated in the preliminary draft Protocol in the form in which they had been drafted prior to their movement to the preliminary draft Convention. It was noted that an alternative condition for the convening of Conferences of Contracting States might usefully be added to that for which provision was already made in Article Z(2), the effect of which would be to enable Unidroit and I.C.A.O. jointly to decide on the convening of such a conference. It was further noted that it would be useful for the provisions of Article Z(2) to be completed by a sub-paragraph (e) providing for the making of the amendments contemplated in sub paragraph (d). It was agreed that in the run-up to the first session of governmental experts members of the Committee might usefully give consideration to the most suitable means of financing the type of equipment-specific review board envisaged by Article Z. Any proposals in this regard should be forwarded to the Unidroit Secretariat with a view to facilitating governmental experts' consideration of this proposal.

Decisions taken by the Committee regarding the preliminary draft Protocol (Study LXIID - Doc. 2)

General remarks

79. – It was agreed that the amendments to the French text of the preliminary draft Convention agreed upon by the Committee should, where appropriate, be carried over to the French text of the preliminary draft Protocol.

80. – It was noted that the Aircraft Protocol Group had worked in English only and that the French text of the preliminary draft Protocol which it had transmitted to Unidroit had not been considered by that group, having been prepared after completion of the English text. The Unidroit Secretariat had detected a considerable number of inconsistencies between this French text and the French text of the preliminary draft Convention established by the Study Group and, whilst every effort had been made to bring the French text of the preliminary draft Protocol into line with the French text of the preliminary draft Convention, there could be no doubt that much work remained to be done.

Re the preamble

81. – It was agreed that the fifth clause of the preamble should be amended so as, first, to replace the word "desirable" by the word "necessary", secondly, to replace the term "modify" by the term "implement" and, thirdly, to delete the reference to Article T of the preliminary draft Convention. It was noted that the term "modify" was normally used in respect of a Protocol which modified an existing Convention, whereas in this case the intention was that the future Convention and Protocol would in effect enter into force simultaneously. It was further noted that Article T dealt with the question of the future Convention's entry into force rather than with the basis of the future Protocol's implementation of the future Convention. In this context attention was drawn to the importance of the amendment proposed to Article T(b) in filling what would otherwise be a lacuna in the preliminary draft Convention, namely the absence of a provision affirming the possibility that its substantive rules were subject to implementation in respect of a particular category of equipment by the terms of a Protocol.

Re Article I

82. – In line with the decision taken in respect of Article 1 of the preliminary draft Convention, the Committee agreed, for reasons of presentation, to delete the individual numbering given to each definition appearing in Article I(2). For the same reasons, it was agreed that these definitions should be listed in the French text by alphabetical order, as in the English text.

83. – In Article I(2)(f) it was agreed to delete the second reference to "Chicago" and to replace the words "or any successor or superseding international agreement governing the nationality of aircraft" by the words "as amended". It was noted that there was no successor or superseding agreement regarding the Chicago Convention on International Civil Aviation, which was regarded as the basic instrument governing this subject, although there were a number of amendments thereto. It was further noted that, while there was one Article in the Chicago Convention which provided that every aircraft had the nationality of the State where it was registered, it was not that Convention so much as the fact of entering an aircraft on a national register which *governed* the nationality of an aircraft.

84. – In Article I(2)(g) it was agreed to delete the reference to a "non-national register". It was noted that, while there were some joint registers, for instance, in States members of the Commonwealth of Independent States, these were all based on national registers and there were no non-national aircraft registers in operation.

85. – In the references to "Chicago Convention aircraft register" and "Chicago Convention registry authority" in Article I(2)(g) and (h) respectively, it was agreed to replace the term "Chicago Convention" by the term "national" to reflect the fact that the aircraft register in question was established by each country. This entailed consequential changes elsewhere in the preliminary draft Protocol, for instance, in Articles IV(1) and XIV(1) and (3). The reference to "national" aircraft registers was necessary in order to distinguish it from the envisaged international register.

86. – In the definition of "suretyship contract" in Article I(2)(u) the Committee agreed to add the words "for the obligations of the obligor under an agreement" after the word "surety". By way of explanation of the need for this definition, it was noted that the term "surety" was only employed in the preliminary draft Convention in the narrow sense of security given to the chargee, whereas in the preliminary draft Protocol it was used in a broader sense. In aircraft finance suretyship contracts were frequently granted to lessors and conditional sellers.

Re Article II

87. – It was agreed that Article XXVI should be brought forward to form a new second paragraph of Article II.

Re Article III

88. – In line with the Committee's provisional agreement to introduce a new Article 7(2) in the preliminary draft Convention (cf. §§ 10 and 24 *supra*), it was agreed to delete Article III and, consequently, also Article I(2)(p).

Re Article IV(2)

89. – It was agreed that the drafting of Article IV(2) would be improved by amending it to read: "Notwithstanding the provisions of Article U of the Convention, this Protocol shall apply to [a purely domestic transaction]".

Re Article VI(2)

90. – It was suggested that the rule stated in Article VI(2) was self-evident. It was explained that it was, on the other hand, needed to avoid the uncertainty that would otherwise affect outright transfers of aircraft equipment under application of the *lex rei sitae* rule.

Re Article VI(3)

91. – It was agreed to amend Article VI(3) to read: "A sale may be registered by either party to the contract of sale in the International Registry by or with the consent in writing of the other party". (However, cf. the decision taken by the Committee in respect of Article 24 of the preliminary draft Convention, § 49 *supra*.)

Re Article VII

92. – On the one hand, the question was raised as to whether this provision might not be considered appropriate for extension to the generality of equipment covered by the future Convention. It was pointed out that one member of the Study Group had pronounced himself to be in favour of such extension. On the other, the question was asked as to the need for such a rule, in that it dealt with a problem common to the law of agency in general. By way of

explanation of the need for this provision, it was pointed out that, while the use of trust and agency structures was a key feature of aircraft financing transactions, the law relating thereto varied from one country to another.

Re Article IX

93. – The question was raised as to whether the future Convention or Protocol was actually concerned with regulating suretyship contracts and, if not, whether the reference thereto in this provision was justified. In defence of this reference, it was noted that it reflected the desire of the representatives of a number of export credit agencies to see greater certainty in the matter of choice of law clauses in suretyship contracts.

Re Article X

94. – It was agreed that Article X(4) should be redrafted along the lines of the corresponding provision (Article XI(7)) of the preliminary draft Protocol as established by the Aircraft Protocol Group (Study LXXIID - Doc. 1) in the light of the decision to reinstate the text of Article 9(2) of the preliminary draft Convention as established by the Study Group (Study LXXII - Doc. 37) (cf. § 28 *supra).*

Re Article XV(1) et seq.

95. – The words "as if", as employed in Article XV(1) *et seq.*, were criticised for their hypothetical connotations. It was as a result agreed that they should be replaced by words which would make it clear that the idea to be conveyed was that provisions of the preliminary draft Convention were modified in certain ways. Thus, in Article XV(1) the words "as if paragraph 3 were omitted" were replaced by the words "with the omission of paragraph 3".

Re Article XX

96. – It was noted that the provisions of Article XXV(2) of the preliminary draft Protocol as established by the Aircraft Protocol Group (cf. Study LXXIID - Doc. 1), providing for the centralised functions of the International Registry to be operated on a 24-hour basis, had been inadvertently omitted in the course of the Chairman's revision of that text. It was consequently agreed to reinstate the provisions in question as a new paragraph 4 of Article XX.

97. – It was noted that the preliminary draft Convention made provision in various places for particular matters to be addressed in the relevant Protocol and/ or regulations. It was submitted that, in cases where the relevant Protocol was silent on these matters, there might be some doubt as to the authority for their treatment in the regulations. It was accordingly agreed to add a new paragraph 5 to Article XX specifying those provisions of the future Convention that would be the subject of regulations (namely, Articles 20(6) and (7), 21, 22, 25, 26(1) and (2), 27 and 28).

Re Article XXI(1)(b)

98. – It was agreed to replace the reference to "that Convention" in Article XXI(1)(b) by the words "the Geneva Convention" in order to avoid any ambiguity as to the Convention concerned: the Convention to which reference was made at the very end of Article XXI(1)(a) was the future Unidroit Convention. It was consequently further agreed to replace the reference to "the Geneva Convention" in line 2 of Article XXI(1)(b) by the words "that Convention".

Re Article XXII

99. – It was agreed that the reference in Article XXII to Article XXV(a) of the preliminary draft Protocol should instead be to Article X(2) of the preliminary draft Convention.

Re Articles XXII and XXIII

100. – It was agreed that the words "to the extent that that Convention is in force among them" in Articles XXII and XXIII were tautological and could accordingly be deleted. Likewise it was agreed that the words "for Contracting States which are parties to it" in Article XXIII were also tautological and could be deleted, in that if the States in question were not parties to the Unidroit Convention on International Financial Leasing then there could be no question of it applying.

Re Article XXIV

101. – As a general rule, it was agreed that it would not be advisable to permit Protocols, given their equipment-specific nature, to purport adversely to affect regional Conventions that were general in their subject-matter, for example, the 1980 Rome Convention on the Law Applicable to Contractual Obligations. It was noted that Governments that were already Parties to such regional instruments would otherwise find it very difficult to become Parties to such Protocols.

Re Chapter V

102. – It was agreed, for presentation purposes, to bring the Aircraft Protocol Group's proposals for Final Provisions, set out in an addendum to the preliminary draft Protocol, forward so that they feature ahead of the Form of irrevocable de-registration and export request authorisation, set out in an appendix to the preliminary draft Protocol.

103. – It was further agreed to reinstate in said Final Provisions, as the penultimate Article thereof and in the form in which it had appeared in the preliminary draft Protocol as established by the Aircraft Protocol Group, those provisions of the preliminary draft Protocol which had been transferred to Article Z of the preliminary draft Convention as part of the Chairman's revision.

104. – It was finally agreed to rearrange the Final Provisions in a more logical order, with the text of Article XXVII coming first, followed by the text of Article XXVIII, then Article XXIX, Article XXX, Article XXXI, Article XXV, that part of Article XXXII dealing with subsequent declarations, then Article XXXIII, that part of Article XXXII dealing with denunciations, the former contents of the Article which had been transferred to the preliminary draft Protocol as Article Z and, last of all, Article XXXIV.

Re Article XXV

105. – It was agreed that the reference in Article XXV to Article XII should instead be to Article XI.

Re Article XXVI

106. – It was agreed that Article XXVI should be moved forward to form a second paragraph of Article II (cf. *sub* Article II, *supra*).

Re Article XXXII(3)

107. – It was agreed that the second sentence of Article XXXII(3), referring to a provision of the preliminary draft Protocol which had been transferred to the preliminary draft Convention as part of the Chairman's revision, should be deleted.

Decision taken by the Committee regarding both the preliminary draft Convention and the preliminary draft Protocol

108. – It was agreed to authorise the Unidroit Secretariat to attend to any drafting refinements that might appear necessary in the light of the changes agreed to by the Committee.

Policy issues raised for the consideration of governmental experts by the Committee

109. – It was agreed by the Committee that a number of provisions should be forwarded to Governments inside square brackets in order to highlight the fact that these provisions involved policy questions that the Study Group did not regard itself as competent to settle. In addition, the Committee agreed to signal a number of important policy issues for particular consideration by Governments at the first session of governmental experts. These were as follows:

Structure of future international instruments

110. – As regards the structure of the future international instruments, it was agreed that the explanatory reports to be sent out to Governments in advance of the first session of governmental experts should contain a reasoned explanation as to why the Study Group had decided that the novel structure of a base Convention and equipment-specific Protocols was preferable to any of the more traditional alternatives canvassed, in particular that of separate equipment-specific Conventions discussed by the Governing Council at its 77th session. It was thought essential to recall that the key reason behind this decision had been concern in the long term to safeguard the benefits of uniformity for all the different categories of mobile equipment encompassed by the future Convention's sphere of application whilst in the short term accommodating the aviation industry's desire to enjoy the economic benefits of the Convention without any delay. Other industries had, however, also committed important resources to this project and it was becoming ever clearer that aircraft equipment was not necessarily perceived by all Governments as being the category of equipment they were most interested in.

111. – It was noted that the Protocol approach afforded Governments a considerable margin of flexibility in deciding which of the different categories of equipment encompassed by the Convention interested them most and thus to be able to adopt the Convention for one or more categories but not for others. In addition, it provided a novel solution to the problem of how best to accommodate the special features of each category of equipment, in particular with regard to the registration provisions of the future Convention, and to provide an appropriate definition of each such category, delimiting the type of asset, typically by either size or capacity, to be covered by the new international regimen. The expertise possessed by representatives of the relevant industry sector had been found to be absolutely essential for these purposes. On the other hand, the manufacturers, financiers and operators of categories of equipment other than aircraft equipment tended to differ enormously in their capacity to monitor these special needs in relation to the future Convention and were in any case considerably less well-organised and forward-looking than the aviation sector. It had accordingly quickly become clear that it would be impossible for the future Convention to include rules dealing with the special needs of each

category of equipment and providing all the necessary definitions without expecting the aviation sector to wait much longer than they were prepared to wait for the entry into force of the new international regimen for aircraft equipment. The Protocol approach accordingly provided an invaluable mechanism enabling representatives of each particular industry sector to indicate those provisions needed to accommodate their special features and to provide an appropriate definition of their particular category of equipment *at such time as they were ready to do so* but *without compromising the aviation sector's desire to see the Convention in operation as regards aircraft equipment as speedily as possible*. It was, moreover, noted by the Committee that other Protocols were expected to be less detailed than the preliminary draft Protocol on Matters specific to Aircraft Equipment and that, if the Protocol solution worked for aircraft equipment, then it was reasonable to anticipate that it would also work for such other Protocols.

112. – Going for a series of separate equipment-specific Conventions, on the other hand, risked jeopardising uniformity in the sense of that common ground of provisions which were not intended to be equipment-specific at all, as indeed compromising the very feasibility of achieving the goal of law reform in respect of those categories of equipment the manufacturers, operators and financiers of which might not be either as well-organised or as forward-looking at the present time as the aviation sector. Separate Conventions would moreover entail the considerable additional expenditure of separate diplomatic Conferences, whereas the Protocol approach contemplated a fast-track procedure for the adoption of subsequent draft Protocols (cf. Article V).

113. – The only alternative to the Protocol approach thought at all worthy of consideration by the Committee was that of a Convention with one Annex to start with, on aircraft equipment, and with others being added subsequently, like the 1944 Chicago Convention on International Civil Aviation, to which a whole series of Annexes were added in the decade following its adoption. In the case of such a path being followed, it was pointed out that it would be important to specify in the Convention the relationship between the Convention and its Annexes, in particular which States would be entitled to become Parties to future Annexes.

Compatibility of the power vested in a Protocol to vary any provision of the future Convention with the notion that certain provisions thereof are mandatory in character

114. – It was noted that one aspect of the Protocol approach that Governments might wish to consider concerned the extent to which the power vested in a Protocol to vary the future Convention in any way should be considered as contradicting the notion that certain provisions of the latter were mandatory in character, as provided in Article 6. It was suggested that this should be seen in the context of the Study Group's decision, especially as reflected in Article X(b) of the text established at the conclusion of its fourth session (cf. Study LXXII - Doc. 37), that the Protocol should be the controlling instrument. It had moreover always been the policy of Unidroit in authorising the preparation of preliminary draft Protocols to give every encouragement to the parties involved to keep any modifications to the future Convention regimen to be proposed thereunder to the absolute minimum necessary in order to adapt its terms to fit particular aspects of the financing of specific categories of equipment and to avoid any steps that might interfere with the fundamental fabric of the Convention; this policy would continue as indeed would the work of the Steering Committee instituted by the Study Group to vet the compatibility of future preliminary draft Protocols with the future Convention.

Authority to be given to commentaries on the future international instruments

115. – It was agreed that it would be for Governments to decide as to the appropriateness of the decision taken by the Committee provisionally to insert a provision in a

new paragraph 2 of Article 7 enjoining that regard should be had, in the interpretation of the future instruments, to commentaries to be prepared thereon as also its proposal that responsibility for the preparation of these commentaries be attributed to the Committee (cf. *sub* Article 7 *supra*).

Arbitral tribunals

116. – It was agreed that Governments would need to consider the types of "arbitral tribunal" to be treated as a "court" for the purposes of the definition of that defined term, in particular in the context of the attribution of jurisdiction under Articles 16(4) and 17(1). It was noted that it was not the intention of the Study Group that ordinary arbitral tribunals established by the parties should be caught by the term "court" and that the "arbitral tribunal established by a Contracting State" referred to in the definition of "court" appearing in Article 1(k) contemplated that kind of arbitral tribunal having lawful authority under national law to bind parties in the same manner as ordinary courts of law, in particular the arbitration courts of the Russian Federation, which handled commercial cases of the type envisaged under the future Convention and occupied an intermediate status between State courts, which mostly handled criminal cases, and ordinary arbitral tribunals. Where the term "arbitral tribunal" was used elsewhere in the future Convention (cf. Article 16(4)), on the other hand, what was intended was an ordinary arbitral tribunal established by the parties. The fear was expressed that this use of one term with two different meanings in the same instrument could prove misleading for those who would not normally refer to explanatory materials.

Duty to act in a commercially reasonable manner in the exercise of default remedies

117. – It was agreed that Governments might care to consider the case for generalising the rule obliging chargees under a secured obligation to act in a commercially reasonable manner in exercising the default remedies conferred upon them under the future Convention (cf. *sub* Article 9(2) *supra*) so as to apply to conditional sellers and lessors too, as proposed in the preliminary draft Protocol, although it was recalled that a similar proposal had encountered fierce opposition from leasing circles when floated within the Study Group on the ground that in jurisdictions where a lease would not be treated as a security agreement a lessor would expect to be able, as owner of the asset in question, to do whatever he liked with that asset.

Jurisdiction

118. – It was agreed that Governments would need to consider the question as to whether each of sub-paragraphs (a), (b) and (c) of Article 16(3) should found exclusive or rather, as seemed to be the intention of the Study Group, concurrent grounds of jurisdiction and, if the answer should be that each sub-paragraph should found an exclusive ground of jurisdiction, then what should be the hierarchy of the three different grounds of jurisdiction. The practical importance of the issue was to be seen in those situations which not infrequently arose after the parties had agreed on a jurisdiction clause that, the object being situated in another jurisdiction some distance away, the parties wished to seek urgent interim relief in that other jurisdiction. It was pointed out that the Aircraft Protocol Group had reached the conclusion that it would be controversial to permit the ground of jurisdiction set forth in Article 16(3)(c) to override those contained in Article 16(3)(a) and (b) to the extent that this would be regarded as an ouster of jurisdiction.

119. – Should Governments conclude that the grounds of jurisdiction set forth in Article 16(3) should be exercisable concurrently, it was further agreed that consideration would need to

be given to the question as to whether a rule *lis alibi pendens* was needed to deal with the situation of a party bringing proceedings for interim relief before several courts at the same time.

120. – Another question which Governments might wish to ponder concerned whether the grounds of jurisdiction set out in Article 16(3) should be exhaustive or whether national courts should be able to add other grounds. It was pointed out that it had been the opinion of the Aircraft Protocol Group that the answer to this question would depend on which of the alternatives set out in Article 16(3)(b) was selected; unless the decision was to go for the second alternative in Article 16(3)(b), the Aircraft Protocol Group's feeling was that there could not be any other plausible grounds of jurisdiction but that, if the narrower ground of jurisdiction represented by the second alternative (the location of the obligor) were to be chosen, then the obvious other plausible ground of jurisdiction would be the location of the financier. The preliminary draft Protocol provided an additional ground of jurisdiction in respect of aircraft equipment in the country of registration (cf. Article X(5) of the preliminary draft Protocol).

121. – The Committee noted that concurrent jurisdiction might also be attributed to the court having jurisdiction over the merits of the case, particularly in view of the growing trend to give extraterritorial effect to orders *in rem* in cases where the court making such orders was the court having jurisdiction over the merits of the case, where previously such effect would not have been given (cf. Resolution adopted by the International Law Association at its Helsinki session in 1996 and judgments of the Court of Justice of the European Union under Articles 24 and 25 of the 1968 Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters). Governments might indeed wish to consider bringing the future Convention into line with this trend by granting extraterritorial effect under the future Convention to interim orders *in rem* pronounced by the court having jurisdiction over the merits of the case, in order better to fulfil the Convention's vocation to reflect the conditions likely to prevail in the 21st Century. Should Governments wish to take such a step, the Committee noted that they might also wish to extend this rule to arbitral tribunals.

122. – It was pointed out, moreover, that Article 16(3)(b) contemplated an *in personam* jurisdiction which in a limited number of countries (in particular, Australia and the United Kingdom) would already allow extraterritorial Mareva injunctions against the relevant party.

123. – On the question of the exclusivity or otherwise of the jurisdiction agreed upon by the parties under Article 16(3)(c), the attention of Governments was drawn to the contrasting approaches taken, on the one hand, in the United States of America, where the presumption was that the parties' attribution of jurisdiction in their agreement was not to be treated as exclusive unless they had specifically indicated that they intended it to be exclusive, and, on the other hand, in most Civil law countries, where the presumption was that the parties' jurisdiction clause was exclusive unless they had specifically indicated that their intention was that it should not be exclusive.

124. – It was noted that Article 17(1), whilst undoubtedly giving an obligee an invaluable weapon against an obligor, would go against the current international trend by providing for a *forum arresti*, a jurisdiction known only to a very small number of States and one which had been widely criticised as exorbitant, on the ground that it had a very specific link with only one aspect of the dispute, usually only an order, for instance an order for the seizure of an asset. To that extent it would be for Governments to consider whether this rule was acceptable, whether for the generality of equipment covered by the future Convention or, alternatively, just for aircraft equipment, in the context of which it had first been conceived. Depending on the answers given by Governments to the broader questions regarding the grounds of jurisdiction provided for in Article 16(3), it was agreed that Governments would then need to consider whether the ground

of jurisdiction provided for interim proceedings under Article 16(3)(a) should also be capable of founding jurisdiction for other proceedings that might be brought under the future Convention by virtue of Article 17(1).

125. – It was further agreed that Governments would need to consider the practicalities of the rule proposed in Article W, namely that States should be required to declare, at the time of signature, ratification or accession, those of their courts to have jurisdiction over claims arising under the new international regimen. The fear was expressed that such a rule would create an intolerable degree of complexity for the practitioners called upon to apply the regimen to be put in place by the future Convention, for instance simply at the level of obtaining accurate lists of declarations from the depositary.

Level of detail regarding registration provisions appropriate to be carried in the future Convention

126. – It was noted that the point raised in the Unidroit Governing Council as to whether the registration provisions contained, in particular, in Chapter V were not too detailed to find their place in the body of a future international Convention was a matter that would have to be addressed by Governments. In defence of the level of detail present in these provisions, it was pointed out that the Study Group had felt that it was important to establish reasonably uniform standards which would not vary unduly from Protocol to Protocol. It was nevertheless agreed that the question should in due course be considered as to whether any of the registration provisions at present embodied in the preliminary draft Convention were so specific that they could be left to delegated legislation.

Method by which regulations should become binding on Parties to the Convention/ Protocol

127. – It was noted that Governments might wish to consider the question as to whether the future Convention should in due course prescribe both the type of regulations which the Intergovernmental Regulator should be able to promulgate and the manner in which such regulations would become binding on all Parties to the future Convention and the relevant Protocol, in particular whether there should be a procedure permitting them either to assent or to object to any regulations that the Intergovernmental Regulator might promulgate. It was submitted that the answer to the last question would depend very much on the international standing of the particular Intergovernmental Regulator. It was also submitted that Article 20(5)(a), establishing it as an overriding requirement that the Registrar operate the Registry "efficiently and responsibly," and Article 29(1), providing for the payment of compensation for loss sustained by reason of an error or a system malfunction, should provide a sufficient safeguard against the risk of laxity creeping into the promulgation of regulations.

System of control of the International Registry

128. – The Committee noted that Governments would have to consider the merits of the alternative proposals for control of the International Registry for aircraft equipment submitted by the Aircraft Protocol Group in the preliminary draft Protocol, namely whether one and the same body should have responsibility for both operating and supervising the Registry (cf. Article XVII(1)-(4), Alternative B) or whether these functions should be vested in different bodies (cf. Article XVII(1), Alternative A), as contemplated in the preliminary draft Convention. Depending on the decision to be taken by Governments on this matter in the context of aircraft equipment, it was noted that Governments might need to consider the desirability of modifying the corresponding provisions of the preliminary draft Convention, and in particular Article 20(3), so as to make the future international regimen equipment-specific on this point.

Role of the International Registry

129. – The Committee also noted that Governments would need to consider whether the Registrar's role should in principle be administrative rather than quasi-judicial, that is, if a registration looked on its face registrable, as being in conformity with the formal requirements laid down in the future Convention and the relevant Protocol and Regulations, then the Registrar should be satisfied and accordingly not need to check each registration in minute detail, for instance to verify whether it referred to a valid international interest within the Convention. The Study Group had worked on the basis that the Registrar's role was in principle administrative.

International legal personality of the Intergovernmental Regulator

130. – It was agreed that Governments would need to consider the question as to whether international legal personality should be conferred on the Intergovernmental Regulator under the future Convention, in the same way as it was conferred on the International Registry under Article 19(2).

Need to require the consent of the conditional buyer or the lessee to the registration of an international interest vested in a conditional seller or a lessor

131. – It was agreed that the question as to whether the distinction drawn in Article 24(1) between the registration of an international interest that is a security interest, of a prospective international interest and of an assignment and prospective assignment of an international interest, on the one hand, and the registration of an international interest arising under a title reservation and a leasing agreement, on the other, should be abolished was a matter that should be referred for consideration to Governments (cf. § 49 *supra*). Should the abolition of said distinction fail to commend itself to Governments in the context of the future Convention, it was agreed that the matter should be reconsidered in the context of the preliminary draft Protocol.

Nature of the International Registry's liability for errors and omissions

132. – It was noted that it would be for Governments to consider whether the liability regimen introduced under Article 29 should be based on strict liability.

Relationship of the future Convention to the Uncitral draft Convention on Assignment in Receivables Financing

133. – It was noted that the Study Group had at an early stage taken a conscious decision to avoid dealing with interests in after-acquired equipment and proceeds as this would have involved it in dealing with receivables detached from a registered interest in equipment and thus have brought it into conflict with the Uncitral draft Convention on Assignment in Receivables Financing.

134. – It was noted that there was, however, one issue on which it would be desirable for Governments to consider the case for the Uncitral draft Convention giving way to the future Convention, namely on the question of associated rights dealt with in Article 34(1)(b). In the situation contemplated by the latter provision, the aim was to ensure that, in a case where rights geared to a registered interest, for example a lease, had been assigned, the associated rights to payment travelled with the registration of that interest. These associated rights to payment were not dealt with in isolation and the intention was that they should only pass under Article 34(1)(b) and thus be subject to the priority rules of the future Convention rather than the rules governing

general receivables financing under the Uncitral draft Convention where they would be capable of being picked up by a person searching against a registered interest.

135. – Article 39 was another provision that would need to be considered in relation to the Uncitral draft Convention. It was essentially designed to preserve the purchase money security interest-type of interest of the assignee of a registered interest: in a case where associated rights were transferred with an assignment of an international interest, it gave the holder of those associated rights limited priority over the rights of a general receivables financier (that is, debts that had been assigned detached from an international interest), the extent of this priority being delimited by paragraphs (a)-(d).

136. – It was noted that Governments might wish to consider the fact that, whereas Article 33(2)(a) of the future Convention made writing a condition for a valid assignment of an international interest, the delegation of one State attending the last session of the Uncitral Working Group on International Contract Practices had signalled its opposition to the requirement of writing for a valid assignment in the context of the Uncitral draft Convention.

Relationship of the future Convention to the Unidroit Convention on International Factoring

137. – It was agreed that Governments would need to consider the question how best to make it clear that the rule in Article 34(2) was not intended to be affected by anything which might be inconsistent in the Unidroit Convention on International Factoring.

Relevance of the state of the obligor's actual knowledge to his duty to make payment or give other performance to the assignee of an international interest

138. – It was noted that Governments would need to consider whether or not the reference in Article 36(1)(c) to the state of the obligor's actual knowledge in the context of the subsistence of that party's duty to make payment or other performance to the assignee of an international interest was consistent with the decision to disregard the relevance of actual knowledge for the purposes of Articles 31(2)(a) and 31(3)(b).

Facility for States to extend the benefits of the international registration system to non-consensual rights and interests

139. – It was noted that the Aviation Working Group had proposed to the Study Group that Contracting States be given a facility to extend the benefits of the international registration system contemplated under the future Convention to certain non-consensual rights and interests, such as the rights of lien creditors who have repaired goods and the rights of creditors enforcing judgments, by making such rights and interests capable of registration as if they were international interests. The Study Group regarded this proposal as going beyond its terms of reference (limited as they were to consensual rights and interests) and accordingly decided that the matter should be referred for consideration by Governments as Article 42(1), presented in square brackets.

Facility for States to give effect to the claims of national preferential creditors in preference to the holders of international interests

140. – It was noted that the Aviation Working Group had proposed to the Study Group that Contracting States be given a facility to give effect to the preferential status enjoyed by the claims of certain creditors under national law, typically claims for taxes and wages, by means of

the deposit of an instrument indicating which of such claims should have priority over international interests. This proposal was designed to provide third parties in other countries with certainty as to the extent to which an international interest might find itself subordinated to such preferential claims. The Study Group regarded this proposal as going beyond its terms of reference (limited as they were to consensual rights and interests) and accordingly decided that the matter should be referred for consideration by Governments as Article 42(2), presented in square brackets.

Extension of the future Convention to outright sales

141. – It was noted that the Study Group had not accepted the proposal of the Aviation Working Group to extend the application of the scope of the future Convention to outright sales but that the Chairman of the Study Group had introduced a provision permitting Protocols so to extend its application in order to reflect the fact that the preliminary draft Protocol had found it desirable so to extend the application of the Convention's terms for certain purposes. It will be for Governments to consider this provision the provisional nature of which is indicated by its submission in square brackets.

Relationship of Protocols to regional Conventions

142. – It was agreed, in the context of the Committee's discussion of Chapter X of the preliminary draft Convention and Chapter VIII of the preliminary draft Protocol, that Governments would need to consider the question as to whether Protocols should be able to supersede regional Conventions where these would be inconsistent with some of their terms.

Triggering of the application of the future Convention for a particular category of equipment

143. – It was noted that Governments would need to consider the best means of ensuring that the future Convention be only perceived as having legal effect for a particular category of equipment from the time that a Protocol for that category was in force. It was suggested that one technique worthy of consideration in this context would be for the future Convention to provide that, whilst it would enter into force pursuant to the requisite number of ratifications or accessions, States could only ratify or accede to it where at the same time they also ratified or acceded to a Protocol. Following on from this suggestion, it was also suggested that, once the Convention had thus entered into force, it should then apply in relation to categories of equipment other than the category covered by that first Protocol as from the time that the Protocols covering those other categories were ratified or acceded to. Another technique submitted for consideration would involve Parties to the future Convention agreeing, notwithstanding the Convention's entry into force, not to be bound thereby in relation to any other category of equipment until such time as a Protocol had entered into force for such category.

Case for extending the preliminary draft Protocol rule on representative capacities to the generality of equipment covered by the future Convention

144. – It was agreed that it will be for Governments to consider the case for extending the application of the rule on representative capacities contained in Article VII of the preliminary draft Protocol to the generality of equipment covered by the future Convention (cf. *sub* Article VII, *supra*).

Case for a federal State clause indicating the relevant territorial unit for the purposes of the application of the future Convention/ Protocol's conflicts of laws and conflicts of jurisdiction rules

145. – It was suggested that, in so far as the future Convention/ Protocol contained rules of conflicts of laws and conflicts of jurisdiction, Governments would, at the appropriate moment, need to consider the desirability of including what had now become a standard final provision for federal States in which different systems of law or sets of rules of law were applicable (cf. Article 47 of the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children), indicating the territorial unit relevant for the purposes of the application of such conflicts of laws and conflicts of jurisdiction rules. It was explained that such a clause would be necessary in order to ensure the efficacy of the conflicts of laws and conflicts of jurisdiction rules of the future Convention/ Protocol.

Consideration by the Committee of A.W.G.'s proposal for the establishment of an aircraft registry contact group (S.R.C. Misc. 3)

146. – Proposing that the Committee authorise the establishment of an aircraft registry contact group under its auspices, *Mr Wool* submitted that such a step could be seen as the logical continuation of the pioneering conceptual work on the future international registration system carried out by the Registration Working Group of the Study Group (cf. Study LXXIIC Docs. 2 and 3) and the development of that group's thinking in the context of the Aircraft Protocol Group's consideration of the most suitable structure to give to the future international registration system for aircraft equipment. The purpose of the proposal was further to advance thinking, with a view to the production of a paper for the attention of Governments, on certain outstanding aspects of the future international registration system as it related to aircraft equipment (in particular conditions of registration, liability for errors and omissions, registration of engines, technological aspects and cost implications of the design of the future system and the fees to be charged) as also the reasoning behind the alternative proposals put forward by the Aircraft Protocol Group for control of the International Registry, and thus to facilitate matters when Governments came to consider these issues. A.W.G. saw early clarification of thinking on these issues as fundamental for the success of the future Convention/ Protocol, *inter alia* so as to forestall institutional resistance to the idea of an international registration system. As examples of the institutions that he would like to see associated in this work, he mentioned I.C.A.O., I.A.T.A., the United States Federal Aviation Administration, the European Joint Aviation Authorities and individuals with systems building expertise and experience of advanced registration systems.

147. – Notwithstanding recognition that all the issues raised by Mr Wool would in due course need to be dealt with, there was a general feeling that the time was not ripe for the establishment of such a group and that any decision in this regard should be left to Governments at the first session of governmental experts. It was important not to risk creating hostility on the part of Governments. As a compromise solution, it was agreed to request the Aircraft Protocol Group to continue looking at these issues as they affected aircraft equipment with a view to laying a paper before governmental experts at some stage during their first session, although not before they began examination of provisions dealing with the international registration system. In this way Governments would then be able to consider how best to carry forward such work thereafter. The purpose of the paper to be prepared would be to explain the international registration system as it related to aircraft equipment, on the basis of the texts of the preliminary draft Convention and Protocol to emerge from the Committee. Such a paper would in the process permit the identification of the key issues still to be resolved. The aim would be thus to set the stage for a deeper analysis of said issues after the first session of governmental experts.

The Aircraft Protocol Group would be free to call upon such outside experts as it deemed appropriate. It was agreed that, in addition to the issues listed by Mr Wool, the Aircraft Protocol Group should also consider the implications of the International Registry having international (as opposed to domestic) legal personality. It was acknowledged that the work to be done by the Aircraft Protocol Group was likely to benefit the whole project.

The way forward

148. – It was noted that the English and French texts of the preliminary draft Convention and the preliminary draft Protocol would be revised in the light of the changes agreed upon by the Committee. It was recognised in this connection that much work remained to be done on the French text of the preliminary draft Protocol and that, whilst every effort would be made by the Unidroit Secretariat to complete this work in time for the transmission of the texts to Governments by Unidroit, it was likely that the task would take somewhat longer.

149. – It was noted that a report on the meeting of the Committee would be prepared by the Unidroit Secretariat and that this report would, in particular, highlight the policy issues which had been identified as requiring consideration by Governments.

150. – It was noted that the discussion paper on fast-track procedures for the adoption of post-diplomatic Conference Protocols, the review of the future Convention and Protocols and their amendment, prepared by Professor Chinkin and Professor Kessedjian, would be revised, to take account of the Committee's deliberations, and then circulated amongst all members of the Committee for comment with a view to the preparation of a final version of the paper for transmission to Governments.

151. – It was noted that the Chairman would be updating the article on the preliminary draft Convention that he had contributed to the 1998-1 issue of the *Uniform Law Review* in the light of the changes to that text agreed upon by the Committee. As thus updated, it would be transmitted for information to Governments by Unidroit with the revised texts of the preliminary draft Convention and the preliminary draft Protocol.

152. – It was noted that representatives of the I.C.A.O. and Unidroit Secretariats would be meeting after the meeting of the Committee in order to discuss arrangements for the transmission of the texts as revised to Governments. It was further noted that Unidroit would be transmitting these texts to its member Governments, together with a memorandum explaining the background to their preparation, the Secretariat's report on the Committee's work and the updated version of the Chairman's aforementioned article (cf. § 151 *supra*), just as soon as the revision procedure necessitated by the large number of changes effected by the Committee had been completed by the Unidroit Secretariat. On the I.C.A.O. side, it was noted that the I.C.A.O. Council would only be taking a decision on the setting up of a sub-committee of the Legal Committee to consider the texts in September 1998 and that the texts could consequently only be transmitted by I.C.A.O. to those Governments nominated to serve on such a sub-committee after that decision. It was also noted that I.C.A.O. would have to translate the revised texts into Arabic, Russian and Spanish, a process that was likely to take between four and six weeks.

153. – It was agreed that it would not be appropriate for the Economic Impact Assessment study, commissioned by I.A.T.A. and A.W.G. on behalf of the Aircraft Protocol Group, to be transmitted by Unidroit and I.C.A.O. to their member Governments, in particular given that it only existed in an English version. It was agreed that it should rather be transmitted to the same addressees by I.A.T.A. and A.W.G., with reference to such transmission being included in the Note Verbale under cover of which Unidroit would be transmitting the revised

texts to Governments. It was noted that A.W.G. might contact INSEAD to see whether it might be willing to prepare a French-language version of the study.

154. – It was noted that explanatory reports on the revised texts would be prepared in advance of the first session of governmental experts in order to give the latter background information on the process which had led up to the Committee's work, a brief introduction to the basic concepts involved and a concise description of each Article, indicating in particular the intention it was intended to achieve. These reports would be quite distinct from the full commentaries which it was intended to prepare in due course. Their future transmission would be announced in the Notes Verbales and State letters under cover of which Unidroit and I.C.A.O. respectively would transmit the revised texts to their member Governments. Given the fact that the future Convention was intended to apply to mobile equipment in general and as such to encompass a range of categories of equipment broader than just aircraft equipment, it was agreed that the preparation of the explanatory report on the preliminary draft Convention should be the responsibility of the Unidroit Secretariat, whereas responsibility for the preparation of the explanatory report on the preliminary draft Convention as it related to aircraft equipment, in particular the preliminary draft Protocol, should be that of the Committee. It was noted that it was, however, premature to settle the question of the formal presentation of these reports to Governments and that this was a matter that should be left to be resolved by the I.C.A.O. and Unidroit Secretariats at the appropriate time. It was nevertheless understood that I.A.T.A. and A.W.G. would be informally consulted by I.C.A.O. and Unidroit in reaching such a decision.

Measures to improve co-ordination between Unidroit and I.C.A.O., on the one hand, and I.A.T.A. and A.W.G., on the other, regarding governmental briefings organised by the latter

155. – It was agreed that the imminent launching of the intergovernmental consultation process made it vital that urgent measures be taken to avoid recurrences of the type of problem, adverted to above by the Acting Secretary-General (cf. § 4), which both Unidroit and I.C.A.O. had recently experienced in their relations with certain member Governments as a result of confusion engendered in the minds of said Governments as to the precise nature of the role being played by I.A.T.A. and A.W.G. in relation to the preliminary draft Convention and Protocol. This confusion had essentially arisen in the context of the briefings which I.A.T.A. and A.W.G. were organising for governmental audiences in different parts of the world. The purpose of these briefings was to explain to Governments how the future Convention/ Protocol was likely to benefit aviation interests with a view to facilitating the intergovernmental consultation process.

156. – It was explained that the problems encountered had essentially arisen out of the manner in which the briefings were presented and, more specifically, at the level of the letters of invitation to such briefings sent out by I.A.T.A. and A.W.G. It was noted that it would assist in avoiding such confusion in future if it were made clear by I.A.T.A. and A.W.G. in their letters of invitation that, in organising such briefings for the aforementioned purpose (cf. § 155 *in fine*), they were not acting on behalf of either Unidroit or I.C.A.O. but merely on their own behalf. It was also explained how some Governments reading these letters of invitation had gained the impression that it was I.A.T.A. and A.W.G. that were driving the project and that the role of Unidroit and I.C.A.O. was limited to doing the paper-work. It was suggested that with a view to avoiding further such embarrassment of this kind I.A.T.A. and A.W.G. should review the drafting of these letters accordingly. The representatives of I.A.T.A. and A.W.G. vouchsafed to make every effort to avoid recurrences of such confusion and embarrassment in future. At the same time they laid stress on the valuable opportunity the partnership they enjoyed in this process with Unidroit and I.C.A.O. afforded them to advance said process by more informal

means than would normally be possible under the traditional treaty-making procedure. They argued that this could only be to the benefit of the entire project but for its success depended upon communication being kept open at all times.

Future meetings of the Committee

157. – On behalf of I.A.T.A., *Mr Charlton* invited the Committee to hold its following meeting at the I.A.T.A. Centre in Geneva as soon as possible after the first session of governmental experts with a view to analysing the situation in the light of that session. On behalf of Unidroit, the *Acting Secretary-General* indicated that, whilst he could clearly not commit the Secretary-General elect on this matter, he believed that Unidroit would in principle be able to attend such a meeting. He stressed that the role and structure of the Committee to date had been fixed by the Unidroit Governing Council at its 77th session (cf. Study LXXII - Doc. 40, p. 41) but that its future role and structure were matters that it would be for Governments, on the occasion of the first session of governmental experts, and not for the Secretariats of Unidroit and I.C.A.O. to decide.

158. – *Mr Charlton* and *Mr Wool* emphasised the need for future decisions affecting the rules of procedure of the Committee, including the chair, to be the subject of proper advance consultation amongst all four members of the Committee.

APPENDIX I

AGENDA

1. – Election of the Chairman.

2. – Approval of the agenda.

3. – Approval of the text of:

(a) the preliminary draft Unidroit Convention on International Interests in Mobile Equipment revised to respond to the comments made by the Unidroit Governing Council at its 77th session, held in Rome from 16 to 20 February 1998 (cf. Study LXXII - Doc. 39) and

(b) the preliminary draft Protocol thereto on matters specific to aircraft equipment revised to respond to the comments made by the Unidroit Governing Council at its 77th session, held in Rome from 16 to 20 February 1998 (cf. Study LXXIID - Doc. 2).

4. – Consideration of the most appropriate jurisdiction rules to be included in the future Convention and Protocol.

5. – Consideration of the issues raised by the relationship between the future Convention and Protocol and existing international instruments.

6. – Consideration of a proposal made by the Aviation Working Group to take certain steps designed to advance work on the development of the international registration system intended to underpin the future Convention and Protocol (cf. S.R.C. Misc. 1).

7. – Consideration of a fast-track procedure for the adoption of new Protocols and amendments to the future Convention and Protocol (cf. S.R.C. Misc. 2).

8. – Consideration of the role of explanatory reports in clarifying the purpose and effect of provisions of the future Convention and Protocol and avoiding the need to clutter up the texts with unnecessary detail.

9. – Any other business.

APPENDIX II

PRELIMINARY DRAFT UNIDROIT CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT

(as established by the Study Group at the conclusion of its fourth session, held in Rome from 3 to 7 November 1997, and revised by the Chairman of the Study Group)

CHAPTER I

SPHERE OF APPLICATION AND GENERAL PROVISIONS

Article 1

In this Convention the following words are employed with the meanings set out below:

(a) "agreement" means a security agreement, a title reservation agreement or a leasing agreement;

(b) "applicable law" means the law applicable by virtue of the rules of private international law;

(c) "assignment" means an outright transfer by agreement, whether by way of security or otherwise, which confers on the assignee rights in the international interest;

(d) "associated rights" means all rights to payment or other performance under an agreement or a contract of sale secured by or associated with the object;

(e) "buyer" means a buyer under a contract of sale;

(f) "chargee" means the grantee of an interest in an object under a security agreement;

(g) "chargor" means the grantor of an interest in an object under a security agreement;

(h) "conditional buyer" means the buyer under a title reservation agreement;

(i) "conditional seller" means the seller under a title reservation agreement;

(j) "contract of sale" means an agreement for the sale of an object which is not a title reservation agreement;

(k) "court" means a court of law or an administrative or arbitral tribunal established by a Contracting State;

(l) "Intergovernmental Regulator" means the intergovernmental regulator referred to in Article 20(1);

(m) "international interest" means an interest to which Article 2 applies and which is constituted in conformity with Article 8;

(n) "leasing agreement" means an agreement by which one person ("the lessor") grants a right to possession or control of an object (with or without an option to purchase) to another person ("the lessee") in return for a rental or other payment;

(o) "object" means a mobile object of a category listed in Article 3(1);

(p) "obligee" means the chargee under a security agreement, the conditional seller under a title reservation agreement or the lessor under a leasing agreement;

(q) "obligor" means the chargor under a security agreement, the conditional buyer under a title reservation agreement, the lessee under a leasing agreement [or the person whose interest in an object is burdened by a registrable non-consensual right or interest];

(r) "prospective assignment" means an assignment that is intended to be made in the future, whether or not upon the occurrence of an uncertain event;

(s) "prospective international interest" means an interest that is intended to be created or provided for as an international interest in the future, whether or not upon the occurrence of an uncertain event;

(t) "prospective sale" means a sale which is intended to be made in the future, whether or not upon the occurrence of an uncertain event;

(u) "Protocol" means, in respect of any category of object and associated rights to which this Convention applies, the Protocol in respect of that category of object and associated rights;

(v) "registered" means registered in the International Registry pursuant to Chapter V;

(w) "registered interest" means an international interest [or a registrable non-consensual right or interest] registered pursuant to Chapter V;

(x) ["registrable non-consensual right or interest" means a right or interest registrable pursuant to an instrument deposited under Article 42(1);]

(y) "Registrar" means, in respect of any category of object and associated rights to which this Convention applies, the person designated under Article 20(3);

(z) "Regulations" means regulations made by the Intergovernmental Regulator under Article 20(4);

(aa) "sale" means a transfer of ownership pursuant to a contract of sale;

(bb) "secured obligation" means an obligation secured by a security interest;

(cc) "security agreement" means an agreement by which a chargor grants or agrees to grant to a chargee an interest in or over an object to secure the performance of any existing or future obligation of the chargor or a third person;

(dd) "security interest" means an interest created by a security agreement;

(ee) "surety" means any guarantor, surety or other credit insurer under a guarantee (including a demand guarantee and a standby letter of credit) or credit insurance given to the chargee;

(ff) "title reservation agreement" means an agreement for the sale of an object on terms that ownership does not pass until fulfilment of the condition or conditions stated in the agreement;

(gg) "unregistered interest" means a consensual [or non-consensual right or] interest [(other than an interest to which Article 42(2) applies)] which has not been registered, whether or not it is registrable under this Convention; and

(hh) "writing" means an authenticated record of information (including information sent by teletransmission) which is in tangible form or is capable of being reproduced in tangible form.

Article 2

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

2. – For the purposes of this Convention, an international interest in mobile equipment is an interest in an object of a category listed in Article 3(1):

(a) granted by the chargor under a security agreement;

(b) vested in a person who is the conditional seller under a title reservation agreement; or

(c) vested in a person who is the lessor under a leasing agreement.

3. – Whether an interest to which the preceding paragraph applies falls within-sub-paragraph (a), (b) or (c) of that paragraph is to be determined by the applicable law. An interest falling within sub-paragraph (a) does not also fall within sub-paragraph (b) or (c).

4. – Except as provided by this Convention, rules of the applicable law shall not apply to interests constituted as international interests under this Convention.

Article 3

1. – This Convention applies in relation to a mobile object, and associated rights relating to a mobile object, of any of the following categories:

(a) airframes;

(b) aircraft engines;

(c) helicopters;

(d) [registered ships;]

(e) oil rigs;

(f) containers;

(g) railway rolling stock;

(h) space property;

(i) objects of any other category each member of which is uniquely identifiable.

2. – For the purposes of this Convention, a mobile object is an object which is to be regularly moved from an area under the jurisdiction of one State to an area under the jurisdiction of another State or is to be moved to, or located in an area beyond national jurisdiction, including outer space.

Article 4

This Convention shall apply when at the time of conclusion of the agreement creating or providing for the international interest:

(a) the obligor is located in a Contracting State; or

(b) the object to which the international interest relates has been registered in a nationality register [, or a State-authorised asset register,] in a Contracting State or otherwise has a close connection, as specified in the Protocol, to a Contracting State.

Article 5

For the purposes of this Convention, a party is located in a State if it is incorporated or registered or has its principal place of business in that State.

Article 6

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 Chapter III, except as stated in Articles 9(3)-(5), 10(2) and (3), 13(1), 14 and 15, or of Article 37(2).

Article 7

1. – In the interpretation of this Convention, regard is to be had to its purposes as set forth in the preamble,* to its international character and to the need to promote uniformity and predictability in its application.

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* The preamble will be drafted in due course.

2. – 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 applicable law.

CHAPTER II

CONSTITUTION OF AN INTERNATIONAL INTEREST

Article 8

An interest is constituted as an international interest 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, conditional seller or lessor has power to enter into the agreement;

(c) enables the object to be identified in conformity with the applicable Protocol; and

(d) in the case of a security agreement, enables the secured obligations to be identified, but without the need to state a sum or maximum sum secured.

CHAPTER III

DEFAULT REMEDIES

Article 9

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 or control 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. – A chargee proposing to sell or grant a lease of an object under paragraph 1 otherwise than pursuant to a court order shall give reasonable prior notice in writing of the proposed sale or lease to interested persons.

3. – 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 of the secured obligations.

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

5. – In this Article and in Article 10 "interested persons" means:

(a) the chargor;

(b) any surety;

(c) any person entitled to the benefit of any international interest which is registered after that of the chargee;

(d) any other person having rights subordinate to those of the chargee 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 paragraph 1(b) or vesting of the object in the chargee under Article 10(1), as the case may be.

Article 10

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 (or any other interest of the chargor in) any object covered by the security interest shall vest in the chargee in or towards satisfaction of the secured obligations.

2. – The court shall grant an application under the preceding paragraph only if the amount of the secured obligations 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 or any interested person may discharge the security interest by paying the amount secured, subject to any lease granted by the chargee under Article 9(1). Where, after such default, the payment is made in full by an interested person, that person is subrogated to the rights of the chargee.

4. – Ownership or any other interest of the chargor passing on a sale under Article 9(1) 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 31.

Article 11

In the event of default by the conditional buyer under a title reservation agreement or by the lessee under a leasing agreement, the conditional seller or lessor, as the case may be, may terminate the agreement and take possession or control of any object to which the agreement relates. The conditional seller or lessor may also apply for a court order authorising or directing either of these acts.

Article 12

1. – The parties may provide in their agreement for any kind of default, or any event other than default, as giving rise to the rights and remedies specified in Articles 9 to 11 or 16.

2. – In the absence of such an agreement, "default" for the purposes of Articles 9 to 11 and 16 means a substantial default.

Article 13

1. – Subject to paragraph 2, any remedy provided by this Chapter shall be exercised in conformity with the procedural law of the place where the remedy is to be exercised.

2. – Any remedy available to the obligee under Articles 9 to 11 which is not there expressed to require application to the court may be exercised without leave of the court except to the extent that the Contracting State where the remedy is to be exercised has made a declaration under Article X or in the Protocol.

Article 14

Any additional remedies permitted by the applicable law, including any remedies agreed upon by the parties, may be exercised to the extent that they are not inconsistent with the mandatory provisions of this Chapter.

Article 15

Any remedy given by this Convention shall be exercised in a commercially reasonable manner. A remedy shall be deemed to be exercised in a commercially reasonable manner where it is

exercised in conformity with a provision of the security agreement except where the court determines that such a provision is manifestly unreasonable.

Article 16

1. – A Contracting State shall ensure that an obligee who adduces *prima facie* evidence of default by the obligor may, pending final determination of its claim, obtain speedy judicial relief in the form of one or more of the following orders:

(a) preservation of the object and its value;

(b) possession, control, custody or management of the object;

(c) sale or lease of the object;

(d) application of the proceeds or income of the object;

(e) immobilisation of the object.

2. – Ownership or any other interest of the obligor passing on a sale under the preceding paragraph is free from any other interest over which the chargee's security interest has priority under the provisions of Article 31.

3. – A court of a Contracting State has jurisdiction to grant judicial relief under paragraph 1 where:

(a) the object is within [or is physically controlled from] the territory of that State;

(b) [one of the parties] [the obligor] is located within that territory; or

(c) the parties have agreed to submit to the jurisdiction of that court.

4. – A court may exercise jurisdiction under paragraph 1 even if the trial of the claim referred to in that paragraph will or may take place in a court of another State or in an arbitral tribunal.

5. – Nothing in this Article shall limit the availability of any form of interim judicial relief under the applicable law.

Article 17

[1. – A court of a Contracting State to which Article 16(3) applies has general jurisdiction in other proceedings relating to this Convention, but no court may make orders or give judgments or rulings against or purporting to bind the International Registry.

2. – A court of a Contracting State may decline to exercise jurisdiction under Article 16(3)(c) and paragraph 1 of this Article where the exercise of such jurisdiction would be manifestly contrary to the public policy of that State.]

[CHAPTER III *bis*

Article 18

A waiver of sovereign immunity from jurisdiction of the courts specified in Article 17(1) or relating to enforcement of rights and interests relating to an object under the Convention shall be binding and, if the other conditions to such jurisdiction or enforcement have been satisfied, shall be effective to confer jurisdiction and permit enforcement, as the case may be.]

CHAPTER IV

THE INTERNATIONAL REGISTRATION SYSTEM

Article 19

1.– An International Registry shall be established for registrations of:

(a) international interests, prospective international interests [and registrable non-consensual rights and interests];

(b) assignments and prospective assignments of international interests; and

(c) subordinations of interests referred to in sub-paragraph (a) of this paragraph.

2. – The International Registry shall have international legal personality and such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes under this Convention.

3. – Different registries may be established for different categories of object and associated rights. For the purposes of this Convention, "International Registry" means the relevant international registry.

4. – For the purposes of this Chapter and Chapter V, the term "registration" includes, where appropriate, an amendment, extension or discharge of a registration.

[Article 20

1. – The Protocol shall designate an Intergovernmental Regulator ** to exercise the functions assigned to it by this Chapter, Chapter V and the Protocol.

2. – The Protocol may provide for Contracting States to designate operators of registration facilities in their respective territories. Such operators shall be transmitters of the information required for registration and, in such capacity, shall constitute an integral part of the registration system of this Convention. The Protocol may specify the extent to which the designation of such an operator shall preclude alternative access to the International Registry.

3. – The Intergovernmental Regulator shall establish the International Registry, designate the Registrar and oversee the International Registry and the operation and administration thereof.

4. – Subject to paragraph 5, the manner in which such oversight is conducted, the responsibilities of the Registrar and operators of registration facilities and the fees to be paid by users of the international registration system shall be prescribed in the Protocol and/or in regulations ("the Regulations") from time to time made by the Intergovernmental Regulator as provided by paragraph 7 and Articles 21, 22 and 25 - 28. ***

5. – The Registrar shall:

(a) operate the International Registry efficiently and responsibly;

(b) perform the functions assigned to it under this Convention, the Protocol and the Regulations;

(c) [report to the Intergovernmental Regulator on its performance of these functions and otherwise comply with the oversight requirements specified by the Intergovernmental Regulator;]

(d) maintain financial records relating to its functions [in a form specified by the Intergovernmental Regulator; and]

(e) [insure against liability for its acts and omissions in a manner acceptable to the Intergovernmental Regulator].

6. – The Intergovernmental Regulator shall have power to require acts and omissions which are in contravention of this Convention, the Protocol or the Regulations to be rectified.

** The present text assumes that the Intergovernmental Regulator and the operators of the International Registry will be different bodies. However, as indicated in the preliminary draft Aircraft Equipment Protocol, an alternative to be considered is a unitary International Registry Authority which would act as both operator and regulator.

*** It was noted by the Aircraft Protocol Group that Article 20(4) is an example of the type of provision which was envisaged as being within Article T(b) and which may therefore find itself modified by the terms of a Protocol

7. – The Protocol and/or the Regulations may prescribe the procedures pursuant to which the Registrar and operators of registration facilities may request advice from the Intergovernmental Regulator regarding the exercise of their respective functions under this Convention, the Protocol and the Regulations.]

CHAPTER V

MODALITIES OF REGISTRATION

Article 21

The Protocol and Regulations may contain conditions and requirements, including the criterion or criteria for the identification of the object, which must be fulfilled in order:

(a) to effect a registration; or

(b) to convert the registration of a prospective international interest or a prospective assignment of an international interest into registration of an international interest or of an assignment of an international interest.

Article 22

The information required for a registration shall be transmitted, by any medium prescribed by the Protocol or Regulations, to the International Registry or registration facility prescribed therein.

Article 23

1. – A registration shall take effect upon entry of the required information into the International Registry data base so as to be searchable.

2. – A registration shall be searchable for the purposes of paragraph 1 at any time when:

(a) the International Registry has assigned to it a sequentially ordered file number; and

(b) the registration, including the file number, may be accessed at the International Registry and at each registration facility in which searches may be made at that time.

3. – If an interest first registered as a prospective international interest becomes an international interest, the international interest shall be treated as registered from the time of registration of the prospective international interest.

4. – Paragraph 3 applies with necessary modifications to the registration of a prospective assignment of an international interest.

5. – The International Registry shall record the date and time a registration takes effect.

6. – A registration shall be searchable in the International Registry data base according to the criteria prescribed by the Protocol.

Article 24

1. – An international interest which is a security interest, a prospective international interest or an assignment or prospective assignment of an international interest may be registered by or with the consent in writing of the chargor or assignor or intending grantor or assignor, as the case may be. Any other type of international interest may be registered by the holder of that interest.

2. – The subordination of an international interest to another international interest may be registered by the person in whose favour the subordination is made.

3. – A registration may be amended, extended prior to its expiry or discharged, by or with the consent in writing of the party in whose favour it was made.

[4. – A registrable non-consensual right or interest may be registered by the holder thereof].

Article 25

Registration of an international interest remains effective for the period of time [specified in the Protocol or the Regulations as extended in conformity with Article 24(2)] [agreed between the parties in writing].

Article 26

1. – A person may, in the manner prescribed by the Protocol and Regulations, make or request a search of the International Registry concerning interests registered therein.

2. – Upon receipt of a request therefor, the Registrar, in the manner prescribed by the Protocol and Regulations, shall issue a registry search certificate with respect to any object:

(a) stating all registered information relating thereto, together with a statement indicating the date and time of registration of such information; or

(b) stating that there is no information in the International Registry relating thereto.

[Article 27

The Registrar shall maintain a list of the categories of non-consensual right or interest declared by Contracting States in conformity with Article 42(2) and the date of each such declaration. Such list shall be recorded and searchable in the name of the declaring State and shall be made available as provided in the Protocol and Regulations to any person requesting it.]

Article 28

A document in the form prescribed by the Regulations which purports to be a certificate issued by the International Registry is *prima facie* proof:

(a) that it has been so issued; and

(b) of the facts recited in it, including the date and time of a registration under Article 24.

Article 29

1. – Any person suffering loss by reason of any error or system malfunction in the International Registry shall be entitled to an indemnity in respect of such loss. The measure of liability shall be compensatory damages for loss incurred as the result of the act or omission.

2. – The courts [of the Contracting State[s] in which the Registrar or the operators of registration facilities, as the case may be, are situated] shall have jurisdiction to resolve any disputes arising under this Article.

3. – Subject to paragraph 1, the International Registry, the Intergovernmental Regulator, the Registrar and the operators of registration facilities shall, in the exercise of their functions, enjoy immunity from legal process except:

(a) to the extent that the International Registry expressly waives such immunity; or

(b) as otherwise provided by agreement with a State in which the International Registry is situated.

4. – The assets, documents and archives of the International Registry shall be inviolable and immune from seizure or legal process except to the extent that the International Registry expressly waives such immunity.

Article 30

1. – When the obligations secured by a security interest [or the obligations giving rise to a registrable non-consensual right or interest] have been discharged, or the conditions of transfer of title under a title reservation agreement have been fulfilled, the obligor may, by written demand delivered to the holder of such a registered interest, require the holder to remove the registration relating to the interest.

2. – Where a prospective international interest or a prospective assignment of an international interest has been registered, the intending grantor or assignor may by notice in writing, delivered to the intended grantee or assignee at any time before the latter has given value or incurred a commitment to give value, require the relevant registration to be removed.

CHAPTER VI

EFFECTS OF AN INTERNATIONAL INTEREST AS AGAINST THIRD PARTIES

Article 31

1. A registered interest has priority over any other interest subsequently registered and over an unregistered interest.

2. – The priority of the first-mentioned interest under the preceding paragraph applies:

(a) even if the first-mentioned interest was acquired or registered with actual knowledge of the other interest; and

(b) even as regards value given by the holder of the first-mentioned interest with such knowledge.

3. – The buyer of an object acquires its interest in it:

(a) subject to an interest registered at the time of its acquisition of that interest; and

(b) free from an unregistered interest even if it has actual knowledge of such an interest.

4. – The priority of competing interests under this Article may be varied by agreement between the holders of those interests, but an assignee of a subordinated interest is not bound by an agreement to subordinate that interest unless at the time of the assignment a subordination had been registered relating to that agreement.

5. – Any priority given by this Article to an interest in an object extends to insurance proceeds payable in respect of the loss or physical destruction of that object [and to amounts paid or payable by any Government or State entity in respect of the confiscation, condemnation or requisition of that object.]

Article 32

1. – An international interest is valid against the trustee in bankruptcy of the obligor if prior to the commencement of the bankruptcy that interest was registered in conformity with this Convention.

2. – For the purposes of this Article, "trustee in bankruptcy" includes a liquidator, administrator or other person appointed to administer the estate of the obligor for the benefit of the general body of creditors.

3. – Nothing in this Article affects the validity of an international interest against the trustee in bankruptcy where that interest is valid against the trustee in bankruptcy under the applicable law.

CHAPTER VII

ASSIGNMENTS OF INTERNATIONAL INTERESTS AND RIGHTS OF SUBROGATION

Article 33

1. – The holder of an international interest ("the assignor") may make an assignment of it to another person ("the assignee") wholly or in part.

2. – An assignment of an international interest shall be valid only if it:

(a) is in writing;

(b) enables the international interest and the object to which it relates to be identified;

(c) in the case of an assignment by way of security, enables the obligations secured by the assignment to be identified.

Article 34

1. – An assignment of an international interest in an object made in conformity with the preceding Article transfers to the assignee, to the extent agreed by the parties to the assignment:

(a) all the interests and priorities of the assignor under this Convention; and

(b) all associated rights [so far as such rights are assignable under the applicable law].

2. – An assignment made in conformity with the preceding paragraph shall take effect subject to:

(a) all defences of which the obligor could have availed itself against the assignor; and

(b) any rights of set-off in respect of claims existing against the assignor and available to the obligor at the time of receipt of a notice of the assignment under Article 36.

3. – The obligor may by agreement in writing waive all or any of the defences and rights of set-off referred to in the preceding paragraph.

4. – In the case of an assignment by way of security, the assigned rights revest in the assignor, to the extent that they are still subsisting, when the security interest has been discharged.

Article 35

The provisions of Chapter V shall apply to the registration of an assignment or prospective assignment of an international interest as if the assignment or prospective assignment were the international interest or prospective international interest and as if the assignor were the grantor of the interest.

Article 36

1. – To the extent that an international interest has been assigned in accordance with the provisions of this Chapter, the obligor in relation to that interest is bound by the assignment, and, in the case of an assignment within Article 34(1)(b), has a duty to make payment or give other performance to the assignee, if but only if:

(a) the obligor has been given notice of the assignment in writing by or with the authority of the assignor;

(b) the notice identifies the international interest[; and

(c) the obligor does not have [actual] knowledge of any other person's superior right to payment or other performance].

2. – Irrespective of any other ground on which payment or performance by the obligor discharges the latter from liability, payment or performance shall be effective for this purpose if made in accordance with the preceding paragraph.

3. – Nothing in the preceding paragraph shall affect the priority of competing assignments.

Article 37

1. – In the event of default by the assignor under the assignment of an international interest made by way of security, Articles 9, 10 and 12 to 16, in so far as they are capable of application to intangible property, apply as if references:

(a) to the secured obligation and the security interest were references to the obligation secured by the assignment of the international interest and the security interest created by that assignment;

(b) to the chargee and chargor were references to the assignee and assignor of the international interest; and

(c) to the object included references to the assigned rights relating to the object.

2. – Where, in the case of an assignment by way of security, the sums collected or received by the assignee of the international interest as the result of the exercise of any remedy provided by virtue of the preceding paragraph exceed the amount secured and any reasonable costs incurred in the exercise of any such remedy, then unless otherwise ordered by the court the assignee shall pay the excess to the holder of the assignment registered immediately after its own or, if there is none, to the assignor of the international interest.

Article 38

Where there are competing assignments of international interests and at least one of the assignments is registered, the provisions of Article 31 apply as if the references to an international interest were references to an assignment of an international interest.

Article 39

Where the assignment of an international interest has been registered, the assignee shall, in relation to the associated rights transferred by virtue of the assignment, have priority over the holder of associated rights not held with an international interest to the extent that the first-mentioned associated rights relate to:

(a) a sum advanced and utilised for the purchase of the object;

(b) the price payable for the object; or

(c) the rentals payable in respect of the object; and

(d) the reasonable costs referred to in Article 9(4).

Article 40

An assignment of an international interest is valid against the trustee in bankruptcy of the assignor if prior to the commencement of the bankruptcy that assignment was registered in conformity with this Convention.

Article 41

1. – Subject to paragraph 2, nothing in this Convention affects an interest in the object arising in favour of any person by operation of principles of legal subrogation under the applicable law.

2. – The priority between any interest within the preceding paragraph and a competing interest may be varied by agreement in writing between the holders of the respective interests.

[CHAPTER VIII

NON-CONSENSUAL RIGHTS AND INTERESTS

Article 42

1. – A Contracting State may at any time in an instrument deposited with the depositary of the Protocol list the categories of non-consensual right or interest which shall be registrable under this Convention as regards any category of object as if the right or interest were an international interest and be regulated accordingly.

2. – A non-consensual right or interest (other than a registrable non-consensual right or interest) which under the law of a Contracting State would have priority over an interest in the object equivalent to that held by the holder of the international interest (whether in or outside the insolvency of the obligor) has priority over the international interest to the extent, and only to the extent that:

(a) such priority is set out by that State in an instrument deposited with the depositary of the Protocol and that instrument has been deposited with the depositary prior to the time when the registration of the international interest takes effect; and

(b) the non-consensual right or interest would, under the domestic law of that State, have priority over a registered interest of the same type as the international interest without any act of publication.]

[

CHAPTER [IX]
APPLICATION OF CONVENTION TO SALES

Article 43

The Protocol may provide for the application of this Convention, wholly or in part and with such modifications as may be necessary, to the sale or prospective sale of an object.]

[CHAPTER [X]
RELATIONSHIP WITH OTHER CONVENTIONS] ****

CHAPTER [XI]
[OTHER] FINAL PROVISIONS

Article T

This Convention shall enter into force as regards a category of object:

(a) at the time of entry into force of the Protocol;

(b) as a single instrument with that Protocol; and

(c) as between Contracting States Parties to that Protocol.

Article U

A Contracting State may declare at the time of signature, ratification, acceptance, approval of, or accession to the Protocol that it will not apply this Convention in relation to [a purely domestic transaction]. ***** Such a declaration shall be respected by the courts of all other Contracting States.

**** It is thought that Chapter X should be omitted and its contents left to each Protocol, since a particular Protocol may involve amendments even to a Convention which is not itself equipment-specific. See, for example, the exclusion by the preliminary draft Aircraft Equipment Protocol of the Unidroit Convention on International Financial Leasing.

***** To be defined by taking account of the location of the object and the parties.

Article V

[Insert provision for accelerated procedure to finalise further Protocols]

[Article W

A Contracting State shall declare at the time of ratification, acceptance, approval of, or accession to the Protocol the relevant court or courts for the purposes of Article 1(k) of this Convention.]

Article X

1. – A Contracting State may declare at the time of signature, ratification, acceptance, approval of, or accession to the Protocol that while the charged object is situated within, or controlled from its territory the chargee shall not grant a lease of the object in that territory.

2. – A Contracting State may declare at the time of signature, ratification, acceptance, approval of, or accession to the Protocol that any remedy available to the obligee under Articles 9 to 11 which is not there expressed to require application to the court may only be exercised with leave of the court.

Article Y

A Contracting State may declare at the time of signature, ratification, acceptance, approval of, or accession to the Protocol that it will not apply the provisions of Article 16, wholly or in part.

Article Z

1. – A five-member Review Board shall promptly be appointed to prepare yearly reports to the Contracting States addressing the matters specified in sub-paragraphs (a)-(d) of paragraph 2. [The composition of the Review Board, and its organisation and administration, shall be determined, in consultation with other relevant interests, jointly by the International Institute for the Unification of Private Law, the International Civil Aviation Organization and ....].

2. – At the request of not less than twenty-five per cent of the Contracting States, conferences of the Contracting States shall be convened from time to time to consider:

(a) the practical operation of this Convention and the Protocol and their effectiveness in facilitating the asset-based financing and leasing of the objects covered by their terms;

(b) the judicial interpretations given to the terms of this Convention, the Protocol and the Regulations;

(c) the functioning of the International Registry system and the performance of the Registrar and its oversight by the Intergovernmental Regulator; and

(d) whether any modifications to this Convention and the Protocol or the arrangements relating to the International Registry are desirable.

[Remaining Final Provisions to be prepared by the Diplomatic Conference]

APPENDIX III

PRELIMINARY DRAFT PROTOCOL ON MATTERS SPECIFIC TO AIRCRAFT EQUIPMENT

PRELIMINARY DRAFT PROTOCOL

ON MATTERS SPECIFIC TO AIRCRAFT EQUIPMENT

(as established by a working group organised and chaired by Mr J. Wool,

expert consultant to the Study Group on international aviation finance matters,

at the invitation of the President, at the conclusion of its second session, held in Geneva from 19 to 21 November 1997, and revised by the Chairman of the Study Group

in collaboration with Mr Wool)

THE CONTRACTING STATES TO THIS PROTOCOL,

MINDFUL of the demand for, and utility of aircraft equipment and the need to finance their acquisition and use as efficiently as possible,

RECOGNISING the advantages of asset-based financing and leasing for this purpose and desiring to facilitate these transactions by establishing clear rules to govern them,

BELIEVING that such rules must (i) reflect the principles underlying asset-based financing and leasing of aircraft objects and (ii) provide transaction parties with autonomy to allocate risks and benefits to the extent consistent with the policy decisions made by Contracting States in this Protocol,

CONSCIOUS of the need for an international registry system as an essential feature of the legal framework applicable to international interests in aircraft equipment,

CONSIDERING it desirable to modify the Unidroit Convention on International Interests in Mobile Equipment, pursuant to Article T of the Convention, to reflect the requirements of aircraft finance and the purposes described above,

HAVE AGREED upon the following provisions relating to aircraft equipment:

CHAPTER I

SPHERE OF APPLICATION AND GENERAL PROVISIONS

Article I
Defined terms

1. – Terms used in this Protocol and defined in Article 1 of the Convention are employed herein with the meanings there stated.

2. – In this Protocol the following terms are employed with the meanings set out below:

(a) "aircraft" means airframes with aircraft engines installed thereon or helicopters;

(b) "aircraft engines" means aircraft engines (other than those used in military, customs or police services) powered by jet propulsion or turbine technology and:

(1) in the case of jet propulsion aircraft engines, have at least 1750 lbs of thrust or its equivalent; and

(2) in the case of turbine-powered aircraft engines, have at least 550 rated take-off shaft horsepower or its equivalent,

together with all modules and other installed, incorporated or attached accessories, parts and equipment and all data, manuals and records relating thereto;

(c) "aircraft objects" * means airframes, aircraft engines and helicopters;

(d) "airframes" means airframes (other than those used in military, customs and police services) that, when appropriate aircraft engines are installed thereon, are type certified by the competent aviation authority to transport:

(1) at least eight (8) persons including crew; or

(2) goods in excess of 2750 kilograms,

together with all installed, incorporated or attached accessories, parts and equipment (other than aircraft engines), and all data, manuals and records relating thereto;

(e) "authorised party" means the party referred to in Article XIV(2);

(f) "Chicago Convention" means the Chicago Convention on International Civil Aviation, signed at Chicago on 7 December 1944, or any successor or superseding international agreement governing the nationality of aircraft;

(g) "Chicago Convention aircraft register" means the national or non-national register in which an aircraft is registered pursuant to the Chicago Convention;

(h) "Chicago Convention registry authority" means the national authority, or the common mark registering authority in a Contracting State which is the State of registry

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* In accordance with the preliminary draft Convention, the body of this preliminary draft Protocol employs the term "object" rather than the term "equipment", although the latter is used in the title of the instrument (and, for consistency with that title, in the preamble). Consideration should be given to the adoption of a consistent terminology in the two instruments.

responsible for the registration and de-registration of an aircraft in accordance with the Chicago Convention;

(i) "common mark registering authority" means the authority maintaining the non-national register in which an aircraft of an international operating agency is registered in accordance with Article 77 of the Chicago Convention;

(j) "deregister the aircraft" means delete the registration of an aircraft from a Chicago Convention aircraft register;

(k) "Geneva Convention" means the Convention on the International Recognition of Rights in Aircraft, signed at Geneva on 19 June 1948;

(l) "helicopters" means heavier-than-air machines (other than those used in military, customs or police services) supported in flight chiefly by the reactions of the air on one or more power-driven rotors on substantially vertical axes and which are type certified by the competent aviation authority to transport:

(1) at least five (5) persons including crew; or

(2) goods in excess of 450 kilograms,

together with all installed, incorporated or attached accessories, parts and equipment (including rotors), and all data, manuals and records relating thereto;

(m) "insolvency date" means the date referred to in Article XII(1);

(n) ["International Registry Authority" means the permanent international body designated as the International Registry Authority under this Protocol;]

(o) ["International Regulator" means [the permanent international body designated as the International Regulator under this Protocol] [the entity designated as the International Regulator in Article XVII(1)];]

(p) "interpretative note" means the note [approved] [authorised] by the Diplomatic Conference for the adoption of this Protocol as a[n] [authoritative] source for interpreting this Protocol;

(q) "primary insolvency jurisdiction" means the insolvency jurisdiction of the State in which the centre of the obligor's main interests is situated;

(r) "prospective sale" means a sale that is intended to take effect on the conclusion of a contract of sale in the future;

(s) ["Registrar" means [the entity designated as the Registrar under this Protocol] [the entity initially designated or subsequently appointed or re-appointed as the Registrar, as the case may be, as specified in Article XVII];]

(t) "State of registry" means in respect of an aircraft the State, or a State member of a common mark registering authority, on whose Chicago Convention aircraft register an aircraft is entered under the Chicago Convention; and

(u) "suretyship contract" means a contract entered into by one of the parties as surety.

Article II
Modification of Convention as regards aircraft objects

The Convention shall apply in relation to aircraft objects as modified by the terms of this Protocol.

Article III
Interpretative note

The interpretative note shall be referred to regarding the matters there addressed.

Article IV
Sphere of application

1. – The reference in Article 4(b) of the Convention to a "nationality register" is to be construed as a reference to a Chicago Convention aircraft register. No other "close connection" to a Contracting State shall be applicable for the purposes of that paragraph.

2. – Article U of the Convention shall not apply for the purposes of this Protocol.

3. – In their relations with each other, the parties may, by agreement in writing, derogate from or vary any of the provisions of Articles X(1), XI or XII(1) - (6).

Article V
Application of Convention to sales

The following provisions of the Convention apply *mutatis mutandis* in relation to a sale and a prospective sale as they apply in relation to an international interest and a prospective international interest:

Article 19(1) other than sub-paragraph (c);

Articles 21 - 23;

Article 26;

Articles 28 and 29;

Chapter VI; and

Article 42(2).

Article VI
Formalities and effects of contract of sale

1. – An agreement is a contract of sale for the purposes of this Protocol if it:

(a) is in writing;

(b) relates to an aircraft object in respect of which the transferor has power to enter into the agreement; and

(c) identifies the aircraft object.

2. – A contract of sale transfers the interest of the transferor in the aircraft object to the transferee according to its terms.

3. – A sale may be registered in the International Registry by or with the consent in writing of the seller.

Article VII
Representative capacities

A party to an agreement or a contract of sale may enter into an agreement, or register a related interest in an aircraft object in an agency, trust or other representative capacity. In such case that party is entitled to assert rights and interests under the Convention to the exclusion of the party or parties represented.

Article VIII
Description of aircraft objects

A description of an aircraft object that contains its manufacturer's serial number, the name of the manufacturer and its model designation is sufficient to identify the object for the purposes of Article 8(c) of the Convention and Article VI(1)(c) of this Protocol.

Article IX
Choice of law

1. – The parties to an agreement or a contract of sale or a related suretyship contract or subordination agreement may agree on the law which is to govern their rights and obligations under this Convention, wholly or in part.

2. – The reference in the preceding paragraph to the law chosen by the parties is to the rules of law in force in the designated State other than its rules of private international law.

CHAPTER II

DEFAULT REMEDIES, PRIORITIES AND ASSIGNMENTS

Article X
Modification of default remedies provisions

1. – In addition to the remedies specified in the provisions of Articles 9(1), 11 and 16(1) of the Convention, the obligee may in the circumstances specified in such provisions:

(a) deregister the aircraft; and

(b) export and physically transfer the aircraft object from the territory in which it is situated.

2. – The obligee may not exercise the remedies specified in the preceding paragraph without the prior consent in writing of the holder of any registered interest ranking in priority to that of the obligee.

3. – A chargee giving ten or more working days' prior written notice of a proposed sale or lease to interested persons is deemed to satisfy the requirement of providing "reasonable prior notice" specified in Article 9(2) of the Convention. The foregoing shall not prevent a chargee and a chargor from agreeing to a longer prior notice period.

4. – Article 15 of the Convention applies in relation to aircraft objects:

(a) as if "1." were inserted before "Any remedy."

(b) as if the following were substituted for the second sentence:

"An agreement between an obligor and an obligee as to what is commercially reasonable shall, subject to paragraph 2, be conclusive."

(c) as if the following were inserted as paragraph 2:

"2. The obligee may not take possession or control of an aircraft object in a manner which contravenes public order. For this purpose, the disruption of air transport is not in itself deemed a contravention of public order."

5. – For the purposes of Articles 16 and 17 of the Convention, a court of a Contracting State also has jurisdiction where that State is the State of registry.

Article XI
Definition of speedy judicial relief

1. – For the purposes of Article 16(1) of the Convention, "speedy" in the context of obtaining judicial relief means a period not exceeding thirty calendar days from the date on which the instrument initiating the proceedings is lodged with the court or its administrative office.

2. – The remedies specified in Article X(1) shall be made available by the Chicago Convention registry authority and other administrative authorities, as applicable, in a Contracting State no later than three working days after the judicial relief specified in the preceding paragraph is authorised or, in the case of judicial relief authorised by a foreign court, approved by courts of that Contracting State.

Article XII
Remedies on insolvency

1. – For the purposes of this Article, "insolvency date" means the earliest date on which one of the events specified in paragraph 2 shall have occurred.

2. – This Article applies where:

(a) any insolvency proceedings[**] against the obligor have been commenced by the obligor or another person in a Contracting State which is the primary insolvency jurisdiction of the obligor; or

(b) the obligor is located in a Contracting State and has declared its intention to suspend, or has actually suspended payment to creditors generally.

3. – Within a period not exceeding [thirty/sixty] days from the insolvency date the obligor shall:

(a) cure all defaults, and agree to perform all future obligations under the agreement and related transaction documents; or

(b) give possession of the aircraft object to the obligee [in accordance with, and in the condition specified in the agreement and related transaction documents].

4. – Where possession has been given to the obligee pursuant to the preceding paragraph, the remedies specified in Article X(1) shall be made available by the Chicago Convention registry authority and other administrative authorities, as applicable, no later than three working days after the date on which the aircraft object is returned.

5. – No exercise of remedies permitted by the Convention may be prevented or delayed after the period specified in paragraph 3.

6. – No obligations of the obligor under the agreement and related transactions may be modified [in the insolvency proceedings] without the consent of the obligee.

7. – No rights or interests, except for preferred non-consensual rights or interests listed in an instrument deposited under Article 42 of the Convention, shall have priority in the insolvency over registered interests.

Article XIII
Insolvency assistance

The courts of a Contracting State in which an aircraft object is situated shall expeditiously co-operate with and assist the courts or other authorities administering the insolvency proceedings referred to in Article XII in carrying out the provisions of that Article.

Article XIV
De-registration and export authorisation

1. – Where the obligor has issued an irrevocable de-registration and export request authorisation substantially in the form annexed to this Protocol and has submitted such authorisation for recordation to the Chicago Convention registry authority, that authorisation shall be so recorded.

2. – The person in whose favour the authorisation has been issued ("the authorised party") or its certified designee shall be the sole person entitled to exercise the remedies specified

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[**] The phrase "insolvency proceedings" will need to be defined.

in Article X(1), and may do so only in accordance with the authorisation. Such authorisation may not be revoked by the obligor without the consent in writing of the authorised party.

3. – The Chicago Convention registry authority and other administrative authorities in Contracting States shall expeditiously co-operate with and assist the authorised party in the exercise of the remedies specified in Article X.

Article XV
Modification of priority provisions

[1.] – Article 31 of the Convention applies as if paragraph 3 were omitted.

[2. – Article 31(5) of the Convention applies as if the words "and to amounts payable by any Government or State entity in respect of its confiscation, condemnation or requisition of that object" were inserted immediately following the words "physical destruction of that object".] [***]

Article XVI
Modification of assignment provisions

1. – Article 33(2) of the Convention applies as if the following were added immediately after sub-paragraph (c):

"(d) is consented to in writing by the obligor, whether or not the consent is given in advance of the assignment or specifically identifies the assignee."

[2. – Article 34(1)(b) of the Convention applies as if the words "so far as such rights are assignable under the applicable law" were omitted.]

[3. – Article 36(1) of the Convention applies as if sub-paragraph (c) were omitted].

[4. – Article 39 of the Convention applies as if the words following the phrase "not held with an international interest" were omitted]. [****]

[***] Consideration should be given to an optional provision for compensation in respect of such governmental acts to be paid before they are performed in order to reduce political risk.

[****] Article 39 of the preliminary draft Convention, as may be modified by this preliminary draft Protocol, will have important implications for the competing rights of a receivables financier and an asset-based financier. Consideration should be given to the appropriate rule in the context of aviation financing.

CHAPTER III

REGISTRY PROVISIONS RELATING TO INTERNATIONAL INTERESTS IN AIRCRAFT OBJECTS

Article XVII
Regulation and operation of Registry

ALTERNATIVE A

[1. – [The International Registry shall be regulated and operated by the International Registry Authority.] [The International Registry shall be regulated by the International Regulator ***** and operated by the Registrar.]] ******

ALTERNATIVE B

[1. – The International Registry shall be regulated by the Council of the International Civil Aviation Organization or such other permanent body designated by it to be the International Regulator.

2. – The initial Registrar hereby designated to operate the International Registry shall be a newly created, independent special purpose affiliate of the International Air Transport Association.

3. – The initial Registrar shall be organised in consultation with the International Regulator. Its constitutive documents shall contain provisions that:

(a) restrict it to acting as Registrar and performing ancillary functions; and

(b) ensure that it has no greater duties (fiduciary or otherwise) to members of the International Air Transport Association than to any person or entity in the performance of its functions as Registrar.

4. – The initial Registrar shall operate the International Registry for a period of five years from the date of entry into force of this Protocol. Thereafter, the Registrar shall be appointed or re-appointed at regular five-year intervals by the [Contracting States] [International Regulator].]

[2./5. – Article 20(1) and (3) of the Convention apply as modified by the preceding paragraphs of this Article.]

***** Further consideration needs to be given as to whether the appropriate term is *International* Regulator or *Intergovernmental* Regulator.

****** The two bracketed provisions in this Alternative A are mutually exclusive, so that if the decision is to have an International Registry Authority references in other Articles to the International Regulator and the Registrar will be deleted, whilst if the latter are adopted references to the International Registry Authority will be deleted.

Article XVIII
Basic regulatory responsibilities

1. – The [International Registry Authority] [International Regulator] shall act in a non-adjudicative capacity. This shall not prevent the [International Registry Authority] [International Regulator] from undertaking the functions specified in Article 20(6) and (7) of the Convention.

2. – The [International Registry Authority] [International Regulator] shall [be responsible to the Contracting States, and shall report thereto on its regulatory [and oversight] functions. Such reports shall be made on a yearly basis or more frequently as the [International Registry Authority] [International Regulator] deems appropriate.]

[3. – The initial Regulations shall be promulgated by the [International Registry Authority] [International Regulator] on entry into force of this Protocol.]

Article XIX
Registration facilities

1. – At the time of ratification, acceptance, approval of, or accession to this Protocol, a Contracting State may, subject to paragraph 2:

(a) designate its operators of registration facilities as specified in Article 20(2) of the Convention; and

(b) declare the extent to which any such designation shall preclude alternative access to the International Registry.

2. – A Contracting State may only designate registration facilities as points of access to the International Registry in relation to:

(a) helicopters or airframes pertaining to aircraft for which it is the State of registry; and

(b) registrable non-consensual rights or interests created under its domestic law.

Article XX
Additional modifications to Registry provisions

1. – For the purposes of Article 23(6) of the Convention, the search criterion for an aircraft object shall be its manufacturer's serial number, supplemented as necessary to ensure uniqueness. Such supplementary information shall be specified in the Regulations.

2. – For the purposes of Article 30(2) of the Convention, and in the circumstances there described, the holder of a registered prospective international interest or a registered prospective assignment of an international interest shall take such steps as are within its power to effect a removal thereof no later than five working days after the receipt of the demand described in such paragraph.

3. – The fees referred to in Article 20(4) shall be determined so as to recover the reasonable costs of operating the International Registry and the registration facilities and, in the case of the initial fees, of designing and implementing the international registration system.

CHAPTER IV

RELATIONSHIP WITH OTHER CONVENTIONS

Article XXI
Relationship with 1948 Convention on the International Recognition of Rights in Aircraft

1. – Where a Contracting State is a party to the Geneva Convention:

(a) the reference to the "laws" of such Contracting State for the purposes of Article I (1)(i) of the Geneva Convention should be to such laws after giving effect to the Convention;

(b) for the purposes of that Convention, the term "aircraft" as defined in Article XVI of the Geneva Convention shall be deleted and replaced by the terms "airframes," "aircraft engines" and "helicopters" as defined in this Protocol; and

(c) registrations in the International Registry shall be deemed to be regular recordations "in a public record of the Contracting State" for the purposes of Article I (1)(ii) of the Geneva Convention.

2. – Subject to paragraph 3, the Convention shall, for the Contracting States referred to in the preceding paragraph, supersede the Geneva Convention to the extent, after giving effect to the preceding paragraph, of inconsistency between the two Conventions.

3. – The provisions of the preceding paragraph shall not apply to Articles VII and VIII of the Geneva Convention where an obligee elects to exercise remedies against an obligor in accordance with those Articles [and provides the court with written evidence of that election.]

Article XXII
Relationship with 1933 Convention for the Unification of Certain Rules Relating to the Precautionary Arrest of Aircraft

The Convention shall, for Contracting States that do not make a declaration under Article XXV(a) of this Protocol, supersede the 1933 Convention for the Unification of Certain Rules Relating to the Precautionary Arrest of Aircraft to the extent that that Convention is in force among them.

Article XXIII
Relationship with 1988 Unidroit Convention on International Financial Leasing

The Convention shall, for Contracting States which are parties to it, supersede the 1988 Unidroit Convention on International Financial Leasing as it relates to aircraft objects to the extent that that Convention is in force among them.

[Article XXIV
Relationship with 1980 Rome Convention on the Law Applicable to Contractual Obligations

Article IX of this Protocol, so far as not disapplied under Article XXV, shall have effect in a Contracting State notwithstanding any provisions of the 1980 Rome Convention on the Law Applicable to Contractual Obligations.]

CHAPTER V
[OTHER] FINAL PROVISIONS *******

******* It is envisaged that, in line with practice, draft Final Provisions will be prepared for the Diplomatic Conference at such time as governmental experts have completed their preparation of the draft Protocol. The proposals for draft Final Provisions set out in the Addendum to this preliminary draft Protocol below are in no way intended to prejudge that process but simply to indicate the suggestions of the Aircraft Protocol Group on this matter. Particular attention is drawn to Article XXXII(3) (limiting the effect of any denunciation or future declaration or reservation as regards established rights) and Article XXXV (establishing a Review Board and contemplating review and revision of this Protocol).

APPENDIX

FORM OF IRREVOCABLE DE-REGISTRATION AND EXPORT REQUEST AUTHORISATION

[Insert Date]

To: [Insert Name of Chicago Convention Registry Authority]

Re: Irrevocable De-Registration and Export Request Authorisation

The undersigned is the registered [operator] [owner]* of the [insert the airframe/helicopter manufacturer name and model number] bearing manufacturer's serial number [insert manufacturer's serial number] and registration [number] [mark] [insert registration number/mark] (together with all installed, incorporated or attached accessories, parts and equipment, the "**aircraft**").

This instrument is an irrevocable de-registration and export request authorisation issued by the undersigned in favour of [insert name of obligee] ("the **authorised party**") under the authority of Article XIV of the Protocol to the Unidroit Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment. In accordance with that Article, the undersigned hereby requests:

(i) recognition that the authorised party or the person it certifies as its designee is the sole person entitled to:

(a) obtain de-registration of the aircraft from the [insert name of national aviation registry] maintained by the [insert name of aviation authority] for the purposes of Chapter III of the Chicago Convention of 1944 on International Civil Aviation; and

(b) export and physically transfer the aircraft from [insert name of country]; and

(ii) confirmation that the authorised party or the person it certifies as its designee may take the action specified in clause (i) above on written demand without the consent of the undersigned and that, upon such demand, the authorities in [insert name of country] shall co-operate with the authorised party with a view to the speedy completion of such action.

The rights in favour of the authorised party established by this instrument may not be revoked by the undersigned without the written consent of the authorised party.

Please acknowledge your agreement to this request and its terms by appropriate notation in the space provided below and lodging this instrument in [insert name of Chicago Convention registry authority].

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* Select the term that reflects the relevant nationality registration criterion.

[insert name of operator/owner]

_____

Agreed to and lodged this
[insert date]

By: [insert name of signatory]
Its: [insert title of signatory]

_____

[insert relevant notational details]

ADDENDUM

CHAPTER V

[OTHER] FINAL PROVISIONS

Article XXV
Declarations disapplying certain provisions

A Contracting State may declare at the time of ratification, acceptance, approval of, or accession to this Protocol that it will not apply any one or more of the provisions of Articles IV and XII to XIV of this Protocol.

Article XXVI
Convention and Protocol as single instrument

The Convention and this Protocol shall be read and interpreted together as one single instrument and shall be known as the Unidroit Convention on International Interests in Mobile Equipment as applied to aircraft objects.

Article XXVII
Adoption of Protocol

1. – This Protocol is open for signature at the concluding meeting of the Diplomatic Conference for the Adoption of the Draft Protocol to the Unidroit Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment and will remain open for signature by all Contracting States at [....] until [....].

2. – This Protocol is subject to ratification, acceptance or approval of Contracting States which have signed it.

3. – This Protocol is open for accession by all States which are not signatory Contracting States as from the date it is open for signature.

4. – Ratification, acceptance, approval or accession is effected by the deposit of a formal instrument to that effect with the depositary. [*]

Article XXVIII
Entry into force

1. – This Protocol enters into force on the first day of the month following the expiration of [three] months after the date of deposit of the [third] instrument of ratification, acceptance, approval or accession.

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[*] It is recommended that a resolution be adopted at, and contained in the Final Acts and Proceedings of, the Diplomatic Conference, contemplating the use by Contracting States of a model ratification instrument that would standardise, *inter alia*, the format for making and/or withdrawing declarations and reservations.

2. – For each Contracting State that ratifies, accepts, approves or accedes to this Protocol after the deposit of the [third] instrument of ratification, acceptance, approval or accession, this Protocol enters into force in respect of that Contracting State on the first day of the month following the expiration of [three] months after the date of the deposit of its instrument of ratification, acceptance, approval or accession.

Article XXIX
Territorial units

1. – If a Contracting State has two or more territorial units in which different systems of law are applicable in relation to the matters dealt with in this Protocol, it may, at the time of ratification, acceptance, approval or accession, declare that this Protocol is to extend to all its territorial units or only to one or more of them, and may substitute its declaration by another declaration at any time.

2. – These declarations are to be notified to the depositary and are to state expressly the territorial units to which this Protocol extends.

3. – If a Contracting State makes no declaration under paragraph 1, this Protocol is to extend to all territorial units of that Contracting State.

Article XXX
Temporal application

This Protocol applies in a Contracting State to rights and interests in aircraft objects created or arising on or after the date on which this Protocol enters into force in that Contracting State.

Article XXXI
Declarations and reservations

No declarations or reservations are permitted except those expressly authorised in this Protocol.

Article XXXII
Denunciations and subsequent declarations

1. – This Protocol may be denounced, or a subsequent declaration may be made by any Contracting State at any time after the date on which it enters into force for that Contracting State, by the deposit of an instrument to that effect with the depositary.

2. – Any such denunciation or subsequent declaration shall take effect on the first day of the month following the expiration of [twelve] months after the date of deposit of the instrument of denunciation or in which such declaration is made with the depositary. Where a longer period for that denunciation or declaration to take effect is specified in the instrument of denunciation or in which such declaration is made, it shall take effect upon the expiration of such longer period after its deposit with the depositary.

3. – Notwithstanding the previous paragraphs, this Protocol shall continue to apply, as if no such denunciation or subsequent declaration had been made, in respect of all rights and interests arising prior to the effective date of that denunciation or subsequent declaration. The foregoing shall not apply to any subsequent declaration under Article XV of this Protocol.

Article XXXIII
Withdrawal of declarations and reservations

Any Contracting State which makes a declaration under, or a reservation to this Protocol may withdraw it at any time by a formal notification in writing addressed to the depositary. Such withdrawal is to take effect on the first day of the month following the expiration of [three] months after the date of the receipt of the notification by the depositary.

Article XXXIIIbis

1. – A five-member Review Board shall promptly be appointed to prepare yearly reports to the Contracting States addressing the matters specified in sub-paragraphs (a)-(d) of paragraph 2. [The composition of the Review Board, and its organisation and administration, shall be determined, in consultation with other relevant interests, jointly by the International Institute for the Unification of Private Law, the International Civil Aviation Organization and ....].

2. – At the request of not less than twenty-five per cent of the Contracting States, conferences of the Contracting States shall be convened from time to time to consider:

(a) the practical operation of this Convention and the Protocol and their effectiveness in facilitating the asset-based financing and leasing of the objects covered by their terms;

(b) the judicial interpretations given to the terms of this Convention, the Protocol and the Regulations;

(c) the functioning of the International Registry system and the performance of the Registrar and its oversight by the Intergovernmental Regulator; and

(d) whether any modifications to this Convention and the Protocol or the arrangements relating to the International Registry are desirable.

Article XXXIV
Depositary arrangements

1. – This Protocol shall be deposited with the [....].

2. – The [....] shall:

(a) inform all Contracting States which have signed or acceded to this Protocol and [....] of:

(i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession, together with the date thereof;

(ii) each declaration made in accordance with this Protocol;

(iii) the withdrawal of any declaration;

(iv) the date of entry into force of this Protocol; and

(v) the deposit of an instrument of denunciation of this Protocol together with the date of its deposit and the date on which it takes effect;

(b) transmit certified true copies of this Protocol to all signatory Contracting States, to all Contracting States acceding to the Protocol and to [....];

(c) provide the [International Registry Authority] [Registrar] with the contents of each instrument of ratification, acceptance, approval or accession so that the information contained therein may be made publicly accessible; and

(d) perform such other functions customary for depositaries.

ANNEX

NOTES ON REVISION OF PRELIMINARY DRAFT AIRCRAFT EQUIPMENT PROTOCOL

General

1 The purpose of the revision is fourfold:

(1) To shorten the preliminary draft Protocol substantially while preserving its key features;

(2) To transfer to the preliminary draft Convention those provisions which appear suitable for general application;

(3) To align the style of the preliminary draft Protocol with that of the preliminary draft Convention;

(4) To rearrange the Articles in a more logical sequence.

2 The length of the preliminary draft Protocol has been substantially reduced. There are now 34 Articles instead of 47 and several of the remaining Articles have been significantly shortened. This has been achieved by moving a number of Articles or paragraphs to the preliminary draft Convention itself and by deleting provisions which are already in the preliminary draft Convention or which add nothing to its effect.

Moreover, the provision of explanatory materials will lighten the text of the preliminary draft Protocol like that of the preliminary draft Convention.

3 Brackets have been inserted round certain provisions in order to identify prospective policy concerns that need to be addressed.

4 References to the preliminary draft Protocol are to the original text of the preliminary draft Protocol except where otherwise indicated. References to the preliminary draft Convention are to the revised text (numbers of Articles remain unchanged but new Articles 39 and 43 have been added).

Old Article

I Since the only relevant form of outright transfer is sale, "sale" has been substituted for "transfer" throughout, references to the transfer agreement have been deleted, and definitions of "contract of sale" and "sale" inserted in the preliminary draft Convention.

IV/V As originally drafted, this combined formalities with sphere of application. It has been split into two separate Articles, one extending the preliminary draft Convention to sales (new Article IV) and the other providing for the formalities and effects (new Article V). Original para. 3 of Art. IV deleted as unnecessary.

VI Rendered otiose by suggested amendments to the definition of "associated rights" in the preliminary draft Convention.

VII Paragraph (b) deleted as unnecessary.

VIII Deleted as unnecessary.

IX Deleted as point now covered by revision of definition of "leasing agreement" as suggested by Mr J. Wool.

XI Paragraph 4 deleted as unnecessary in view of addition to Article 8(d) of the preliminary draft Convention.
Paragraph 5 revised since "surety" is now defined.
Paragraph 6 deleted as inappropriate.
Paragraph 8 has been reworded to establish the necessary link with a Contracting State.

XII	Paragraph 3 has been inserted in brackets, an alternative being to transfer it to the preliminary draft Convention, as shown by the bracketed addition to Article 31(5).
XIII	Paragraph 4 has been transferred to Article 34(3) of the preliminary draft Convention. Paragraph 6 has been reworded and put in brackets as suggested deletion would have the effect that the competing interest could be a Convention interest, in which case there would be a conflict with the basic priority provisions.
XIV	Transferred to preliminary draft Convention and abbreviated.
XV	Transferred to new Article W of preliminary draft Convention.
XVI	Deleted as already covered by preliminary draft Convention.
XVII	Moved to new Article XXV.
XIX	Last part of paragraph 3(b) put in brackets, as it could involve substantial expenditure to detriment of general body of creditors. It is understood from Mr J. Wool that this is not what was intended, and that the duty to return in proper condition is meant to be confined to cases where that duty is part of a secured obligation. Will need some redrafting. Paragraph 8 deleted as now covered by Article V.
XXIV	Paragraph 1 and Article XXV covered by revision of Article 20 of preliminary draft Convention.
XXV	Alternative now offered to paragraph 2 as implications of concept "responsible to Contracting States" are unclear.
XXVII	Paragraph 1 transferred to become Article 21(b) of preliminary draft Convention. Paragraph 2 deleted as unnecessary.
XXIX	Substance transferred to revised Article 29 of preliminary draft Convention.
XXX	Substance now covered in revised Articles 20 and 29 of preliminary draft Convention.
XXXI	Now covered in Article 17 of preliminary draft Convention.
XXXII	Deleted as unnecessary.
XXXIII	Paragraph 3 put in brackets; evidential provisions not appropriate.
XXXVI	Inserted in brackets as it seems both unnecessary and undesirable, unnecessary because the preliminary draft Convention gives freedom of choice, subject only to mandatory rules which cannot be excluded anyway, and undesirable because of the need to retain paragraph 4 of the preliminary draft Convention.
XXXVII	Deleted as it is inappropriate to deal with a purely regional Convention in a multilateral Protocol.