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

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

*DISCUSSION PAPER  
ON THE LEGAL RELATIONSHIP BETWEEN THE PRELIMINARY DRAFT  
CONVENTION AND ITS EQUIPMENT-SPECIFIC PROTOCOLS*

*(prepared by Ms C. CHINKIN (Professor of Public International Law, London School of Economics) and  
Ms C. KESSEDJIAN (Professor of Law; Deputy Secretary-General, Hague Conference on  
Private International Law) at the request of the Steering and Revisions Committee)*

Rome, January 1999

**DISCUSSION PAPER**  
**ON THE LEGAL RELATIONSHIP BETWEEN THE PRELIMINARY DRAFT**  
**UNIDROIT CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE**  
**EQUIPMENT AND ITS EQUIPMENT-SPECIFIC PROTOCOLS**

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## **1. INTRODUCTION**

This discussion paper analyses the legal relationship between the preliminary draft Unidroit Convention on International Interests in Mobile Equipment (**the preliminary draft Convention**) and its equipment-specific Protocols, and some consequences for certain aspects of treaty law. It sets out options for consideration with respect to:

1. Accelerated procedures for the adoption of post-diplomatic Conference Protocols on further categories of equipment;
2. Review procedures for the base Convention and Protocols;
3. Amendment procedures for the base Convention and Protocols.

The paper sets out some alternative approaches for discussion but does not suggest precise language for inclusion in the instruments.

## **2. THE BASE CONVENTION AND EQUIPMENT-SPECIFIC PROTOCOLS**

The legal framework for the proposed regulation of international interests in mobile equipment is innovative in terms of treaty law and rests upon the partnership between public and private sectors in establishing industry-specific international regimes. The important and unusual role of the private sector in developing international legal norms pushes at the boundaries of public international law and necessitates some rethinking in some important areas of treaty law.

The proposed instruments comprise a base Convention that provides for the «constitution and effects of an international interest in mobile equipment» (Article 2) and equipment-specific Protocols prepared in conjunction with, and benefiting from, sector experts. The base Convention is envisaged as applying to a range of categories of «uniquely identifiable objects»: airframes; aircraft engines; helicopters; [registered ships;] oil rigs; containers; railway rolling stock; space property (Article 3). It is not foreseen that the base Convention will stand by itself so as to apply in general to all such equipment apart from that specifically regulated by a Protocol. The base Convention «shall be read and interpreted as a single instrument» with each relevant protocol (Article U and reiterated within each Protocol, see preliminary draft Protocol to

the preliminary draft Unidroit Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment (**the preliminary draft Aircraft Protocol**), Article II).

At the time of the first meeting of governmental experts in February 1999, only one equipment-specific preliminary draft Protocol will be ready for the consideration of Governments, namely, the preliminary draft Aircraft Protocol. While this can be seen as a model for other Protocols it does of course have regard to unique aspects of the aircraft industry and current international aviation law and practice. The experience of drafting the preliminary draft Aircraft Protocol alongside the base Convention (and with participation of experts from the aircraft sector in the drafting of the base Convention) has shown that there are a number of legal consequences of the relationship that require careful and explicit consideration. These result from the understandings that:

1. In each case the base Convention and relevant Protocol are to be read as a single instrument. Provisions in the base Convention apply to all relevant equipment unless there are sector-specific provisions contained within a Protocol. In this sense it is the Protocol, not the base Convention, that is controlling with respect to each category of equipment.
2. The base Convention can only become applicable with respect to any category of equipment with the coming into force of the relevant Protocol, and only for the Parties to the relevant Protocol.
3. Each equipment-specific Protocol is controlling. It can amend or modify the base Convention where the special characteristics of the relevant sector make this necessary.
4. Consequently States' obligations under the base Convention will vary according to which Protocols they have adhered to, and there may be different obligations for the same Party if it has entered into more than one Protocol.

The challenge presented by this structure is therefore to ensure that there is sufficient flexibility within the base Convention to accommodate the needs of different sectors within the relevant Protocols, while ensuring that the essential structural coherence of the Unidroit registration system and the legal effects of international registration are maintained, that is that equipment-specific modifications do not undermine the basic objectives of the base Convention (which do however include the facilitation of asset-based financing). It will be necessary to ensure both that any amendment to the base Convention is compatible with each Protocol and, conversely, that no Protocol amendment entails an amendment to the base Convention that will undermine another Protocol. These requirements are especially important in the contexts of adopting future equipment-specific Protocols and for processes for amendment and review of all Protocols and the base Convention. In all these contexts, States may wish to consider the impact of the innovative framework upon the traditional processes of treaty law and whether they wish to depart from them.

### 3. ISSUES FOR CONSIDERATION

#### 3.1.1. Adoption of future Protocols

The adoption of a further Protocol may modify the base Convention, but only with respect to the equipment covered by that Protocol. This issue is therefore closely connected with that of amendment considered below. Framework Conventions frequently anticipate the adoption of future Protocols, for example to expand the scope of the Convention, to introduce new rights and obligations, or to introduce implementation and compliance procedures. Future Protocols may be negotiated and adopted in the usual way, that is through a further diplomatic Conference. Conventions may also provide that States Parties can opt in or opt out of Annexes to a particular Convention, including future Annexes. These models are however not exactly on point because the preliminary draft Convention is unique in that future Protocols are envisaged that involve new participants: different international governmental Organisations (**I.G.O.s**) and international non-governmental Organisations (**N.G.O.s**) and, possibly, different States Parties from those that have become Parties to the base Convention through their acceptance of the preliminary draft Aircraft Protocol. Any new Protocol may also modify the base Convention with respect to that equipment. It is therefore necessary to consider the position of both existing Parties, through their adherence to an earlier Protocol, and of potential Parties to the proposed Protocol. It is also important to remember that the envisaged Protocols will cover assets with important strategic and financial implications for States.

These considerations make it problematic to anticipate the wishes of potential States Parties, and to determine whether a fast-track, simplified method of adoption of future Protocols is desirable. It must be remembered that the traditional, diplomatic Conference route is a possibly slower, but viable way of adopting a new Protocol that will form a further integral legal instrument with the base Convention.

The following is offered as a model for fast-track adoption of future Protocols. It provides for an institutional, co-ordinating role for Unidroit and, where appropriate, for input from relevant I.G.O.s and N.G.O.s that have a significant position with respect to a particular category of equipment (as has been the experience with the International Civil Aviation Organization (**I.C.A.O.**), the International Air Transport Association and the Aviation Working Group (**A.W.G.**) with respect to the preliminary draft Aircraft Protocol). These provisions could be made applicable for both the fast-track and diplomatic Conference models as Unidroit's continued involvement in future Protocols is important to ensure that the objective of maintaining the integrity of the base Convention and Unidroit's conception of the registration scheme remain intact.

For a fast-track procedure to be feasible and acceptable to States, the base Convention will have to specify which of its provisions are essential to its objects and purposes. Since the assumption is that Protocols can modify the base Convention where necessary to accommodate the special characteristics of the particular industry, such modifications should be kept to the minimum necessary to maintain the integrity of the Unidroit registration system. A fast-track amendment process would rest upon the tacit acceptance given to future Protocols by the

diplomatic Conference adopting the future draft Convention and the future draft Aircraft Protocol. Provision for the process would have to be made in the preliminary draft Convention (Article W), and explained fully in the Explanatory Memorandum for Governments.

### **3.1.2. Procedures for the adoption of future Protocols**

The base Convention would make it the responsibility of the Secretariat of Unidroit to explore the drafting of future equipment-specific Protocols to the base Convention. Any existing initiative, for example those with respect to space property and railway rolling stock, would of course be continued. Where the Secretariat considers it appropriate and timely, it should form a working party for the drafting of a preliminary draft Protocol. Depending upon the degree of specificity required, a provision of the base Convention would specify the methodology to be followed by the Unidroit Secretariat in identifying the potential membership of such a working party (for example, relevant I.G.O.s, N.G.O.s and appropriate experts).

Upon completion of its initial drafting, the working party would submit its preliminary draft Protocol to the Governing Council of Unidroit for adoption. The Governing Council would consider it in the usual way, paying particular attention to its compatibility with the structure and substance of the base Convention. Where possible, and to facilitate consistency, texts of more than one equipment-specific Protocol should be considered together and the Secretariat should attempt to co-ordinate the timing of working parties to enable this to occur. Two alternative procedures could then be followed: (1) diplomatic Conference or (2) fast-track procedure.

The preliminary draft text(s) would then be passed to the Unidroit General Assembly with the comments of the Governing Council. The General Assembly could call for a diplomatic Conference to be convened for all States that had attended the diplomatic Conference adopting the future draft Convention and the future draft Aircraft Protocol, States that had become Parties to the base Convention through any subsequent Protocol and any additional States with a particular interest in the industry sector. Alternatively, the General Assembly could adopt the preliminary draft Protocol as a draft Protocol and activate the following procedure.

The Secretariat of Unidroit would forward the adopted draft Protocol with explanatory notes to its member States, to those States that attended the diplomatic Conference for the future draft Convention and the future draft Aircraft Protocol and to any other State that acceded to the Convention through any further Protocol. These States would be invited to make written submissions and comments on the draft Protocol within [twelve months]. Received comments would be considered in turn by the working party, the Unidroit Governing Council and subsequently the Unidroit General Assembly for final approval, in conjunction with any other relevant I.G.O.

The text would then be offered for acceptance by States. States Parties to the base Convention through acceptance of an earlier Protocol could automatically become Parties to the new Protocol, unless a State notifies the Governing Council of Unidroit in writing, within [twelve months] of receiving the text, that it does not wish to do so (i.e. the opt-out procedure).

States that are not Parties to the base Convention would be able to accede in accordance with the final provisions of the Protocol and thus become Parties to the base Convention through their adherence to that Protocol. This would not incur any obligations with respect to other Protocols to which they had not become Parties.

### **3.2. Review procedures for base Convention and Protocols**

Procedures for the review of the operation and application of Conventions have become a feature of treaty-making. Review Conferences for these purposes should be distinguished from a Review Conference for the purpose of treaty amendment or modification, although the review process might indicate the need for amendment (see 81 *American Journal of International Law* (1987) 226).

The unique nature of the structure of the base Convention and an expanding number of equipment-specific Protocols necessitates a review procedure to be contained within the base Convention. The review procedure would allow assessment by States Parties of the evolution of the overall legal regime in the light of potential modifications through successive Protocols and in effect ensure the ongoing viability of the base Convention. Further, there may be a need for assessment of:

- the interpretation of the various instruments by national institutions;
- difficulties experienced by operators;
- changes and possible conflicts in international law and practice.

#### **3.2.1. General Review Conference**

The base Convention should make provision for the Secretary-General of Unidroit to convene a Review Conference [five years] after the entry into force of the base Convention through the entry into force of an equipment-specific Protocol (of which the first is likely to be the preliminary draft Aircraft Protocol) and thereafter at five-yearly intervals, or if requested by twenty-five per cent of the accumulated States Parties to the base Convention and all Protocols. Participants in the Review Conference would include representatives of States Parties to the base Convention through adherence to any equipment-specific Protocol, representatives from relevant I.G.O.s and N.G.O.s (as observers) and any expert that the Secretary-General of Unidroit deems desirable to invite.

The purpose of a general Review Conference would be to review the operation of the treaty to assess fulfilment of its objectives in the light of its Preamble and provisions. Its functions would include:

- a review of the operation of the base Convention and Protocols through an article-by-article analysis of all instruments;
- consideration of the uniform interpretation of the base Convention and Protocols;
- proposing measures to reinforce the practical effectiveness of the principles of the base Convention and Protocols.

- making recommendations concerning the functioning of the international registration system and its oversight by the Intergovernmental Regulators.

Procedures (for example consensus, unanimity or a specified majority of those present and voting) for determining the Chair of the Conference and for the adoption of recommendations etc. would have either to be specified by the base Convention or decided by the first Review Conference.

The recommendations and declarations of such a Review Conference would not be binding upon States Parties but would provide an important source of authoritative information on the application of the base Convention and Protocols.

The Review Conference might propose amendments to the base Convention, subject to the procedures discussed below.

### **3.2.2. Equipment-specific Review Conference**

Provision for a Review Conference for the base Convention together with all Protocols does not prevent the inclusion of provisions for an equipment-specific Review Board and the convening of an equipment-specific Review Conference (see Article XXXIV of the preliminary draft Aircraft Protocol). Equipment-specific review procedures would however be limited to considering issues relating to that category of equipment, with respect to the base Convention or equipment-specific Protocol.

Participants in an equipment-specific Review Conference would include representatives of States Parties to the equipment-specific Protocol, representatives from relevant I.G.O.s and N.G.O.s and any expert that the Secretary-General of Unidroit deems desirable to invite.

The purpose of an equipment-specific Review Conference would be to review the operation of the Protocol to assess fulfilment of its objectives in the light of its Preamble and provisions. Its functions would include:

- a review of the operation of the base Convention and Protocol with respect to a specific category of equipment through an article-by-article analysis of the base Convention and Protocol;
- consideration of the uniform interpretation of the relevant Protocol and the regulations;
- consideration of measures to reinforce the effectiveness of the principles of the relevant Protocol;
- to make recommendations concerning the functioning of the international registration system and its oversight by the Intergovernmental Regulator.

Consideration might be given to the desirability of having a Review Conference for all Protocols at the same time. This would bring together representatives of States Parties to all Protocols and from the different I.G.O.s and N.G.O.s. The advantage of such a procedure would

be that the operation for all sectors could be reviewed in the light of other sectors' experience and any incompatibilities (for example equipment-specific Protocols amending the base Convention that might impact in some way on other sectors). The disadvantage would be the different timing of the entry into force of the base Convention with respect to different Protocols and the diverse needs of the different sectors.<sup>(1)</sup>

### **3.3.1. Treaty amendment**

The provisions for treaty amendment and modification are specified in Articles 39-41 of the Vienna Convention on the Law of Treaties, 1969.

#### Points to Note

(i) The Vienna Convention is permissive in that its rules may be adapted or modified by Parties to any treaty and residual in that it applies only if the Parties have not indicated an alternative. The over-riding principle is the will and intention of the Parties.

(ii) The coming into effect of amendments is traditionally covered by the same underlying principles as those for the coming into force of a treaty, that is, it rests upon the consent of the Parties.

(iii) A range of innovative amendment procedures has been introduced into recent treaties that establish regulatory regimes, especially with respect to environmental and trade matters. These aim at creating a speedier, simpler process for treaty amendment, especially where on-going amendments are required by scientific or technological matters and where the scope of the proposed changes could not be envisaged at the time the treaty was concluded. They are fast-tracked by not requiring the express consent of all States Parties to the specific amendment. In effect States give their consent in advance by the terms of the treaty to the process by which amendments are introduced, but not to the precise content of potential amendments.

The purpose of such procedures is to prevent delay in the acceptance of amendments until the consent of all States Parties can be obtained, a process that effectively allows one State to veto, or to hold up, the proposals.

(iv) A two-tier amendment process may be adopted whereby the full consent of all States Parties is required in the usual way for the amendment of those Articles considered as essential to the structure, objects and purposes of the Convention, and a simplified, fast-track procedure for Articles deemed to be of a more technical, or specialist nature. Aspects of the unique relationship between the base Convention and the equipment-specific Protocols make such a two-tier amendment process problematic. Since the equipment-specific Protocols are controlling, any proposed amendment to the base Convention must be considered for its impact upon the Protocol(s). In turn, whilst an amendment to the base Convention can be achieved through a provision of a Protocol (for the purposes of the base Convention read as an integral whole with that Protocol), such amendments must not undermine the fundamentals of the base Convention. Further, it must be noted that simplified procedures for amendments are more readily accepted by States where they concern matters contained in treaty annexes and relate to

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<sup>(1)</sup> However, see the reservations expressed by the A.W.G. hereunder, in the Appendix to this paper.

technical adjustments. The nature of the equipment-specific Protocols is such that they cannot be regarded in this light - there is not an evident hierarchy between provisions for this purpose. Nevertheless, provisions in the Protocols may be susceptible to changes within particular industries and to new, previously unspecified demands that may require less formal amendment procedures. It must also be remembered that it is possible for a State to be a Party to the base Convention through only one equipment-specific Protocol. Such a State would have an interest in the amendment of another equipment-specific Protocol in so far as it amended the base Convention, but not if it had no such effect. <sup>(2)</sup>

(v) In most cases where a fast-track treaty amendment procedure is used, it operates within an institutional framework. This normally includes a decision-making organ comprising all, or some specified percentage of the Parties (for example a Conference or Meeting of the Parties), and a secretariat that can manage and oversee the process. The Parties in effect delegate to such bodies the powers to carry through such an amendment process. In the proposed Unidroit Convention consideration should be given to whether organs of Unidroit, for example the Secretariat and General Assembly, could perform these functions.

### **3.3.2. Traditional procedures for treaty amendment**

Proposed amendments may be made by any State Party. The text of a proposed amendment is submitted to the appropriate institutional body and circulated to all States Parties. There may be provision for consultation with interested non-State bodies. Any comments are then circulated a specified time period before any meeting of relevant parties. In an institutional framework, amendments can be put for adoption by the institutional body by either a specified majority of those present and voting, or by consensus. If the majority or consensus is not achieved within the institution, the proposed amendment procedure is terminated. If the amendment is adopted by the institutional body, it is submitted to the States Parties for ratification in the usual manner. Once the specified number of ratifications of the amendment is received, the amendment would come into effect in accordance with Article 40 of the Vienna Convention on the Law of Treaties.

This process requires the specific acceptance of all amendments. Where there is no institutional framework within which the first stage of the process can be operated, consideration must be given to whether any proposed amendment should be put for approval by States Parties or whether it must be first proposed by a minimum number of States.

Another model is to allow a specified number of States to propose a Conference to consider amendment, e.g. United Nations Convention on the Law of the Sea (**U.N.C.L.O.S.**), Article 312 of which states that, after 10 years from the date of entry into force of the Convention, a State Party may, by written communication to the Secretary-General of the United Nations, propose specific amendments and request that a Conference be convened to consider the proposals. The Secretary-General must communicate this request to all States Parties and, if not less than one half of them respond favourably within 12 months, the Conference will be held. Such a process could be worked into the Review Conference.

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<sup>(2)</sup> *idem.*

### **3.3.3. Fast-track procedures**

#### *3.3.3.1. Tacit acceptance*

Tacit acceptance to an amendment requires objections from States Parties to a proposed amendment within a specified period of time. This requires States to make a positive objection to a proposal, which may be viewed as unhelpful, or even an unfriendly act. If no objection is made the amendment is regarded as having been tacitly accepted.

E.g. of tacit acquiescence:

U.N.C.L.O.S., Article 313 (1) of which allows a State Party to propose an amendment to be adopted without the convening of a Conference. The State Party circulates this proposal to all Parties and if within 12 months any State objects to the acceptance of the amendment or to the proposal to use the fast-track procedure, the amendment is considered to have been rejected.

A question under this model is whether one objection should be allowed to defeat the proposal or whether a certain number of objections should be needed. If one objection is sufficient, it reduces the chances of an amendment being adopted, but maintains intact the principle of consent.

An intermediate position is that a certain number of objections would lead to a Review Conference for the consideration of the amendment.

If an amendment comes into effect unless a certain number of States object, the position of a State that has objected but without sufficient support to defeat the amendment must be determined. The principle of consent would require that such a State does not become bound, but an alternative (radical) approach would deem that State bound by the acceptance of the amendment by the majority.

#### *3.3.3.2. Opt-out*

The opt-out procedure has been used in environmental treaties, and within such institutional frameworks as I.C.A.O., the International Maritime Organization, the International Whaling Commission and the International Labour Organization.

The procedure typically involves two stages. First, the appropriate institutional organ adopts the proposed amendment by specified majority vote or consensus and, secondly, States Parties to the institution can formally object within a specified time period and avoid becoming bound by the amendment. Failure to object results in the State becoming bound. This procedure is conveniently used, for example, where the amendment proposes broader application of the Convention, the introduction of quota systems, regulations on allowable equipment.

Such a procedure can also operate without the need for a Conference of the Parties (or in between such Conferences). For example, the 1973 Convention on the International Trade in

Endangered Species allows postal amendment to its annexes. After receiving a proposed amendment, the appropriate secretariat communicates it to all other Parties and other relevant bodies. Parties must return their comments within a specified time and these are circulated by the secretariat, together with its own recommendations.

If no objections to the proposal are received within a specified time, the amendment comes into force for all Parties except those that have explicitly made reservations. If objections to the amendment coming into force are made, the secretariat carries out a postal vote. Replies must be received from half the Parties with two-thirds in favour for the amendment to be accepted. If sufficient affirmative votes are received, the amendment comes into effect for all Parties except those that have explicitly reserved.

In such examples, «[t]he essential characteristic is that a member state is automatically bound by the act of the organization unless it takes specific action to avoid being so bound.» Silence, or failure to opt-out assumes tacit consent (M. Fitzmaurice, “Modifications to the Principle of Consent in Relation to Certain Treaty Obligations” in 2 *Austrian Review of International and European Law* (1997) 275-317). The co-ordinating role of the organs of the institution is especially evident in this model. This approach can be seen as an effective method of accelerating and simplifying the process of adapting an international treaty to maintain its relevance and to allow for the inevitable changes in the relevant field of applicability. Alternatively, it can be seen as moving too far beyond the concept of State consent. For these reasons it is typically restricted to annexes or appendices to the main treaty.

#### 3.3.3.3. *Adjustment*

A still more simplified procedure can be used for what has been termed «adjustment» rather than amendment. Adjustments typically refer explicitly to points of detail or accessory provisions, for example to levels of production under the Montreal Protocol to the Ozone Layer Convention, or to adjust payments to levels of inflation. In this model proposed amendments are communicated to the Parties at least six months before a meeting at which they will be considered. At the meeting, adjustments may be adopted by a specified majority or by consensus, depending upon what the Parties have decided. Under the adjustment procedure States that vote against their acceptance are nevertheless held bound if the required majority is met. In this instance the majority binds the minority, leaving the latter with no option other than acceptance of majority will, or leaving the treaty regime (if there is provision for denunciation or withdrawal).

### **3.3.4. Amendment of the base Convention and equipment-specific Protocols**

There are a number of particular points that should be considered with respect to procedures for amendment of the base Convention and Protocols.

#### 3.3.4.1. *Who can propose amendments?*

For the base Convention proposals for amendment could be made by any [or a specified number of] States Parties to the base Convention; for any equipment-specific Protocol by any [or

a specified number of] States Parties to the relevant Protocol. <sup>(3)</sup> Consideration should be given to whether the International Regulator should be able to propose amendments to a Protocol.

#### 3.3.4.2. *Amendment procedures*

Proposed amendments should be submitted to the depositary which should be the same for the base Convention and all Protocols, for example the Unidroit Secretariat, and circulated to the relevant I.G.O. or N.G.O. for comment, as well as to States Parties. In view of the importance of sectoral interests in the equipment-specific Protocols, a proposed amendment to the base Convention should also be submitted to all equipment-specific Review Boards for comment with respect to its impact on that sector. A proposal for the amendment of an equipment-specific Protocol should be circulated to the Review Board of any other Protocol for information, and possibly consideration of adopting a similar amendment. All comments received should be circulated to States Parties with the proposed amendment for comment before being put for adoption by the Unidroit General Assembly.

In a traditional procedure an amendment that is accepted by the required majority in the appropriate institutional forum would then be open for ratification by all States Parties. Once an amendment is in force, any new Party would be bound by the Convention as amended. A tacit acceptance or opt-out procedure could be used if formulated by States in the amendment Articles of the base Convention and Protocols, with specified time-limits, majorities and consequences for States that do not accept the amendment. It must be emphasised that the controlling nature of the Protocols means that they cannot be equated to technical annexes or appendices and that accordingly fast-track, opt-out procedures might not be appropriate.

If an amendment to the base Convention necessitated amendment to an equipment-specific Protocol, provision could be made for delaying the entry into force of the amendment until Parties to the Protocol had been able to make the required amendment, after consultation with the representatives from the relevant industrial sector. If they did not do so, the proposed amendment would remain ineffective, thereby preserving the interests of the Protocol. Since the base Convention and an equipment-specific Protocol are to be read as an integral whole, amendment to an equipment-specific Protocol would amend the Convention, for those Parties to the Convention through their adherence to that Protocol. These procedures would require that the base Convention specify any provisions that are not amenable to amendment by amendment of a Protocol, although these should be restricted to those provisions necessary to maintain the integrity of the base Convention.

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<sup>(3)</sup> *idem.*

COMMENTS  
ON THE DISCUSSION PAPER

(submitted by the Aviation Working Group) <sup>(1)</sup>

1. As we mentioned at the meeting of the Steering and Revisions Committee, we strongly take issue, on both substantive and procedural grounds, with any provision or proposed procedure (including any General Review Conference) that (i) purports to limit the controlling feature of the preliminary draft Aircraft Protocol or (ii) that links the legal effect of any review of, or amendment to the Convention (or any other Protocol) to the preliminary draft Aircraft Protocol.

While we appreciate the desirability of ensuring consistency across equipment types, we believe that attempting to institutionalise arrangements towards that end will put unacceptable pressure on the multi-equipment framework and may ultimately lead to a severing of the project into sectoral Conventions.

It follows that the aspects of the paper that contemplate *amendments to the base Convention* should in our view be deleted. See, e.g., the last paragraph in Section 2, the 2<sup>nd</sup> paragraph of Section 3.2 and Section 3.2.1, sub-point (iv) of Section 3.3.1. and Section 3.3.4.1.

In addition, we also think that the last paragraph of Section 3.2.2 should be deleted: there should be equipment-specific Review Conferences at such time or times as Contracting States to a Protocol deem them appropriate and/or as contemplated by the relevant Protocol.

2. We believe it desirable to emphasise the role of the Review Board in assisting Contracting States to the Protocols in review procedures. Please consider amendments to Sections 3.2, 3.2.1, 3.2.2 and 3.3.1.

On a related note, the reference to the International Regulator should be to the equipment-specific Review Board in Section 3.3.4.1.

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(1) *Note by the Unidroit Secretariat:* The discussion paper was prepared at the request of the Steering and Revisions Committee, at its meeting held in Rome from 27 to 29 June 1998. A first draft was submitted to members of that committee for comment. Most of the comments received were capable of being incorporated in the final version of the discussion paper set out above. However, the comments submitted by one member of the committee, namely the A.W.G., were felt to depart substantially from the consensus reached by the committee on the occasion of its meeting (cf. Study LXXII - Doc. 41, §§ 70-75) and have therefore been set out separately in this Appendix to the discussion paper.