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Sub-Committee of the ICAO Legal
Committee on the study of
international interests in mobile
equipment (aircraft equipment)

UNIDROIT Committee of governmental
experts for the preparation of a draft
Convention on International Interests
in Mobile Equipment and a draft
Protocol thereto on Matters specific
to Aircraft Equipment

SECOND JOINT SESSION

(Montreal, 24 August - 3 September 1999)

REPORT

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Opening

1. The first Plenary Session of the second Joint Session of the Sub-Committee of the ICAO Legal Committee on the study of international interests in mobile equipment (aircraft equipment), and the UNIDROIT Committee of governmental experts for the preparation of a preliminary draft UNIDROIT Convention on international interests in mobile equipment and a preliminary draft Protocol thereto on Matters specific to Aircraft Equipment was opened by Mr. R.C. Costa Pereira, Secretary General, and Dr. L. Weber, Director of the Legal Bureau, on behalf of ICAO, and Professor H. Kronke, Secretary-General, on behalf of UNIDROIT.
2. In his opening address, Mr. Costa Pereira emphasized the co-operation between ICAO and UNIDROIT in their efforts to create an internationally registrable interest in aircraft and an international registry and he mentioned the work to be done in order to conclude a new international regimen. Professor Kronke outlined the ongoing learning process that had evolved throughout this project, praised the improvements and proposals that had been made and expressed the hope for fruitful discussions during the second Joint Session so that they might lead to a successful conclusion. Dr. Weber mentioned the importance of continuing to build upon the results of the Rome meeting, held in February, 1999, and reiterated the importance of reaching international consensus on the issues contained in these draft instruments.
3. Dr. E. Chiavarelli (Italy) was Chairman of the second Joint Session. The Joint Secretaries were Mr. S. Espínola, Principal Legal Officer (ICAO) and Mr. M.J. Stanford, Principal Research Officer (UNIDROIT). Mr. J. Huang (ICAO), Ms. M. Schneider (UNIDROIT) and Ms. M.-J. Phelan (UNIDROIT) acted as Assistant Secretaries.
4. The second Joint Session was attended by 140 participants of 38 States, and 9 international Organizations (**Attachment A**).

Agenda Item 1: Adoption of the Agenda

1:1 The agenda was adopted as proposed.

Agenda Item 2: Presentation of Current Structures Used in Asset-based Aircraft Financing

2:1 A presentation was given by Mr. Klaus Heinemann, Member, Executive Board, Deutsche VerkehrsBank A.G., Frankfurt, Germany, who offered a banker's point of view on the issue of asset based aircraft financing. He explained that the aviation industry had evolved from a traditionally government-owned or heavily regulated industry to a privatized and deregulated industry, increasingly governed by an open-skies policy. This trend had resulted in an increase in default history among airlines, which had given rise to the need for new legal regimes for the protection of the interests of creditors. A further presentation was made by Mr. David Shapiro, Senior Counsel, Corporate and Finance Law, Air Canada – Montreal who shared his views of the reasons why airlines should support the Convention. He described two principal reasons: first, the Convention would result in reduced transaction costs, and secondly, it would expand sources of funding. Another presentation, entitled «Legal Issues as They Impact on the Draft UNIDROIT Convention and Aircraft Protocol» was given by Ms. Siobhán Lohan, A. & L. Goodbody International, Finance Services Centre, Dublin, Ireland. Ms. Lohan indicated that because of the lack of an international registry system there was no effective means of finding out whether any outstanding mortgages or liens existed in respect of aircraft. Ms. Lohan put forth the position that the proposed Convention, as a uniform global law, would provide much-needed solutions to these problems.

Agenda Item 3: Organisation of work

3:1 In addition to the Drafting Committee and the Registration Working Group (RWG) established during the First Joint Session, the Joint Session decided to confer formal status on the Informal Insolvency Working Group, that had been set up by the UNIDROIT and ICAO Secretariats pursuant to the decision taken during the first Joint Session (cf. paragraph 143 of the Report thereon), and to set up a Jurisdiction Working Group and a Public International Law Working Group.

3:2 In determining the composition of the Insolvency Working Group (IWG), it added to the existing eight members of the Informal Insolvency Working Group (namely, France, Germany, Japan, Mexico, Netherlands, Singapore, United Kingdom and United States of America) Canada, Egypt, Russian Federation and South Africa. It was understood that the Aviation Working Group (AWG), and the International Air Transport Association (IATA) would attend meetings of the Informal Insolvency Working Group as advisers. The IWG was requested to complete its work by 12 noon on 27 August 1999 with a view to reporting to Plenary.

3:3 The Jurisdiction Working Group (JWG) was composed of the following States: Argentina, Austria, Canada, China, Egypt, Finland, France, Germany, Japan and United States. AWG, IATA and the Hague Conference on Private International Law were appointed advisers to the Group. The Group was requested to meet immediately and to report to Plenary by 12 noon on 1 September 1999.

3:4 The Public International Law Working Group (PILWG) was composed of the following States: Australia, Austria, Canada, Egypt, France, Ireland, Japan, Mexico, Republic of Korea, Russian Federation, South Africa, United Kingdom and United States. It was explained that, as with all bodies of the Joint Session, those States which were not members could attend meetings of the Group as observers. The Hague Conference on Private International Law, AWG, IATA, the Rail Working Group, the Space Working Group and the authors of WP/2 were appointed advisers to the Group. The United Nations Commission on International Trade Law (UNCITRAL), the United Nations Office for Outer Space Affairs were appointed observers on the Group. The Group was expected to meet after this Joint Session.

3:5 It was agreed that the Chairman of the Drafting Committee should be delegated the task of completing the work of the Drafting Committee for distribution to Governments by the end of the year. It was further agreed that such work would concern only on the issues already referred to the Drafting Committee by Plenary, and should result in a text to be distributed by the Secretariats as the basic working document of the following Joint Session.

3:6 Plenary discussed the task assignment of the PILWG. It was decided that the Secretariats would draft a flimsy indicating the topics within the mandate of the PILWG and the order of priority among these. It was agreed that this flimsy would be reviewed by Plenary at the final meeting of the second Joint Session.

3:7 Plenary discussed the mandate of the PILWG, on the basis of Flimsy No. 5, a document which indicated the Secretariats' proposals for the topics to be considered by the PILWG. The Secretary General of UNIDROIT pointed out that an addition should be made under point 1 (a), so that the PILWG could also examine the relationship of the future Convention/Aircraft Protocol with the Chicago Convention. It was suggested that this should be added as item (i), and that the other Conventions should be renumbered. It was pointed out that the Annexes to the Chicago Convention should also be included in the PILWG's examination.

One observer suggested that the PILWG's task in relation to the Chicago Convention should be seen simply in terms of aligning the draft Convention and Protocol with that Convention, rather than seeking to make a full examination of the relationship between the instruments. Another delegation pointed out that the relationship with the other four Conventions should be examined in relation to both the draft Convention and the draft Protocol. It was suggested that the title for point 3 was confusing and should be replaced with the words «Final Clauses». The Secretary General of UNIDROIT indicated that paragraph (c) «Other matters relating to Final clauses» should be added under point 3. Several delegations made further suggestions for technical aspects that should be addressed by the PILWG under point 3, such as the reciprocity rule, the question of entry into force, federal state clauses (both extension of application and interpretation clauses), and the harmonisation of the final clauses between the draft Convention and Protocol. Under point 4, it was pointed out that transitional provisions should be examined not only in relation to the draft Convention, but also the draft Protocol. Another delegation also pointed out that such provisions were not limited to Article 38, but that the PILWG should rather examine the impact of international interests on existing registered interests in general. It was also suggested that the PILWG examine transitional provisions in relation to Geneva Convention Contracting and non-Contracting States. Under point 5, several delegations proposed that not only the issue of immunity, but also that of privileges be addressed by the PILWG. Another delegation requested that the PILWG examine immunity in relation to the possible structure of the Supervisory Authority and the Registrar. It was agreed that the question of the liability of the Supervisory Authority and the Registrar should be added to point 5. Furthermore, it was pointed out by one observer that the mandate of the PILWG should also include the requirement to produce a paper for Governments to consider before the next Joint Session, and that this was not provided for in Flimsy No. 5. On the issue of priority among the topics to be covered by the PILWG, Plenary accepted the wording of the mandate as contained in Flimsy No. 5, since each heading followed a logical sequence. Some delegations found, however, that the list did not reflect a particular order of priority. It was suggested that point 1(a) was of particular importance, followed by point 2(a). It was pointed out that point 2(b) should also be given priority. Another delegation however, cautioned against giving priority among the various items in the PILWG mandate, since they were of equal importance. It was decided that these opposing views could be reconciled by allowing the PILWG to refer individual items on the list of items for consideration by the PILWG for consideration by different members of the PILWG. Plenary approved the mandate of the PILWG as contained in Flimsy No. 5, subject to the changes suggested.

Agenda Item 4: Consideration of the Structure of the Draft Instruments

4:1 A presentation, given by Mr. H. Rosen, Co-ordinator, Rail Working Group, described the growing awareness in the railway industry with respect to the need to have the Convention and a Protocol to protect security interests in railway rolling stock. A second presentation by Mr. P. D. Nesgos, Co-ordinator, Space Working Group, referred to the ongoing work of his group and its contacts with the space industry and the relevant Organizations.

4:2 In considering the structure of the proposed instruments, the Joint Session had before it two basic options, namely, the present structure (a Convention supplemented by a Protocol and possibly other future Protocols), and, alternatively, a single text in the form of a stand-alone Convention. The possibility of developing a consolidated text of the Convention and relevant Protocol as a convenient working tool was also mentioned.

4:3 One delegation, supported by two other delegations, expressed the view that they felt it was difficult at the present time to come to a clear decision on this matter. There were a number of factors, in particular whether there was a need of protocols for other equipment sectors, which should be more fully evaluated in the future. Therefore, it was preferable to keep an open mind on this matter and, for the time being, to continue to work on the basis of the present structure. A consolidated text should be developed at the appropriate time as a convenient working tool. Several other delegations also spoke in favour of a multi-equipment and two-tiered structure.

4:4 One delegation felt that it would be preferable to work on the basis of a text for a stand-alone Convention, which would be applicable to aircraft and aircraft equipment. In the view of this delegation, there was a problem of legitimacy if the aviation sector were to develop a base Convention which would then be applicable to railway rolling stock, space equipment, agricultural and mining equipment, etc.

4:5 Another delegation also felt that the structure of a stand-alone Convention would be preferable. In addition to the problem of legitimacy, this delegation considered that the acceptability of a complex two-instrument structure, when it came to the ratification process, might be doubtful. A consolidated text should therefore be developed in the near future.

4:6 One observer noted the importance of maintaining aircraft equipment as part of a broad coverage that would be seen as yielding a broader social benefit distributed amongst a broader group of borrowing country citizens.

4:7 In response to the query from the delegation referred to in paragraph 4.3 above regarding the extent to which the Convention could bind Governments concluding future Protocols, it was explained that this was not a problem in so far as it was a key feature of the Convention/Protocol structure that each Protocol was intended to be capable of amending the Convention.

4:8 It was therefore agreed that the meeting should keep an open mind regarding the structure. It was premature to determine the structure of the instruments at this stage. With a view to addressing the concerns raised, it was agreed that it would be useful to envisage the preparation of a consolidated text of the Convention and Protocol. The precise moment at which such an integrated text should be prepared in respect of aircraft equipment was left open for the time being. Thirdly, it was agreed that for the time being, the meeting should continue to work on the basis of the present structure.

Agenda Item 5 (UNIDROIT Agenda Items 5 & 6): Study of a draft instrument or draft instruments relating to international interests in mobile equipment, with particular regard to aircraft equipment

5:1 The Joint Session considered the text of the preliminary draft Convention and the preliminary draft Protocol. It was decided that the term «States Parties» in the preamble should be referred to the Drafting Committee for reconsideration in order to align this term with the term «Contracting States» used in the preamble to the preliminary draft Protocol. While the Joint Session agreed on the general content of the preamble to the preliminary draft Convention and that of the preamble to the preliminary draft Protocol, it requested the Drafting Group to review the text of both preambles with a view to harmonizing them and eliminating the redundant elements in the preamble to the preliminary draft Protocol.

Article 1 of the draft Convention

5:2 The Drafting Committee was tasked to review the following suggestions: the need for cross references regarding definitions in different languages; the use of «the» and «a» in the definition of «chargee» and others; the need to add «as defined above» after the word «agreement» in the definition of «contract of sale»; the possibility of deleting or revising the definition of «writing»; the removal of square brackets in all definitions, to the extent that such removal did not involve substantive issues. It was noted that some definitions such as «associated rights», «qualified proceeds» and «registrable non-consensual right or interest» would be reviewed in the context of the substantive text. The definition of «Intergovernmental Regulator», «International Registry», «registered», «registrar» and «regulations» would be revisited after the RWG had completed its work .

Article I of the draft Protocol

5:3 Concerning the definition of aircraft and aircraft engines, a view was expressed that military, customs and police aircraft should not be included. Another view suggested that a reservation clause could be added to the draft Protocol to the effect that each State might declare that the Protocol was not applicable to State aircraft. It was decided that the Drafting Committee should resolve the technical aspects of this definition, without considering the policy issue regarding the question. Suggestions to add «or remove» and «by any competent means» to the definition of «de-reregister the aircraft» were referred to the Drafting Committee. It was determined that the definitions that related to technical aspects of insolvency and registration concerning only aircraft objects should only be discussed once the IWG and the RWG had finished their work and reported to Plenary.

Article 2 of the draft Convention

5:4 Plenary expressed acceptance of **paragraphs 1, 2, and 3** as written. As for **paragraph 4**, it was referred for review by the Drafting Committee to consider its purpose and whether it should be deleted altogether. The question was raised whether the term «qualified proceeds» used in **paragraph 5** included both monetary and non-monetary proceeds. It was decided that the Drafting Committee should redraft **paragraph 5** so as to include both monetary and non-monetary proceeds.

Article 3 of the draft Convention

5:5 Plenary considered whether to reincorporate the list of categories of mobile equipment that had been removed from Article 3 at the Rome meeting. The reason for this re-incorporation was in order to avoid any confusion with the UNCITRAL Convention on Assignment and Receivables Financing. The consensus of Plenary was to avoid re-including the list, and instead to include the notion of «high value» as a limiting factor for determining the application of the Convention. The location and wording of this notion was an issue left to the determination of the Drafting Committee. Otherwise, Plenary agreed to the wording of **paragraphs 1 and 2 of Article 3** as written.

Articles II and III of the draft Protocol

5:6 Certain members suggested that further clarification be given to the term «national aircraft register» in **paragraph 1 of Article III**. It was also decided that the square brackets should remain around **paragraph 2 of Article III** until the Drafting Committee could reach a satisfactory definition of «purely domestic transaction». Otherwise, it was agreed that **Articles II and III** should remain as they were written.

Article 4 of the draft Convention

5:7 Several delegates expressed confusion regarding the meaning of «registered office», «centre of control» and «place of business». It was decided that the Drafting Committee should attempt to align these terms with their meaning in each respective language. The Drafting Committee was left to decide whether **paragraph 2** should be maintained. Its inclusion would depend on whether the term «place of business» were to be retained in **sub-paragraph (d) of paragraph 1**.

Article 5 of the draft Convention

5:8 This Article was approved without discussion.

Article 6 of the draft Convention

5:9 A proposal was made to include a reference to the preamble in **paragraph 2**, as well as a proposal for the preparation of an explanatory document to accompany the Convention.

Article 7 of the draft Convention

5:10 In the light of the use of the word «writing» in **Article 7**, it was agreed that the definition of «writing» in **Article 1** be re-drafted to take into account the implications of the use of computer systems. It was proposed to replace the word «person» with «sender» in order to provide more generic terminology that would reflect the technical aspects of computer use.

Articles IV and V of the draft Protocol and Article 39 of the draft Convention

5:11 Plenary engaged in a discussion regarding the necessity of including the registration of outright sales in the Convention. Plenary agreed that it was established practice in the aviation industry to allow registration of contracts of sale, and it would be counter-productive to exclude sales from the Convention. It was decided, therefore, to maintain **Article 39** in the Convention as drafted, as well as **Articles IV** and **V** of the Protocol. It was further agreed that there was no conflict between **paragraph 2** of **Article V** and the provisions of the Vienna Convention on the International Sale of Goods since the latter was silent on the issue of the passing of ownership and did not apply to aircraft.

Article VI of the draft Protocol

5:12 This Article was approved without discussion.

Article VII of the draft Protocol

5:13 It was decided that the Drafting Committee should re-draft this Article so that the methods of description it contained did not appear as an exhaustive list. The session agreed that the methods of description for the purposes of registration should not be exclusively limited to the manufacturer's serial number, the name of the manufacturer and its model designation. Finally, Plenary approved a proposal that **Article VII** be referred to the Registration Working Group to consider a definition or uniform description of the term «serial number.» It was further proposed that the Registration Working Group provide a list of appropriate means of registration in the form of an addendum.

Article 8 of the draft Convention

5:14 One delegation expressed concern that the remedies contained in **Article 8** were in potential conflict with the future Convention on jurisdiction and recognition of judgments being prepared by the Hague Conference on Private International Law, as well as the Brussels and Lugano Conventions. Another delegation questioned whether it was necessary to include the remedies in the Convention, or whether it would be more practical to move them to the Protocol. It was nevertheless agreed that these remedies should remain in the Convention until the effect of **Article 8** on other Protocols could be determined. One delegation called for the retention of the term «and by lawful means» in paragraph 2 and the Drafting Committee was given the task of considering whether or not it should be deleted. It was proposed that the words «at any time» be added. **Article 8** in its entirety was otherwise accepted.

Article 9 of the draft Convention

5:15 Errors in cross references in **paragraphs 4 and 5** were pointed out and referred to the Drafting Committee for correction.

Article 10 of the draft Convention

5:16 This Article was approved without discussion.

Article 11 of the Convention

5:17 It was agreed that the words «at any time» be added after the words «may agree» in **paragraph 1**. The Article was referred to the Drafting Committee to make the necessary changes.

Article 12 of the draft Convention

5:18 The Session agreed to a modification of **Article 12** to provide a more neutral approach to self-help remedies, which might be incompatible with some legal systems. One observer proposed the deletion of **paragraph 2**, and a further change to **paragraph 1** to read «subject to paragraph Y». The observer further proposed that Article Y of the Convention be reformulated so that Contracting States be required to declare whether or not the self-help remedies of **Articles 8 to 10** were available in their territory. These proposals were accepted. The observer in question was invited to submit to the Drafting Committee both a draft text reflecting the proposed changes as well as a report on the consequences of the proposed changes on other articles of the Convention, such as **Article 8, paragraph 2**.

Article 13 of the draft Convention

5:19 This Article was approved without discussion.

Article 14 of the draft Convention

5:20 One delegation raised the question whether cases under **Article 14** would be subject to the provisions of **Article 8** of the draft Convention regarding the exercise of a right in a commercially reasonable manner and the reasonable prior notice of interested persons. Another delegation suggested that **Article 14** should take into account the Convention for the Unification of Certain Rules Relating to the Precautionary Attachment of Aircraft (Rome, 1933) referred to in Article XXIII of the draft Protocol. It was decided that these questions should be dealt with by the Drafting Committee.

5:21 Some delegations considered that the measures envisaged in **paragraph 1 (d) and (e)** were different in nature from those contained in **sub-paragraphs (a), (b) and (c)** and should not therefore be treated together. It was explained that the orders referred to in **sub-paragraphs (d) and (e)** were required as measures to ensure the preservation of the economic value or utility of the object. They should be regarded as preventive rather than curative measures. Proposals to exclude specification of forms of interim judicial relief in **paragraph 1**, leaving them to national law, and to delete **paragraph 2** were not accepted. In opposing such proposals, one observer, supported by a number of delegations, noted the link between Article 14 and Article X of the draft Protocol and expressed the view that these provisions contained a fair balance for the protection of the parties to the transaction and were necessary for the effectiveness of the proposed legal regime. It was decided to send **paragraphs 1 and 2** to the Drafting Committee to consider footnote 12 and the deletion of the square brackets. One delegation raised its concern regarding the implication of Article 14 on the role of a judge.

5:22 **Paragraphs 3 and 4** were approved. However, reference to «the preceding paragraph» in **paragraph 3** should be amended to «paragraph 1» if **paragraph 2** were to be retained.

Article IX of the draft Protocol

5:23 This Article was approved without prejudice to the issues covered therein which were under consideration by the Working Groups.

Article X of the draft Protocol

5:24 Some delegations voiced concern regarding the establishment of a fixed period of time for courts to issue orders, because this was incompatible with the constitutional law of their States. Two observers, supported by two delegations, expressed the view that such incompatibility should not be a problem for States, because **Article X** was optional. They added that if a time-frame was not provided for courts to act on speedy judicial relief, uncertainty would remain, therefore not permitting achievement of the main objective of the proposed legal regime. One delegation requested the revision of the term «calendar days» in the Spanish version, in **paragraph 1**.

5:25 It was decided to keep **paragraphs 1 and 2** in square brackets until a solution could be found. **Paragraphs 3 and 4** were not addressed, because they were under consideration by the Working Groups.

Article 27 of the draft Convention

5:26 An observer expressed the need to cross-reference **Article 27** to the Protocol. To that effect, it was proposed that the Drafting Committee consider including a reference to **Article 27** in Article IV of the Protocol. Reservations were made with respect to **paragraph 2 of Article 27** since, as it currently read, paragraph 2 allowed for the acquisition of priority even when a party was in bad faith. Reservations were also made with respect to **paragraph 5** and as regards whether the use of the term «qualified proceeds» was sufficiently broad in order to describe the various types of proceeds. Further reservations were made with respect to **paragraph 6**, on the ground that it created an unjustified burden on non-consensual interests. It was decided that paragraphs 2, 5 and 6 should remain in the Convention, but that the Drafting Committee should examine the Article from a technical point of view, and keep in mind the various reservations that were made. It was further agreed that the Drafting Committee consider either omitting paragraph 6, or re-drafting it so that the requirement of giving notice for non-consensual interest holders would not otherwise affect the issue of priority.

Article XIV of the draft Protocol

5:27 It was pointed out that the reference to **Article 27 paragraph 4** was erroneous, and the Drafting Committee was directed to change the reference to **paragraph 3**.

Article 29 of the draft Convention

5:28 It was agreed to delete the square brackets in **paragraph 2 (c)** and approve the entire Article.

Article 30 of the draft Convention

5:29 It was decided to send **paragraph 2** to the Drafting Committee and to approve **paragraphs 1, 3 and 4**. It was further agreed to revisit this Article if necessary with a view to rationalizing efforts with the work on a future Convention on Assignment in Receivables Financing under preparation within UNCITRAL.

Article 31 of the draft Convention

5:30 It was agreed that the Drafting Committee should consider re-drafting **paragraph 1** so that it reflected the same approach as the Protocol in its treatment of assignments of international interests. It was proposed, therefore, that the Drafting Committee consider the merits of omitting **sub-paragraph (c)** of paragraph 1, and substituting it by a requirement that, in order to constitute a valid assignment, the obligor must consent in writing.

Articles 32, 33, 34 of the draft Convention and Article XV of the draft Protocol

5:31 It was decided to defer discussion of Articles 32, 33 and 34 of the draft Convention in the absence of the observer from UNCITRAL. Article XV of the draft Protocol was accepted as written.

Article 36 of the draft Convention

5:32 It was decided that the Drafting Committee should consider the technical question of whether this Article should be included in the Convention, or instead transferred to the Protocol.

Articles 37 and 38 of the draft Convention (Chapter IX)

5:33 The Session debated at length the policy issues surrounding non-consensual interests. While some delegations proposed that these Articles should be excluded completely, others expressed the view that non-consensual interests were of great importance for the Convention. Another proposal called for the drafting of a definition of «non-consensual interest» or, at least, a provision providing limiting factors to determine what types of non-consensual interest of a State would be included for the purposes of the application of the Convention. It was also proposed that, instead of providing a definition of «non-consensual interest», the issue should be decided by each Contracting State in the form of a declaration. In making their declarations, it was suggested that States be allowed to provide either a general description or a specific list of the types of non-consensual interest under each nation's laws that would have priority under **Article 38 paragraph 2**. Also, it was suggested that, in making their declarations, States be allowed to determine whether the Convention applied to current as well as future non-consensual interests arising under national laws. Yet another proposal called for the possibility for Contracting States to opt out of Articles 37 and 38. It was agreed that non-consensual interests were of great importance and should remain in the Convention. In order to accommodate those States that expressed reservations on this issue, it was decided that this chapter should be redrafted in order to allow greater flexibility. The Drafting Committee was called upon to take into account the various proposals. Finally, it was decided that Plenary should reconsider this issue once the Drafting Committee had completed its work.

Articles 40 and 41 of the draft Convention

5:34 It was decided that the JWG (cf. §§ 3:1 and 3:3 *supra*) should examine whether the bases of jurisdiction for the purposes of Article 14 (1) could be considered appropriate for the purpose of general jurisdiction under Article 41, bearing in mind the distinction between jurisdiction *in rem* and *in personam*. The Group should also consider the issues relating to exclusive jurisdiction, the scope of the International Registry's immunity from jurisdiction of the court under Article 41 in conjunction with Article 8(1), and other issues relating to jurisdiction, including Chapter IV of the draft Protocol. It was noted that waivers of sovereign immunity under Article XXI of the draft Protocol required further research and study.

Chapter V of the draft Protocol (Articles XXII to XXIV)

5:35 With respect to the relationship of the Protocol with the other Conventions mentioned in **Chapter V**, questions were raised whether the Protocol, which itself would form an integral part of a Convention, could amend or override other Conventions. It was explained, however, that there was a practice whereby a Protocol could alter relationships as between the parties. It was concluded that further consideration of this matter was necessary with the assistance of experts in the law of treaties.

Article U and Article V of the draft Convention

5:36 A number of issues were identified for the consideration of the PILWG (cf. §§ 3:1 and 3:4 *supra*). The Secretary General of UNIDROIT referred to WP/2 and invited the Group to consider further the issues identified in that paper. One delegation pointed out that the number of ratifications required for the entry into force of the Convention should be as small as possible in order to provide immediate benefit to the financial market. One delegation proposed that the Working Group should bear in mind at all times that the most important objective of the Convention was to achieve the financial infrastructure required by industry. Another delegation underlined the need to establish transitional arrangements for the protection of existing interests. A third delegation suggested that the Working Group should consider the final clauses of the Convention and the Protocol together. Another delegation suggested that in **Article V** of the draft Convention, declarations should be made at the time when a State signed or ratified the Convention and not at the time when it signed or ratified the Protocol.

5:37 With respect to the term «[purely domestic transaction]» in Article V, Plenary undertook intensive discussions. Some States preferred to remove the square brackets in this Article. In their view, the future Convention and Protocol should cover transnational situations only and States should be allowed to exclude purely domestic transactions from the application of these instruments. Other States emphasized that the very essence of the Convention was to offer the holders of international interests clear predictability of their rights. The attempt to define purely domestic transactions could defeat the purposes of the Convention and Protocol. Some delegations pointed out the advantage of addressing the matter on an equipment-specific basis.

5:38 Plenary reviewed the Report by the RWG presented by its Chairman (WP/17). The RWG had come to the conclusion that general provisions on the issue of registration should be placed in the Convention (Appendix 1 to the RWG Report) and any detailed provisions should be placed in the Protocol (Appendix 2 to the RWG Report). The RWG recommended, therefore, that the Convention contain provisions on the following topics: the overall structure of the Registry, principles applicable to all registries created under the Convention, and a checklist of the features of the Registry. It was decided that Plenary should consider the new draft articles proposed by the RWG in their order of appearance in their Report.

Proposed revised Article 1 of the draft Convention

5:39 The RWG recommended that amendments be made to certain definitions of Article 1 of the Convention, since they were no longer needed in the light of the structure chosen for the Convention. This recommendation was adopted without further discussion.

Proposed new Article 15 of the draft Convention

5:40 The RWG provided a new draft for this Article, but indicated that this involved no significant changes to the previous draft. The RWG also pointed out that the new Article D, to be included in the Protocol, modified **paragraph 4** of **Article 15** by adding outright sales to the list of items that might be registered in

the International Registry. One delegation expressed concern as to whether paragraph 4 of the new draft Article would effectively include future interests. These comments were referred to the Drafting Committee for discussion. Another proposal, calling for the removal of the square brackets around **paragraph 3**, was approved.

Proposed new Article 16 of the draft Convention

5:41 The RWG provided a new draft **Article 16**. For the purposes of clarity and accuracy, the term «Supervisory Authority» was to be used instead of «Intergovernmental Regulator.» The RWG indicated that it had experienced difficulty in determining the approach to be taken as regards the designation of the Supervisory Authority, in view of the policy and administrative issues involved. The RWG had therefore provided three alternative approaches in the proposed Article C of the Protocol. The Session saw a «chicken and egg» problem arising regarding the sequence and timing of the creation of the International Registry. It was pointed out that, although it might be preferable to postpone the designation of the Supervisory Authority until the International Registry was up and running, States might decide not to adhere to the Convention until the International Registry was put in place. One delegation proposed allowing for Contracting States to designate a Registrar of their choice until such time as the International Registry was created. Several delegations proposed that the organisation of the International Registry would be facilitated through the involvement of ICAO.

5:42 Referring to the institutional structures established in the *Convention on the Marking of Plastic Explosive for the Purpose of Detection* (MEX Convention) and the *Agreement on the Joint Financing of Certain Air Navigation Services in Iceland*, and to the role played by ICAO, the Director of the ICAO Legal Bureau indicated that the Council of ICAO had not to date been seised of any proposal for its involvement in the setting-up and operation of the International Registry but would consider such a proposal in due course. The suggestions made in the preceding paragraph were referred to the Drafting Committee for further consideration.

5:43 In **paragraph 2 of Article 16**, the RWG provided an enumeration of the powers of the Registrar. Mandatory obligations of the Registrar were set out in the RWG's proposed Articles E and F of the Protocol. Several delegations expressed reservations concerning the manner in which these powers were enumerated, and questioned whether or not they should all be made mandatory. One observer proposed that only **Article 15** should remain in the Convention, and that the rest of the provisions regarding the creation of the International Registry should be placed in the Protocol. These proposals were referred to the Drafting Committee with a view to it reconsidering the list of mandatory and non-mandatory duties of the Registrar. Reservations were also raised regarding **paragraph 4**, and whether it would effectively allow consultation of the registry by those not from a Contracting State. The Drafting Committee was requested to consider alternative approaches. It was further decided that paragraph 5 (c) and Article 23 should be redrafted in order to reflect the changes to be made to **Articles 37 and 38** regarding non-consensual interests.

Proposed revised Article 17

5:44 The RWG proposed a new draft **Article 17**. Following the expression of reservations by delegates, it was decided that the Drafting Committee should consider whether the provisions of this Article should or should not be mandatory.

Proposed revised Article 24

5:45 The RWG's changes to **Article 24** were accepted by the Session without further discussion.

Proposed revised Article 25

5:46 The RWG made changes to this Article in order effectively to address the problem of de-registering interests on the Registry that were no longer valid. One observer made reservations to **paragraph 3**, which provided for entries on the Registry to be removed by court order, indicating that this paragraph, as drafted, raised problems concerning jurisdiction, and gave rise to the possibility of conflicting court orders. It was proposed that, if these provisions were to be retained, they should be re-drafted so as to align them with the jurisdiction provisions of the Convention.

5:47 Concern had been expressed regarding the inclusion of a separate jurisdiction in **Article 25 (3) (b)**, in addition to the general jurisdiction provision included in the Convention. It was noted that courts should not normally issue orders against the registry except in cases where the secured party could not be traced. It was also suggested that the word «may» in **paragraph 3** should be replaced by «shall». The Drafting Committee was asked to review these matters.

Proposed revised Article 26

5:48 The importance of the issues relating to liability and immunities was emphasized. It was agreed that the square brackets in **paragraph 1** be removed. The Drafting Committee was requested to separate the liability and immunities provisions into two separate articles. It was further agreed that the major part of the liability provisions should be incorporated in the Convention instead of the Protocol. Moreover, the word «may» in the *chapeau* of **paragraph 4** should be changed into «shall». The Drafting Committee was also asked to consider redrafting **paragraph 4 (b)**. Some delegations proposed adding a provision to Article 26 regarding the legal personality of the Registrar. One delegation proposed a provision allowing for the right of the obligor to make corrections in the event of a mistake by the Registrar.

5:49 In response to a question as to whether a system of strict liability was envisaged, the Chairman of the RWG explained that the text of **paragraph 4** seemed to indicate strict liability. For example, the registry would be held liable for loss by reason of the malfunctioning of the International Registry.

5:50 With respect to immunities, it was suggested that this issue should be covered not only in the agreement with the host State, but also in the Convention. The provisions concerning immunities were referred to the Drafting Committee for refinement. It was suggested that a provision should also be included in the future Convention dealing with the related matter of the privileges of the future International Registry. It was suggested that a model for such a provision was to be found in ICAO's Headquarters Agreement. The treatment of this matter in the Convention could well facilitate the negotiation of such an agreement.

Proposed new Articles A and B of the draft Protocol

5:51 These Articles were accepted without any comments.

Proposed new Article C of the draft Protocol

5:52 The meeting considered the three possible approaches identified by the RWG for the designation of the Supervisory Authority. It was emphasized that it would be important for the International Registry to be operational when the Convention came into effect. With reference to the role played by ICAO with regard to the MEX Convention and the Joint Financing Agreement (see paragraph 5:42), it was decided to request the Secretariat of ICAO to prepare a working paper outlining the relevant precedents in this respect in order to provide some guidance for future consideration. The meeting would not express its preference for any of the three approaches identified by the RWG until it had had the opportunity to note the view of the ICAO Council on this matter.

Proposed new Article D of the draft Protocol

5:53 It was suggested that the word «creation» in the title of **Article D** should be replaced by «establishment». It was further suggested that «[unless that designation takes place in the Protocol]» be added to the end of **paragraph 2**. In response to a query regarding the distinction between «International Registry» and the «Registrar», it was explained that the «International Registry» referred to the facilities whereas the «Registrar» was the body responsible for registration. The Drafting Committee was requested to revisit Article D, taking into account the above-mentioned suggestions.

Proposed new Article E of the draft Protocol

5:54 The Drafting Committee was asked to review **paragraph 1 (b)** on the understanding that the registry should operate on the basis of the principle of cost recovery rather than profit making. The Drafting Committee should also review the question of «guidance» in **paragraph 1 (a)**.

Proposed new Article F of the draft Protocol

5:55 Different views were expressed in the context of **paragraph 1** as to whether the International Registry and Registrar should have no obligation to ensure that information transmitted for registration was accurate. It was decided that the Drafting Committee should study this matter on the understanding that the Registrar could not guarantee the accuracy of the information. In view of the general nature of **Article F**, particularly **paragraphs 1** and **3** thereof, the Drafting Group was requested to review whether Article F should be moved, in whole or in part, to the draft Convention. The Drafting Committee was also requested to reinsert the provision which had previously existed requiring the operation of the International Registry on a twenty-four-hour basis and to reinsert a provision, on the lines of the previous Article 19(2), indicating when an interest was searchable.

5:56 With respect to **paragraph 7**, it was suggested that the last sentence should be deleted. The Drafting Committee was requested to redraft this paragraph.

Proposed new Article G of the draft Protocol

5:57 It was agreed that the Drafting Committee should consider whether this Article should be placed in the draft Convention. Otherwise, it was accepted as written.

Proposed new Article H of the draft Protocol

5:58 This Article was referred to the Drafting Committee to make the necessary changes to **paragraph 2** to include the term «officers». It was agreed that the Drafting Committee should consider whether the definition of «Registrar» should include both legal and physical persons. The Drafting Committee was further tasked to harmonize this Article and **Article 26** of the Draft Convention, and to draft alternative provisions covering strict and fault liability. It was proposed that the words «insured against» in **paragraph 3** be modified in order to require the Registrar to provide full insurance coverage.

Proposed new Article I of the draft Protocol

5:59 While some delegations supported the use of the words «joint regional registry,» it was also proposed that the terminology should be aligned with that used in ICAO documentation «Chicago Convention, Annex 7 and Council Resolution of 1969». Another delegation proposed that more flexible terminology be used in order to permit a Contracting State to designate the registry of its choice. The Drafting Committee was requested to review this matter in order to achieve some flexibility. It was agreed that the Drafting Committee should reconsider the utility of **paragraph 2(a)**, and should consider whether the square brackets around **paragraph 2(b)** should be removed. It was also agreed that the Drafting Committee should correct drafting errors in **paragraph 3**, with a view to replacing the term «International Registry» by the term «Registrar.» Plenary also requested the Drafting Committee to consider whether these same corrections should be made to paragraph 2(b).

Proposed new Article J of the draft Protocol

5:60 Discussions on this Article were postponed until a later date.

5:61 Plenary reviewed the Report by the IWG presented by its Chairman (WP/19). It was agreed that Plenary would not reopen discussion on the points addressed by the Informal Insolvency Working Group during the Rome meeting that had taken place in July 1999, and that the recommendations made on that occasion (cf. WP/10, §§ 9-21) would be referred directly to the Drafting Committee. In its work during the Second Joint Session, the IWG had proposed two draft versions of Article XI of the Draft Protocol, one that would reflect a «hard rule» on insolvency issues (Option A), and the other a more flexible «soft rule» (Option B) which would allow judicial discretion under national insolvency laws. Contracting States would then have the choice of adopting Option A or Option B.

Article XI, Option A, paragraph 1 (WP/19, Appendix I)

5:62 Paragraph 1 was accepted without any comments.

Article XI, Option A, paragraph 2

5:63 The Session accepted the comments of the IWG made in points 2.6.3 and 2.6.4 of its report.

Article XI, Option A, paragraph 3

5:64 In response to a query as to why **paragraph 3** referred to the obligor who «is not eligible for or subject to insolvency proceedings under applicable law», it was explained that the provision was intended to cover State-controlled airlines which might not be subject to insolvency proceedings. Accordingly, the Drafting Committee was tasked to review this provision in order clearly to reflect the intention. It was also

agreed that the Drafting Committee should consider how the reference to the waiting period in paragraph 3 could be reflected in paragraph 1.

Article XI, Option A, paragraph 4

5:65 It was agreed that the Drafting Committee should consider whether not only the obligor, but also the insolvency administrator should be subject to **paragraph 4**. It was further proposed that the term «preserve» should not preclude the operation of the aircraft by the obligor, nor should paragraph 4 preclude the availability of other forms of interim relief under national laws.

Article XI, Option A, paragraph 5

5:66 Plenary accepted the IWG's proposal to delete **paragraph 5**.

Article XI, Option A, paragraph 6

5:67 It was agreed that **paragraph 6** be referred to the Drafting Committee in the light of the comments made under point 2.6.11 of the IWG report.

Article XI, Option A, paragraph 7

5:68 Plenary accepted the proposed draft of **paragraph 7**.

Article XI, Option A, paragraph 8

5:69 It was agreed that **paragraph 8** should be deleted, as proposed by the IWG.

Article XI, Option A, paragraph 9

5:70 Plenary accepted the comments of the IWG made under point 2.6.13 of the IWG report.

Article XI, Option A, paragraph 10

5:71 It was noted that **paragraph 10** was essential to the purpose behind the «hard rule» of Option A. It was further agreed that the alternative draft prepared by the IWG under point 2.6.14 of WP/19 should be referred to the Drafting Committee for further consideration. Several reservations were made to paragraph (b) of the proposed revision on the ground that it did not seem to serve any effective purpose and did not address the issue of the modifying powers of national courts. Other delegations questioned the utility of laying out a specific list of exceptions in paragraph (b).

Article XI, Option B, paragraph 11

5:72 It was agreed that the reference to «non-consensual interest» must be changed once the Session reached a decision regarding Articles 37 and 38 of the draft Convention.

Article XI, Option B (WP/19, Appendix II)

5:73 One observer proposed a modification to Option B of Draft Article XI (ICAO Ref. LSC/ME/2-UNIDROIT CGE/Int.Int./2 - Flimsy No.4). This proposed modification was intended to provide greater flexibility, and to ensure that when a State chose Option B, national rules providing other means of judicial relief could be applied. Another proposal called for a re-examination of **paragraph 4**, which appeared to promote a «hard rule» by enabling the obligee to take possession of the aircraft at the end of the «waiting period». Although the Session did not have the time to engage in a full discussion of the provisions of «Option B», it was agreed that Plenary's discussion on this issue should provide sufficient guidance for the Drafting Committee.

5:74 Plenary reviewed the Report by the JWG presented by its Chairman (WP/27). The Chairman informed Plenary that the Group had not attempted to present new drafting proposals but rather to provide further guidance for the future work of the Drafting Committee.

5:75 In reviewing paragraphs 2.2 and 2.3 of the Report, one delegation expressed concern that some of the bases of jurisdiction listed in **Article 40(1)(c)**, in its reference to Article 14, were not appropriate in contexts of interim relief. The Chairman of the JWG explained that it had been the intention of the Working Group to leave to the party concerned as many jurisdictional choices as possible, and noted that the list referred to in **Article 40(1)** should not be construed as an exhaustive list. The same delegation recalled that there had been no consensus as to the acceptability of the bases of jurisdiction listed in **Article 40(1)**, particularly subparagraph (a).

5:76 In examining the issues referred to in paragraph 2.4 of the Report, comments were made with respect to the basis for the determination of the defendant's location as set out in the Brussels and Lugano Conventions and **Article 3** of the Draft Hague Convention, and the need to identify suitable concepts contained therein for the purpose of integration with **Article 4** of the draft Convention. One delegation suggested the criterion of «domicile» be the basis for the obligor's location.

5:77 In relation to paragraph 2.6 of the Report, the Secretary General of UNIDROIT suggested clarifying in the Report that the reference to *lex fori* should be replaced by «the law applicable under *lex fori*». In the subsequent discussion, views were expressed as to whether the parties should be given full autonomy with respect to choice of forum agreements. It was agreed that the Convention would not include criteria for validity, nor would the term «validity» appear. The JWG had decided not to address the issue of exclusivity. One delegation expressed dissatisfaction with this decision and pointed out that choice of jurisdiction clauses were expressly given exclusivity in the Brussels and Lugano Conventions.

5:78 With respect to paragraph 2.8 of the Report, one delegation reiterated its reservations with respect to the unilateral measures of **Article 8(1)** of the draft Convention.

5:79 Plenary thereafter reviewed paragraph 2.9 of the Report. The issues that had already been identified earlier in connection with paragraph 2.6 of the Report (validity of forum selection, exclusivity of forum), were considered equally relevant to paragraph 2.9. The Chairman of the JWG restated the intent behind the first part of **Article 41**, which was to give effect to the basis of general jurisdiction. The JWG proposed that general jurisdiction should only be available under the draft Convention if the parties had validly agreed to the jurisdiction of a court. One delegation pointed out that where the choice of the parties was not clear, then the jurisdiction rules of the forum of the defendant should be applicable. Another delegation noted that, even if it was not wished to adopt the criterion of «domicile», this criterion was the most common basis

of jurisdiction under both the Brussels Convention and in private international law. One delegation expressed the view that domicile was no longer an effective concept, and that other international instruments of wider scope should be taken into account besides the Brussels and Lugano Conventions. It was agreed that the issue might be resolved if the draft Convention were to provide for a definition of «domicile».

5:80 With respect to paragraphs 2.11 of the JWG Report, Plenary confirmed the common understanding that the issues referred to in points 1) and 2) should be considered as a cumulative requirement, which described one particular factual situation. In the ensuing discussion with respect to **Article 25(3)** of the draft Convention, Plenary decided that this clause required further examination, particularly as this clause had yet not been reviewed by the Drafting Committee.

5:81 With respect to the issues referred to in paragraphs 2.13 and 2.14 of the Report, it was noted that the proposals contained therein were made on the assumption that the International Registry would be located in a Contracting State.

5:82 Plenary reviewed the **Final Provisions** of the draft Convention in order to provide some guidance to the PILWG in its future work.

Article U of the draft Convention

5:83 This Article had been previously discussed by Plenary (cf. §5:36 *supra*).

Article V of the draft Convention

5:84 It was decided that this Article should not be moved to the scope provisions of the Convention, but should remain in the final provisions because it was an exceptional provision. The problem regarding the meaning of «purely domestic transaction» had been raised earlier in Plenary.

Article W of the draft Convention

5:85 One delegation emphasized the importance of completing this Article, and the necessity to assure the progress of future Protocols.

Article X of the draft Convention

5:86 Some delegations expressed concern regarding the jurisdiction issues that were raised by this Article. It was explained, however, that the Article was intended merely to enable Contracting States to designate which of its courts should have jurisdiction for the purposes of the application of the Convention, and did not concern jurisdiction issues.

Article Y of the draft Convention

5:87 Plenary considered this Article in the context of its discussions on Article 12 of the draft Convention. One delegation proposed that the PILWG analyse how this Article might be affected by the rule of public international law on the binding nature of international treaties.

Article Z of the draft Convention

5:88 This Article was approved without discussion.

5:89 Plenary then considered the **Final Provisions** in the Addendum to the draft Protocol (Chapter VI). These provisions were referred to the PILWG for further consideration.

5:90 The observer from UNCITRAL addressed Plenary on the issue of the relationship between the draft Convention and UNCITRAL's draft Convention on Assignment in Receivables Financing, and the potential overlap in their respective spheres of application. The observer suggested that the UNCITRAL Convention should perhaps defer to the UNIDROIT Convention with relation to aircraft equipment. The observer also indicated that UNCITRAL and States had not however taken a final position on this matter. It was decided that Plenary would cooperate with UNCITRAL in the reaching of a solution. For this purpose, the PILWG was charged with the task of finding means to harmonise these draft Conventions.

5:91 Plenary reviewed the Report of the Drafting Committee, presented by its Chairman (WP/24). The Drafting Committee had been under severe time constraints to complete the heavy workload referred to it by Plenary, and had therefore been unable to complete its work. Since the Drafting Committee's Report was not complete, it was agreed that a review of the Report by Plenary was premature. Nevertheless, some interventions were made on the contents of the Report. One delegation expressed its satisfaction with the footnote attached to the removed words «and by lawful means» in **Article 8** of the draft Convention, but reserved the right to alter its position at a later date. It was suggested that the footnote to **Article 8 (2)** be amended to make it clear that «commercially reasonable manner» would not affect tort, trespass or other such laws.

Agenda Item 6 (UNIDROIT Agenda Item 7): Future Work

6:1 The Chairman of the PILWG indicated that, in the light of the broad tasks which Plenary had entrusted to the Working Group, it would be necessary to convene a formal meeting in order to enable the Group to finalize its work within the envisaged time-frame. Plenary endorsed the convening of such a meeting on the understanding that the PILWG would already commence its work prior to such a meeting. Commenting on the budgetary implications of the planned meeting, the Director of the Legal Bureau of ICAO indicated that efforts would be made to find the required resources in order to support the meeting.

6:2 The Chairman of the Drafting Committee accepted the task which Plenary had entrusted to him, strictly on the basis of the decisions reached by Plenary as reflected in the Report and in cooperation with the two Secretariats. With a view to ensuring the input of aviation expertise, Mr. K. El-Hussainy (Egypt), Chairman of the ICAO Legal Committee, and Mr. H.-G. Bollweg (Germany), Head of the Aviation Law Department of the Ministry of Justice, would be called in by the Chairman whenever necessary for the performance of the task entrusted to him. The Chairmen of the different Working Groups would be consulted in the same way when necessary.

6:3 The observer from IATA informed Plenary about the contents of a statement prepared by that Organization. The observer primarily expressed concern as to the pace of the decision making-process with respect to the new legal instruments under consideration. In response to the statement made by IATA, one delegation, supported by many other delegations, stated that it did not share IATA's view. In this connection, this delegation emphasized the need to achieve a sufficient degree of comfort at the level of Governments in order to bring the law-making process to a satisfactory conclusion and also felt that considerable progress had been made during the Joint Session in a number of areas pertaining to insolvency, registration and jurisdiction. It continued by stating that this momentum should not be lost by diligently progressing on the issues under consideration in the PILWG and the Drafting Committee. These observations were endorsed by several other delegations. One delegation expressed the hope that Plenary remained committed to the end of the year 2000 as a target date for the Diplomatic Conference. In relation to this latter issue, Plenary stressed the importance of the inter-sessional work of both Working Groups and the need to have the results of this work available. One delegation supported by another delegation stated that, if the Convention were to benefit developing countries, then it would be essential for these countries to have the necessary time to prepare themselves.

6:4 One delegation cautioned against focussing only on the dates for the next Joint Session and the Diplomatic Conference and observed that the results of both Working Groups would only be available by the end of 1999, leaving little time for appropriate consultation. In relation to this point, one observer, supported by one delegation, expressed the view that the documents available already offered a sufficient basis for the ongoing consultation process. This observer also stressed the need for all participants to maintain their efforts so as to avoid any delay in the meeting schedule, bearing in mind the year 2000 as a target date.

6:5 In relation to the future work to be carried out, one delegation stated the need to reconsider the issue of the overall structure of the new legal instrument, including the possibility of the merging of the provisions of the Convention and the Protocol into one single instrument. In response to this point, one delegation expressed its support for a multi-equipment Convention.

6:6 In preparation for the next Joint Session, one delegation expressed the desire to solicit comments from other equipment sectors (space, railway) in order to ensure that their views were fully taken into account in the preparation of the draft Convention. In addition, this delegation suggested that Arabic also be provided for as a working language, should it be decided to hold the next Joint Session in a place other than Montreal.

Agenda Item 7 (UNIDROIT Agenda Item 8): Review of report

7:1 The Report was reviewed and approved with a number of amendments.

Agenda Item 8 (UNIDROIT Agenda Item 9): Any other business

8:1 Two delegations reiterated the offer they had made at the first Joint Session to host the Diplomatic Conference. One of these delegations also reiterated its offer to host the International Registry.

ATTACHMENT A
LIST OF PARTICIPANTS

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Lakhdari, N.

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Bazinas, S.V.

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LIST OF WORKING PAPERS

ICAO references LSC/ME/2	Title	UNIDROIT references CGE/Int. Int/2
WP/1	Provisional Agenda	
	Revised draft Agenda	WP/1
WP/2	Discussion Paper on the Legal Relationship between the draft Convention and its Equipment-Specific Protocols	WP/2
WP/3	Comments on the draft Convention and Protocol	WP/3
WP/4	Comments on the draft Convention	WP/4
WP/5	Comments on the draft Convention and Protocol	WP/5
WP/6	Memorandum on the importance for aircraft equipment of the inclusion of associated rights within the sphere of application of the proposed instruments	WP/6
WP/7	Memorandum on the importance for space property of the inclusion of associated rights within the sphere of application of the proposed Convention and the proposed Space Property Protocol	WP/7
WP/8	Comments on the draft Convention and Protocol	WP/8
WP/9	Position Paper on Insolvency-Related Provisions	WP/9
WP/10	Report by the Informal Insolvency Working Group	WP/10
WP/11	Comments on the draft Convention	WP/11
WP/12	Comments on the draft Convention and Protocol	WP/12
WP/13	Draft Report - Plenary Session	WP/13
WP/14	Draft Report - Plenary Session	WP/14
WP/15	Comments on the draft Convention and Protocol	WP/15
WP/16	Proposal regarding the draft Convention	WP/16
WP/17	Report by the Registration Working Group	WP/17
WP/18	Draft Report - Plenary Session	WP/18
WP/19	Report by the Insolvency Working Group	WP/19
WP/20	Draft Report - Plenary Session	WP/20

ICAO references LSC/ME/2	Title	UNIDROIT references CGE/Int. Int/2
WP/21	Draft Report - Plenary Session	WP/21
WP/22	Draft Report - Plenary Session	WP/22
WP/23	Draft Report - Plenary Session	WP/23
WP/24	Report by the Drafting Committee	WP/24
WP/25	Comments on the draft Protocol	WP/25
WP/26	Comments on the draft Convention	WP/26
WP/27	Report by the Jurisdiction Working Group	WP/27
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REPORT BY THE INFORMAL INSOLVENCY WORKING GROUP

(Rome, 1 / 2 July 1999)

I. INTRODUCTION

1. Pursuant to the decision taken by the first Joint Session (cf. UNIDROIT CGE / Int.Int./Report / ICAO Ref. LSC/ME-Report, § 143), an Informal Insolvency Working Group was convened by the UNIDROIT and ICAO Secretariats in Rome on 1 and 2 July 1999. The essential purpose of this Working Group was to consider the insolvency-related provisions of the preliminary draft UNIDROIT Convention on International Interests in Mobile Equipment (hereinafter referred to as *the preliminary draft Convention*) and the preliminary draft Protocol thereto on Matters specific to Aircraft Equipment (hereinafter referred to as *the preliminary draft Aircraft Protocol*) from the angle of their relationship with existing international instruments on insolvency and insolvency assistance and national law rules pertaining to transnational insolvency.

2. In determining which States should be invited to participate in this Working Group, the UNIDROIT and ICAO Secretariats had regard essentially to the delegations that had manifested particular interest in the deliberations of the first Joint Session regarding the insolvency-related provisions of the preliminary draft Convention and the preliminary draft Aircraft Protocol. The following States were invited to participate in the Working Group: France, Germany, Japan, Mexico, Netherlands, Singapore, United Kingdom, United States of America. The following intergovernmental Organisations were invited to attend the meeting of the Working Group as observers: Commission of the European Union, Hague Conference on Private International Law, United Nations Commission on International Trade Law (UNCITRAL). The following international non-governmental Organisations were also invited to attend its meeting as observers: International Bar Association (I.B.A.), International Federation of Insolvency Practitioners (Insol International). In accordance with the decision taken by the first Joint Session (cf. UNIDROIT CGE / Int.Int./Report / ICAO Ref.LSC/ME-Report, § 9), the following international non-governmental Organisations were invited to attend the meeting as advisers: Aviation Working Group (A.W.G.), International Air Transport Association.

3. The meeting of the Informal Insolvency Working Group was opened at the seat of UNIDROIT in Rome on 1 July 1999 at 9.35 a.m. by Mr H. Kronke, Secretary-General of UNIDROIT. In opening the meeting, Mr Kronke reminded those attending that its task was to review the insolvency-related provisions of the preliminary draft Convention and the preliminary draft Aircraft Protocol with a view to seeking to formulate recommendations on these provisions for the attention of the second Joint Session. He stressed that it was not for the Working Group to seek to redraft any of the existing insolvency-related provisions. On a proposal by the representative of Germany, speaking on behalf of the Council of Ministers of the European Union, Ms C.R. Allen (United Kingdom) was elected Chairman.

4. The meeting was attended by the following representatives of States, observers and advisers:

MEMBERS OF THE WORKING GROUP

FRANCE

Mr Jean-Luc VALLENS, Judge on secondment from the *Cour d'Appel de Colmar*; Chairman, *Groupement pour l'Informatisation du Livre Foncier d'Alsace et de Moselle* (GILFAM), Colmar

Ms Dominique LARROCHE, Sub-Directorate for Legal Affairs, Directorate-General of Civil Aviation, Ministry of Equipment, Transport and Housing, Issy-les-Moulineaux

Ms Christine ALLAIRE, on secondment to the Sub-Directorate for Legal Affairs, Directorate-General of Civil Aviation, Ministry of Equipment, Transport and Housing, from IFURTA, Issy-les-Moulineaux

GERMANY

Mr Klaus WIMMER, Head of Section, Office RB 5, Federal Ministry of Justice, Berlin

JAPAN

Mr Susumu MASUDA, Attorney-at Law, Mori Sogo Law Offices, Tokyo

NETHERLANDS

Mr André J. BERENDS, Legal Adviser, Legislation Department, Ministry of Justice, The Hague

UNITED KINGDOM

Ms Catherine R. ALLEN, Head, Business Law Unit, Department of Trade & Industry, London; *Chairman of the Working Group*

Mr Bryan J. WELCH, Legal Director, Department of Trade and Industry, London

Mr Clifford CALLAGHAN, Policy Advisor, Insolvency Service, Department of Trade and Industry, London

Mr Nicholas T. BRAINSBY, Policy Advisor, Insolvency Service, Department of Trade and Industry, London

UNITED STATES OF AMERICA

Mr Robert A. MORIN, Vice-President, Aircraft Finance Division, Export-Import Bank of the United States of America, Washington, D.C.

OBSERVERS

INTERNATIONAL BAR ASSOCIATION Ms Lisa CURRAN, Attorney, Ughi & Nunziante, Rome; *Co-chairman, Sub-committee E 8 of the Section on Business Law (Financing Transactions)*

INSOL INTERNATIONAL Mr Ronald W. HARMER, Consultant, Blake Dawson Waldren, Solicitors, London; *Chairman, International Accreditation*

ADVISERS

AVIATION WORKING GROUP Mr Jeffrey WOOL, Partner, Perkins Coie, Washington, D.C.; *Co-ordinator, Aviation Working Group*

Mr Claude POULAIN, Deputy Finance Vice-President, SNECMA, Paris

5. The Working Group adopted the draft agenda (reproduced as an Appendix to this Report).
6. The Working Group was seised of the following materials:
 - (1) Draft agenda (I.I.W.G. / Agenda);
 - (2) First Joint Session (Rome, 1-12 February 1999): Report (UNIDROIT CGE/Int.Int./Report ICAO Ref. LSC/ME-Report);
 - (3) Preliminary observations (submitted by Mr Susumu Masuda) I.I.W.G. /WP/1;
 - (4) Insolvency-related provisions of the preliminary draft UNIDROIT Convention on International Interests in Mobile Equipment and of the preliminary draft Protocol on Matters specific to Aircraft Equipment (I.I.W.G. / WP/2);
 - (5) Proposal by the delegation of France (I.I.W.G. / WP/3);
 - (6) (European Union) Convention on Insolvency Proceedings (Brussels, 23 November 1995);
 - (7) European Convention on Certain International Aspects of Bankruptcy (Istanbul, 5 June 1990);
 - (8) UNCITRAL Model Law on Cross-Border Insolvency (Vienna, 30 May 1997);
 - (9) Effects of the international interest in mobile equipment in insolvency – some comments from a German perspective, by Ms Eva-Maria Kieninger (draft of an article to appear in the forthcoming special issue of the *Uniform Law Review*).

7. In introducing the business of the session, the *Chairman* proposed that, following an opportunity for the making of general comments, the Working Group should first review, one by one, the insolvency-related provisions of the preliminary draft Convention and the preliminary draft Aircraft Protocol, in particular from the point of view of their compatibility with existing international instruments on insolvency and insolvency assistance (that is, the European Union Convention on Insolvency Proceedings, the European Convention on Certain International Aspects of Bankruptcy and the UNCITRAL Model Law on Cross-Border Insolvency) and national law rules pertaining to transnational insolvency, and then consider the case for the possible moving of certain of these provisions from one instrument to another, that is as between the preliminary draft Convention and the preliminary draft Aircraft Protocol.

8. In the event, the shortness of the time available and the complexity of the issues involved meant that the Working Group was only able to complete a review of the insolvency-related provisions of the preliminary draft Convention and some of the insolvency-related provisions of the preliminary draft Aircraft Protocol. In particular, it was not able to begin consideration of Article XII of that text and it recognised that its review of the issues dealt with in Article XI would require to be dealt with in greater depth on the occasion of the second Joint Session. Furthermore, it was not able to consider the case for the moving of certain provisions from one instrument to another. The proposals made by the Working Group for the consideration of the Joint Session have been grouped together hereunder under each of the relevant provisions of the preliminary draft Convention and the preliminary draft Aircraft Protocol which it had time to consider. It was agreed that the UNIDROIT and ICAO Secretariats should give thought to the most appropriate means of ensuring that the work commenced in Rome be carried forward as a matter of priority during the second Joint Session.

II. REVIEW OF THE INSOLVENCY-RELATED PROVISIONS OF THE PRELIMINARY DRAFT CONVENTION

Re: *Article 27*

9. Regarding footnote 10 to Article 27, it was agreed that the burden of registering the date of the commencement of the insolvency should not be imposed on the insolvency administrator, particularly given the asset-based nature of the International Registry.

Re: *Article 28*

10. It was noted that Article 28 had the limited intention of ensuring the survival in insolvency proceedings of a duly registered international interest. It in no way sought to establish any priority for the international interest in relation to other interests in the obligor's insolvency. Such questions had been expressly left to be dealt with by national law. The purpose of the article was accordingly limited to ensuring that the trustee in bankruptcy would recognise the international interest in the event of the bankruptcy of the obligor and that the international interest did not simply fall within the pool of claims of the obligor's general creditors.

Re: *Article 28(1)*

11. Questions were raised as to the suitability of the term «valid» in the English text to achieve this purpose in Article 28(1). Reference was made to the corresponding word «opposable» employed in the French-language version of this provision. It was suggested that this term might be considered to render the idea which it was intended to convey more accurately than the word «valid». Concern was nevertheless

expressed as to the inherent ambiguity of the term «opposable» when used in the context of the registered international interest vis-à-vis, on the one hand, the trustee in bankruptcy and, on the other hand, the general creditors of that party. It was pointed out that use of the word «opposable» would have different meanings depending on whether the trustee in bankruptcy or the general creditors were concerned, that is, it would be enforceable against the former but would have priority over the latter.

12. In the uncertainty surrounding the precise purport of this provision in the contexts envisaged, it was suggested that one solution might be to replace the words «is valid against» by the words:

«...is to be recognised by the trustee in bankruptcy as if it were an analogous security or title-based interest under national law, if any, and, if not, as a valid proprietary interest in the object".

13. The Working Group considered the question as to whether or not the term "*commencement of bankruptcy*" should be defined. It was recalled that the essential meaning of this term was to pinpoint the moment at which a creditor's rights were adversely affected. The reason for footnote 14 to this term was that one delegation at the first joint Session had wished to go further and to ensure that a creditor should be able to determine when bankruptcy proceedings should commence. Consideration was given to taking the definition of «*foreign representative*» appearing in Article 2(d) of the aforementioned UNCITRAL Model Law as the basis for a definition of "*commencement of the insolvency*". Attention was also given to Article 2(f) of the aforementioned European Union Convention. It was pointed out that this provision, however, failed to cover the case of an interim appointment of an insolvency administrator.

14. Given the importance of the need to be clear as to the precise moment up until which it would be possible to register an international interest that would be valid against the insolvency administrator, it was finally agreed to define «*commencement of the insolvency*,» along the lines of Article 2(d) of the UNCITRAL Model Law, as follows:

« «commencement of the insolvency» means the time at which a person or body, including one appointed on an interim basis, is authorised to administer the reorganisation or the liquidation of the obligor's assets or affairs».

15. In addition, concern was expressed regarding the matter referred to in footnote 15 to Article 28 (1). It was explained that the fact that the rule laid down in Article 28 (1) was not intended to displace any special rules of national law regarding bankruptcy proceedings, preferences and fraudulent conveyances had up until the last session of the UNIDROIT Study Group been spelled out in a specific rule, as a fourth paragraph to Article 28. This paragraph had been deleted on the occasion of the final session of the Study Group on the ground that a similar qualification to the main rule laid down in Article 28(1) was not to be found in the Article of the UNIDROIT Convention on International Financial Leasing (Article 7(1)) on which Article 28(1) had been based.

16. The Working Group, while sensitive to the desirability of avoiding inconsistency between international treaties dealing with the same subject-matter, nevertheless registered the view that such concerns were outweighed by the need to express the intention of the drafters on this point clearly in the body of the future Convention and not simply in an annotation to Article 28(1) to be included in a future explanatory report.

Re: *Article 28(2)(a)*

17. It was agreed that the type of proceedings referred to in Article 28(2) (a) needed to be defined more precisely. It was agreed to adopt the definition of «insolvency proceedings» given in Article 2(a) of the aforementioned UNCITRAL Model Law. Article 28(2)(a) as thus amended would read as follows:

«(a) « insolvency» means a collective judicial or administrative proceeding in a State, including an interim proceeding, pursuant to a law relating to insolvency in which proceeding the assets and affairs of the obligor are subject to control or supervision by a court, for the purpose of reorganisation or liquidation.»

Re: *Article 28(2)(b)*

18. There was agreement that the term «*trustee in bankruptcy*» employed in Article 28(2)(b) should be replaced by a less Common law-oriented expression. The term «*representative*» employed in the aforementioned UNCITRAL Model Law was rejected as being too broad. The term «*insolvency administrator*» was finally agreed upon as being the most appropriate term to replace «*trustee in bankruptcy*».

Re: *Article 35*

19. It was agreed that Article 35 should be brought into line with the changes that had been agreed to Article 28. Consideration was given to the question as to whether the validity of an assignment of an international interest against the insolvency administrator should be left to be determined by national law, along the lines of Article 14 of the aforementioned European Union Convention. It was agreed that this was a question which would need to be decided by the Joint Session.

Re: *Article 38*

20. It was agreed that Article 38 raised major policy issues which would first have to be decided upon by the Joint Session and that it was not therefore worthwhile to consider its insolvency implications at this stage.

III. REVIEW OF THE INSOLVENCY-RELATED PROVISIONS OF THE PRELIMINARY DRAFT AIRCRAFT PROTOCOL

Re: *Article X(4)*

21. This paragraph was widely criticised and there was general support for its deletion. It was seen as conferring unduly broad powers on the obligee in the event of the obligor's insolvency and to be inconsistent both with the principle of the recognition of foreign proceedings on the basis of equality of

treatment and with the attitude of Article XI regarding the non-exercisability of remedies within the time prescribed in paragraph 3 of that Article.

Re: *Article XI*

22. There was considerable discussion of the merits and demerits of the «opt-out» regimen proposed under Article XI as combined with Article XXX. While there was general recognition of the importance of the principle underlying this rule, namely the need to build in a sufficient element of flexibility which would, on the one hand, enable airlines (in particular, the airlines of countries the banking systems of which were not at present able to meet their capital needs) to attract financing in their own right and, on the other, avoid them going bankrupt, this was tempered by concern on the part of all but one of the Governments present as to the acceptability of such discriminating in favour of one sectoral interest group in the insolvency context, considered moreover to be against the Constitution of one State, and the implications this would inevitably have for the preservation of the integrity of domestic insolvency law regimes. It was agreed that these concerns and, in particular, the acceptability of such innovations in the interest of cheaper aviation financing when measured against the yardstick of the concept of the preservation of the integrity of domestic insolvency law regimes were issues that required a political judgment that the Working Group was not competent to make and which should rather be exercised by the Joint Session.

23. Concern was moreover expressed as to whether the opt-out regimen would be effective in giving States which chose to opt out of the application of Article XI the protection that they sought to obtain thereby: it was feared that, as at present drafted, it could in a given case produce different effects in States having accepted it and those having opted out of its application. It was agreed that, in order to deal with this problem, the opt-out would need to follow the asset. The applicability of Article XI would thus depend on whether the State which was the primary insolvency jurisdiction of the obligor had opted out, regardless of the attitude of the State where the insolvency proceedings were commenced.

24. Another issue which proved to be of concern to States with the opt-out regimen concerned the unhappy fate of certain existing Conventions, in particular the aforementioned Istanbul Convention, which had chosen to take the option route on substantive issues that had defied all attempts to reach consensus. It was essential to be sure that the incorporation of an opt-out regimen in the future Protocol would not jeopardise the chances of its acceptance by Governments.

25. There was a strong feeling in the Working Group that a distinction needed to be drawn in the regimen of Article XI between liquidation and reorganisation proceedings. A major drawback of making the provisions of Article XI apply indiscriminately to both was seen in the difficulty an airline would face in reorganising were its aircraft to be sold. It was proposed that one solution to this problem might consist in States deciding to opt out of the application of Article XI in respect of reorganisation proceedings.

26. There was general agreement that, to the extent that the Joint Session might decide to endorse the opt-out approach, then all matters not regulated by Article XI, such as its relationship with the UNCITRAL Model Law and the European Union Convention, should be left to be dealt with by the applicable national law. It was moreover suggested by certain Governments that leaving certain matters to be dealt with by national law could permit the injection of valuable flexibility into the whole question of which matters currently dealt with under Article XI needed to be addressed there. For instance, it was noted that in this way all matters relating to the realisation of the international interest could be referred to national insolvency law as an alternative to the «hard» optional rule providing for timetables in the granting of insolvency remedies.

27. Citing the different insolvency remedies normally applied in respect of security interests, on one hand, and title retention and leasing agreements, on the other hand, one Government raised the question as to whether it was justifiable to provide equal treatment under Article XI for the three different categories of international interest covered by the future Convention.

28. A number of shortcomings in the drafting of specific paragraphs of Article XI were noted in the course of the Working Group's review of these provisions.

29. Regarding Article XI(1), it was suggested that the language of the future Convention and Protocol should be brought more into line.

30. Regarding Article XI(2)(a), it was suggested that, in so far as this provision was designed to cover both a voluntary and an involuntary commencement of insolvency proceedings, its drafting might be improved were the clause «any insolvency proceedings against the obligor have been commenced» to be replaced by a clause along the lines of «any insolvency proceedings have been commenced with respect to the obligor and its assets».

31. Regarding Article XI(2)(b), it was agreed that it needed to be made clear that this provision was concerned with the case where an airline, in particular a State-owned airline, would not be eligible for insolvency proceedings under national insolvency law. It was suggested that a possible solution might be to replace the words «the obligor is located in a Contracting State and» by a clause along the lines of «the obligor is not eligible for insolvency proceedings in the primary insolvency jurisdiction of that party and, being located in a Contracting State,».

32. Regarding Article XI(3) in general, it was noted that the duties imposed under this provision were duties that were capable of concerning not only the obligor but also the insolvency administrator.

33. Regarding Article XI(3)(a), it was agreed that the words «and agree to perform all future obligations ...» were of doubtful interpretation and performance and, assuming that the intention behind them was to provide for a continuing threat over airlines, this was something which should be made more explicit than was currently the case.

It was moreover noted that the combined intention of Article XI(3)(a) and Article XI(5) was to ensure that, should the obligor's defaults be all cured, say, on the last day of the grace period provided for in the chapeau of Article XI(3) but the obligor then defaulted again some days later, the insolvency remedies provided under Article XI would then become immediately available without the need for another grace period. It was agreed that this intention was not realised by the present drafting of Article XI(3)(a) and Article XI(5) and that their drafting accordingly needed to be looked at afresh with this in mind.

34. Regarding Article XI(3)(b), it was noted that provision would need to be made for the case where the return of the aircraft resulted in a windfall for the obligee. It was also noted that there was no reference in this provision to any duty on the obligee, in realising the aircraft, to do so on the best possible terms.

35. Regarding Article XI(4), it was noted that this provision, when read in conjunction with Article IX(1), could give the impression that the obligee was being given powers that were too broad in the absence of judicial control, whereas it was only intended to refer to the remedies of de-registration of the aircraft (Article IX(1)(a)) and export and transfer thereof (Article IX(1)(b)). It was agreed that such a misreading was the fault of the infelicitous drafting of Article XI(4), which, it was accordingly agreed, would need to be amended.

36. Regarding Article XI(5), it was agreed, as noted above (cf. § 33 *supra*), that the formulation of this sub-paragraph in relation to sub-paragraph 3 would need to be improved. It was also noted that the reference to «the Convention» in this provision was, by virtue of Article 5 thereof, intended also to cover the principle of the parties' freedom of contract.

37. Regarding Article XI(6), certain Governments felt that this provision was going too far and would therefore be unacceptable, in particular for the way in which it proposed in effect to put one creditor above the law. It was explained by the representative of the Aviation Working Group that this provision was *par excellence* intended to be one of those provisions which Governments would be free to opt out of: whereas certain Governments might take the view that it was indeed unacceptable and would therefore opt out of it, others might find the manner in which it would enable them to gain access to the international capital markets so attractive as to accept it.

38. Certain Governments felt that a major shortcoming of the opt-out regimen lay in its all-or-nothing approach; these Governments, essentially Civil law Governments, thought it would be better to seek agreement on certain basic rules and not try to be so ambitious. It was recognised that this approach, combined possibly with some elements of the opt-out regimen, might usefully form the basis of an Alternative B. Such an alternative text was indeed proposed by the delegation of France (cf. I.I.W.G. / WP/3). While the Working Group was not completely happy with this proposal either, it nevertheless agreed that the basic concepts underlying this proposal should be forwarded to the Joint Session as the possible basis for another attempt at the drafting of an Alternative B. The concepts in question were as follows:

- (a) the aircraft object should only have to be returned to the obligee after the commencement of insolvency proceedings involving the obligor once the obligee had specifically requested this of the insolvency administrator;
- (b) the obligee should have a duty to provide evidence of the *bona fides* of its claim and of the registration of its international interest;
- (c) the need to spell out the role of the court in granting the appropriate remedy;
- (d) the returned aircraft object should not be sold pending a court decision regarding the claim and the international interest.

It was suggested that the concept embodied in sub-paragraph (d) above might work if it were combined with an optional regimen providing for a definite timetable for the granting of remedies on insolvency of the type provided for in Article XI. It was further suggested that an alternative Article XI should also spell out the chargee's right of separation and make it clear that the insolvency administrator was under an obligation to decide, in the case of an unperformed consensual contract, whether it wished to continue with performance of that contract and, if so, had then to perform all outstanding obligations thereunder.

APPENDIX**AGENDA**

1. Election of the Chairman.
 2. Adoption of the agenda.
 3. Review of the insolvency-related provisions of the preliminary draft UNIDROIT Convention on International Interests in Mobile Equipment, as reviewed by the Drafting Committee during the first Joint Session (cf. Report on the first Joint Session, Attachment D, Appendix I), in particular from the perspective of their relationship with existing international instruments on insolvency and insolvency assistance and national law rules pertaining to transnational insolvency.
 4. Review of the insolvency-related provisions of the preliminary draft Protocol to the preliminary draft UNIDROIT Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment, as reviewed by the Drafting Committee during the first Joint Session (cf. Report on the first Joint Session, Attachment D, Appendix II), in particular from the perspective of their relationship with existing international instruments on insolvency and insolvency assistance and national law rules pertaining to transnational insolvency.
 5. Any other business.
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REPORT BY THE REGISTRATION WORKING GROUP (RWG)

1. The Registration Working Group (RWG), set up by the first Joint Session on 5 February 1999 met during the Second Joint Session on 25 and 26 August 1999. Representatives of the following States attended as members: Canada, Egypt, Finland, France, Ireland, Japan, Singapore, South Africa and the United States. Observers of the Aviation Working Group and the International Air Transport Association also attended sessions of the group as advisors. The Secretariats of ICAO and UNIDROIT were represented at all meetings of the Group.
2. Mr. R.C.C. Cuming (Canada) continued as Chairman and Mme Potvin Plamondon (Canada) continued as Assistant to the Chairman.
3. The task of the Group was to complete consideration of the registration provisions of the draft [UNIDROIT] Convention on International Interests in Mobile Equipment (Study LXXII – Doc. 42)/draft [UNIDROIT] Convention on International Interests in Mobile Equipment (ICAO Ref. LSC/ME-WP/3) (**the draft Convention**) concerned with the international registration system, modalities of registration and liabilities and immunities of the international registry (Chapters IV, V and VI) and the provisions of the draft Protocol to the draft [UNIDROIT] Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment (Study LXXIID – Doc. 3)/draft [UNIDROIT] Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment (ICAO Ref. LSC/ME-WP/4) (**the draft Protocol**) concerned with registration of international interests in aircraft objects (Chapter III).
4. The Group first took under consideration the Report by the RWG (UNIDROIT CGE/Int.Int/WP/15) (ICAO Ref. LSC/ME-WP/26) dated 11 February 1999, Attachment C to Report of the First Joint Session (UNIDROIT CGE Int.Int/Report) (ICAO Ref. LSC/ME-Report). The draft provisions in Appendix I were reconsidered in the light of information received by and comments addressed to members of the RWG following the February meeting of the Group. It was agreed by the members of the Group, that, subject to reservations of some members hereinafter noted, draft provisions set out the attached Appendix I to this Report would be recommended to the Joint Session as replacement for Articles 15 to 27 of the draft Convention (Articles 15 to 26 of the Appendix I to the Report by the Drafting Committee (UNIDROIT CGE/Int.Int.WP/26) (ICAO Ref. LSC/ME-WP/27 dated 12 February 1999) being Attachment D to Report of the First Joint Session (UNIDROIT CGE Int.Int/Report) (ICAO Ref.LSC/ME-Report).
5. The Group decided not to take a position with respect to the need to grant international legal personality to the Supervisory Authority as provided in draft Article 26, paragraph 1.
6. One delegation questioned the need to give immunity to the Supervisory Authority and the Registrar as provided in draft Article 26, paragraphs 2 and 3.
7. One delegation expressed concern with respect to the decision to regulate all issues relating to the liability of the Supervisory Authority and the International Registry in the Protocol. (See draft Convention Article 26, paragraph 4). It took the position that the principle of liability for errors and omissions is one of the essential elements of an international registration system which should be provided for in the Convention. The principle could be amplified, modified or excluded by the Protocol.

8. The Group decided not to take a position with respect to making the Supervisory Authority liable for failure to properly discharge its obligations under the Convention and Protocol. (See draft Convention Article 26, paragraph 4(a) and draft bracketed Protocol Article H, paragraph 1 and 3).

9. The Group then took under consideration draft provisions prepared by the Chairman dealing with registration matters to be addressed in the future Aircraft Protocol. These draft provisions were considered in the light of registration provisions in the draft Convention and the draft Protocol.

10. It was agreed by the members of the Group that, subject to reservations of some members as hereinafter noted, draft provisions set out in the attached Appendix II to this Report would be recommended to the Joint Session as replacement for Articles XVI to XIX of the draft Protocol.

11. The Group declined to place before the Joint Session a specific recommendation as to how the Supervisory Authority will be designated or constituted. However, three possible approaches are set out in the note to Appendix II to this Report.

12. The general approach adopted by the Group was to leave to regulations promulgated by the Supervisory Authority matters of detail concerning the creation and operation of the International Registry. However, matters of basic structure and policy should be addressed in the Articles of the future Protocol.

13. A basic structural feature of the approach recommended by the Group is the separation of the roles of Supervisory Authority and Registrar. An important aspect of this feature is that users of the International Registry will have a body to which complaints concerning the operation of the Registry may be brought.

14. The Group decided not to take a position with respect to giving to a national (Chicago Convention) registry the power to set requirements that must be met before it transmits (as an exclusive transmitter) registration information to the International Registry. (See draft bracketed Protocol Article I, paragraph 2(b)).

15. The text of the registration provisions of the future Convention recommended by the Group is appended hereto as Appendix I. The text of the registration provisions of the future Protocol recommended by the RWG is appended hereto as Appendix II.

16. The Joint Session, in consideration of the Group's recommendations, is invited to consider the appropriate means of insuring their due consideration by the Drafting Committee.

**REGISTRATION PROVISIONS OF THE PRELIMINARY
DRAFT UNIDROIT CONVENTION**

(as recommended by the Registration Working Group)

Article 1
Definitions

It is recommended that the definition of «Intergovernmental Regulator» be deleted.

It is recommended that the definition of «International Registry» be amended to refer to Article 15(2).

It is recommended that the definition of «Registrar» be amended to refer to Article 16(2).

It is recommended that the definition of «regulations» be amended as follows:

«Regulation» means a regulation promulgated by a Supervisory Authority.

CHAPTER IV*

THE INTERNATIONAL REGISTRY

Article 15

It is recommended that this Article be replaced by proposed Article 15 set out below.

1. – In this Convention and the Protocols, «International Registry» means the international registry facilities established for the purposes of this Convention and a Protocol and, where the context permits, includes the Registrar designated by the Supervisory Authority.

2. – Different international registries may be established under Protocols for different categories of objects and associated rights. In this Convention a reference to «International Registry» is a reference to the relevant International Registry.

3. – The following may be registered in the International Registry:

- (a) international interests, prospective international interests [and registrable non-consensual rights and interests];
- (b) assignments and prospective assignments of international interests;
- (c) subordinations of interests referred to in sub-paragraph (a) of this paragraph; and

* A consolidation of former chapters IV and V.

(d) such other interests as may be specified in the Protocols.

4. – For the purposes of this Chapter (and Chapter V) the term «registration» includes, where appropriate, an amendment, extension or discharge of a registration, and for the purposes of Chapter VII, «registered interest» includes any interest referred to in paragraph 3(a)-(d) of this Article.

Article 16

It is recommended that this Article be replaced by proposed Article 16 set out below.

1. – A Supervisory Authority shall be created pursuant to or specified in the Protocol.
2. – The Supervisory Authority may:
 - (a) establish or provide for the establishment of the International Registry;
 - (b) designate the Registrar for the International Registry;
 - (c) promulgate regulations dealing with the operation of the International Registry and with procedures through which complaints concerning its operation can be made to the Supervisory Authority;
 - (d) exercise supervisory control over the Registrar and the International Registry, and, upon request of the Registrar provide guidance to the Registrar as is appropriate;
 - (e) set and periodically review the fee structure for services of the International Registry so as to ensure that all costs are recovered;
 - (f) do all things necessary to ensure a modern, efficient and effective registry system exists for the purposes of this Convention and the Protocol; and
 - (g) report periodically to the Contracting States concerning the discharge of its obligations under this Convention and the Protocol;
 - (h) make agreements refers to in Article 26 paragraph 3.
3. – The Protocol may:
 - (a) provide that a Contracting State may designate an entity in its territory as an exclusive or non-exclusive transmitter of information required for registration, and
 - (b) specify the legal relationship between that entity and the International Registry.
4. – A person may not be precluded from having access to the international registration facilities of the International Registry for the purposes of registration and searching because the person is not a national of or is not located in a Contracting State.

5. – The Registrar designated under paragraph 2(b) shall:
- (a) operate the International Registry and perform the functions assigned to it by this Convention, the Protocol and regulations promulgated by the Supervisory Authority in accordance with established business practices;
 - (b) implement directives issued by the Supervisory Authority.
 - (c) [maintain a list of the categories of non-consensual rights or interests declared by Contracting States in conformity with Article 40 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.]

Articles 17 - 23

It is recommended that Articles 17-23 be replaced by proposed Article 17 set out below.

Article 17

The Protocol or regulations promulgated by the Supervisory Authority may:

- 1. – contain conditions and requirements for
 - (a) registration of items referred to in Article 15, paragraph 3;
 - (b) searches of the International Registry data base;
 - (c) the medium for transmitting registration information and appropriate security measures;
 - (d) the issue of search certificates by the Registrar, and
 - (e) the confidentiality of information and documents of the International Registry.
- 2. – fix the time of registration of an interest;
- 3. – set the period of time a registration remains effective;
- 4. – specify when written consent of an obligor, assignor, intended obligor, intended assignor or subordinated party is required before a registration can be effected; and
- 5. – deal with such additional matters as are incidental to the creation and operation of the International Registry.

Article 24

It is recommended that this Article be amended as set out below.

A document in the form prescribed by the regulations promulgated by the Supervisory Authority which purports to be a search 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 registration.

Article 25

It is recommended that this Article be replaced by proposed Article 25 set out below.

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 holder of such interest or right shall discharge a registration relating to the interest or right upon receipt of a written demand delivered by the obligor to the holder at the address of the holder as set out in the registration, requiring discharge of the registration.

2. – Where a prospective international interest or a prospective assignment of an international interest has been registered, the intended grantee or intended assignee shall discharge the registration upon receipt of a written demand delivered by the intending grantor or interested assignor to the intended grantee or intended assignee, at the address of the intended grantor or intended assignor as set out in the registration, at any time before the latter has given value or incurred a commitment to give value, requiring discharge of the registration.

3. – The Protocol may provide:

(a) that, if a holder, intended grantee or intended assignee fails to respond to a demand referred to in paragraphs 1 or 2 when required to do so, the obligor, intended obligor or intended assignor may resort to the court for a determination as to whether the holder, intended grantee or intended assignee is entitled to maintain the registration;

(b) that the court of the Contracting State in which the Registrar is located or the court explicitly chosen by the parties involved shall have jurisdiction to make the determination referred to in sub-paragraph (a) and make an order binding on the Registrar to discharge the registration.

CHAPTER V**

LIABILITY AND IMMUNITIES

Article 26

[1. – The Supervisory Authority shall have international legal personality as is necessary to carry out its functions under the Convention and the Protocol.]

2. – Subject to paragraph 4, the Supervisory Authority, its officers and employees shall be immune from legal process as is necessary to carry out their functions under the Convention and the Protocol.

** Formerly Chapter VI.

3. – Subject to paragraph 4 and except as otherwise provided by agreement with the State in which the International Registry is situated:

(a) the Registrar, the officers and employees of the Registrar shall be immune from legal process, as is necessary to carry out their functions under the Convention and the Protocol, and

(b) the assets, documents, database and archives the International Registry shall be inviolable and immune from seizure or other legal process as necessary to allow the International Registry to function as provided in this Convention and the Protocol.

4. – The Protocol may contain provisions dealing with the following matters:

(a) the liability of the Supervisory Authority for failure to properly discharge its duties under this Convention or Protocol;

(b) the liability of the Registrar for loss suffered by a person by reason of an error, omission or malfunction of the International Registry;

(c) the amount recoverable in an action brought against the Supervisory Authority or Registrar;

(d) the acquisition of insurance against liability referred to in paragraph (a) and (b); and

(e) the courts which have jurisdiction in actions brought against the Supervisory Authority or the Registrar.

APPENDIX II

CHAPTER V

**REGISTRATION PROVISIONS OF THE
DRAFT AIRCRAFT EQUIPMENT PROTOCOL**

(as recommended by the Registration Working Group)

Article A
Definitions

[only those relevant to the Registry Provisions]

1. – Except as otherwise provided in this Protocol, terms used herein have the meaning set out in the Convention.

2. – In this Protocol:

«International Registry» means the International Registry for interests in aircraft objects referred to in Article D.

«registration» includes, where appropriate, an amendment, extension or discharge of a registration.

Article B

Articles 15 paragraphs 4; 16 paragraphs 4 and 5; 24; 25 and 26 paragraphs 1 to 3 of Chapter IV of the Convention and any definitions in Article 1 relating thereto are incorporated into this Chapter. (See Appendix I).

Article C
The Supervisory Authority

1. – [Note: The Registry Working Group (RWG) discussed extensively the various approaches to the designation of the Supervisory Authority as provided in RWG redraft of Article 16, paragraph 1 of the draft Convention. However, the Committee lacked sufficient information to be in a position to recommend an approach.

The following three approaches are put forward for consideration:

(a) The Protocol will specify an existing international organization that will name or constitute the Supervisory Authority.

(b) The Protocol will specify an existing international organization that will appoint the members of the Supervisory Authority who are representatives of States that become Contracting States within a specified period after the Convention comes into effect, and will provide a mechanism for substituting other representatives as circumstances warrant.

(c) The Protocol will provide that the initial Supervisory Authority will be named or constituted by the Contracting States within a specified period following the date the Convention comes into effect and will provide a mechanism for replacement of the initial Supervisory Authority or continuation of the initial Supervisory Authority as circumstances warrant.]

Article D
Creation of The International Registry

1. – The Supervisory Authority shall establish or provide for the establishment of the International Registry for registration of:

- (a) items referred to in Article 15, paragraph 3, subparagraphs (a) to (c) of the Convention; and
- (b) contracts of sale and prospective sales of aircraft objects.

2. – The Supervisory Authority shall designate a Registrar for the International Registry.

3. – The designation of a person as Registrar shall be for a period of time not exceeding five years. A person may be designated Registrar more than once.

Article E
Powers And Responsibilities of The Supervisory Authority

1. – The Supervisory Authority shall:

(a) exercise supervisory control over the Registrar and the International Registry and upon request of the Registrar provide guidance to the Registrar as is appropriate;

(b) set and periodically review the fee structure for services of the International Registry so as to ensure that all costs are recovered;

(c) do all things necessary to ensure that the International Registry is modern, efficient and effective;

(d) promulgate regulations on entry into force of this Protocol or as soon thereafter as is practicable, and, from time to time thereafter as may be required, dealing with the operation of the International Registry including but not limited to the following:

(i) the establishment of different databases for different categories of aircraft objects and their associated rights;

(ii) the conditions and requirements for registrations or searches of the International Registry database or databases;

(iii) the medium for transmitting registration information to the International Registry;

- (iv) security measures pertaining to registration information;
- (v) the issue of search certificates by the Registrar; and
- (vi) the correction of errors in registrations.

(e) report annually to the Contracting States concerning the discharge of its obligations under the Convention and this Protocol.

2. – The Supervisory Authority may enter into an agreement referred to in Article 26, paragraph 3 of the Convention.

Article F *Basic Features of The International Registry*

1. – The International Registry shall be a depository of registration information transmitted by users. The International Registry and Registrar shall have no obligation to ensure that information transmitted for registration is accurate.

2. – The registration-search criterion for an aircraft object shall be its manufacturer's serial number, supplemented as provided in regulations by information necessary to ensure uniqueness.

3. – A registration shall take effect upon entry of the information required by the regulations into the database of the International Registry so that it is searchable.

4. – A registration is effective until a discharge is registered unless otherwise specified by the person making it.

5. – An international interest shall be treated as having been registered at the time a registration of it as a prospective interest is effective.

6. – The preceding paragraph applies with necessary modifications to an assignment of an international interest and to sale.

7. – Except as provided in paragraphs 8 and 9, a registration relating to an international interest, a prospective international interest, an assignment or prospective assignment of an international interest or a sale or prospective sale of an aircraft object may be made by either party to the relevant transaction with the prior written consent of the other party thereto. The Registrar shall require an indication that the consent has been obtained but has no obligation to verify that consent has been given in fact. The absence of consent does not affect a registration.

8. – The subordination of an international interest may be registered by or with the written consent of the person whose interest has been subordinated.

9. – A registration may be amended or discharged or may be extended prior to its expiry or discharge, by or with the written consent of the person in whose favour it was made.

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

Article G
Searches

1. – Any person may, in the manner prescribed by the regulations, make or request a search of the International Registry using:

- (a) the registration-search criterion referred to in Article F, paragraph 2; or
- (b) such other criterion specified in the regulations.

2. – Upon receipt of a request, the Registrar, in the manner prescribed in the regulations, shall issue a search certificate:

- (a) stating all registered information relating to an aircraft object disclosed in a search using the items referred to in paragraph 1 of this Article; and
- (b) indicating the date and time of registration of such information; or
- (c) stating that there is no registration relating thereto.

Article H
Liability of The Supervisory Authority And Registrar

[1. – The Supervisory Authority shall be liable for compensatory damages for loss suffered by a person directly resulting from failure by the Supervisory Authority to discharge properly its obligations under this Protocol.]

2. – The Registrar shall be liable for compensatory damages for loss suffered by a person directly resulting from an error or omission of the Registrar or employees of the Registrar or from a malfunction of the International Registry.

3. – [The Supervisory Authority and] the Registrar shall insure against the liability referred to in paragraphs [1 and 2] of this Article.

4. – The courts of the Contracting State in which the International Registry is located shall have jurisdiction in actions brought under this Article.

Article I
The Role of National Registry Authorities

1. – A Contracting State, in the manner prescribed by the regulations, may designate its national registry or that of another Contracting State or a joint regional registry as the exclusive transmitter of registration information with respect only to:

- (a) helicopters or airframes for which it is the State of registration; and
- (b) registrable non-consensual rights or interests created under its domestic law.

2. – An entity designated as provided in paragraph 1:

(a) shall have a relationship to the International Registry identical to that of any other transmitter of registration information;

[(b) may set requirements that must be met before it transmits registration information to the International Registry but may not alter the effect of regulations of the Supervision Authority dealing with registrations in the International Registry;]

3. – The Supervisory Authority and the International Registry shall not be liable for any conduct of an entity referred to in paragraph 1.

Article J

The language(s) of the International Registry shall be _____.

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REPORT BY THE INSOLVENCY WORKING GROUP

1. INTRODUCTION

1.1 The Informal Insolvency Working Group (hereinafter referred to as «the Informal Group») set up by the ICAO and UNIDROIT Secretariats pursuant to the decision taken by the first Joint Session met in Rome on 1 and 2 July 1999. It was unable to complete its review of all the insolvency-related provisions of the preliminary draft Convention (hereinafter referred to as «the draft Convention») and the preliminary draft Protocol (hereinafter referred to as «the draft Protocol»). The second Joint Session decided at its opening Plenary session that the Group should be reconvened urgently in order to complete this review.

1.2 In accordance with this decision, the membership of the Informal Group was enlarged by the addition of Canada, Egypt, the Russian Federation and South Africa. It was also confirmed that meetings of the Insolvency Working Group (hereinafter referred to as «the Group») would also be attended by observers of the Aviation Working Group, INSOL International and the International Air Transport Association as advisers.

1.3 The Group held five meetings on 24, 25 and 26 August. Representatives of the following States attended its meetings as members: Canada, Egypt, France, Germany, Japan, Netherlands, Russian Federation, Singapore, South Africa, United Kingdom and United States of America, Representatives of China and Sweden attended as observers.

1.4 The first meeting was chaired by Ms C. Allen (United Kingdom), who had been elected Chairman at the Rome meeting. In view of her unavailability to continue in the chair, Mr. B. J. Welch (United Kingdom) was elected Chairman of the Group at the second meeting on a proposal of Germany seconded by Canada.

2. REVIEW OF THE INSOLVENCY-RELATED PROVISIONS OF THE DRAFT PROTOCOL

2.1 The Group agreed not to reopen discussion on those issues on which it had been able to reach consensus at the Rome meeting of the Informal Group; namely those issues reflected in paragraphs 9–21 of the Report on that meeting (hereinafter referred to as «the Report»). The Group's discussion focussed on Articles XI and XII of the draft Protocol. It agreed that, as in Rome, it would not be appropriate for the Group to take policy decisions, which fell rather within the competence of the Plenary.

Re Article XI

2.2 As regards Article XI of the draft Protocol, regarding which opinions had been divided at the Rome meeting (cf. paragraphs 22 to 38 of the Report), it was agreed to proceed on the basis of offering Contracting States two alternative approaches. One of these approaches would be based on the «hard option» contained in Article XI of the draft Protocol. The essential feature of this option would be that it provided a fixed period for the giving of possession of the aircraft object to the obligee unless all defaults were cured by the end of that period. The other approach would be based on the proposal submitted by the French delegation at the Rome meeting of the Informal Group. The essential feature of this approach would be that it provided for judicial control and discretion in the realisation by an obligee of his security interest in an aircraft object.

2.3 The Group had before it a proposal by the Aviation Working Group (hereinafter referred to as «A.W.G.») for an amended text of Article XI as contained in the draft Protocol (ICAO Ref. LSC/ME/2 UNIDROIT CGE/Int. Int./2 IWG – Flimsy No. 1), a proposal by Japan (ICAO Ref. LSC/ME/2 UNIDROIT

CGE/Int. Int./2 IWG – Flimsy No. 2) and a proposal by France (ICAO Ref. LSC/ME/2 UNIDROIT CGE/Int. Int./2 IWG – Flimsy No. 3). The Group agreed that, whilst it would work on the basis of these draft texts, it was not a drafting Group. It would therefore be for the Drafting Committee to revise the texts of the insolvency-related provisions of the draft Convention and Protocol following consideration by the Plenary of the report of the Informal Group and the report of the Group.

2.4 Following discussion in the Group of these proposals, it was agreed to present to the Plenary the proposal made by the A.W.G. as the basis of the hard option to be offered to States and the proposal by France as the basis of an alternative option.

2.5 The texts of these two options (Option A and Option B (original version)) are reproduced in Appendices I and II respectively to this report.

2.6 The Group made a number of remarks and proposals for the amendment and/or clarification of the various paragraphs of Option A. These are set out hereunder:

Re paragraph 1

2.6.1 A preliminary point concerned whether a Contracting State could opt out of individual provisions of this Article or whether it was intended to be accepted as a whole. Opinions were divided on this issue, which was recognised to be a policy issue for Plenary, although it was pointed out that Article XI (Option A) would no longer represent a hard option if States could opt out of paragraph 10. The Group, recognising that paragraph 10 was the critical paragraph in respect of which some members of the Group would wish to opt out, worked with a view to preparing a revised paragraph 10 that would be acceptable to all members of the Group (cf. paragraph 2.6.14 of this report).

2.6.2 It was concluded that this raised a question as to the need to redraft Article XXX.

Re paragraph 2

2.6.3 This paragraph refers to a declaration by a Contracting State being operative in the case where that Contracting State is the State in which the centre of the obligor's main interests is situated. The Group agreed that the Drafting Committee in looking at this paragraph should look at the definition of «primary insolvency jurisdiction» in Article I of the draft Protocol with a view to introducing the rebuttable presumption that the relevant jurisdiction is the place of incorporation of a company unless the person commencing the insolvency proceedings could establish that the obligor's main interests were located elsewhere. This definition was based on that of the corresponding definition of primary insolvency jurisdiction in the UNCITRAL Model Law on Cross-Border Insolvency.

2.6.4 One member of the Group felt that it would be useful to have a provision regarding which insolvency law would be applicable to the international interest.

Re paragraph 3

2.6.5 Paragraph 3(b) refers to the «otherwise applicable insolvency law». It was agreed that this meant the insolvency law that would apply in the absence of the application of Article XI.

2.6.6 It was agreed that the words «return» and «returned» should be replaced in Article XI generally (e.g. paragraphs 7 and 8) by references to «giving possession», as in the case of some transactions the obligee would never previously have had possession.

2.6.7 It was also agreed that there was no need for a special rule providing for the obligee to return any surplus to the obligor in the context of this paragraph: this point was covered by Articles 8(5) and Y2 of the draft Convention. Article Y2 meant that the remedies available to the obligee following the giving of possession of the aircraft object would be subject to judicial control if a Contracting State had made a declaration under that Article.

Re paragraph 4

2.6.8 Some qualifications were proposed to the obligation to preserve the aircraft object and its value. These included limiting the obligation to taking «all reasonable steps» and that the obligation be qualified by reference to the terms of the agreement. It was further suggested that it should be made clear that that obligation terminates on the obligor giving possession of the aircraft object to the obligee.

2.6.9 A general point made was that, in line with the change already made to paragraph 3, references in the article to «obligor» should be expanded to include the insolvency administrator (to read «the insolvency administrator or the obligor, as applicable»). However it should be made clear that this expansion did not mean that the insolvency administrator was to be personally liable; it was suggested that one method of achieving this result would be to refer to the obligor or insolvency administrator «when acting on behalf of the obligor».

Re paragraph 5

2.6.10 It was decided that paragraph 5 should be deleted as the requirements it contained were necessary in any proceedings in which the obligor sought to rely on his security.

Re paragraph 6

2.6.11 It would be necessary for the Drafting Committee to give effect to the proposal in paragraph 33 of the Report. Some members of the Group furthermore felt that it should be made clear that a new waiting period would be available where fresh insolvency proceedings were commenced in respect of the same agreement.

Re paragraph 8

2.6.12 It was agreed that the fact that the object could not be sold prior to the date on which possession was given to the obligee was implicit in paragraph 6. It was therefore agreed that this paragraph should be deleted.

Re paragraph 9

2.6.13 It was agreed that the Drafting Committee should consider introducing a rule, that might be modelled on Article 14(4) of the draft Convention, designed to indicate that nothing in the future Convention

was intended to limit the availability of remedies under the applicable insolvency law prior to the expiry of the waiting period.

Re paragraph 10

2.6.14 There was a clear division of opinion as to the acceptability of a general rule prohibiting the modification of the obligor's obligations under the relevant agreement and related transactions. On the basis that this paragraph was an essential feature of the hard option, a more limited version was prepared. This reads as follows:

- «10. (a) No obligations of the obligor:
- (i) to return the aircraft object to the obligee under the agreement and related transactions documents or, if applicable, as provided in Article XI(3); or
 - (ii) to perform all obligations as set out in the agreement and related transaction documents,

may be modified without the consent of the obligee.

- (b) Nothing in this Article XI(10) shall be construed to:
- (i) affect the authority, if any, of the insolvency administrator under the applicable law if the agreement and related transaction documents have been terminated; or
 - (ii) permit the conversion of unsecured claims to secured claims or limit the obligee's rights, if any, to the former.»

Re paragraph 11

2.6.15 It was noted that the treatment of non-consensual interests was a policy issue to be considered in Plenary and that this paragraph should therefore appear in square brackets for the time being. Subject to that consideration, paragraph 11 appeared satisfactory.

2.7 Regarding Option B, it was agreed that the French proposal for this option should be completed in line with the suggestions contained in paragraph 38 of the Report. A revised text of this option was accordingly prepared and appears as Appendix III.

Re Article XII

2.8 In considering Article XII, it was agreed that the wording of this paragraph should be brought into line with Articles 25 and 26 of the aforementioned UNCITRAL Model Law. In particular, it was suggested that the reference to «courts» should be expanded to include «the insolvency administrator» and that the duty of co-operation should extend to the courts or authorities administering the insolvency proceedings cooperating with the courts of the Contracting State in which the aircraft object was situated.

2.8.1 As the application of this Article is stated to be «in accordance with the law of the Contracting State», it was suggested that there was no need to provide for a Contracting State to be able to opt out of this Article.

APPENDIX I**Article XI****Option A**

1. – A Contracting State may declare at the time of signature, ratification, acceptance, approval of or accession to this Protocol that it will not apply the provisions of Article XI to all or specified ¹ types or certain stages of insolvency proceedings, or to suspensions of payments by obligors that are not eligible for or subject to insolvency proceedings, under its national laws.

2. – Any such declaration shall be operative in the case where the declaring Contracting State is the State in which the centre of the obligor's main interests is situated.]²

3. – Where insolvency proceedings ³ involving the obligor have been commenced, or, alternatively, where the obligor is not eligible for or subject to insolvency proceedings under applicable law and has declared its intention to suspend, or has actually suspended payments to creditors generally, the insolvency administrator or the obligor, as applicable, shall, subject to paragraph 6, return the aircraft object to the obligee no later than the earlier of -

- (a) the end of the waiting period; and
- (b) the date on which the aircraft object would be returned to the obligee under otherwise applicable insolvency law.

For purposes of this Article XI, the "waiting period" shall be the period of time specified in the declaration of the Contracting State referred to in paragraph 1.

4. – During the waiting period, the obligor shall preserve the aircraft object and its value.

¹ This is designed to permit States to limit the application of this Article to liquidation-type proceedings.

² Paragraphs 1 and 2 would be moved to the final clauses section but is included here for illustrative purposes.

³ This term will be defined in the future Convention in line of paragraph 17 of document ICAO Ref LSC/ME/2-WP/10 UNIDROIT CGE/Int. Int./2/-WP/10.

5. – The obligee shall be given the opportunity during the waiting period to adduce evidence that it is the holder of an international interest and provide proof that such international interest has been registered.

6. – The obligor may retain possession of the aircraft object on the date specified in paragraph 3 by curing all defaults, and agreeing to perform all future obligations, under the agreement and the related transaction documents.

7. – The remedies specified in Article IX(1)(a) and (b) shall be made available by the national registry authorities and the other administrative authorities, as applicable, no later than [...] working days after the date on which the aircraft object is returned, as notified by the obligee.

8. – The returned aircraft object may not be sold prior to the date on which it is returned to the obligee.

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

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

11. – No rights or interests, except for preferred non-consensual rights or interests listed in an instrument deposited under Article 38 of the Convention, shall have priority in the insolvency over registered interests.

APPENDIX II

Article XI

Option B (original version)

1. – Where insolvency proceedings have been commenced against the obligor, the obligee may request the obligor to permit the obligee to take possession of the secured object and the obligee shall provide evidence of its claim and proof that its international interest has been registered.

2. – The court which has commenced insolvency proceedings may require the taking of any additional step or the provision of any additional guarantee and may also permit the obligee to take possession of the secured object upon such terms as the court may order.

3. – The secured object shall not be sold pending a decision by a court regarding the claim and the international interest.

APPENDIX III**Article XI****Option B** (revised version)

1. – Where insolvency proceedings involving the obligor have been commenced, or, alternatively, where the obligor is not eligible for or subject to insolvency proceedings under applicable law and has declared its intention to suspend, or has actually suspended payments to creditors generally, the insolvency administrator or the obligor, as applicable upon the request of the obligee, has to declare within a reasonable time period whether it will:

- (a) cure all defaults and to 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 the applicable law.

2. – The applicable law referred to in subparagraph (b) of the preceding paragraph may permit the court to require the taking of any additional step or the provision of any additional guarantee.

3. – The obligee shall provide evidence of its claims and proof that its international interest has been registered.

4. – If the obligor or the insolvency administrator, as applicable, does not make such a declaration within a reasonable time period, or when he has declared that he will give possession of the aircraft object but fails to do so, the court may permit the obligee to take possession of the aircraft object upon such terms as the court may order and may require the taking of any additional step or the provision of any additional guarantee.

In any event, the obligor or the insolvency administrator must give possession of the aircraft object to the obligee not later than the end of the waiting period.

For purposes of this Article XI, the "waiting period" shall be the period of time specified in the declaration of the Contracting State referred to in paragraph ___.

5. – The aircraft object shall not be sold pending a decision by a court regarding the claim and the international interest.

REPORT BY THE DRAFTING COMMITTEE

1. The Drafting Committee set up by the first Joint Session in Rome on 3 February 1999 met on two occasions during the second Joint Session, on 31 August and 1 September 1999. Representatives of the following States attended these meetings as members: Canada, Egypt, France, Germany, Japan, Mexico, Republic of Korea, Singapore, South Africa and the United States of America. A representative of Tunisia attended as observer. Observers of the International Air Transport Association and the Aviation Working Group attended as advisers. The Drafting Committee was assisted by the ICAO and UNIDROIT Secretariats.
2. The Drafting Committee was chaired by Mr. K. F. Kreuzer (Germany). Mr. R.M. Goode (United Kingdom), Rapporteur to the Joint Session, also took part in the work of the Drafting Committee in accordance with the invitation addressed to him by the Chairman of the Joint Session on the occasion of the first Joint Session.
3. The business of the Drafting Committee was to give effect to the matters referred to it by the Joint Session in the light of its second reading of the [preliminary] draft [UNIDROIT] Convention on International Interests in Mobile Equipment (ICAO Ref. LSC/ME-Report - UNIDROIT CGE/Int.Int./Report, Attachment D, Appendix I) (*the draft Convention*) and the [preliminary] draft Protocol thereto on Matters specific to Aircraft Equipment (ICAO Ref. LSC/ME-Report - UNIDROIT CGE/Int.Int./Report, Attachment D, Appendix II) (*the draft Protocol*).
4. The Drafting Committee in the event did not have time to consider the drafting implications of the recommendations contained in the Report by the Registration Working Group (ICAO Ref. LSC/ME/2-WP/17 - UNIDROIT CGE/Int.Int./2-WP/17) nor the drafting implications of the recommendations contained in the Report by the Insolvency Working Group (ICAO Ref. LSC/ME/2-WP/19 - UNIDROIT CGE/Int.Int./2-WP/19) and those recommendations contained in the Report by the Informal Insolvency Working Group (ICAO Ref. LSC/ME/2-WP/10 - UNIDROIT CGE/Int.Int./2-WP/10) in respect of which the Insolvency Working Group had decided not to reopen discussion.
5. The text of the provisions of the draft Convention as reviewed by the Drafting Committee is appended hereto as Appendix I, with the text of the provisions of the draft Protocol as reviewed by the Drafting Committee appended as Appendix II.
6. In view of the fact that the Drafting Committee was not able to consider the registration- and insolvency-related provisions of the draft instruments, these provisions are included in these appendices in square brackets in the form in which they emerged from the first Joint Session. It was agreed that these provisions would need to be dealt with by the Drafting Committee in due course.

APPENDIX I

**TEXT OF THE [PRELIMINARY] DRAFT [UNIDROIT] CONVENTION ON
INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT**
*as reviewed by the Drafting Committee in the light of the
Joint Session's second reading thereof *¹*

**[PRELIMINARY] DRAFT [UNIDROIT] CONVENTION ON INTERNATIONAL
INTERESTS IN MOBILE EQUIPMENT**

CHAPTER I SPHERE OF APPLICATION AND GENERAL PROVISIONS

Article 1	Definitions
Article 2	The international interest
Article 3	Sphere of application
Article 4	Where obligor is situated
Article 5	Derogation
Article 6	Interpretation and applicable law

CHAPTER II CONSTITUTION OF AN INTERNATIONAL INTEREST

Article 7	Formal requirements
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CHAPTER III DEFAULT REMEDIES

Article 8	Remedies of chargee
Article 9	Vesting of object in satisfaction; redemption
Article 10	Remedies of conditional seller or lessor
Article 11	Meaning of default
Article 12	Procedural requirements
Article 13	Additional remedies
Article 14	Relief pending final determination

[CHAPTER IV THE INTERNATIONAL REGISTRATION SYSTEM]

* This document reproduces Attachment F to the Report on the second Joint Session, Appendix I.

¹ *Note by the Secretariats:*

Amendments made to the preliminary draft Convention as reproduced in Unidroit CGE/Int.Int./Report; ICAO Ref. LSC/ME-Report, Attachment D, Appendix I may be identified, in the case of deletions, by the striking through of the provisions in question and, in the case of additions, by the use of underlining.

Article 15	The International Registry
Article 16	The Intergovernmental Regulator and the Registrar

[CHAPTER V MODALITIES OF REGISTRATION]

Article 17	Registration requirements
Article 18	Transmission of information
Article 19	When registration takes effect
Article 20	Who may register
Article 21	Duration of registration
Article 22	Searches
Article 23	List of declared non-consensual rights or interests
Article 24	Evidentiary value of certificates
Article 25	Removal of registration

[CHAPTER VI LIABILITIES AND IMMUNITIES OF THE INTERNATIONAL REGISTRY]

Article 26	Indemnity and immunity
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CHAPTER [VII] EFFECTS OF AN INTERNATIONAL INTEREST AS AGAINST THIRD PARTIES

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{ CHAPTER [IX] NON-CONSENSUAL RIGHTS AND INTERESTS }

Article 37	<u>Registrable non-consensual rights and interests</u>
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{CHAPTER [X] APPLICATION OF THE CONVENTION TO SALES }

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[CHAPTER [XI] JURISDICTION]

Article 40
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CHAPTER [XIII] [OTHER] FINAL PROVISIONS

Article U
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Article Z

[PREAMBLE

THE STATES PARTIES TO THIS CONVENTION,

AWARE of the need to acquire and use ~~high-value~~ mobile equipment of high-value or particular economic significance and to facilitate the financing of the acquisition and use of such equipment in an efficient manner,

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

MINDFUL of the need to ensure that interests in such equipment are recognised and protected universally,

DESIRING to provide broad economic benefits for all interested parties,

BELIEVING that such rules must reflect the principles underlying asset-based financing and leasing and promote the autonomy of the parties necessary in these transactions,

CONSCIOUS of the need to establish ~~an international registration system as one of the essential features of the legal framework applicable to international interests in high-value mobile equipment~~ a legal framework for international interests in such equipment and for that purpose to create an international registration system for their protection,

[RECOGNISING that a Convention on asset-based financing must allow Contracting States the flexibility to make special declarations concerning important national policies.]²

HAVE AGREED upon the following provisions:]

CHAPTER I

SPHERE OF APPLICATION AND GENERAL PROVISIONS

Article 1
Definitions

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; ~~[(h)]~~

² This clause of the preamble, while not adopted by the Drafting Committee, is transmitted to Plenary, in square brackets, with a view to seeking the advice of that body as to the desirability of its inclusion in the preamble.

(b) «assignment» means a consensual transfer, whether by way of security or otherwise, which confers on the assignee rights in the international interest; [(d)]

(c) «associated rights» means all rights to payment or other performance by ~~the~~ an obligor under an agreement or a contract of sale secured by or associated with the object; [(p)]

(d) «buyer» means a buyer under a contract of sale; [(a)]

(e) «chargee» means ~~the~~ a grantee of an interest in an object under a security agreement; [(n)]

(f) «chargor» means ~~the~~ a grantor of an interest in an object under a security agreement; [(g)]

(g) «conditional buyer» means ~~the~~ a buyer under a title reservation agreement; [(b)]

(h) «conditional seller» means ~~the~~ a seller under a title reservation agreement; [(ff)]

(i) «contract of sale» means a contract for the sale of an object which is not an agreement; [(k)]

(j) «court» means a court of law or an administrative or arbitral tribunal established by a Contracting State; [(ee)]

(k) «Intergovernmental Regulator» means, in respect of any Protocol, the intergovernmental regulator referred to in Article 16(1); [(y)]

(l) «international interest» means an interest to which Article 2 applies and which is constituted in conformity with Article 7; [(t)]

(m) «International Registry» means the international registry referred to in Article 15(3); [(bb)]

(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; [(j)]

(o) «object» means an object of a category to which Article 2 applies; [(c)]

(p) «obligee»³ means ~~the~~ a chargee under a security agreement, ~~the~~ a conditional seller under a title reservation agreement or ~~the~~ a lessor under a leasing agreement; [(m)]

(q) «obligor»⁴ means ~~the~~ a chargor under a security agreement, ~~the~~ a conditional buyer under a title reservation agreement, ~~the~~ a lessee under a leasing agreement ~~for the~~ a person whose interest in an object is burdened by a registrable non-consensual right or interest; [(o)]

(r) «prospective assignment» means an assignment that is intended to be made in the future, upon the occurrence of a stated event, whether or not the occurrence of the event is certain; [(e)]

³ It was noted by the Drafting Committee that consideration should be given in due course as to the desirability of replacing the term «obligee» by «creditor» with a view to simplifying the terminology employed in the preliminary draft Convention: the corresponding term «créancier» in the French text was, however, found satisfactory.

⁴ Idem.

(s) «prospective international interest» means an interest that is intended to be created or provided for as an international interest in the future, upon the occurrence of a stated event (which may include the obligor's acquisition of an interest in the object), whether or not the occurrence of the event is certain; [(u)]

(t) «prospective sale» means a sale which is intended to be made in the future, upon the occurrence of a stated event, whether or not the occurrence of the event is certain; [(hh)]

(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; [(aa)]

(v) [«qualified proceeds»] means proceeds of an object payable by reason of arising from the loss or physical destruction of the object or payable by a Government or State entity in respect of the its confiscation, condemnation or requisition of the object; }⁵ [(z)]

(w) «registered» means registered in the International Registry pursuant to Chapter V; [(w)]

(x) «registered interest» means an international interest {for a registrable non-consensual right or interest} registered pursuant to Chapter V; [(s)]

(y) {«registrable non-consensual right or interest»} means a right or interest registrable pursuant to an instrument deposited under Article 37; } [(q)]

(z) «Registrar»⁶ means, in respect of any category of object and associated rights to which this Convention applies, the person designated under Article 16(3); [(f)]

(aa) «regulations» means regulations made, pursuant to the Protocol, by the Intergovernmental Regulator under Article 16(4); [(cc)]

(bb) «sale» means a transfer of ownership of an object pursuant to a contract of sale; [(gg)]

(cc) «secured obligation» means an obligation secured by a security interest; [(x)]

(dd) «security agreement» means an agreement by which a chargor grants or agrees to grant to a chargee an interest (including an ownership interest) in or over an object to secure the performance of any existing or future obligation of the chargor or a third person; [(i)]

(ee) «security interest» means an interest created by a security agreement; [(dd)]

(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; [(l)]

⁵ ~~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.~~

⁶ It was noted by the Drafting Committee that it would be desirable to seek a better definition of this term in due course. This definition should indicate that the term was designed to include not only a natural person but also a legal person.

(gg) «unregistered interest» means a consensual interest or non-consensual right or interest [(other than an interest to which Article 38 applies)] which has not been registered, whether or not it is registrable under this Convention[; [(v)] and

(hh) «writing» means a record of information (including information [sent][obtained] by teletransmission) which is in tangible form or is capable of being reproduced in tangible form and which [identifies][indicates] by reasonable means the person sending the record and that person's approval of it] [(r)].⁷

Article 2

The international interest

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, constituted under Article 7, in an uniquely identifiable object of a category of such objects designated in a Protocol:

- (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.

An interest falling within sub-paragraph (a) does not also fall within sub-paragraph (b) or (c).

3. – This Convention does not determine whether an interest to which the preceding paragraph applies falls within sub-paragraph (a), (b) or (c) of that paragraph.

~~[4. — This Convention governs only:~~

- ~~(a) — the constitution of an international interest, its effects, its assignment and rights of subrogation;~~
- ~~(b) — matters relating to the international registration system and the modalities of registration;~~
- ~~(c) — questions of jurisdiction,~~

~~as provided for in Articles 2 to 41.]~~

⁷ It was noted by the Drafting Committee that this definition would need to be reconsidered in the light of advice from specialists.

~~{5.4. – An international interest in an object extends to {qualified⁸ proceeds} of that object.}~~

Article 3
Sphere of application

{ 1. – } This Convention shall apply when at the time of the conclusion of the agreement creating or providing for the international interest:

- (a) the obligor is situated in a Contracting State; or
- (b) the object to which the international interest relates has a connection, as specified in the Protocol, with a Contracting State.

{ 2. – The fact that the obligee is situated in a non-Contracting State does not affect the applicability of this Convention. }

Article 4
Where obligor is situated

{1. –} For the purposes of this Convention [other than the provisions of Article 40], the obligor is situated in any Contracting State where it:

- (a) is incorporated or formed;
- (b) has its registered office;
- (c) has its centre of ~~control~~ administration; or
- (d) has its place of business

~~in that State.~~

{2. – A reference in this Convention to the obligor's place of business shall, if it has more than one place of business, mean its principal place of business or, if it has no place of business, its habitual residence. }

Article 5
Derogation

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 8(2)-(6), 9 (3) and (4), 12(1) and 13.

⁸ The term «qualified» is to be seen as a provisional label for the category of proceeds to be covered by the preliminary draft Convention.

Article 6

Interpretation and applicable law

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.

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.

3. – References to the applicable law are □, except as provided in Articles □, □ to the domestic rules of the law applicable by virtue of the rules of private international law of the forum State.

4. – Where a State comprises several territorial units, each of which has its own rules of law in respect of the matter to be decided, and where there is no indication of the relevant territorial unit, the law of that State decides which is the territorial unit whose rules shall govern. In the absence of any such rule, the law of the territorial unit with which the case is most closely connected shall apply.

CHAPTER II

CONSTITUTION OF AN INTERNATIONAL INTEREST

Article 7

Formal requirements

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 of which the chargor, conditional seller or lessor has power to dispose;
- (c) enables the object to be identified in conformity with the Protocol; and
- (d) in the case of a security agreement, enables the secured obligations to be determined, but without the need to state a sum or maximum sum secured.

CHAPTER III

DEFAULT REMEDIES

Article 8

Remedies of chargee

1. – In the event of default as provided in Article 11, the chargee may, to the extent that the chargor has at any time so agreed, 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,
- or apply for a court order authorising or directing any of the above acts.

2. – Any remedy given by sub-paragraph (a), (b) or (c) of the preceding paragraph or by Article 14 shall be exercised in a commercially reasonable manner ~~and by lawful means~~.⁹ 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 such a provision is manifestly unreasonable.

3. – 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:

- (a) interested persons specified in paragraph 6 (a) and (b); and
- (b) interested persons specified in paragraph 6 (c) who have given notice of their rights to the chargee within a reasonable time prior to the sale or lease.

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

5. – 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.

6. – ~~In this Article and in Article 9~~ For the purposes of this Convention, <interested

⁹ In proposing the deletion of this phrase, the Drafting Committee agreed that the Explanatory Report on the future Convention, to be prepared in due course by the ICAO and UNIDROIT Secretariats, should include a reference to the fact that the Convention did not seek to override any rule on this point that might be laid down by the applicable law.

persons» means¹⁰:

- (a) the chargor;
- (b) any person who, for the purpose of assuring performance of any of the obligations in favour of the chargee, gives or issues a suretyship or demand guarantee or a standby letter of credit or any other form of credit insurance;
- (c) any other person having rights subordinate to those of the chargee in or over the object.

Article 9

Vesting of object in satisfaction; redemption

1. – At any time after default as provided in Article 11, the chargee and all the interested persons may agree 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 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.

3. – 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.

4. – At any time after default as provided in Article 11 and before sale of the charged object or the making of an order under paragraph 4 2, the chargor or any interested person may discharge the security interest by paying in full the amount secured, subject to any lease granted by the chargee under Article 8(1). Where, after such default, the payment of the amount secured is made in full by an interested person, that person is subrogated to the rights of the chargee.

5. – Ownership or any other interest of the chargor passing on a sale under Article 8(1) or passing under paragraph 1 or 2 of this Article is free from any other interest over which the chargee's security interest has priority under the provisions of Article 27.

¹⁰ This definition of «interested persons» should be moved to Article 1 in due course, with corresponding amendments to the cross-references in Article 8(3)(a) and (b).

Article 10
Remedies of conditional seller or lessor

In the event of default under a title reservation agreement or under a leasing agreement as provided in Article 11, the conditional seller or the lessor, as the case may be, may:

- (a) terminate the agreement and take possession or control of any object to which the agreement relates; or
- (b) apply for a court order authorising or directing either of these acts.

Article 11
Meaning of default

1. – The obligor and obligee may at any time agree as to the events that constitute a default or otherwise give rise to the rights and remedies specified in Articles 8 to 10 and 14.

2. – In the absence of such an agreement, «default» for the purposes of Articles 8 to 10 and 14 means a substantial default.

Article 12
Procedural requirements

*Alternative A*¹¹

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

2. – Any remedy available to the obligee under Articles 8 to 10 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 Y or in the Protocol.]

Alternative B

¹¹ The Drafting Committee did not consider the drafting of the provisions of this Article nor those of Article Y(2) pending instructions from Plenary as to which Alternative was to be preferred; Alternative A of Article 12 and Alternative A of Article Y(2) represent the texts of these provisions as adopted at the first Joint Session whereas Alternative B of Article 12 and Alternative B of Article Y(2) represent a proposal by the Aviation Working Group designed to provide a more neutral formulation than the current formulation, considered to contain a presumption in favour of non-judicial remedies.

[1. Subject to Article Y(2), any remedy provided by this Chapter shall be exercised in conformity with the procedure prescribed by the law of the place where the remedy is to be exercised.

~~2. Any remedy available to the obligee under Articles 8 to 10 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 Y or in the Protocol.]~~

Article 13 *Additional remedies*

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 as set out in Article 5.

Article 14 *Relief pending final determination*

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 and to the extent that the obligor has at any time so agreed, obtain speedy judicial relief in the form of {such} one or more of the following orders {as the obligee requests}:

- (a) preservation of the object and its value;
- (b) possession, control or custody of the object;
- (c) immobilisation of the object;¹²
- (d) sale, lease or management of the object;
- (e) application of the proceeds or income of the object.

{2. – In making any order under sub-paragraphs (d) or (e) of the preceding paragraph, the court may impose such terms as it considers necessary to protect ~~the obligor~~ interested persons in the event that the obligee:

- (a) in implementing any order granting such relief, fails to perform any of its obligations to the obligor under this Convention or the Protocol; or
- (b) fails to establish its claim, wholly or in part, on the final determination of that claim.}

¹² It was proposed that the comment by a delegation seeking to ensure that Article 14(1)(c) should not run counter to any other international instrument on the subject should be dealt with at the appropriate time in the Final Provisions; cf. also footnote to Article XXIII of the preliminary draft Aircraft Equipment Protocol.

{3.} – Ownership or any other interest of the obligor passing on a sale under ~~the preceding~~ paragraph 1 is free from any other interest over which the obligee's international interest has priority under the provisions of Article 27.

{4.} – Nothing in this Article ~~affects the application of Article 8(2) or~~ limits the availability of forms of interim judicial relief other than those set out in paragraph 1.

[CHAPTER IV ¹³

THE INTERNATIONAL REGISTRATION SYSTEM

Article 15

The International Registry

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 16

The Intergovernmental Regulator and the Registrar

¹³ *Note by the Secretariats:*

The provisions of this Chapter are presented in square brackets in that the Drafting Committee did not have time to give effect to the decisions taken by the Plenary during its consideration of the Report by the Registration Working Group (ICAO Ref. LSC/ME/2-WP/17; UNIDROIT CGE/Int.Int./2-WP/17).

1. – The Protocol shall designate an Intergovernmental Regulator¹⁴ 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.¹⁵

4. – 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 from time to time in the regulations.

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.

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

¹⁴ 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 Protocol on Matters specific to Aircraft Equipment, an alternative to be considered is an unitary International Registry Authority which would act as both operator and regulator (cf. Article XVI(1) of that text which provides as follows:

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.]]

¹⁵ It was noted by the Aircraft Protocol Group that Article 16(3) is an example of the type of provision which was envisaged as being within Article U(b) and which may therefore find itself modified by the terms of a Protocol.

and the regulations.]]

[CHAPTER V ¹⁶

MODALITIES OF REGISTRATION

Article 17

Registration requirements

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 18

Transmission of information

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 19

When registration takes effect

- 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 the preceding paragraph 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.

¹⁶ *Note by the Secretariats:*

The provisions of this Chapter are presented in square brackets in that the Drafting Committee did not have time to give effect to the decisions taken by the Plenary during its consideration of the Report by the Registration Working Group (ICAO Ref. LSC/ME/2-WP/17; UNIDROIT CGE/Int.Int./2-WP/17).

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. – The preceding paragraph 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 20

Who may register

[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 chargor or assignor, as the case may be. Any other type of international interest may be registered by the holder of that interest.]¹⁷

[2.] – The subordination of an international interest to another international interest may be registered by or with the written consent of the person whose interest has been subordinated.

[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 21

Duration of registration

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 20(3)] [agreed between the parties in writing].

¹⁷ Consideration should be given to whether the written consent of obligors under leasing and title reservation agreements should also be required for the registration of international interests.

Article 22
Searches

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 23
List of declared non-consensual rights or interests

The Registrar shall maintain a list of the categories of non-consensual right or interest declared by Contracting States in conformity with Article 38 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 24
Evidentiary value of certificates

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 20.

Article 25
Removal of registration

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 ¹⁸

LIABILITIES AND IMMUNITIES OF THE INTERNATIONAL REGISTRY

Article 26

Indemnity and immunity

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, [is] [are] situated] shall have jurisdiction to resolve any disputes arising under this Article.

3. – Subject to paragraph 1, the International Registry, the Registrar and staff of the International Registry, the Intergovernmental Regulator and the operators of registration facilities and the staff thereof 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.]

¹⁸ *Note by the Secretariats:*

The provisions of this Chapter are presented in square brackets in that the Drafting Committee did not have time to give effect to the decisions taken by the Plenary during its consideration of the Report by the Registration Working Group (ICAO Ref. LSC/ME/2-WP/17; UNIDROIT CGE/Int.Int./2-WP/17).

CHAPTER [VII]

EFFECTS OF AN INTERNATIONAL INTEREST AS AGAINST THIRD PARTIES

Article 27

Priority of competing interests

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 [qualified proceeds].

~~[6. For a registrable non-consensual right or interest to maintain its priority, the holder thereof must provide notice in writing, within days of the registration thereof, to all parties with registered interests in the same object.]~~^{19 20}

¹⁹ The question was left open as to whether the more appropriate place for this provision would be Article 27(6) or Article 37.

²⁰ It is for consideration whether the Registrar should be required to provide the notice referred to in this paragraph.

[Article 28]²¹
Effects of insolvency

1. – An international interest is valid against the trustee in bankruptcy and creditors of the obligor if prior to the commencement of the bankruptcy that interest was registered in conformity with this Convention.²²

2. – For the purposes of this Article and Article 35:

(a) «bankruptcy» includes a liquidation, administration or other insolvency proceeding involving the administration of the estate or affairs of the obligor for the benefit of the general body of the obligor's creditors;

(b) «trustee in bankruptcy» includes a liquidator, administrator or other person appointed to administer the estate or affairs 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.]²²

CHAPTER [VIII]

ASSIGNMENTS OF INTERNATIONAL INTERESTS
AND RIGHTS OF SUBROGATION

Article 29

Formal requirements of assignment

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

²¹ *Note by the Secretariats:*

The provisions of this Chapter are presented in square brackets in that the Drafting Committee did not have time to give effect to the decisions taken by the Plenary during its consideration of the Report by the Insolvency Working Group (ICAO Ref. LSC/ME/2-WP/19; UNIDROIT CGE/Int.Int./2-WP/19).

²² This paragraph is intended to state the substantive rights of the holder of the international interest but not to displace special rules of bankruptcy law restricting the exercise of remedies or avoiding unfair preferences.

by the assignment to be determined in accordance with the Protocol ~~[but without the need to state a sum or maximum sum secured].~~

Article 30

Effects of assignment

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.

2. – Subject to paragraph 3, ~~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;~~
- ~~(b) any rights of set-off in respect of claims existing against the assignor and available to the obligor; and~~

~~(c) any restrictions on assignment contained in the agreement the applicable law shall determine the defences and rights of set-off available to the obligor against the assignee.~~²³

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 revert in the assignor, to the extent that they are still subsisting, when the security interest has been discharged.

Article 31²⁴

Obligor's duty to assignee

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 30(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~~

²³ It will be necessary to ensure that the proposed new drafting of Article 30 (2) covers adequately all the cases dealt with in the deleted provisions of Article 30 (2) (a)-(c).

²⁴ ~~—A question to be considered is whether these provisions should be left to the Protocol, which might in turn refer to the applicable law.~~

~~right to payment or other performance~~ has not been given prior notice in writing of an assignment in favour of another person].

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 32

Default remedies in respect of assignment by way of security

In the event of default by the assignor under the assignment of an international interest made by way of security, Articles 8, 9 and 11 to 14 apply (and, in relation to associated rights, apply in so far as they are capable of application to intangible property) 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;

(c) to the holder of the international interest were references to the holder of the assignment; and

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

Article 33

Priority of competing assignments

Where there are competing assignments of international interests and at least one of the assignments is registered, the provisions of Article 27 apply as if the references to an international interest were references to an assignment of an international interest.

Article 34

Assignee's priority with respect to associated rights

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~~ assignee of associated rights [or other 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 the reasonable costs referred to in Article 8(5).

[Article 35²⁵
Effects of assignor's insolvency

1. – 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.
2. – Nothing in this Article affects the validity of an assignment of an international interest against the trustee in bankruptcy where that interest is valid against the trustee in bankruptcy under the applicable law.]

{Article 36²⁶
Legal subrogation

1. – Subject to paragraph 2, nothing in this Convention affects rights or interests 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 [IX]

NON-CONSENSUAL RIGHTS AND INTERESTS

²⁵ *Note by the Secretariats:*

The provisions of this Chapter are presented in square brackets in that the Drafting Committee did not have time to give effect to the decisions taken by the Plenary during its consideration of the Report by the Insolvency Working Group (ICAO Ref. LSC/ME/2-WP/19; UNIDROIT CGE/Int.Int./2-WP/19).

²⁶ It will be necessary to clarify the sphere of application of this provision.

Article 37²⁷Registrable non-consensual rights and interests

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.

Article 38²⁸Priority of non-registrable non-consensual rights and interests

~~{1. } 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 specified by that State in a declaration; and²⁹~~

~~(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.~~

~~{2. — The non-consensual interest has priority only over an international interest registered after the declaration takes effect.}~~

1. — A Contracting State may declare, generally or specifically, those categories of non-consensual right or interest (other than a right or interest to which Article 37 applies) which under that State's law would have priority over an interest in the object equivalent to that held by the holder of the international interest and are to have priority over a registered international interest, whether in or outside the insolvency of the obligor. Such a declaration may be modified from time to time.

2. — A declaration made under the preceding paragraph may be expressed to cover categories that are created after the deposit of that declaration.

3. — An international interest registered before the deposit of a declaration made pursuant to paragraph 1 or a modification thereof has priority over a non-consensual right or interest of a

²⁷ Consideration should be given to restricting this provision to non-consensual rights and interests that involve a right to payment or obligations that could result in the deprivation of the proprietary interest of an obligee.

²⁸ Idem

²⁹ This sub-paragraph will need to be reviewed in the context of the Final Provisions, so as to state that such a declaration could be made at any time.

category specified in such declaration or modification.^{30 31 32}

{CHAPTER [X]}

APPLICATION OF THE CONVENTION TO SALES

Article 39

Sale and prospective sale

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 [XI]

JURISDICTION³³

Article 40³⁴

1. – A court of a Contracting State has jurisdiction to grant judicial relief under Article 14(1) where:

- (a) the object is within [or is physically controlled from] the territory of that State;
- (b) the defendant is situated within that territory; or
- (c) the parties have agreed to submit to the jurisdiction of that court.

2. – A court may exercise jurisdiction under the preceding paragraph even if the trial of the claim referred to in Article 14(1) will or may take place in a court of another State or in an arbitral tribunal.

[Article 41

³⁰ ~~This paragraph will need to be reviewed in the context of the Final Provisions. It will be necessary to prepare transitional provisions on this matter.~~

³¹ ~~It will be necessary to consider the need for an amendment to Article XXII of the preliminary draft Protocol so as to ensure that it does not permit the expansion of preferred non-consensual rights and interests.~~

³² ~~It will be necessary to clarify the meaning of Article 38 (3).~~

³³ *Note by the Secretariats:*

The provisions of this Chapter were not considered by the Drafting Committee pending completion of their review by the Jurisdiction Working Group.

³⁴ Article 40 will be amended in order to make it clear that it is intended to operate independently of Article 14(1). This Article and Article 41 will be comprehensively reviewed in the light of advice from the Hague Conference on Private International Law and the remarks made by some delegations.

A court of a Contracting State to which Article 40(1) applies has jurisdiction in all proceedings relating to this Convention, but no court may make orders or give judgments or rulings against or purporting to bind the International Registry.]]

[CHAPTER [XII]

RELATIONSHIP WITH OTHER CONVENTIONS] ^{35 36}

CHAPTER [XIII]

[OTHER] FINAL PROVISIONS ³⁷

Article U

1. – This Convention enters into force on the first day of the month following the expiration of six months after the date of deposit of the ... instrument of ratification, acceptance, approval or accession but only applies as regards any category of object ~~listed in Article 3~~ ³⁸ to which a Protocol applies:

- (a) as from the time of entry into force of the Protocol;
- (b) subject to the terms of that Protocol; and
- (c) as between Contracting States Parties to that Protocol.

2. – This Convention and the Protocol shall be read and interpreted as a single instrument.

³⁵ It is thought that the only existing Conventions needing to be dealt with in Chapter XII are the UNIDROIT Convention on International Financial Leasing and, possibly, the UNIDROIT Convention on International Factoring. It is thought that relations between this Convention and other equipment-specific Conventions should be left to each Protocol.

³⁶ This Chapter was not reviewed by the Drafting Committee in line with the decision taken by the Joint Session not to consider this Chapter at this stage.

³⁷ Of this Chapter only Articles V and Y were reviewed by the Drafting Committee.

³⁸ ~~Note by the Secretariat:~~

~~This reference to the former Article 3 will need to be reviewed in the light of the decision to delete that Article at the first Joint Session.~~

Article V³⁹

~~[If the Protocol so provides, a] 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 internal transaction] ⁴⁰ [In such a case, that State may specify in its declaration which types of transaction are to be considered purely internal transactions].
⁴¹ Such a declaration shall be respected by the courts of all other Contracting States.~~

Article W

[Insert provision for accelerated procedure to finalise further Protocols] ⁴²

[Article X

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 of this Convention.]

Article Y

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.

Alternative A ⁴³

[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 8 to 10 which is not there expressed to require application to the court may only be exercised with leave of the court.]

³⁹ If this Article is not found acceptable, it will be necessary to restore Article III (2) of the preliminary draft Protocol.

⁴⁰ To be defined by taking account of the location of the object and the parties.

⁴¹ Add a paragraph inserting as a connecting factor the situation of the transferor under a contract of sale.

⁴² These provisions are to be the subject of consideration by a Final Clauses Working Group.

⁴³ Cf. footnote 11 *supra*.

Alternative B

[2. – A Contracting State at the time of signature, ratification, acceptance, approval of, or accession to the Protocol shall declare whether or not any remedy available to the obligee under Articles 8 to 10 which is not there expressed to require application to the court may only be exercised with leave of the court.]

Article Z

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 14, wholly or in part.

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

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APPENDIX II

**TEXT OF THE [PRELIMINARY] DRAFT PROTOCOL TO THE [PRELIMINARY]
DRAFT [UNIDROIT] CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE
EQUIPMENT ON MATTERS SPECIFIC TO AIRCRAFT EQUIPMENT**

*as reviewed by the Drafting Committee in the light of the
Joint Session's second reading thereof *¹*

**[PRELIMINARY] DRAFT PROTOCOL TO THE [PRELIMINARY] DRAFT
[UNIDROIT] CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE
EQUIPMENT ON MATTERS SPECIFIC TO AIRCRAFT EQUIPMENT**

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* This document reproduces Attachment F to the Report on the second Joint Session, Appendix II.

¹ *Note by the Secretariats:*

Amendments made to the preliminary draft Protocol as reproduced in Unidroit CGE/Int.Int./Report; ICAO Ref. LSC/ME-Report, Attachment D, Appendix II may be identified, in the case of deletions, by the striking through of the provisions in question and, in the case of additions, by the use of underlining.

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APPENDIX FORM OF IRREVOCABLE DE-REGISTRATION AND EXPORT REQUEST AUTHORISATION

PREAMBLE

THE CONTRACTING STATES TO THIS PROTOCOL,

~~MINDFUL of the demand for, and utility of aircraft equipment and the need to finance the acquisition and use thereof 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 registration system as an essential feature of the legal framework applicable to international interests in aircraft equipment,~~

~~CONSIDERING it necessary to implement the UNIDROIT Convention on International Interests in Mobile Equipment so as to meet the requirements of aircraft finance and the purposes described above as it relates to aircraft equipment, in the light of the purposes set out in the preamble to the Convention,~~

MINDFUL of the need to adapt the Convention to meet the particular requirements of aircraft finance and to extend the sphere of application of the Convention to include contracts of sale of aircraft equipment,

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 or piston technology and:

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

~~(b)~~(ii) in the case of turbine-powered or piston-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; [(o)]

(c) «aircraft objects» means airframes, aircraft engines and helicopters; [(c)]

(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:

~~(a)~~ (i) at least eight (8) persons including crew; or

~~(b)~~(ii) goods in excess of 2750 kilograms,

together with all installed, incorporated or attached accessories, parts and equipment (other than aircraft engines),² and all data, manuals and records relating thereto; [(f)]

(e) «authorised party» means the party referred to in Article XIII(2); [(q)]

(f) «Chicago Convention» means the Convention on International Civil Aviation, opened for signature at Chicago on 7 December 1944, as amended; [(i)]

(g) «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; [(c)]

(h) «de-register the aircraft» means delete or remove the registration of an aircraft from a national aircraft register; [(r)]

(i) «Geneva Convention» means the Convention on the International Recognition of Rights in Aircraft, opened for signature at Geneva on 19 June 1948; [(j)]

(j) «guarantee contract» means a contract entered into by a person as guarantor; [(h)]

(k) «guarantor» means a person who, for the purpose of assuring performance of any obligations in favour of an obligee secured by a security agreement or under an agreement, gives or issues a suretyship or demand guarantee or a standby letter of credit or any other form of credit insurance; [(m)]

(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:

~~(a)~~ (i) at least five (5) persons including crew; or

~~(b)~~(ii) goods in excess of 450 kilograms,

² Consider the position of propellers.

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

(m) «insolvency date» means the date referred to in Article XI(1); [(k)]

(n) [«International Registry Authority» means the permanent international body designated as the International Registry Authority under this Protocol;] [(b)]³

(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 XVI(1)];] [(p)]⁴

(p) «national aircraft register» means ~~the national register in which an aircraft is registered pursuant to any register for the purposes of~~ the Chicago Convention; [(s)]

(q) «national registry authority» means the national authority, or the common mark registering authority in a Contracting State which is the State of registry responsible for the registration and de-registration of an aircraft in accordance with the Chicago Convention; [(d)]

(r) «primary insolvency jurisdiction» means the insolvency jurisdiction of the State in which the centre of the obligor's main interests is situated; [(t)]

~~«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 XVI];] [(g)] and

(t) «State of registry» means in respect of an aircraft the State, or a State member of a common mark registering authority, on whose national aircraft register an aircraft is entered under the Chicago Convention. [(l)]

Article II

Implementation of Convention as regards aircraft objects

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

2. – 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.

³ This definition will need to be reconsidered in the light of the Drafting Committee's review of the registration provisions pursuant to the deliberations of Plenary regarding the Report by the Registration Working Group.

⁴ This definition will need to be reconsidered in the light of the Drafting Committee's review of the registration provisions pursuant to the deliberations of Plenary regarding the Report by the Registration Working Group.

Article III⁵
Sphere of application

1. – The connection with a Contracting State under Article 3(b) of the Convention is satisfied with respect to this Protocol if an [aircraft object] is registered in a national aircraft register of a Contracting State [or if the agreement provides that the aircraft object shall be registered, and the aircraft object becomes so registered, in a Contracting State].

~~[2. – Notwithstanding the provisions of Article V of the Convention, this Protocol shall apply to [a purely domestic transaction].]~~⁶

~~[3.–2.]~~ –In their relations with each other, the parties may ~~not~~, by agreement in writing, derogate from or vary the effect of any of the provisions of this Protocol, ~~except, by agreement in writing, as stated in~~ Articles IX(1), X or XI(1) - (6).

Article IV
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 15(1) other than sub-paragraph (c);
- Articles 17 - 19;
- Article 22;
- Articles 24 and 26;
- Chapter VII; and
- Article 38.

Article V
Formalities and effects of contract of sale

1. – For the purposes of this Protocol, a contract of sale is one which:
- (a) is in writing;
 - (b) relates to an aircraft object of which the transferor has power to dispose; and
 - (c) identifies the aircraft object.

⁵ Add a paragraph inserting as a connecting factor the situation of the transferor under a contract of sale.

⁶ This provision will need to be reinstated in the event that Article V of the preliminary draft Convention is not found to be acceptable.

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 by either party to the contract of sale in the International Registry by or with the consent in writing of the other party.

Article VI
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 VII
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 necessary and sufficient to identify the object for the purposes of Article 7(c) of the Convention and Article V(1)(c) of this Protocol.

Article VIII
Choice of law

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

2. – Unless otherwise agreed, 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 or ~~political subdivision~~ territorial unit of a State other than its rules of private international law.

CHAPTER II

DEFAULT REMEDIES, PRIORITIES AND ASSIGNMENTS

Article IX

Modification of default remedies provisions

1. – In addition to the remedies specified in the provisions of Articles 8(1), 10 and 14(1) of the Convention, the obligee may, to the extent that the obligor has at any time so agreed and in the circumstances specified in such provisions:

- (a) de-register 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.⁷

3. – (a) Article 8(2) of the Convention shall not apply to aircraft objects.

(b) A new Article 13^{bis} shall be inserted after Article 13 of the Convention, to read as follows:

«1. – Any remedy given by this Convention shall be exercised in a commercially reasonable manner.

2. – An agreement between an obligor and an obligee as to what is commercially reasonable shall, subject to paragraph 3, be conclusive.

3. – An obligee may not take possession or control of an aircraft object otherwise than by lawful means.⁸ For these purposes, the removal of the aircraft object from service shall not in itself be deemed unlawful.»

4. – A chargee giving ten or more ~~working~~ calendar 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 8(3) of the Convention. The foregoing shall not prevent a chargee and a chargor or a guarantor from agreeing to a longer prior notice period.

⁷ Further consideration is to be given to the situation of holders of other interests that are protected under Article IX of the Geneva Convention.

⁸ It will be necessary to delete the reference to «by lawful means» in line with the decision to delete the words «and by lawful means» in Article 8 (2) of the preliminary draft Convention.

Article X
Definition of speedy judicial relief

[1. —For the purposes of Article 14(1) of the Convention, «speedy» in the context of obtaining judicial relief means a period not exceeding [□] calendar days from the date on which the instrument initiating the proceedings is lodged with the court or its administrative office.]

[2.— The obligor and obligee may at any time agree that Article 14(2) of the Convention shall not apply.]

[3.]— The remedies specified in Article IX(1) shall be made available by the national registry authority and other administrative authorities, as applicable, in a Contracting State no later than [□] working calendar days after the judicial relief specified in ~~the preceding~~ paragraph 1 is authorised or, in the case of judicial relief authorised by a foreign court, approved by courts of that Contracting State.

[4.] – Judicial relief under Article 14(1) of the Convention may be granted in a Contracting State notwithstanding the commencement of insolvency proceedings ⁹ in another [Contracting] State unless its application would contravene an international instrument binding on that Contracting State.

Article XI ¹¹
Remedies on insolvency

[Alternative A]

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 ¹² 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

⁹ The phrase «insolvency proceedings» should be defined and brought into line with the terminology of the Convention.

¹⁰ *Note by the Secretariats:*

The provisions of this Chapter are presented in square brackets in that the Drafting Committee did not have time to give effect to the decisions taken by the Plenary during its consideration of the Report by the Insolvency Working Group (ICAO Ref. LSC/ME/2-WP/19; UNIDROIT CGE/Int.Int./2-WP/19).

¹¹ *Idem*

¹² A Contracting State may find it appropriate or necessary to adjust its relevant domestic laws or regulations in order to give full effect to this Article and Article XII.

(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 [. . .]¹³ 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 IX(1) shall be made available by the national registry authority and other administrative authorities, as applicable, no later than [. . .]¹⁴ ~~working~~ calendar 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 38 of the Convention, shall have priority in the insolvency over registered interests.

*[Alternative B]*¹⁵

Article XII¹⁶ *Insolvency assistance*

The courts of a Contracting State in which an aircraft object is situated shall, in accordance with the law of the Contracting State, co-operate to the maximum extent possible with foreign courts or other foreign authorities administering the insolvency proceedings referred to in Article XI in carrying out the provisions of that Article.

¹³ See Article XXX.

¹⁴ See Article XXX.

¹⁵ It was suggested that an alternative, more flexible formulation of the remedies on insolvency should be prepared. A proposed text does not yet exist, however.

¹⁶ *Note by the Secretariats:*

The provisions of this Chapter are presented in square brackets in that the Drafting Committee did not have time to give effect to the decisions taken by the Plenary during its consideration of the Report by the Insolvency Working Group (ICAO Ref. LSC/ME/2-WP/19; UNIDROIT CGE/Int.Int./2-WP/19).

Article XIII

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 national 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 in Article IX(1) and may do so only in accordance with the authorisation and any applicable airworthiness or safety laws or regulations. Such authorisation may not be revoked by the obligor without the consent in writing of the authorised party. The national registry authority shall remove an authorisation from the registry at the request of the authorised party.

3. – The national 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 IX.

Article XIV

Modification of priority provisions

Article 27 of the Convention applies with the omission of paragraph 4 3.

Article XV

Modification of assignment provisions

1. – Article 29(2) of the Convention applies with the following being 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 31(1) of the Convention applies with the omission of sub-paragraph (c).]

[3. 2 – Article 34 of the Convention applies with the omission of the words ~~following the phrase «not held with an international interest»~~ beginning with the words «to the extent that».] ^{17 18}

¹⁷ Article 34 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 as well as to its effects on general receivables financing.

¹⁸ This provision was seen as raising an important policy question to be decided by Plenary, namely the desirability of extending the scope of this rule beyond equipment-specific financing.

[CHAPTER III ¹⁹REGISTRY PROVISIONS RELATING TO INTERNATIONAL INTERESTS
IN AIRCRAFT OBJECTS

Article XVI

*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 ²⁰ and operated by the Registrar.] ²¹

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].]

¹⁹ *Note by the Secretariats:*

The provisions of this Chapter are presented in square brackets in that the Drafting Committee did not have time to give effect to the decisions taken by the Plenary during its consideration of the Report by the Registration Working Group (ICAO Ref. LSC/ME/2-WP/17; UNIDROIT CGE/Int.Int./2-WP/17).

²⁰ Further consideration needs to be given as to whether the appropriate term is *International* Regulator or *Intergovernmental* Regulator.

²¹ 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.

[2./5. – Article 16(1) and (3) of the Convention apply as modified by the preceding paragraphs of this Article.]

Article XVII

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 16(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 XVIII

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 16(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 XIX

Additional modifications to Registry provisions

1. – For the purposes of Article 19(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 25(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~~ calendar days after the receipt of the demand described in such paragraph.

3. – The fees referred to in Article 16(4) of the Convention 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.

4. – The centralised functions of the International Registry shall be operated and administered by the [International Registry Authority] [Registrar] on a twenty-four hour basis. The various registration facilities shall be operated and administered during working hours in their respective territories.

5. – The regulations shall prescribe the manner in which the following provisions of the Convention shall apply:

Article 16(6) and (7);

Article 17;

Article 18;

Article 21;

Article 22(1) and (2);

Article 23; and

Article 24.]

[CHAPTER IV²²

JURISDICTION

Article XX

Modification of jurisdiction provisions

For the purposes of Articles 40 and 41 of the Convention, a court of a Contracting State also has jurisdiction where that State is the State of registry.

²² *Note by the Secretariats:*

The provisions of this Chapter were not considered by the Drafting Committee pending completion of their review by the Jurisdiction Working Group.

Article XXI

Waivers of sovereign immunity

1. – Subject to paragraph 2, a waiver of sovereign immunity from jurisdiction of the courts specified in Article 41 of the Convention or relating to enforcement of rights and interests relating to an aircraft 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.

2. – A waiver under the preceding paragraph must be in a[n authenticated] writing that contains a description of the aircraft.]

CHAPTER V²³

RELATIONSHIP WITH OTHER CONVENTIONS

Article XXII

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 «law» of such Contracting State for the purposes of Article I (1)(d)(i) of the Geneva Convention should be to such law after giving effect to the Convention;

(b) for the purposes of the Geneva Convention, the term «aircraft» as defined in Article XVI of that 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].

²³ With the exception of Article XXX, the meeting of governmental experts did not discuss Chapters V and VI, leaving consideration of those Chapters to a time nearer to a diplomatic Conference.

Article XXIII

*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 Y(2) ²⁴ of the Convention, supersede the 1933 Convention for the Unification of Certain Rules Relating to the Precautionary Arrest of Aircraft.

Article XXIV

Relationship with 1988 UNIDROIT Convention on International Financial Leasing

The Convention shall supersede the 1988 UNIDROIT Convention on International Financial Leasing as it relates to aircraft objects.

CHAPTER VI

[OTHER] FINAL PROVISIONS ²⁵

²⁴ If Alternative B of Article Y(2) is adopted, this will need to be amended accordingly.

²⁵ 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 Articles XXXI(3) and XXXIII(3) (limiting the effect of any future declaration or reservation and denunciation respectively as regards established rights) and Article XXXIV (establishing a Review Board and contemplating review and revision of this Protocol).

ADDENDUM

CHAPTER VI

[OTHER] FINAL PROVISIONS

Article XXV

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.²⁶

Article XXVI

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.

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.

²⁶ 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 the making and/or withdrawal of declarations and reservations.

Article XXVII
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 XXVIII
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 XXIX
Declarations and reservations

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

Article XXX
Declarations disapplying certain provisions

A Contracting State, at the time of ratification, acceptance, approval of, or accession to this Protocol[[,]]:

(a) may declare that it will not apply any one or more of the provisions of Articles VIII and X to XIII of this Protocol[;

(b) to the extent that it has not made a declaration under sub-paragraph (a), must declare that it will apply time-periods as specified in its declaration for the purposes of Articles X and XII; and

(c) may declare that it will impose other conditions on the application of Articles VIII [, IX(1)] and X to XII as specified in its declaration].

Article XXXI
Subsequent declarations

1. – A Contracting State may make a subsequent declaration 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 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 in which such declaration is made with the depositary. Where a longer period for that declaration to take effect is specified in the instrument 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 subsequent declaration had been made, in respect of all rights and interests arising prior to the effective date of that subsequent declaration.

Article XXXII
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 XXXIII
Denunciations

1. – This Protocol may be denounced 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 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 with the depositary. Where a longer period for that denunciation to take effect is specified in the instrument of denunciation, 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 had been made, in respect of all rights and interests arising prior to the effective date of that denunciation.

Article XXXIV
Establishment and responsibilities of Review Board

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

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 Protocol and its effectiveness in facilitating the asset-based financing and leasing of aircraft objects;

(b) the judicial interpretation given to the terms of the Convention, this Protocol and the regulations;

(c) the functioning of the international registration system and the performance of the [International Registry Authority] [Registrar and its oversight by the Intergovernmental Regulator]; and

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

Article XXXV
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.

appendix

FORM OF IRREVOCABLE DE-REGISTRATION
AND EXPORT REQUEST AUTHORISATION

[Insert Date]

To: [Insert Name of National 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 XIII 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 national registry authority].

[insert name of operator/owner]

Agreed to and lodged this
[insert date] Its: [insert title of signatory]

By: [insert name of signatory]

[insert relevant notational details]

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

REPORT BY THE JURISDICTION WORKING GROUP

1. INTRODUCTION

1.1 The Jurisdiction Working Group (hereinafter referred to as the «Working Group») held two meetings on 31 August and 1 September 1999. Representatives of the following States attended its meeting as members: Argentina, Austria, Canada, China, Egypt, Finland, France, Germany, Japan, United States. The Aviation Working Group (AWG) attended as observer and adviser to the Working Group. Mr. Antti T. Leinonen (Finland) was elected Chairman of the Group on a proposal by the United States seconded by Germany. Mr. Philippe Lortie was elected Deputy Chairman of the Group on a proposal of Austria seconded by Egypt. The Chairman of the Registry Working Group, Professor Ron C.C. Cuming attended the second meeting of the Working Group.

2. REVIEW OF THE JURISDICTION-RELATED PROVISIONS AND PROBLEM AREAS OF THE DRAFT CONVENTION AND THE DRAFT PROTOCOL

2.1 It was agreed that the discussions would duly take into consideration the fact that certain delegations were not able to regularly attend the meetings in view of their other commitments in the Drafting Committee. Thus, decisions taken by the Working Group do not prejudice later review of the issues by those delegations.

2.2 With reference to **Article 40** of the draft Convention, the Working Group considered whether it would be feasible and necessary to distinguish the basis of jurisdiction according to the judicial relief sought under **Article 14(1)**, i.e. *in rem* and *in personam* reliefs. The Working Group concluded to maintain the current approach having regard to the fact that the reliefs listed in **Article 14(1)** were to be agreed upon by the parties. It also agreed not to make reference in **Article 40** to **Article 14(4)** as suggested by The Hague Conference in document ICAO Ref. LSC/ME/2-WP/8 (UNIDROIT CGE/Int.Int./2-WP/8). As a matter of general policy in the context of judicial reliefs enumerated in Article 14(1), the Working Group agreed that the interested party on its own should not unnecessarily be limited as to the choice of forum. It was understood that this policy decision in no way prejudiced the position of the delegations with regard to issues related to general jurisdiction and recognition, enforcement of decisions by foreign courts.

2.3 In light of the policy decision taken, there was a consensus as to the acceptability, in principle, of bases of jurisdiction listed in **Article 40(1) subparagraphs (a) to (c)**. Furthermore, it was the common understanding of the Working Group that **Article 40(1)** was not intended to provide an exhaustive list of bases of jurisdiction for the purposes of Article 14(1).

2.4 With reference to **Article 40(1) subparagraph (b)**, the Working Group discussed the various ways to establish criteria for the determination of the defendant's location. It concluded that a provision concerning the matter was necessary. It was agreed to use Article 3 of the Draft Hague Convention as a basis to determine the defendant's location, subject to some minor modifications in the light of **Article 4** of this draft Convention. Furthermore, it was suggested that the Drafting Committee should attempt to integrate Article 4 of the draft Convention and Article 3 of the Draft Hague Convention as it would then determine both the location of the obligor and that of the defendant. This relationship between **subparagraph (b) of Article 40(1)** and **Article 4(1)** of the draft Convention was important to address as the defendant may include other persons than the obligor.

2.5 One delegate asked the Secretariat to review the Spanish translation of the English term «defendant» as the current term used in Spanish applied only to the criminal procedure. Another delegate requested a review of the Arabic version on the same issue.

2.6 With regard to **Article 40(1) subparagraph (c)**, it was agreed that the text should provide for a «valid» forum selection clause but not seek to further specify the criteria, thus leaving the determination of the validity to the *lex fori*. One delegation suggested that the provision explicitly indicate that no nexus between the forum and the subject matter of the dispute was required. The Working Group also agreed that the question of exclusiveness of the forum chosen by the parties should not be addressed but left to the parties' agreement and the applicable law.

2.7 It was the common understanding of the Working Group, for the sake of clarity, that **Article 40(2)** should be retained subject to review by the Drafting Committee.

2.8 With regard to the general scope of jurisdiction provisions in **Article 40**, the Working Group took the view that **Article 8(1)** of the draft Convention was not covered by them.

2.9 The Working Group agreed that the first clause in **Article 41** was intended to provide for general jurisdiction for disputes arising under the draft Convention. It was decided that general jurisdiction would only be available under the draft Convention if the parties had validly agreed to the jurisdiction of a court. The Working Group took the position that the view expressed *supra* 2.6 as to validity and exclusiveness of such agreement also applied in the context of choice of court clauses providing general jurisdiction.

2.10 It was noted that the second clause of **Article 41** had a close relationship to the shape of the International Registry and its immunity. Therefore, it could not be addressed until such time as the structure and the legal nature of the Registry as well as the scope of its immunity had been settled.

2.11 With regard to **Article 25(3)** of the draft Convention (as amended in WP/17) dealing with the jurisdiction of courts having power to issue orders binding on the Registrar to discharge a registration, the Working Group limited its discussion to the situations where:

- 1) the holder of an international interest had failed to respond to a demand by the obligor to discharge the registration; and
- 2) it could not be found for the purpose of acquiring an *in personam* order against it requiring the registration to be discharged.

2.12 The Working Group concluded that in such a situation the courts of the State where the Registrar was located should have exclusive jurisdiction to make orders binding on the Registrar. In determining whether the obligor was entitled to have the registration discharged, the court concerned should consider the merits of the case only insofar as was necessary to decide upon the making of an order.

2.13 The Working Group discussed whether the draft Convention or draft Protocol should determine which courts were to have jurisdiction in actions for damages brought under **Article H** of the draft Protocol (as amended in WP/17). There was a consensus that the courts of the Contracting State in which the International Registry was located should have jurisdiction in such actions and that the jurisdiction should be exclusive. It was noted that jurisdiction should be based on the legal location of the Registrar irrespective of the physical location of the international registry facilities. One delegation raised the point as to whether the possibility of direct action against the Registrar's insurer should be contemplated in the Article.

2.14 With regard to **Article XX** of the draft Protocol, one delegation noted that the court indicated therein would not be the appropriate forum for some provisional measures and would be wholly inappropriate as forum vested with general jurisdiction. An observer requested to postpone discussion of the provision pending further consultation on the necessity of retaining the additional basis of jurisdiction. The Working Group concluded that discussion of that Article should take place at a later occasion once delegations and observers had given more consideration to the matter.

– END –

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