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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.