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COMMITTEE OF GOVERNMENTAL EXPERTS FOR THE PREPARATION OF A DRAFT

CONVENTION ON INTERNATIONAL FINANCIAL LEASING

Comments by the Government of the Netherlands on the text of  
the preliminary draft uniform rules on international  
financial leasing as this emerged from the second session of  
governmental experts

Rome, April 1987

## Preamble

The words "are ill-suited" in the third clause are preferable to the words "need to be adapted", because the Convention does not entail an obligation for member States to adapt rules of (internal) law. As far as Dutch law is concerned, the reference in this clause to the rules of law governing the traditional contract of hire is incorrect and misleading in that financial leasing is generally regarded as a sui generis contract or as hire-purchase, whereas operating leasing is regarded as hire.

## Article 1

It was suggested by some Dutch organizations that the Convention should have a wider field of application and should also apply in other cases, e.g. when sale and lease-back are concerned or when the supply agreement is entered into by the supplier and the lessee.

With regard to paragraph 2, littera (c), some organizations stressed that, at least in the Netherlands, it is typical of financial leasing that the whole of the cost of the equipment is amortized. The words "or a part" in this subparagraph are incorrect. In the Netherlands the term of the leasing agreement is linked to the useful life of the equipment. If this element is not taken into account, the definition is inaccurate and incomplete, at least as far as Dutch notions are concerned. As a result the distinction between financial leasing and operating leasing is being obscured.

## Article 5

We refer to the objections which we have raised already and which were stated in Study LIX - Doc. 26.

If Article 5 is not deleted, it would be more correct if the connecting factor for determining the applicable law were not to be the lessee's principal place of business, as proposed, but the lex rei sitae, which is normally the connecting factor in private international law when effects as against third parties or public notice requirements are concerned.

**Article 10**

This provision is not fair in a situation where the lessee orders and chooses the equipment, whereas the lessor merely finances the transaction, as is normally the situation in Dutch practice. In this situation it is not fair for the lessee to have any claim against the lessor for non-delivery, delay in delivery or delivery of non-conforming equipment.