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INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW
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COMMITTEE OF GOVERNMENTAL EXPERTS FOR THE PREPARATION OF A DRAFT
CONVENTION ON INTERNATIONAL FINANCIAL LEASING

NOTE

submitted by Mr Ibrahim F.I. Shihata, Vice President and
General Counsel, World Bank for the attention of the
committee of governmental experts at its third session

Rome, April 1987

Under Article 12 of the MIGA Convention^(*), MIGA's guarantee will initially be limited to "eligible investments" defined as "equity interests, equity-type loans and such forms of direct investment as may be determined by the Board". MIGA's Board may add other forms of medium- or long-term provision of assets only by a special majority. In September 1986 a Conference of signatory States unanimously adopted MIGA's operational regulations, subject to the approval of MIGA's Board. These regulations cover leases to the extent that they are "operating leasing agreements with terms of at least three years where the lessor leases capital goods to a lessee and where rental payments are substantially dependent on the production, revenues or profits of the investment project."

The World Bank's representative at the third session of the committee of governmental experts will be suggesting amendments to the proposed draft Convention to extend its scope to such arrangements.

(*) Note by the Unidroit Secretariat: the acronym MIGA stands for the proposed Multilateral Investment Guarantee Agency of the World Bank. Mr J.B.L. Pierce in his article "The manufacturer's view: Boeing" which appeared at p. 21 of the February 1987 "Financing aircraft" supplement to Trade Finance Report and Corporate Finance stated as follows:

"The World Bank has a natural mandate to assist the development of transport in the third world market. The proposed MIGA (Multilateral Investment Guarantee Agency will provide investment guarantees to private investors covering war risk, expropriation and inconvertibility of proceeds. By adapting the programme to private aviation political risk insurance groups, the programme will be able to assist private leasing companies to provide additional support to third world airlines.

Designing the programme under a completely new charter - such as MIGA - will prove to be more cost effective than attempting to rewrite or to amend the various incomplete and discordant political risk programmes provided by the export credit agencies. The latter may not be available to all leasing companies on a universal basis, as such companies will be re-exporting various competitive type aircraft on a continuing basis.

For aircraft producers of all types and component mix the World Bank represents an opportunity to adopt a uniform, standardised system which can be of universal application to all leasing companies regardless of where they are registered. This opportunity must not be lost."