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INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW
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STUDY GROUP FOR THE PREPARATION OF
UNIFORM RULES ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT:
SUB-COMMITTEE FOR THE PREPARATION OF A FIRST DRAFT

(Second session: Rome, 29 November - 1 December 1994)

Summary report

(prepared by the Unidroit Secretariat)

Rome, February 1995

1. – The sub-committee of the Study Group for the preparation of uniform rules on international interests in mobile equipment responsible for the preparation of a first draft held its second session in Rome at the seat of Unidroit from 29 November to 1 December 1994. The session was opened at 3.10 p.m. on 29 November by Mr M. Evans, Secretary-General of Unidroit. Mr R.M. Goode, Professor of English Law in the University of Oxford and member of the Unidroit Governing Council, was in the chair.

2. – The session was attended by the following experts and representatives of intergovernmental and international non-governmental Organisations:

Members of the sub-committee

Mr R.C.C. Cuming	Professor of Law in the University of Saskatchewan
Mr V.A. Kouvschinov	Vice-Chairman, Legal and Treaty Department, Ministry of Foreign Economic Relations of the Russian Federation
Mr K.F. Kreuzer	Professor of Law in the University of Würzburg
Mr C.W. Mooney, Jr.	Professor of Law in the University of Pennsylvania, representing the Department of State of the United States of America
Mr H. Synvet	Professor of Law in the University of Paris II (Panthéon - Assas)
Mr T.J. Whalen	Partner, Condon & Forsyth, Washington, D.C., representing the Department of State of the United States of America

Observers

INTERGOVERNMENTAL ORGANISATIONS

European Bank for Reconstruction and Development	Mr J.-H. Röver, Legal Adviser, Office of the General Counsel
Hague Conference on Private International Law	Mr M. Pelichet, Deputy Secretary-General
International Bank for Reconstruction and Development	Mr H. Fleisig, Economic Adviser, Private Sector Development Department, Finance & Private Sector Development Ms N. de la Peña, Consultant Attorney, Private Sector Development Department, Finance & Private Sector Development
United Nations Commission on International Trade Law	Mr S. Bazinas, Legal Officer

INTERNATIONAL NON-GOVERNMENTAL ORGANISATIONS

European Federation of Equipment Leasing Company Associations (Leaseurope)	Mr R. Clarizia, Professor of Law, University of Urbino; Consultant to the Italian Leasing Association (Assilea)
European Federation of Finance House Associations (Eurofinas)	Mr F.J.T. Price, Deputy Head of Legal Services, Lombard North Central PLC, Redhill
International Bar Association	Ms L. Curran, Vice-Chairperson, Sub-committee of the Banking Law Committee of the Section on Business Law on the Taking of Security in International Transactions
International Maritime Committee	Mr R. Herber, Professor of Commercial Law, University of Hamburg

In view of the continuing special interest of the aviation industry in this area of the Institute's activity, Mr J. Wool, Attorney with Perkins Coie, Seattle, Washington and Affiliate Professor of Law, University of Washington, was also invited to attend the session as a special guest with a view to conveying the concerns of that community.

3. - The sub-committee was seised of the following materials:

- (1) Study Group for the preparation of uniform rules on certain international aspects of security interests in mobile equipment: sub-committee for the preparation of a first draft (first session: Rome, 14-16 February 1994): summary report (prepared by the Unidroit Secretariat) (Study LXXII - Doc. 12);
- (2) Proposals for a first draft (drawn up by the Chairman and a member of the sub-committee on the basis of the provisional conclusions reached by the latter at its first session) (Study LXXII - Doc. 13);
- (3) Proposals for a first draft: comments (by members of the sub-committee and the study group and the international Organisations and professional associations represented by observers thereon) (Study LXXII - Doc. 14);
- (4) Proposals for a first draft: comments (by Mr Thomas J. Whalen, Professor Rolf Herber and The Boeing Company) (Study LXXII - Doc. 14 Add. 1);
- (5) Proposals for a first draft: comments (by Professor Charles W. Mooney, Jr. and the Legal Committee of the Finance and Leasing Association of the United Kingdom) (Study LXXII - Doc. 14 Add. 2);
- (6) Proposals for a first draft: comments (by Mr Jan-Hendrik Röver) (Study LXXII - Doc. 14 Add. 3).

4. - The sub-committee approved the agenda which is set out in Appendix I to this report.

5. - Appendix II sets out the comments of the Banking Federation of the European Union on the proposals for a first draft which were received after the sub-committee's meeting.

6. - Appendix III sets out the comments of the Italian Banking Association which were also only received after the sub-committee meeting.

7. - In opening the meeting, the Secretary-General of Unidroit recalled that, since the first session of the sub-committee, a small drafting group had met to prepare a first set of draft articles designed to reflect the provisional conclusions reached by the sub-committee at its first session and, in line with the decision taken by the sub-committee at its first session, a special invitational seminar, co-sponsored by the International Bar Association, had been held, the day before, on the theme *Current Trends in the Modernisation of the Law Governing Personal Property Security*. This seminar, addressed essentially to the practising lawyers most directly in touch through their daily work with latest developments in this area of the law, focussed on a number of initiatives taking place in different parts of the world, in particular the modernisation of the personal property security laws of a number of Latin American jurisdictions being sponsored by the World Bank and the Model Law on Secured Transactions prepared by the European Bank for Reconstruction and Development for the countries of its operations. The Secretary-General asked the International Bar Association's representative attending the session to convey to Mr M. Gioscia, immediate past Co-chairman of that Association's Banking Law Committee, the sense of the Institute's appreciation of all the hard work he had put in to ensure the success of the seminar.

8. - The Chairman, in introducing the business of the session, indicated that he saw this basically as the completion of the broad framework begun at the previous session and, with this in mind, suggested that the sub-committee eschew as far as possible technical drafting points related to the drafting group's proposals for a first draft and concentrate instead on achieving some agreement on the nature of the rules on enforcement and priorities to be included in the first draft. Given that the comments on the drafting group's proposals for a first draft, however, raised some fundamental points, he recognised that the sub-committee would have to start out by looking at some of the key issues raised by these comments. With regard to these comments he emphasised the incomplete nature of the drafting group's proposals. These only went as far as the broad measure of agreement attained at the sub-committee's first session. They did not therefore deal at all with the questions of enforcement and priorities and only in outline with that of registration. Regarding the number of well-founded criticisms contained in the comments he was at pains to stress that the drafting group's proposals were in no way to be regarded as reflecting the personal ideas of the draftsmen but merely those conclusions which the sub-committee had *provisionally* reached at its previous session. The very provisional nature of these conclusions meant that it was all along acknowledged that they might well have to be reviewed in the light of articles to be drafted subsequently. He apologised for one omission from the drafting group's proposals, namely the overlooking of the sub-committee's provisional agreement on the question of insurance proceeds payable to the secured party.

9. - The Chairman identified the key issues raised by the comments submitted on the drafting group's proposals for a first draft as follows:

- (i) the test of internationality (for example, the question whether there needed to be movement of the equipment from one State to another or whether it should be sufficient that the parties had their principal places of business in different Contracting States);
- (ii) the effect of making registration a condition for the application of the Convention (in particular, whether parties should be left free to opt in or out of the regimen to be set up under the Convention or whether the purpose of filing in the international register should not rather be to give third parties a clear picture of where they stood);
- (iii) the definition of mobile equipment;
- (iv) the desirability of the Convention applying not only to the recognition and enforcement of international interests in mobile equipment but also to their creation.

10. - The sub-committee reached a number of conclusions in the course of its meeting. These conclusions were only provisional in so far as they might need to be revised in the light of the sub-committee's reading of the next set of draft articles. These provisional conclusions were as follows:

- (i) The application of the proposed Convention should be triggered by the filing of an interest in the international register; until there was at least one interest on the international register the Convention would not therefore come into operation. However, in principle once an interest had been filed in the international register that interest would have priority over prior unfiled interests and over subsequent interests, whether filed or unfiled. Subject to that, interests registered under local law would remain unaffected. The question was reserved as to whether the application of the proposed Convention might also be triggered by a disposition even where there was no interest on the register.
- (ii) The type of register envisaged was one under which an interest would be filed and searches made against an asset. Searches would be made for an interest arising by way of security or by way of title reservation, including leases, although it would be necessary at some stage to consider whether certain types of lease, for instance short-term leases, should be excluded. The assets to be covered would typically be relatively high-value assets. The effect of opting for a system of asset registration would be that the assets would have to be specifically identifiable by a

registration number or some other identification mark, which would mean that filing would have to be made against each asset individually and it would be impossible to take an interest over future assets or over merely generic classes of asset. An asset-backed system of registration would have a number of advantages. It would enable a person searching the register to discover all filed interests, not simply those granted by the debtor with whom he was dealing, and would avoid some of the problems associated with the acquisition of rights in future property.

However, it was agreed that consideration should be given to the possibility of setting up a separate register of interests under which searches could be made against the debtor. This separate register might be envisaged for equipment which was not of such high value and in particular for equipment not lending itself to identification. Specific identification no longer being necessary, it would be possible under this register to file future assets or classes of asset.

- (iii) In order to overcome the difficulties inherent in defining "mobile" equipment, it was agreed that a list of movable tangibles falling within the scope of the proposed Convention should be drawn up. No decision was taken as to whether this list should be exclusive or non-exclusive, that is as to whether only the listed assets should fall within the scope of the proposed Convention or whether the list should only be by way of example. It was suggested that in drawing up such a list a useful starting-point would be the answers to the questionnaire sent out by Unidroit in 1990⁽¹⁾. If it were to be decided to go for a non-exclusive list, it was felt that it would be better to refer to equipment normally "used" in more than one State rather than equipment normally "moved" from one State to another. The "use" test would better distinguish items to be used in the business of the party taking security from inventory, which the proposed Convention was not intended to encompass, and from equipment which was intended to be moved but only to a fixed destination from which it was not intended to be moved again.
- (iv) In view of the special requirements of aviation finance practice, the sub-committee invited The Boeing Company and Airbus Industrie jointly to organise the preparation of a memorandum, for consideration by the drafting group and the sub-committee, setting forth a representative aviation industry view on the desired content of the proposed Convention as the same related to aircraft. It was agreed that the question, raised at the first session of the sub-committee, as to whether supplementary rules might need to be prepared for aircraft and aircraft engines should be deferred pending the submission of this memorandum which might, it was suggested, show there to be scope for the rules needed to meet the special requirements of aviation finance practice to be generalised to the other types of mobile equipment also to be addressed by the proposed Convention.
- (v) Regarding Article 1 of the proposals for a first set of draft articles, the question whether the debtor had an interest in mobile equipment capable of being given in security or whether the seller or lessor in a title reservation case was the owner of the mobile equipment and capable of reserving title was one to be determined by the applicable national law and not by the proposed Convention.
- (vi) Regarding Articles 1 & 2 of the proposals for a first set of draft articles, the proposed Convention should be expressed to cover the creation of international interests, not merely their registration, that is an interest would be an international interest for the purposes of the proposed Convention only where it had been created and registered in accordance with the relevant provisions thereof. This would make it clear that the international interest was not merely registered under the proposed Convention but was also created thereunder and thus avoid any inference that the

(1) cf. *Analysis of the replies to the Questionnaire on an international regulation of aspects of security interests in mobile equipment* (Study LXXII - Doc. 3) (paper prepared by the Unidroit Secretariat) at pp. 12-13 ; *Basic issues identified in responses to the Questionnaire on an international regulation of aspects of security interests in mobile equipment* (paper prepared by Professor R.C.C. Cumming) (Study LXXII - Doc. 4) at pp. 2-4.

interest being registered under the proposed Convention might have been created under some national law. It must be possible to determine from the proposed Convention alone whether in a given case there was an international interest.

- (vii) Regarding Article 2 of the proposals for a first set of draft articles, it would not be necessary for the international registration system to be set up under the proposed Convention to be itself under the control of Unidroit which might wish to avail itself of a registry used by other Organisations. It would however be for the proposed Convention to lay down the legal framework governing the requirements for a Convention registration. These rules would be supplemented by the administrative regulations to be laid down by whichever body or system was given responsibility for administering the register. Power to determine this body or system and, where necessary, to change a choice previously made should be vested in the Unidroit Governing Council. In developing the legal framework for the Convention registration system it was agreed that it would be useful to look at the framework under which the European Patent and the European Trade mark operated⁽²⁾ and at papers prepared by the United Nations Commission on International Trade Law looking at possible registration systems for receivables financing, reservation of title to goods and securities.
- (viii) Regarding Article 3 of the proposals for a first set of draft articles, it was pointed out that to require the debtor to sign the registration notice filed by the creditor (cf. Article 3 (d) of the proposals) could create problems for the operation of an efficient registration system in that it could create an opportunity for debtors to cause trouble for secured parties. What was important was that the secured party's communication to the registry should be authorised by the debtor, which led the sub-committee to consider whether the creditor should be required to produce documentary evidence of that authorisation. However, whilst it was recognised that it was important to protect the debtor against the risk of unauthorised registrations, it was felt that there might be other better ways of doing this, for example by giving the debtor the right to compensation for loss sustained through an unauthorised filing.
- (ix) In the course of the sub-committee's consideration of the question whether the security agreement should be required to specify an amount or maximum amount secured, a number of points emerged. First, whatever was put onto the register should match the terms of the security agreement. Thus, if the particular security agreement specified a sum or maximum sum secured that sum should be stated in the filed particulars. It was however feared lest serious problems might arise in large unit financing if there were to be a requirement to state the maximum amount secured in every case, that is not only for registration but also for the security agreement itself, as this would interfere with the right given under many legal systems to secure all indebtedness and could lead to the first secured creditor overstating the maximum sum so as to protect itself, thereby understating the amount of remaining value in the equipment against which a subsequent secured creditor might lend. On the other hand, it was recognised that it was important to protect the holders of junior interests against a reduction in the value of their interests because of, for example, fresh advances by the senior creditor after the junior interest had come into existence. One solution would be to require the statement of a maximum sum secured but it was thought that there might be other better solutions, for instance through a priority rule. The sort of priority rule that might be contemplated, one that already existed in a number of legal systems, could be that, where the senior creditor made fresh advances after notice of a second interest, those advances would be subordinated to the second interest. However, whilst it was thought that this might give the necessary protection, it was agreed that it would be necessary to see the shape of the priority rule to emerge on this point before any final view could be formed.

(2) cf. the Agreement relating to Community patents, done at Luxembourg on 15 December 1989 (89/695/EEC) (to which is annexed the amended Convention for the European Patent for the common market signed at Luxembourg on 15 December 1975 and the Implementing regulations thereto) and the Council Regulation (EC) No. 40/94 of 20 December 1993 on the Community trade mark.

- (x) Regarding Article 4 of the proposals for a first set of draft articles, it was agreed that this article was obsolete, internationality for the purposes of the future Convention being sufficiently established by the fact that the equipment was "mobile equipment". It was not therefore necessary that the secured party and the debtor should also carry on business in different States. The removal of such a requirement had two advantages. First, it would enable a third party to know from the nature of the equipment alone that he was facing a potential international interest without having to know whether the parties to a security or title reservation agreement were or were not carrying on business in the same State. Secondly, where the transaction in question was one in which these parties were carrying on business in the same State, they would still be able to avail themselves of the international registration system which they could not have done were it to be required as a condition for the application of the proposed Convention that they should be carrying on business in different States, a requirement which might moreover lead to a secured party carrying on business in the same State as the debtor finding itself affected by a filed international interest without itself being able to file an interest.
- (xi) Regarding Article 5 of the proposals for a first set of draft articles, it was agreed to delete, first, the words "where the issue before the court is a non-domestic issue" and, secondly, the words "the courts of".
- (xii) It was agreed that the proposed Convention should set out a list of minimum remedies. These should be confined to *in rem* remedies. It was thought that it might be necessary, in view of the conceptual differences involved, to set these out separately for security interests *stricto sensu*, sales under reservation of title and leases.
- (xiii) Whilst it was agreed that the planned Convention should not give active blessing to additional *in rem* remedies given by the contract, either directly or through choice of law provisions, it was also recognised that neither should it preclude the giving of such remedies: it should simply make it clear that any additional remedies given under the contract would be subject to the mandatory rules of the *lex fori*, although it was not clear whether it would be necessary to spell this out in the text of the future instrument.
- (xiv) Among the remedies considered by the sub-committee for possible inclusion in the proposed Convention were self-help repossession, judicial sale and judicially supervised sale. The question was left open as to whether additional questions, such as rights to deficiencies and the treatment of surpluses, which were related to *in rem* remedies, should also be envisaged in the minimum list of Convention remedies.
- (xv) It was confirmed that in no way was it the intention that the enforcement rules to be embodied in the Convention should interfere with any special rules of national bankruptcy law as to preferences but rather that, in very much the same way as Article 7 (1) (a) of the Unidroit Convention on International Financial Leasing, they should achieve the limited effect of ensuring the validity of an international interest in mobile equipment, properly created and perfected under the proposed Convention, against third parties, including the trustee in bankruptcy and other creditors of the debtor in bankruptcy proceedings.
- (xvi) In a situation in which both the secured party and the debtor were carrying on business in the same State, the equipment had never left the jurisdiction of that State and it was in that State that enforcement proceedings were instituted, the fear was expressed that a prospective Contracting State might be deterred from accepting the proposed Convention were the application of the enforcement provisions of its own domestic law to be ousted by the mere fact that the equipment in question was "mobile". It was agreed that, even where an international interest in the mobile equipment had been duly filed, the absence of a genuinely foreign element required that in such a case the enforcement provisions of the proposed Convention should not apply as between the parties to the security or title reservation agreement. The full force of the enforcement rules of the

proposed Convention would, on the other hand, continue to apply in such a case in relations between third parties and the secured party, seller or lessor, as the case might be.

Concern was expressed lest such a restriction on the applicability of the proposed Convention's enforcement rules, however justified it might be in respect of equipment, such as bulldozers, which, whilst inherently mobile in character, might not in the end be used in more than one jurisdiction, might result in countries with unsophisticated secured financing laws finding their options for the financing of large-ticket items like aircraft and ships severely limited. As a solution it was suggested that a caveat for large-ticket items such as aircraft and ships might be entered to the general proposition that a State's domestic enforcement rules should apply as between the parties to the security or title reservation agreement in preference to those of the proposed Convention in the special case referred to in this sub-paragraph.

- (xvii) A further problem seen as arising in the special case referred in the previous sub-paragraph was that of the nature of the interest which the court where proceedings were instituted was being called upon to enforce. Where an international interest had been filed, it would be important for the judge in such proceedings to know what kind of legal animal it was dealing with. It was agreed that the proposed Convention should spell out the basic legal characteristics of the international interest along the lines of the recommendation adopted in this regard by the restricted exploratory working group that had met in March 1992 to examine the feasibility of the Institute's exercise in this field⁽³⁾, albeit with some adaptations to reflect those interests arising under title reservation agreements.
- (xviii) It was agreed that, subject to the mandatory rules of the *lex fori*, the question as to which remedies should apply, that is those provided for in the proposed Convention or those laid down by domestic law, was moreover a matter on which it would be desirable to leave scope for the agreement of the parties, in this case the parties to the security or title reservation agreement.
- (xix) Of special importance in the context of the enforcement rules to be provided for in the proposed Convention was the question of which courts were to have competence. It was agreed that there were three possible grounds of jurisdiction in this regard: first, the courts of the State where the equipment was located; secondly, in the case of equipment subject to nationality or ownership registration, the courts of the State of such registration and, thirdly, subject to the mandatory rules of the *lex fori* controlling abusive choices of law, the courts of the State designated by the parties to the security or title reservation agreement. To confer exclusive jurisdiction on the courts of the State where the equipment was located would not provide an adequate solution in the case of highly mobile assets. For example, at the time proceedings were begun in the court designated by the parties the equipment might be out of the jurisdiction, only returning later, by which time, however, a court order would have been obtained authorising its seizure. It was agreed that in assessing the acceptability of the third possible ground of jurisdiction it would be necessary to consider the terms of the Brussels Convention of 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters and the Lugano Convention of 1988 on the same subject.
- (xx) In drawing up the Convention rules on priorities, it was agreed to proceed on the basis that it might be necessary to have different sets of priority rules applicable, on the one hand, to security

(3) cf. Study LXXII - Doc. 5, at § 8 where the working group recommended that an international security interest should possess the following legal characteristics:

- (1) it would be a right *in rem*;
- (2) it would give a right to follow the equipment into the hands of third parties, subject to any applicable priority rule;
- (3) it would give the secured party a right to payment from the proceeds of sale or other disposition of the equipment in preference to other creditors, subject to any applicable priority rule.

interests *stricto sensu* and, on the other hand, to title reservation/leasing agreements. It was agreed to look first at security interests *stricto sensu*.

- (xxi) The shape of the priority rules would vary depending on the nature of the registration system to be envisaged, that is on whether it was to be solely an asset registration system or whether registration against the debtor was also to be possible. If registration against the debtor were to be envisaged, the proposed Convention would have to address the problem of security over future assets and, in particular, the case for allowing an exception to the first-to-file rule in favour of a purchase money security interest.
- (xxii) The priority rules for international security interests *stricto sensu* should be founded on the first-to-file principle, that is, once an international interest had been filed on the international register, it should as a rule take priority over all subsequent interests filed on that register and all domestic security interests in the same equipment, whether filed on a national register or not and regardless of whether the national filing was first in time or not. Creation of an international security interest and registration thereof on the international register would be co-terminous under the proposed Convention, thus avoiding some of the problems bedevilling national systems.
- (xxiii) One category of domestic interest to which the international interest would inevitably have to yield priority in certain circumstances was the statutory lien in favour of such preferential creditors as the revenue authorities. The situation regarding such liens was complicated by the way in which the ranking enjoyed by such preferential creditors in relation to the holder of a security interest of the type envisaged under the proposed Convention would vary from one class of preferential creditor to another. Thus in France the interest of a secured creditor would rank after certain statutory liens, such as a lien in favour of salary claims, but before others, such as a lien in favour of social security claims. Whilst it was agreed that it would be essential to do everything possible in the proposed Convention to safeguard the efficacy of the international interest in the face of such statutory liens, it was at the same time recognised that this would at the end of the day be a matter for national courts. It was therefore suggested that the proposed Convention include a rule providing that, in resolving a priority dispute as between an international interest and such a statutory lien, the international interest should be treated as though it were the nearest domestic equivalent. To deal with the problem of those jurisdictions which did not recognise non-possessory security interests, the international interest would need to be assumed to possess the minimum legal characteristics given to it under the proposed Convention. A similar rule would need to be considered for the problem of those jurisdictions that did not recognise the concepts of reservation of title or leasing, the minimum legal characteristics of which would also need to be spelled out in the proposed Convention.
- (xxiv) The question was raised as to whether it would be desirable for a creditor with knowledge of a prior national interest in the same mobile equipment, duly filed in the national register, to be able to defeat the priority of that other creditor by filing in the international register. However, national precedent seemed to indicate that any attempt to develop a lack of notice requirement for priority purposes would raise all manner of difficulties, in particular regarding questions of proof and the risk of creating circular priority situations. The question of a good faith requirement was, on the other hand, left open. It was pointed out that some of the Canadian provinces' Personal Property Security Acts provided that knowledge of the existence of a prior interest in the same collateral was not by itself evidence of a lack of good faith and that it would be for the court in each case to decide what further elements were necessary. The answer would probably be conduct of a type amounting to collusion between debtor and creditor in order intentionally to defeat the interest of an earlier secured party. If lack of notice of a prior interest was not to be made a requirement for priority purposes but good faith was, extreme care would need to be taken to ensure that the courts did not end up by fudging the line between the two.
- (xxv) It was agreed that there was no reason why the Convention priority rules should displace the operation of national rules governing priorities over surpluses as between different holders of

domestic interests in mobile equipment. Thus once the priority of the holder of an international interest had been duly satisfied, there was no reason why scope should not be left for national legal systems to operate in this matter.

(xxvi) The sub-committee rejected the idea of providing an exception to the principle of the priority of the international interest in favour of a prior national interest in the same equipment where at the moment of the institution of enforcement proceedings the situation had remained totally domestic. In response to a suggestion that this was a matter best left to be regulated by national law, it was pointed out that such a decision would complicate life enormously for the secured party and thus run counter to the proposed Convention's declared objective of reducing the cost of secured finance. Furthermore, the operation of such an exception, in particular the determination of the localising factor, would be fraught with difficulty. It was suggested that this was a problem that was best dealt with by building in an additional requirement regarding the time at which the international interest was created.

(xxvii) The sub-committee agreed that the time was not yet ripe for consideration of the technical aspects of the public notice system to be set up under the proposed Convention. There was agreement that this should await such time as the sub-committee had worked out the kind of system it wanted and what it wanted that system to do.

11. - It was agreed that the next step would be for the small external group representing the interests of the aviation industry to present a memorandum for consideration by the sub-committee on the desired content of the proposed Convention as this related to aircraft. This memorandum together with the provisional conclusions reached by the sub-committee at its second session would then serve as the basis for the drafting group to prepare a revised set of proposals for a first draft. It was agreed that the drafting group might be enlarged and that, where it realised that there might be a problem which the sub-committee had not considered, it should be free, in proposing a revised text, to depart from what had been provisionally agreed to the extent necessary. Once the revised set of proposals for a first draft was ready, it would be circulated for comment amongst all members of the study group and the sub-committee as well as those Organisations and professional associations represented on those bodies by observers. It was hoped that it would thus be possible to reconvene the sub-committee in either September or early October 1995.

**STUDY GROUP FOR THE PREPARATION OF
UNIFORM RULES ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT:
SUB-COMMITTEE FOR THE PREPARATION OF A FIRST DRAFT**

(Second session: Rome, 29 November – 1 December 1994)

AGENDA

1. – Approval of the draft agenda
2. – Preparation of a first draft of uniform rules on international interests in mobile equipment in the light of:
 - (a) Proposals for a first draft (drawn up by the Chairman and a member of the sub-committee on the basis of the provisional conclusions reached by the latter at its first session) (Study LXXII - Doc. 13);
 - (b) Comments on the proposals for a first draft submitted by members of the sub-committee and observers representing international Organisations and professional associations (Study LXXII - Doc. 14)
3. – Consideration of the desirability of referring the drafting of the supplementary rules for aircraft contemplated in the report on the sub-committee's first session to one or more experts under the supervision of the sub-committee
4. – Consideration of the desirability of referring the technical aspects of the public notice system to be set up under the proposed Unidroit Convention to one or more experts under the supervision of the sub-committee
5. – Any other business

PROPOSALS FOR A FIRST DRAFT

(drawn up by the Chairman and a member of the sub-committee
on the basis of the provisional conclusions
reached by the sub-committee at its first session):

COMMENTS OF

THE BANKING FEDERATION OF THE EUROPEAN UNION

At this stage, we would limit our comments to saying that international recognition of security interests in mobile equipment is, in principle, welcomed since, to date, it has been virtually impossible to create non-possessory security interests, which apply worldwide, with regard to such equipment.

It is proposed in the draft that an international system of registration be introduced. Although such a system would have the advantage of ensuring a high level of legal certainty, it would have the disadvantage that a registration procedure of this type would be extremely costly, time-consuming and laborious. It must therefore be questioned whether it can be justified when compared with the potential benefits envisaged. Since the costs of securing a loan must, as a rule, be borne by the customer, the price for loans secured by foreign collateral would clearly increase.

We therefore feel that it would be preferable to ensure the international effectiveness of security interests through a system of mutual recognition.

PROPOSALS FOR A FIRST DRAFT

(drawn up by the Chairman and a member of the sub-committee
on the basis of the provisional conclusions
reached by the sub-committee at its first session):

*COMMENTS OF
THE ITALIAN BANKING ASSOCIATION*

As regards the sphere of application of the proposed Convention, it should be noted that:

1. - The proposed Convention is confined to non-possessory security interests created by agreement (Art. 1(2)(d)). Such security agreements are not allowed by the Italian law governing consensual security interests over goods; the Civil Code defines the pledge as a traditional possessory security interest (Art. 2786). It has therefore been necessary to pass a new statute concerning specific economic sectors and recognising the validity of a non-possessory security interest.

2. - It is not clear whether the proposed Convention is intended to cover the "floating charge" (Art. 1(4); Art. 3(b)); this would raise many questions of compatibility with the Italian Civil Code, which does not regulate the floating charge.

3. - The simple assimilation of the lease concept to title reservation agreements put forward by the proposed Convention (Art. 1(2)(c)) seems to emphasise the view that leasing transactions - as well as retention of title under a conditional sale - must be intended to serve the function of security.

In Italy the opposite idea has prevailed, that is, that the lease is to be regarded - in its traditional form - as a financing transaction. In the light of this no analogy with retention of title is admissible.

Therefore the proposed Convention should be limited to regulating the lease by way of security.