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U n i d r o i t

INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW

STUDY GROUP FOR THE PREPARATION OF
UNIFORM RULES ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT:
WORKING GROUP TO CONSIDER THE LEGAL AND TECHNICAL ISSUES
RAISED BY THE ESTABLISHMENT OF AN INTERNATIONAL REGISTER

(Second session: Geneva, 26 - 28 May 1997)

SUMMARY REPORT

(prepared by the Unidroit Secretariat)

Rome, June 1997

INTRODUCTION

1.- The Working Group to consider the legal and technical issues raised by the establishment of an international register held its second session in Geneva at the I.A.T.A. Centre, at the invitation of the International Air Transport Association, from 26 to 28 May 1997. The session was opened at 10 a.m. on the 26th by Mr L.S. Clark, General Counsel and Corporate Secretary, I.A.T.A. Legal Services Division, Geneva. Mr R. C. C. Cuming, Professor of Law in the University of Saskatchewan, 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 Working Group

Miss B. R. L. Craggs	Deputy Head Business Law Unit Department of Trade and Industry of the United Kingdom
Mr H. Sigman	Los Angeles; <i>representing the Department of State of the United States of America</i>
Mr J. R. Standell	Assistant Chief Counsel Federal Aviation Administration - Aeronautical Centre, Oklahoma City; <i>representing the Department of State of the United States of America</i>

Intergovernmental Organisations

Hague Conference on Private International Law	Mr M. Pelichet Deputy Secretary-General
Intergovernmental Organisation for International Carriage by Rail	Mr G. Mutz Legal Adviser

International Non-Governmental Organisations

European Company for the Financing of Railway Rolling Stock	Ms. G. Fraschina Legal Adviser
International Air Transport Association	Mr A Charlton Director, Legal Services, Geneva
International Association of Young Lawyers	Ms G. Deyhimy Legal Counsel, Montreal Mr D. W. C. Mallon Partner Biddle & Co., London

International Bar Association

Mr S. Marchand
Partner
Tavernier Gillioz De Preux Dorsaz,
Geneva

Advisers

Mr J. Wool

Partner, Perkins Coie, London;
Assistant Affiliate Professor of Law,
University of Washington;
*Co-ordinator of the Aviation Working
Group/Expert consultant on international
aviation finance matters/ Chairman of
the Working Group for the preparation of
a preliminary draft Protocol on matters
specific to aircraft equipment*

Mr H. Rosen

Solicitor, Zug;
*Expert consultant on international
rail finance matters*

3.- The Unidroit Secretariat was represented by:

Mr L. Ferrari Bravo

President

Mr M. J. Stanford

Principal Research Officer

Mr M. H. Banos

Intern

4.- The Working Group was seised of the following materials:

(i) Exploratory report prepared by Professor R.C.C. Cuming (University of Saskatchewan) (Study LXXIIc - Doc. 1);

(ii) Summary report on the first session of the Working Group, prepared by the Unidroit Secretariat (Study LXXIIc - Doc. 2);

(iii) Revised draft articles of a future Unidroit Convention on International Interests in Mobile Equipment (prepared by the Drafting Group in the light of the Study Group's reading at its second session of the first set of draft articles established by the Subcommittee in conjunction with the recommendations of the Aviation Working Group) with introductory remarks (prepared by the Unidroit Secretariat) (Study LXXII - Doc. 30);

(iv) Revised draft articles of a future Unidroit Convention on International Interests in Mobile Equipment (prepared by the Drafting Group in the light of the Study Group's reading at its second session of the first set of draft articles established by the Subcommittee in conjunction with the recommendations of the Aviation Working Group); comments (by the Aviation Working Group and the International Air Transport Association) (Study LXXII - Doc. 32);

(v) Revised draft articles of a future Unidroit Convention on International Interests in Mobile Equipment (prepared by the Chairman of the Study Group in the light of the deliberations of that Group at its third session, held in Rome from 15 to 21 January 1997, and of

the proposals by the Drafting Group at its third session, held in Rome on 17 and 20 January 1997) (International Interests/Study Group/Drafting Group/Fourth session/W.P. 1);

(vi) Revised draft articles of a future Unidroit Convention on International Interests in Mobile Equipment (prepared by the Chairman of the Study Group in the light of the deliberations of that Group at its third session, held in Rome from 15 to 21 January 1997, and of the proposals by the Drafting Group at its third session, held in Rome on 17 and 20 January 1997): comments on the application of the revised draft articles to space-based equipment (by Mr Scott H. Siegel) (International Interests/Study Group/Drafting Group/Fourth session/W.P. 2);

(vii) Revised draft articles of a future Unidroit Convention on International Interests in Mobile Equipment (prepared by the Chairman of the Study Group in the light of the deliberations of that Group at its third session, held in Rome from 15 to 21 January 1997, and of the proposals by the Drafting Group at its third session, held in Rome on 17 and 20 January 1997): comments (by the Aviation Working Group and the International Air Transport Association) (International Interests/Study Group/Drafting Group/Fourth session/W.P. 3) (in English only);

(viii) Revised Articles of an UNCITRAL Draft Convention on Assignments in Receivables Financing (A/CN.9/WG.II/WP.93): Annex (Registration) (in English only).

5.- In opening the session, both on behalf of the International Air Transport Association (**I.A.T.A.**) and on behalf of the I.A.T.A./Aviation Working Group team, *Mr Clark* paid tribute to the enormous effort contributed by Mr J. Wool as co-ordinator of the Aviation Working Group, in particular in bridging gaps, whether perceived or real. He drew attention to the timeliness of the new international structure to be put in place by the proposed Convention as supplemented by the different Protocols envisaged thereto. In terms of the aircraft industry this structure would have immense significance not only for manufacturers of aircraft equipment, airlines and aviation financiers but also for Governments because of the insurance it would provide against the prevailing degree of uncertainty. He considered it particularly significant for the long-term chances of success of this project that it had brought together the contributions of an important international Organisation, the leading professional association in the airline industry and the aerospace industry as represented by Airbus Industrie and the Boeing Company. He was confident that the Working Group would be able to maintain the momentum that had been built up.

6.- On behalf of Unidroit, *Mr Ferrari Bravo* emphasised the importance for exercises in the unification of international business law to respond to the perceived needs of the business interests involved, measured in global terms, and in this context for the relevant international Organisations and professional associations to build partnerships through which better to be able to attain such objectives. He saw this partnership-building process as being particularly fundamental to the realisation of a successful end-product in this project, in particular in the development of a product that would be responsive not only to the peculiar challenges involved in the secured financing of high-value mobile assets in such an unprecedented era of economic globalisation but also one that would stand the test of time as an international framework for the regulation of such transactions well into the following century. He expressed his gratitude to I.A.T.A. and the Aviation Working Group for the signal contribution they had made to the advancement of this project, in launching the idea of the future Convention being supplemented by equipment-specific Protocols, and to I.A.T.A. in particular for its offer to operate the future international register for aircraft equipment for a set initial term. He particularly welcomed I.A.T.A.'s invitation to hold the session on its premises as concrete evidence of that building of

inter-organisational partnerships capable of enhancing the viability and thereby the long-term chances of success of the future international instrument. He too paid special tribute to the work of Mr Wool in co-ordinating the Aviation Working Group, in serving as expert consultant to both the Study Group and the Working Group and in chairing the new Working Group with which he had entrusted the preparation of a preliminary draft Protocol on matters specific to aircraft equipment.

He nevertheless cautioned against losing sight of the fact that the material sphere of application of the future Convention was considerably broader than aircraft equipment alone and in this context welcomed the participation of representatives of the railway rolling stock sector at this meeting. He paid tribute to Mr H. Rosen for his work in bringing about a greater awareness in railway circles of the potential benefits for railway rolling stock financing under the future Convention. He moreover saw confirmation of his belief in the special relevance of the Convention for the future commercialisation of space in the comments submitted by Mr S. H. Siegel on the application of the registration provisions of the Convention to space-based equipment. He referred to the special Working Group he had entrusted with consideration of the aptness of the future instrument to meet the special requirements of space-based equipment financing and noted the promising response accorded to this initiative, in particular the pledging of support by the European Space Agency. He accordingly urged the Working Group to pay special attention to Mr Siegel's comments. In the context of the gauging of the responsiveness of the future instrument to the concerns of business practice, he also welcomed the participation of representatives of the International Bar Association and the International Association of Young Lawyers. In conclusion, he recorded the Institute's immense debt of gratitude to Mr Cumings for the tower of strength he had been at all stages of the project.

7.- In introducing the business of the session, *the Chairman* indicated that this would be primarily to reach conclusions on those provisions of the revised draft articles prepared by the Chairman of the Study Group (International Interests/Study Group/Drafting Group/Fourth session/W.P. 1) (**the revised draft articles**) concerned with the international registration system and the modalities of registration such as would permit him to submit a revised text of these provisions to the Drafting Group in time for its July 1997 session. He recalled that at its first session the Working Group had had a general discussion of the issues involved in the creation and management of an international registry without however reaching any firm conclusions. He noted that the major change to the structure of the future international instrument agreed since that session, that is the decision to split the future Convention into a general Convention flanked by equipment-specific Protocols, meant that it was likely that, to the extent that separate Protocols would be necessary to address the special requirements of different categories of asset, it would also be necessary for separate registries to be established for these different categories of asset. A further consequence of this would in his opinion be that the majority of the specific provisions concerning registration for each category of asset would fall to be included in each Protocol and the Regulations adopted pursuant thereto, with only a limited number of generic registration provisions appearing in the Convention itself.

He further indicated that it would be necessary for the Working Group to take into account the comments submitted by Mr Siegel, reflecting as they did the interest this project had excited in satellite finance circles, to the extent that these comments disclosed areas where the revised draft articles were not particularly attuned to the realities of satellite finance, that is the fact that they did not provide for the registration of interests in after-acquired property nor for important intangible rights associated with interests in space-based equipment.

Another aspect of the revised draft articles which it would be necessary to examine reflected the fact that it was intended that the future international registration system would be on-line, that is that registration and amendments thereof could be recorded and searched from

remote locations through electronic connection to the Registry data base, although it would also be important, at least in the initial stages, to allow for a non-electronic system. He suggested that the registration provisions as drafted tended to assume a more paper-based system involving human intervention and that they should be redrafted more with an eye to the future and therefore an on-line system. He indicated that in Canada registries were almost wholly on-line, which did not however mean that paper could not be used. The trend was however definitely towards the elimination of paper and in British Columbia about 93% of all registrations were on-line.

8.- The Working Group adopted the agenda which is reproduced in Appendix I to this report.

GENERAL COMMENTS

9.- *Mr Wool* informed the Working Group that the Working Group for the preparation of a preliminary draft Protocol on matters specific to aircraft equipment (**the Aircraft Equipment Protocol Group**) had been set up, its members being Mr Clark on behalf of I.A.T.A., Dr L. Weber on behalf of the International Civil Aviation Organization and himself on behalf of the Aviation Working Group. Liaison observers from different parts of the world had also been invited to participate in its work. A basic outline of the preliminary draft Protocol had been sent out and the Aircraft Equipment Protocol Group would be meeting in Montreal in late August to discuss that outline and a preliminary text. The intention was for the Aircraft Equipment Protocol Group to have completed its work by the end of 1997. He indicated that the comments of the Aviation Working Group and I.A.T.A. (International Interests/Study Group/Drafting Group/Fourth session/W.P. 3) were intended to show the kind of rules that would be necessary to convert the provisions of the general Convention into a framework protocol for not only aircraft equipment but also other assets envisaged by the future Convention.

10.- *Mr Rosen* reported that he had been in touch with manufacturers and financiers of railway rolling stock as also with lawyers specialising in this field. He had found particular support from the Union of European Railway Industries (Unife), an organisation representing the majority of manufacturers of such assets in the world. He had also maintained contact with individual railway operators, in particular Deutsche Bahn, whose support as a significant opinion builder in this sector should be seen as a good augury. He had spoken about the Convention at various rail conferences, in particular at the European Rail Finance Conference in November 1996, and he believed that the measure of his success was to be seen in the growing realisation that the rail industry was indeed faced with a very real problem which the Convention was designed to address. He suggested that the decision to adopt the protocol approach raised a challenge for the rail industry and hoped that the latter would give proper thought to the need for the preparation of special rules for railway rolling stock along the lines of the work to be done for aircraft equipment by the Aircraft Equipment Protocol Group

11.- *Mr Mutz* indicated that the Intergovernmental Organisation for International Carriage by Rail had hitherto been exclusively concerned with international rail transport law and the regulation of the carriage of dangerous goods by rail. His Organisation was however in the process of revising its basic Convention (the COTIF Convention) with a view to expanding its statutory objectives so as to reflect the growing trend away from a monopoly State-owned railway system to a more privatised railway sector in the light of the adoption by the Council of Ministers of the European Union of Directive 91/440. He hoped that this revision process would permit his Organisation to play a full role in the drawing up of special railway rolling stock

rules for incorporation in a future Protocol, although this was a matter which would have to await the decision of the General Assembly of his Organisation, to be held from 8 to 11 September 1997.

12.- *Mr Standell*, while recognising the timeliness of the idea of an international register for the recording of interests in high-value mobile equipment, nevertheless gave notice of the concerns that had been expressed by U.S. financiers concerning certain aspects of the future Convention, in particular those concerning remedies.

13.- *Mr Clark*, while noting that the trend in this area was definitely away from a paper-based system, nevertheless recognised that the introduction of a fully electronic system would require time in some jurisdictions and that it would therefore be necessary to contemplate a dual system over a transition period. He drew attention to the changes that were on the horizon in respect of the nationality of aircraft, pointing out that it was likely that aircraft would cease being registered uniquely in a particular State, as under the 1944 Chicago Convention on International Civil Aviation (and would, for example, be able to be registered in the European Union) and that more and more aircraft would be flying without any flag on their tails. He accordingly urged the Working Group to avoid becoming enmeshed in the notion of a nationality -or flag- based system and to proceed with flexibility and above all with an eye to the future.

14.- *Mr Sigman* emphasised the importance of allowing in the development of the registration rules for the pace of future change. This highlighted the need to employ media-neutral terminology not linked to the past.

15.- *Mr Pelichet* explained that the presence of his Organisation was linked to the invitation addressed to it by the Chairman of the Study Group to submit a paper on the connecting factor to be employed in the future Convention and the jurisdiction rules to be included therein and to what it saw as the relationship between these two issues and the shape of the registration provisions to be included in either the future Convention or the Protocols thereto.

CONSIDERATION OF THE REVISED DRAFT ARTICLES

16.- The Working Group reached a number of conclusions in the course of its consideration of the revised draft articles as supplemented by the other materials laid before it. These conclusions were as follows:

(i) It was agreed, with a view to meeting the concerns expressed in Mr Siegel's comments, to suggest that the Study Group consider favourably the case for the expansion of the sphere of application of the future Convention to encompass intangible interests inextricably connected to any of the categories of equipment listed in Article 2 (1), although it was suggested that such an expansion might be left to be decided on an equipment-by-equipment basis and thus referred by the Convention to the relevant Protocol.

(ii) It was agreed, again with a view to meeting Mr Siegel's concerns, to suggest that the Study Group consider favourably the case for the expansion of the sphere of application of the future Convention to encompass interests in after-acquired property, however leaving the need for such an expansion to be decided on an equipment-by-equipment basis in the relevant Protocol. It was decided that the repercussions on individual provisions of any decision to extend the scope of application of the future Convention to after-acquired property

should be deferred pending a decision by the Study Group as to the wisdom of such an extension (cf. also § 16 (xi) *infra*).

(iii) It was agreed that consideration would be given to the preparation of a model Protocol designed to facilitate the drafting of Protocols for categories of equipment for which the necessary expertise might not be immediately available, although this should not be treated as a high-priority task in view of all that was already to be done and in particular in view of the fact that it was planned that a preliminary draft Protocol, which might serve much the same purpose, would be available on aircraft equipment by the end of 1997.

(iv) It was agreed that, while many features of the registration systems for particular categories of asset would find their rightful place in the relevant Protocols, those registration provisions which were intended to be universally applicable to all the categories of equipment should feature in the future Convention itself and that it would be for the Working Group in its revised version of the registration provisions included in the revised draft articles to indicate such universally applicable provisions.

(v) Regarding Article 15, the Working Group took a number of decisions regarding the structure of the future international registration system:

(a) It was decided that each Protocol (and it was agreed that the Contracting Parties to the relevant Protocol would be better suited than the Unidroit Governing Council to perform this task) should specify an intergovernmental Organisation or entity thereof (the Intergovernmental Regulator) as the body responsible for overseeing the operation and administration of the International Registry. Although it was pointed out that the finding of an intergovernmental Organisation willing to assume the functions of Regulator might not be practicable in respect of certain categories of equipment, it was also pointed out that the need to establish the international credibility of the International Registry, and in particular to gain the confidence of industry, made it a vital aspect of the future international registry system that it be seen to be supervised by an intergovernmental entity, all the more so with a view to finding a viable solution to the jurisdiction problem.

(b) The Regulator would be empowered to appoint the Registrar of the International Registry. The Registrar could be either a public or a private operator. It was suggested that the Registrar should be appointed for a five-year term which should be renewable. The role of the Registrar was to be purely administrative in character and he would not as a rule have any adjudicatory power.

(c) The Regulator would be empowered by the Protocol to issue Regulations to govern the operation of the International Registry, dealing with such matters as the appropriate national registration/vetting offices, if any, the procedure to be complied with in respect of registration in such offices and the registration search criterion or criteria to be used in the relevant International Registry, and to amend these Regulations from time to time. As regards relations between the Intergovernmental Regulator and the Registrar, it was agreed that the Regulator would be independent from the Registrar and that each Protocol should determine whether parties should be able to appeal against acts or omissions, say, an error, on the part of the Registrar or of national Registration Facilities to the Intergovernmental Regulator and that the Registrar and the operators of Registration Facilities should be able to seek advice from the Intergovernmental Regulator regarding the exercise of their functions under the Convention, the Protocol and the Regulations.

(d) It was agreed that national registration facilities, which might double up with existing national recording offices, could be points of entry to the International Registry data base and that, in such a capacity, they would be an integral part of the international registration system. It was recognised that the availability of national registration

facilities as points of entry to the International Registry data base was a matter that would have to be decided in the relevant Protocol by each Contracting State, thus making it clear that if this would raise insuperable problems at the national level, for example in the matter of appeals regarding the vetting procedure, then it would be for these States to decide against the use of national registration facilities for this purpose and to provide that entry should only be via the central International Registry. It was also recognised however that the actions of the national registration facility as a point of entry to the international registration system were quite distinct from its actions under national law and thus the standard of vetting to be applied by national registration facilities under the future Convention and Protocol would be a uniform international standard.

(e) It was agreed that the function of registration was to establish the priority of rights and not to create rights. It was further agreed that a clear distinction should be drawn between factual review or vetting (referred to as conditions of registration), on the one hand, and registration itself, on the other. It was envisaged in this connection that some Protocols would require that the documents testifying to rights safeguarded under the Convention be verified by an administrative procedure, which would not however be part of the registration procedure itself (understood as the actual input of data into the registry data base) but rather a preliminary step thereto. Whether or not there was to be factual review or vetting in respect of a given category of equipment was, it was agreed, a matter to be left to the relevant protocol and not therefore to be the subject of a universally applicable rule of the Convention. It was agreed that the Intergovernmental Regulator's oversight of the International Registry would extend to the vetting process.

(vi) As regards Article 15 (3), there was, subject to the deletion of the final qualifying clause ("except as provided by agreement between the registry and that State") as a tautology, agreement as to the principle embodied therein, although it was thought that the proper place for such a rule would ultimately be among the jurisdiction rules to be included in Chapter IX.

(vii) As regards Article 15 (5), it was agreed that the question of the liability of the International Registry for errors and omissions would be addressed not in the future Convention but rather in the relevant Protocol, with a reference to the Protocol for this purpose being included in the text of the general Convention. It was recognised that it might not however prove possible to provide such a guarantee as to the accuracy of the information registered for all the different categories of equipment covered.

(viii) It was agreed that the drafting of Article 16 in general needed better to distinguish between those provisions intended as a statement of the substantive conditions for a party to be able to submit registration information to the International Registry with the result that that information was automatically placed on the record (Article 16 (1)) and those intended as procedural instructions to the Registrar.

(ix) It was suggested that the Drafting Group consider whether the requirement for the chargor's consent under Article 16 (1) (b) in the context of a security agreement should be broadened to refer to the obligor's consent on the ground that a conditional buyer or a lessee was entitled to the same protection as a chargor.

(x) It was agreed that the drafting of the registration provisions should generally be amended to incorporate reference to the concept of the "registrable national interest" as provisionally accepted by the Study Group. It was further agreed to amend provisionally the definition of "obligor" to cover the case where said concept was ultimately adopted; it would be sufficient for this purpose for the words "or the person whose interest in

the underlying asset is burdened by a registrable national interest” to be added in square brackets to that definition.

(xi) It was agreed to amend Article 16 (2), with a view to accommodating the concerns referred to in § 16 (ii) *supra*, so that registration could be effected or searched by reference to a criterion other than the manufacturer’s serial number or other identification mark, such as the obligor’s name, for those categories of equipment where it would be appropriate. It was further agreed that the question of the particular registration and search criteria to be employed in respect of a given category of asset was a matter to be prescribed in the relevant Protocol.

(xii) A number of amendments were agreed to Article 16 (3). First, it was agreed that the term “occurred” should be altered to “took effect” so as to bring it into line with the terminology employed in Article 16 (5). Secondly, it was agreed to eliminate any implication from the allocation of registration numbers that the Registrar was performing more than just an administrative function. Thirdly, it was agreed to employ more neutral terminology consistent with the likely changes in registration technique, regarding for example the use of numbers. There was agreement that the essential purpose of this provision was to provide that the International Registry should maintain a data base from which a binding sequence of the taking effect of registrations could be determined for both searchability and priority purposes and that in this connection a link would have to be established between this provision, Article 16 (5), Article 21 and Article 26.

(xiii) As regards Article 16 (4) and (5), it was noted that the terminology employed in Article 16 (4), in particular the concept of amendments being “noted” in the Registry data base was not appropriate to a registration system intended to be on-line. It was agreed that this clause could be seen as superfluous in the light of Article 16 (5) and it was suggested that its contents be merged in a new provision combining elements of both. In response to a query regarding the need to provide for the registration of subordinations in a registry designed to provide notice to third parties of a particular interest in property, it was explained that this was necessary to convert a contract claim to a priority position enforceable in bankruptcy.

(xiv) As regards Article 17 (1), (2) and (3), it was agreed that their drafting would need to be amended in order to take account of the fact that registrations under the future international registration system would not be made pursuant to application, but rather by the simple transmission to the International Registry of the information necessary to effect registration.

(xv) As regards Article 17 in general, it was agreed that the reference to the “appropriate registry” should cover not only the relevant International Registry but also national registration facilities where the relevant Protocol recognised these as points of entry to the international registration system (cf. §16 (v) (d) *supra*). However, it was recognised that it would be important to make it clear that transmission of registration information to a national registration facility did not constitute registration but would be merely a first step in the process leading up to that information’s transmission to the International Registry. In this connection it was suggested that registration should be seen as being constituted by receipt of the required registration information by the registry where a search was made and its incorporation in the International Registry data base so as to be searchable.

(xvi) It was agreed that the term “notice” employed in Article 17 (1), (2), (3), (5) and (6) covered both information transmitted in paper form and information transmitted electronically. It was therefore agreed that it should be provided as a substantive rule - and not just as a definition - that the information required for registration should be capable of

transmission by any medium specified in the Protocol or Regulations, whether it be paper or electronic.

(xvii) As regards Article 17 (6), it was agreed that the period of time for which registration should remain effective was a matter to be referred to the relevant Protocol. This reflected the general feeling that a registering party should be free to select the most appropriate solution for its own needs and the fact that different industries might have different financing patterns.

(xviii) It was noted that it would be for the Protocol on matters specific to aircraft equipment to determine the manner in which the registration provisions of the future Convention would need to be adapted so as to extend the definition of an international interest to encompass outright transfers under contracts of sale.

(xix) It was agreed that, in the same way as registration was conditional on the agreement creating or providing for the international interest being in writing, it would be appropriate to make it a condition for the amendment of a registration that the chargor first consent in writing thereto where such an amendment would negatively impact on the chargor's interest.

(xx) It was suggested that a decision to broaden the scope of application of the future Convention to encompass after-acquired property (cf. § 16 (ii) *supra*) might render the prospective international interest as contemplated in Article 18 unnecessary. It was recalled however that the concept of the prospective international interest had only been introduced into the scheme of the Convention for the limited purpose of covering those interests that a party might wish to take in the course of the closing of a transaction. It was nevertheless agreed in general, where possible, to integrate the registration provisions concerning prospective international interests with those concerning international interests.

(xxi) As regards Article 18 (3), it was agreed that a means would need to be found of informing the intending grantee of the intending grantor's decision to have the registration removed before it could actually be removed so as to avoid a situation where the intending grantee might close the loan without knowing of the intending grantor's decision in this regard. It was pointed out that the future Protocol on matters specific to aircraft equipment would contain a special rule on this subject concerning aircraft engines. The effect of this rule would be to create a special kind of prospective international interest which the intending grantor would not be able to have removed in the manner prescribed in Article 18 (3).

(xxii) It was agreed that Article 26, dealing with the taking effect of registration in respect of a prospective international interest, should be brought forward to be included among the registration provisions.

(xxiii) Although the view was expressed that, with an electronic system, the purpose which the certificate referred to in Article 19 was designed to serve could just as well be performed by a printed search result bearing the name of the registry and that the question of whether such a certificate would be accorded the evidentiary value which this Article purported to confer on it was a matter on which each jurisdiction would have its own rules, it was agreed that this Article should nevertheless be retained with a view to developing recognition of the persuasive authority of such certificates in the overall context of the international registration system. It was also agreed that the terminology employed in this provision should be modified to reflect the intention to create an on-line system, and in particular that the words "document" and "recorded" should be replaced by more technologically neutral terms and that, in line with the decision taken in respect of Article 16 (3) (cf. § 16 (xii)), the reference to "registration number" should be deleted.

(xxiv) It was agreed to delete Article 20. It was felt that such a rule was inappropriate in a system designed to be on-line where, once the conditions prescribed for registration were met, it was implicit that registration would follow automatically without any opportunity for the Registrar to intervene. The only useful element added by this provision, the reference to the payment of the necessary fee, could in any case be prescribed under the Regulations. The view was taken that the relevant Protocol was the proper place to set out the Registrar's functions, in particular in respect of registrations submitted in paper form. It was moreover pointed out that the square brackets surrounding Article 23 were intended to indicate that this provision had encountered a certain degree of opposition, whereas, if the intention were to oblige the Registrar to accept a registration notice under Article 20, then Article 23 would be needed as a way out for the Registrar in circumstances where registration was not physically possible.

(xxv) As regards Article 21, it was noted that sub-paragraph 2 (a) would need to be redrafted in the light of the new approach to be taken on the registration search criterion (cf. § 16 (xi) *supra*). The view was taken that this provision moreover needed to specify when a registration was to be considered "searchable" for the purposes of the future Convention: it was agreed that a registration was searchable as from the time when it was so indexed in the International Registry data base as to be revealed upon the making of an inquiry. It was agreed that the order of this provision and Article 19 should be reversed.

(xxvi) As regards Article 22 (a), it was agreed that the purpose of this provision was designed solely to deal with the case where the period of effectiveness of a registration had lapsed without being extended. It was agreed that this provision was not therefore designed to confer any power on the Registrar to exercise discretion in the removal of registrations. It was suggested that in the context of Article 22 in general the evidentiary value of not removing a registration totally from the record dictated the desirability of providing that a registration should be noted as discharged rather than being simply removed. It was however ultimately decided that this Article was effectively superfluous and should accordingly be deleted with the question of the duration of time during which a registration should remain on the Registry data base being dealt with under the relevant Protocol in the context of the question of the duration of the effectiveness of a registration (cf. § 16 (xvii) *supra*).

(xxvii) It was suggested that there might be a case for allowing the chargor to have a registration removed where the assumption on which that party had, in accordance with Article 16 (1) (b), consented thereto was that an agreement would be concluded and that agreement in the event fell through. There was agreement however that such a rule was unnecessary in that it was highly unlikely that a chargee in such a situation would be unwilling to permit the termination of such a registration.

(xxviii) There was no general support for the inclusion of a rule giving the Registrar any vetting powers under the Convention in respect of capricious or malicious registrations and thus denting the principle of the non-adjudicatory nature of the Registrar's powers. The Working Group concluded that the need for speed and efficiency effectively outweighed the risk of possible abuses of the system and that the appropriate solution in such a case would be for the offended party to pursue his remedies through the courts having jurisdiction; as such it was agreed that this was a matter that would need to be considered further when the Study Group came to consider the broader question of jurisdiction. It was felt that, to the extent that such vetting powers were felt to be appropriate in the context of a particular category of equipment, this was a matter which could be addressed in the appropriate Protocol.

(xxix) Where a prospective international interest failed to become an international interest, the question arose as to the most appropriate manner of such a registration

being removed from the Registry data base. It was suggested that registrations of prospective international interests should have a fixed, very short period of effectiveness and that once this period had expired without the prospective international interest becoming a fully fledged international interest the registration should fall away automatically.

(xxx) For the reasons referred to under §16 (xxiv) *supra*, it was agreed that it would be wise to delete Article 23.

(xxxii) There was agreement to introduce a number of additional definitions in the definitions section, essentially designed to explain the new concepts embodied in the registration provisions at the session but also to avoid the need for repeated reference to the “appropriate” or the “relevant” Registry or Protocol (concerning the “Intergovernmental Regulator”, “International Registry”, “Regulations” - it was furthermore agreed that the term “Regulations” was more appropriate in the circumstances than “Rules” - “Registrar” and “Protocol”). By way of explanation of the role to be played by the Regulations in the overall scheme of the future Convention, in particular in relation to the different Protocols, it was pointed out that, whereas each Protocol was to be seen as embodying the substantive rules necessary to adapt the Convention’s rules to the specific situation of an individual category of asset and as such as having the same force as the Convention, the Regulations would contain operational rules concerning the day-to-day workings of the International Registry. It was felt that any concern as to the general accessibility of the Regulations should be appeased by the fact that the International Registry was designed to be electronic.

(xxxiii) It was suggested that a major problem that would have to be addressed in due course concerned the languages in which the Registry should operate. It was pointed out that this issue was likely to raise particular sensitivity and that it would be important to bear in mind that there might well be industries for which neither English nor French would be the most natural working language. It was agreed that this was an issue which fell beyond the remit of the Working Group at this meeting (cf. however Study LXXIIc - Doc. 2, § 6 (h)) and would have to be decided in due course by Governments. In recognition of the fact that the most appropriate language might differ from industry to industry, it was however noted that special provision might be made in the relevant Protocol.

17.- An *ad hoc* drafting group of the Working Group met on 27 May to consider amendments to the registration articles in the light of that group’s conclusions. The text set out in Appendix II to this report reproduces these articles as further amended by the Working Group on 28 May and as revised by the Chairman subsequently. A number of points are to be noted in respect of this new text. These are as follows:

(i) As regards the new Article 15 (1) (c), it will be noted that the Working Group saw fit to make provision generally in the registration articles for the registration of prospective assignments of international interests, in line with the introduction of this concept in Article 29 (2) of the revised draft articles.

(ii) As regards the new Article 15 (2), it will be noted that the Working Group provisionally incorporated a reference to “associated rights”, in line with its decision to recommend to the Study Group that intangible rights inextricably associated with a given category of equipment should also be capable of being registered in the International Registry.

(iii) It will be noted that the whole of the new Article 16 has been presented inside square brackets. This is designed to draw the Drafting Group’s attention to the radical manner in which the Working Group would propose expanding the former Article 15 in order to establish the constitutional structure of the future international registration system, and in particular by way of acknowledgement of the fact that in certain of these provisions the Working Group was conscious that it might be considered to be exceeding its terms of reference

and to be anticipating the type of clauses traditionally drawn up by diplomatic plenipotentiaries. As such it was moreover suggested that this Article might in due course find its rightful place elsewhere in the body of the future Convention.

(iv) As regards the new Article 16 (5) (b), it was agreed that the question of whether, in a case where the Registrar or the operators of national Registration Facilities went to the Intergovernmental Regulator for advice and acted in accordance with the advice given, they should be relieved from any liability for their acts toward third parties was potentially the sort of question which might most suitably be considered in the context of Protocols.

(v) Article 17 is an entirely new provision. Its intention is to indicate that all matters regarding vetting are referred to the relevant Protocol and Regulations. This provision will have particular significance for prospective international interests and their conversion into fully-fledged international interests; Article 19 (2) does not deal with this matter, its purpose being limited to the determination of the priority ranking of an international interest that began its life as a prospective international interest.

(vi) After consideration of the case for including in the new Article 19 (1) a definition pinpointing the legally effective date of searchability so as to avoid possible factual disagreements (it was agreed that the appropriate criterion in American terminology would be that the relevant registration information had been both entered into, and “indexed” in the International Registry data base but it was recognised that “indexation” was not a universally recognised concept), it was agreed that this was a matter which should be resolved in the Protocol.

(vii) The reference to the chargor’s written consent in Article 20 (3) (a) was to be understood in the same sense as that to the same party’s written consent in Article 20 (1) (b), that is not as an instruction to the Registrar to inquire into the existence of a written agreement but rather in terms of the holder of the international interest’s legal entitlement to register or amend that interest. Thus if there was some question as to the existence of such written agreement, this would either have to be litigated or addressed in the vetting procedures.

(viii) It was not necessary to provide for the chargor’s written consent to an extension of the holder of an international interest’s registration in Article 20 (3) (c) in the way that such consent was required under Article 20 (3) (a) for an amendment of a registration that would negatively affect the chargor’s interest: whereas the effect of an amendment might change the relationship between the parties, an extension would simply involve the continuation of that relationship.

(ix) It was agreed, for the purposes of Article 20 (4) and (5), to add a new definition of “obligor” in the definitions section to cover the case of obligations giving rise to a registrable national interest.

(x) It was agreed provisionally that the ability under Article 20 (6) for the obligor to procure the discharge of a prospective international interest within a certain period of time obviated any need to provide a maximum shelf-life for a prospective international interest (cf. § 16 (xxix) *supra*).

(xi) It was agreed that the provision for discharge of a prospective international interest under Article 20 (6) should be made generally applicable to all the different types of registered interest envisaged under Article 1 (2) and not just to security interests, although it was recognised that this would involve a characterisation problem.

(xii) The words “in the manner prescribed by the Protocol and Regulations” in Article 22 (1) and (2) cover *inter alia* the payment of a fee to the Registrar.

(xiii) It was agreed that, in view of the reference in Article 22 (2) (b) to the statement in a registry search certificate that no interest was recorded in the International Registry, it was not necessary to refer again to this fact in the context of the Registry certificate contemplated in Article 24.

(xiv) It was agreed that the reference to the date and time of registration in Article 24 (b) was to the moment from which the information was searchable and not to that at which the entry was made.

(xv) The reference in the new Article 25 to the “International Registry” was not to be understood as excluding national Registration Facilities acting as an integral part of the international registration system but simply to acknowledge the fact that some sensitive issues would fall to be addressed in respect of the position regarding errors and omissions of existing national recording authorities.

(xvi) It was agreed that it would be necessary to check whether the provisions featuring in Articles 29 (2) and 34 (2) of the revised draft articles had been adequately integrated in the body of the new Chapters IV and V.

STUDY GROUP FOR THE PREPARATION OF
UNIFORM RULES ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT:

WORKING GROUP TO CONSIDER THE LEGAL AND TECHNICAL ISSUES
RAISED BY THE ESTABLISHMENT OF AN INTERNATIONAL REGISTER

(Second session: Geneva, 26-28 May 1997)

REVISED DRAFT AGENDA

1. – Approval of the draft agenda.
2. – Consideration of the legal and technical issues raised by the establishment of an international register to operate pursuant to the proposed future Unidroit Convention on International Interests in Mobile Equipment in the light of:
 - (a) Exploratory report prepared by Professor R.C.C. Cuming (University of Saskatchewan) (Study LXXIIC - Doc. 1);
 - (b) Summary report on the first session of the Working Group, prepared by the Unidroit Secretariat (Study LXXIIC - Doc. 2);
 - (c) Revised draft articles of a future Unidroit Convention on International Interests in Mobile Equipment (prepared by the Drafting Group in the light of the Study Group's reading at its second session of the first set of draft articles established by the Sub-committee in conjunction with the recommendations of the Aviation Working Group) with introductory remarks (prepared by the Unidroit Secretariat (Study LXXII - Doc. 30);
 - (d) Revised draft articles of a future Unidroit Convention on International Interests in Mobile Equipment (prepared by the Drafting Group in the light of the Study Group's reading at its second session of the first set of draft articles established by the Sub-committee in conjunction with the recommendations of the Aviation Working Group): comments (by the Aviation Working Group and the International Air Transport Association) (Study LXXII - Doc. 32);
 - (e) Revised draft articles of a future Unidroit Convention on International Interests in Mobile Equipment (prepared by the Chairman of the Study Group in the light of the deliberations of that Group at its third session, held in Rome from 15 to 21 January 1997, and of the proposals by the Drafting Group at its third session, held in Rome on 17 and 20 January 1997) (International Interests/Study Group/Drafting Group/Fourth session/W.P. 1);
 - (f) Revised draft articles of a future Unidroit Convention on International Interests in Mobile Equipment (prepared by the Chairman of the Study Group in the light of the deliberations of that Group at its third session, held in Rome from 15 to 21 January 1997, and of the proposals by the Drafting Group at its third session, held in Rome on 17 and 20 January 1997): comments on the application of the revised draft articles to space-based equipment (by Mr Scott H. Siegel) (International Interests/Study Group/Drafting Group/Fourth session/W.P. 2);

(g) Revised draft articles of a future Unidroit Convention on International Interests in Mobile Equipment (prepared by the Chairman of the Study Group in the light of the deliberations of that Group at its third session, held in Rome from 15 to 21 January 1997, and of the proposals by the Drafting Group at its third session, held in Rome on 17 and 20 January 1997): comments (by the Aviation Working Group and the International Air Transport Association) (International Interests/Study Group/Drafting Group/Fourth session/W.P. 3).

3. – Discussion of a feasibility project for the conduct of the international registry, to be prepared by the International Air Transport Association.

4. – Any other business.

**REVISED DRAFT ARTICLES
OF A FUTURE UNIDROIT CONVENTION
ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT:
CHAPTERS IV AND V**

(as proposed by the Registration Working Group at the conclusion of its second session,
held in Geneva from 26 to 28 May 1997)

CHAPTER IV

THE INTERNATIONAL REGISTRATION SYSTEM

Article 15

1.— An international registry shall be established, in conformity with this Convention and the Protocol and Regulations, for the purposes of registering:

- (a) international interests and amendments, extensions, subordinations, assignments and discharges thereof;
- (b) prospective international interests and discharges thereof;
- (c) prospective assignments of international interests and discharges thereof [; and
- (d) registrable national interests and subordinations and discharges thereof].

2.— Different registries may be established for different categories of asset [and associated rights].

[Article 16

1.— The Protocol shall specify the Intergovernmental Regulator.

2.— The Protocol may permit Contracting States thereto to designate Registration Facilities in their respective territories. Such Registration Facilities, acting in such capacity, shall constitute points of entry into the International Registry and an integral part of the international registration system. The Protocol may set forth the extent to which any such designation shall preclude alternative access to the International Registry.

3.— The Intergovernmental Regulator shall designate the Registrar of the International Registry. The Intergovernmental Regulator shall oversee the International Registry and the operation and administration thereof. The manner in which such oversight is conducted and the responsibilities of the Registrar and the operators of the Registration Facilities shall be prescribed in the Protocol and Regulations.

* 4.— In the exercise of their respective functions under this Convention and the Protocol, the Registrar and the operators of the Registration Facilities, together with the International Registry, shall

* It is envisaged that this provision will ultimately form part of Chapter IX - Jurisdiction.

be deemed to be an international Organisation and, to that extent, shall not be subject to the law or jurisdiction of the courts of the States in which they are situated.

5.- The Protocol may contain procedures pursuant to which:

(a) parties may appeal to the Intergovernmental Regulator in respect of acts or omissions of the Registrar or the operators of the Registration Facilities in contravention of this Convention, the Protocol or the Regulations and empower the Intergovernmental Regulator to require that corrective action be taken; and

(b) the Registrar and the operators of the Registration Facilities may request advice from the Intergovernmental Regulator regarding the exercise of their respective functions under this Convention and the Protocol and Regulations.

6.- The Regulations shall be promulgated by the Intergovernmental Regulator and may be amended from time to time.]

CHAPTER V

REGISTRATION OF INTERNATIONAL INTERESTS, PROSPECTIVE ASSIGNMENTS OF INTERNATIONAL INTERESTS AND PROSPECTIVE INTERNATIONAL INTERESTS

[Article 17

The Protocol and Regulations may contain conditions and requirements which must be fulfilled prior to :

(a) the registration of an international interest and all amendments, assignments, subordinations and discharges relating thereto;

(b) the registration of a prospective international interest, the conversion of a prospective international interest into an international interest and discharge of a prospective international interest;

(c) the registration of a prospective assignment of an international interest, the conversion of a prospective assignment of an international interest into an assignment of an international interest and discharge of a prospective assignment of an international interest [; and

(d) the registration of a registrable national interest and a subordination or discharge thereof].]

Article 18

The information required for the registration of:

(a) an international interest or an amendment, extension, subordination, assignment or discharge thereof;

(b) a prospective international interest, a prospective assignment of an international interest or discharge thereof [; or

(c) a registrable national interest or a subordination or discharge thereof]

shall be transmitted, by any medium prescribed by the Protocol or Regulations, to the International Registry or Registration Facility prescribed therein.

Article 19

1.- Registration shall take effect in respect of:

(a) an international interest and all amendments, extensions, subordinations, assignments and discharges relating thereto;

(b) a prospective international interest, a prospective assignment of an international interest and, subject to paragraph 5 of Article 20, discharge thereof [; or

(c) a registrable national interest and discharge thereof]

upon entry of the required information into the International Registry data base so as to be searchable.

2.- If an interest first registered as a prospective international interest becomes an international interest, the international interest shall be treated as registered from the time of registration of the prospective international interest.

3.- Paragraph 2 applies with necessary modifications to the registration of a prospective assignment of an international interest.

4.- The International Registry shall record the date and time of registration of all the information referred to in paragraph 1.

5.- Registration of an interest referred to in paragraph 1 shall be searchable in the data base of the International Registry according to the criterion or criteria prescribed in the Protocol.

Article 20

1.- The holder of an international interest shall be entitled to register it if:

(a) the agreement relating to it conforms to the provisions of Article 7;

(b) in the case of a security agreement, the chargor has (therein or elsewhere) consented in writing to the registration; and

(c) the conditions for registration set out in the Protocol and Regulations have been complied with.

2.– The intending grantee of a prospective international interest or a prospective assignee of an international interest shall be entitled to effect a registration relating thereto if the intending grantor or assignor, as the case may be, has consented in writing to the registration.

3.– By transmitting the required information to the International Registry in conformity with the Protocol and Regulations:

(a) the holder of a registered international interest may amend the registration but, if the amendment negatively affects the interest of a chargor, the holder may do so only if the chargor has consented in writing thereto;

(b) the assignee of an international interest under an assignment conforming to the provisions of Article 27 may register the assignment;

(c) the holder of a registered international interest [or registrable national interest] may, prior to the expiry of the registration period, extend that period;

(d) the holder of a registered international interest [or registrable national interest] who has subordinated that interest in favour of another registered international interest may register the subordination;

(e) the holder of a registered international interest, a registered prospective international interest, a registered prospective assignment of an international interest [or a registered registrable national interest] may discharge the registration.

4.– When the obligations secured by a security interest [or the obligations giving rise to a registrable national interest] have been discharged, or the conditions of transfer of title under a title reservation agreement have been fulfilled, the obligor may, by written demand delivered to the holder of such a registered interest, require the holder to register the discharge or transfer of title.

5.– The holder of a registered international interest may at any time and, when so required by the obligor under the preceding paragraph, shall procure discharge of the registration of the international interest [, registrable national interest] or transfer of title by transmitting the discharge or transfer of title information to the International Registry in conformity with the Protocol and Regulations.

6.– If the person who has consented to the registration as provided in sub-paragraph (b) of paragraph 1 or paragraph 2, in conformity with the Protocol and Regulations, demands in a writing delivered to the person identified as the obligee or the assignee in the registration that the obligee or the assignee register a discharge thereof, the holder of a registered prospective international interest or a registered prospective assignment of an international interest shall transmit a discharge thereof no later than the number of days specified in the Protocol after the delivery of such demand, provided that the obligee or the assignee has not, prior to receipt of such demand, given value or incurred a commitment to give value.

Article 21

Registration of an international interest remains effective for the period of time specified in the Protocol as extended in conformity with sub-paragraph (c) of paragraph 2 of Article 20.

Article 22

1.— A person may, in the manner prescribed by the Protocol and Regulations, make a search of the International Registry concerning interests registered therein.

2.— Upon receipt of a request therefor, the Registrar, in the manner prescribed by the Protocol and Regulations, shall issue a registry search certificate with respect to any interest:

(a) stating all registered information relating thereto, together with a statement indicating the date and time of registration of such information; or

(b) stating that there is no information in the International Registry relating thereto.

[Article 23

The Registrar shall maintain a list of categories of preferred national creditor declared by Contracting States in the Protocol. Such information shall be made available as provided in the Protocol and Regulations to any person requesting it.]

Article 24

A document in the form prescribed by the Regulations which purports to be a certificate issued by the International Registry is *prima facie* proof:

(a) that it has been so issued; and

(b) of the facts recited in it, including the date and time of registration of the information referred to paragraph 1 of Article 19.

[Article 25

The liability rules for errors and omissions in the operation and administration of the International Registry shall be set forth in the Protocol.]

ADDITIONAL DEFINITIONS

(a) "Intergovernmental Regulator" means, in respect of any category of asset [and associated rights] to which this Convention applies, the intergovernmental Organisation specified, pursuant to paragraph 1 of Article 16, in respect of that category of asset [and associated rights]

(b) "International Registry" means, in respect of any category of asset [and associated rights] to which this Convention applies, the international registry established pursuant to Article 15

(c) "Protocol" means, in respect of any category of asset [and associated rights] to which this Convention applies, the Protocol in force in respect of that category of asset [and associated rights]

(d) "Registrar" means, in respect of any category of asset [and associated rights] to which this Convention applies, the entity operating the International Registry

(e) "Regulations" means regulations promulgated by the Intergovernmental Regulator from time to time

REVISED DEFINITION

(g) "obligor" means the chargor under a security agreement, the buyer under a title reservation agreement, the lessee under a leasing agreement [or the person whose interest in the underlying asset is burdened by a registrable national interest]