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INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW

GOVERNING COUNCIL

(77th session: Rome, 16 - 20 February 1998):

EXTRACT FROM THE REPORT ON THE SESSION

Re item n° 8 on the agenda: International interests in mobile equipment

Rome, July 1998

Item No.8 - International interests in mobile equipment (C.D.(77)8)

(a) *Background*

The President, in introducing this item on the agenda, which, he suggested, might be seen as the most important item for the Council's consideration at its 77th session, noted how what had originally been conceived basically as a project for the extension of the Unidroit Convention on International Financial Leasing had been transformed in both scope and form by the keenness of aviation circles, in the first place the world's two leading aircraft manufacturers, Airbus Industrie and The Boeing Company, but subsequently also the world's leading airlines, as represented by the International Air Transport Association ("*I.A.T.A.*"), to see the urgent completion of a new international legal regimen governing the taking of security in aircraft equipment, perceived as it was to bring a considerable reduction in the extreme costliness of such transactions.

The Council had before it a preliminary draft Unidroit Convention on International Interests in Mobile Equipment established by an Unidroit study group chaired by Professor Goode and a preliminary draft Protocol to this text on matters specific to aircraft equipment established by a working group ("*Aircraft Protocol Group*") organised and chaired, at his invitation, by Mr Jeffrey Wool, expert consultant to the Study Group on international aviation finance matters and co-ordinator of the Aviation Working Group ("*A.W.G.*") organised jointly by Airbus Industrie and The Boeing Company. To both Professor Goode and Mr Wool he expressed his and the Institute's heartfelt thanks for their herculean efforts in the cause of this project.

The Study Group having thus discharged the task set it by the Council in June 1992, it was therefore for the Council to consider the product of its labours, the preliminary draft Convention, with a view to approval. The preliminary draft Protocol, on the other hand, was laid before the Council not for approval but for information purposes, in so far as it had not been established by the Study Group but by a working group specially constituted under his authority.

Depending on the Council's answer to the approval sought by the Secretariat for the preliminary draft Convention, it would then be for it to decide on the following steps to be taken in respect of the project. He very much hoped that, in view of the care with which both texts had been prepared, the Council would consider authorising the Secretariat, in line with Unidroit tradition, to transmit the preliminary draft Convention together with the preliminary draft Protocol to governmental experts for finalisation as a draft Convention and draft Protocol respectively.

In view of their core membership of the working group which had prepared the preliminary draft Protocol, he had seen fit to invite the International Civil Aviation Organization ("*I.C.A.O.*"), I.A.T.A. and the A.W.G. to participate in the Council session as observers and was therefore pleased to welcome Dr Ludwig Weber, Director of the I.C.A.O. Legal Bureau, Mr Lorne Clark, General Counsel and Corporate Secretary of I.A.T.A., and Mr Wool, as co-ordinator of the A.W.G.

In view of the inextricable relationship between the preliminary draft Convention and the preliminary draft Protocol, the Unidroit Secretariat had submitted for the Council's

consideration proposals for close co-ordination with I.C.A.O., I.A.T.A. and the A.W.G. in respect of any intergovernmental work to be authorised on these two texts. These proposals would in particular involve co-sponsorship of the intergovernmental process by Unidroit and I.C.A.O. with the proposed Convention nevertheless envisaged as an Unidroit Convention but with the future Protocol being contemplated as a joint Unidroit/ I.C.A.O. product. They would also involve the continuing direct involvement of I.A.T.A. and the A.W.G. in the process via a broadening of the terms of reference and the composition of the steering group already responsible for the vetting of co-ordination between the future Convention and Protocols thereto.

Mr Stanford would be bringing members of the Council up to date with work on the other preliminary draft Protocols under preparation. Work on these was, it was true, not as far advanced as work in respect of aircraft equipment. He nevertheless reiterated the importance he attached to the future Convention going forward to the intergovernmental process together with as many preliminary draft Protocols as possible. It was essential to give Governments as clear a signal as possible of the multi-equipment vocation of the future Convention. He was in this connection particularly pleased also to welcome Mr Gerfried Mutz, Deputy Director-General of the Intergovernmental Organisation for International Carriage by Rail (“*O.T.I.F.*”), the fourth General Assembly of which, held in Athens in September 1997, had authorised that Organisation to co-ordinate work on the preparation of a Protocol to the future Convention on matters specific to railway rolling stock.

Mr Stanford, in his capacity of Secretary to the Study Group, the Drafting Group of that group and the Registration Working Group, referred members of the Council to the aforementioned Secretariat memorandum (C.D.77(8)) sent out in December 1997 for a full account of the activity which had led up to the establishment by the Study Group of the preliminary draft Convention in November 1997. He referred Council members to the same memorandum for a full consideration of all the different arguments relevant to the question as to how best future work on this project should be organised.

He brought Council members up to date regarding the status of the different preliminary draft Protocols announced in that memorandum and the question of the organisation of future work in respect of those preliminary draft Protocols. He indicated that the preliminary draft Convention had itself been finalised in mid-December 1997 pursuant to the invitation of the Chairman of the Study Group to members of that group at the conclusion of its November 1997 session to contribute ideas for the improvement of the drafting of the text agreed at that session. These amendments strictly of a drafting nature had been finalised by the Secretariat in conjunction with the Chairman of the Study Group.

The first of the working groups set up at the invitation of the President to prepare preliminary draft Protocols to the future Convention had completed its work at the end of January 1998 with the transmission to Unidroit by that working group, the core members of which had been provided by I.C.A.O., I.A.T.A. and the A.W.G., of a preliminary draft Protocol on matters specific to aircraft equipment. This text, originally transmitted in English, had been translated into French thanks to the kind offices of the Canadian Ministry of Justice and the Quebec Research Centre of Private and Comparative Law. This French translation had reached the Secretariat only on 13 February 1998 which was why it had been impossible to bring it to the Council’s attention earlier. He recalled that the preliminary draft Protocol was laid before the Council for information purposes only, not for approval, in so far as it had not

been prepared by the Study Group but by a specially constituted working group external to Unidroit. He announced that this text would be the subject of a presentation by Mr Wool, on behalf of the Aircraft Protocol Group.

It had not proven possible to complete the other two preliminary draft Protocols, relating to railway rolling stock and space property respectively, announced in the aforementioned memorandum in time for the session. Work on the preparation of these texts had commenced later than work on the aircraft equipment Protocol and had not yet attracted quite the same degree of support from industry as that text. He however suggested that the difficulty in galvanising full-blown industry support for the preliminary draft Protocols on matters specific to railway rolling stock and space property should be seen as a difficulty only in relation to the level of support registered in aviation circles for the preliminary draft Protocol on matters specific to aircraft equipment and should not be seen as indicating that there was not substantial interest and indeed support for such initiatives in rail and satellite circles but rather as a reflection of the manner in which developments of this kind traditionally tended to be taken on board rather more speedily in the context of aviation. He had no doubt that in enlightened circles there was firm recognition of the importance the future Convention, and by extension the future Protocols, could play in facilitating the further commercialisation of space and privatisation of the railways.

As announced in the Secretariat memorandum, both the Rail and the Space Working Groups had been hard at work over the previous six months. The Rail Working Group had held a first meeting in Brussels at the Headquarters of the Union of European Railway Industries (Unife), in September 1997 and the Space Working Group had held a first session in Los Angeles in July 1997. Both these groups brought together manufacturers, financiers and operators. The co-ordinator of the Rail Working Group had informed the Secretariat that he planned to have a first draft of a preliminary draft Protocol on matters specific to railway rolling stock ready in time for a second session of the Rail Working Group towards the end of March 1998. He suggested that it was important to bear in mind that two of the three major international Organisations working in this field were represented on the Rail Working Group, that is O.T.I.F. and the European Company for the Financing of Railroad Rolling Stock (Eurofima). It was recognition of the keenness of his Organisation to participate fully in the further stages of work on the preparation of a protocol to the future Convention on railway rolling stock that the Deputy Director-General of O.T.I.F. was attending the session of the Council. It was understood to be the intention of the Rail Working Group co-ordinator to submit his preliminary draft Protocol for comments after the second session of that group and to be in a position to submit it in definitive form to Unidroit by the end of 1998.

The three co-ordinators of the Space Working Group had indicated that they anticipated being in a position to finalise a preliminary draft Protocol on matters specific to space property by mid-summer, that is by June 1998. In their letter of 13 February 1998 to members of the Council the Space Working Group had recommended that it authorise the convening of governmental experts in respect of such a preliminary draft Protocol. The Unidroit Secretariat had been in touch with the Office for Outer Space Affairs of the United Nations and on 16 February 1998 had received a letter from the Director of that body stating that the preliminary draft Protocol on matters specific to space property “is a very interesting prospect in the progressive development of international space law” and suggesting that, once work on the preliminary draft Protocol was completed, it should be forwarded together with the preliminary draft Convention to his office with a request that they be “made available to

member States of the United Nations Committee on the Peaceful Uses of Outer Space for their information". This would enable those States to determine whether to place the matter on the agenda of that Committee's Legal Sub-committee. He further suggested that Unidroit attend the Third United Nations Conference on the Exploration and Peaceful Uses of Outer Space, taking place in July 1999. The Conference would be considering *inter alia* issues of relevance to space law.

Whilst it was true that the preliminary draft protocols on railway rolling stock and space property were not yet available for transmission to governmental experts, he echoed the President's words regarding the desirability of the Institute, in moving this project forward to the intergovernmental process, to give a clear signal as to the multi-equipment purpose of the future Convention. It was also true that aviation circles had manifested the clearest possible concern that work on the conclusion of the future package of international instruments as it related to aircraft equipment should be completed as expeditiously as possible. While taking the opportunity to indicate that the Institute concurred entirely as to the desirability of this objective, he at the same time maintained that these two objectives were eminently reconcilable. As had been shown in the Secretariat's memorandum, work on the preparation of the preliminary draft Protocols on railway rolling stock and space property was proceeding well and indeed, as the President had reminded the Council, the O.T.I.F. General Assembly had authorised that Organisation to co-ordinate work on the preparation of a rail protocol. He accordingly suggested that the Council consider authorising the Secretariat to transmit the preliminary draft Protocol on Railway Rolling Stock under preparation to governmental experts in co-operation with O.T.I.F. at such time as it judges the text to be in a sufficient state of readiness. He further suggested that the Council consider authorising the Secretariat to transmit the preliminary draft Protocol on Space Property under preparation to the United Nations Committee on the Peaceful Uses of Outer Space, at such time as it judged the text to be in a sufficient state of readiness, for consideration by that body with a view to the possible joint convening of governmental experts. Such a procedure would enable the momentum on the other two future Protocols to be maintained while work on the future Convention and Protocol on aircraft equipment proceeded at intergovernmental level.

Mr Goode, in his capacity of Chairman of the Unidroit Study Group that had been responsible for the preparation of the preliminary draft Convention, began by thanking all the many who had been involved in the development of the project to date, whether in the Study Group, the Sub-committee, the Drafting Group, the Registration Working Group, the specialist interest groups (the Aviation, Rail and Space Working Groups) or the Aircraft Protocol Group and in particular Mr Wool, who had co-ordinated the A.W.G. and chaired the Aircraft Protocol Group, and Mr Cuming, who had not only been the initiator of the whole project but also chaired the Registration Working Group.

He prefaced his remarks illustrating the provisions of the preliminary draft Convention with a general introduction as to its nature, purpose and structure. The importance of effective security or retention of title under conditional sale and leasing agreements was well known. Differences in national laws, particularly as regards what was recognised as a legitimate security interest and in the matter of local recognition of foreign security interests, constituted a potential obstacle to financing, which was all the more serious in view of the very large amounts of money represented by the assets covered by the Institute's project. He made reference in this context to the study commissioned by the A.W.G. regarding the economic impact that the future Convention was likely to have in terms of bringing down borrowing

costs and raising credit ratings. The future Convention had, he believed, the potential to become one of the most important Conventions ever sponsored by Unidroit. Whilst it was inevitably somewhat complex, this complexity involved many original and attractive features, not the least of which was the protocol approach, carrying with it the prospective involvement, on the one hand, of I.C.A.O. as the Institute's partner in the organisation of the intergovernmental process on the future aircraft equipment Protocol and of comparable intergovernmental Organisations in the organisation of the intergovernmental process on future rail and space Protocols and, on the other hand, of representatives of the private sector, as accessions to the joint Secretariats, in the revision process (in particular, I.A.T.A. and the A.W.G. for the preliminary draft aircraft equipment Protocol and comparable bodies for the other preliminary draft Protocols).

The Study Group had set out to deal with the problems he had just mentioned by the creation of a new form of interest, the international interest in mobile equipment, which would not derive from national law, even if in most cases an interest created under national law would also constitute an international interest in mobile equipment under the future Convention, by providing a set of provisions regulating relations between the parties to a security agreement, a title reservation agreement and a leasing agreement, by providing for the establishment of an international register in which international interests could be recorded and by laying down rules for the priority of holders of international interests in relation to one another and to the holders of other types of interest and for their protection from creditors in the event of the bankruptcy of the chargor, the conditional buyer or the lessee.

Turning to the sphere of application of the future Convention, he explained that it was essentially concerned with three categories of consensual interest, that of a chargor under a security agreement, that of a conditional seller under a title retention agreement and that of a lessor who was party to a leasing agreement. Article 38(1) provided the basis for the possible extension of its sphere of application to cover certain types of non-consensual interest. The intention was to restrict the future Convention's application to what had been referred to as "mobile equipment". Although the term "mobile" had not yet been defined, the idea which it was designed to cover was equipment of a kind which either moved regularly from State to State in the ordinary course of business or which circulated in Outer Space. The intention thereby was to confine its application to equipment that was of high-unit value and capable of unique identification.

He explained that the application of the future Convention as a whole was not intended to be dependent on registration: registration was envisaged as being necessary to protect an international interest against the rights of third parties and the trustee in bankruptcy of the chargor, the conditional buyer or the lessee. Registration was not therefore necessary to attract the provisions of Chapter III concerning default remedies as between parties to the security agreement, title retention agreement or leasing agreement.

In structure the preliminary draft Convention was divided into eight substantive chapters containing provisions as to sphere of application and general provisions, the constitution of an international interest, default remedies, the international registration system, the modalities of registration, the effects of an international interest as against third parties, assignments of international interests and non-consensual rights and interests respectively. However, he drew attention to the fact that the inclusion of this last chapter was still provisional, the Study Group having taken the view that a decision as to whether or not it was

appropriate so to extend the effect of the Convention regimen was a matter of such moment that it should be left to be taken by governmental experts. In due course it would moreover be necessary to prepare a draft Preamble.

By way of explanation of the thought process which had led to the development of the preliminary draft Convention in the form in which it was submitted to the Council, he indicated that the original idea had been to apply a functional test to the definition of a security interest, rather in the manner of the system that had been adopted by the drafters of Article 9 of the Uniform Commercial Code, and thus to treat as security agreements conditional sale agreements and the rights of lessors under leases intended by way of security. Originally the idea had also been to cover after-acquired property and interests in proceeds. However, at a fairly early stage it became clear that such an approach carried with it serious problems. First of all, legal systems outside North America showed themselves in general not to be ready for such a radical reclassification, the general tendency being to draw a sharp distinction between security given by a debtor over his own property and retention of title under a conditional sale or leasing agreement. This perception led initially to an attempt to assimilate the relevant rules but on the basis of two categories, on the one hand, security interests and, on the other, retention of title under conditional sale and leasing agreements until, that is, representatives of the European leasing industry protested that the lessor's rights under a leasing agreement, to the extent that they involved no intention to make a disposition, could not be assimilated to a retention of title. As a result it was finally recognised that it would be necessary to provide for three separate categories of international interest.

It was, moreover, quickly realised that to extend the application of the future Convention to after-acquired property and proceeds would be to introduce enormous complications. In particular, after-acquired property and proceeds might be accounts, for example, derived from the sale of an asset and thus be detached from an identifiable asset, with the result that one would all too quickly find oneself enmeshed in the whole area of priorities in receivables financing, a field that was the subject of current work by the United Nations Commission on International Trade Law. The Study Group accordingly concluded that it was necessary to restrict the future Convention to interests in existing assets and insurance proceeds, but no other proceeds, and to establish an international register that would be based on registration *by asset* and not against the debtor, carrying with it the further consequence that the future Convention would need to be restricted to assets capable of unique identification, typically by manufacturer's serial number. He noted that one incidental advantage of this approach would be that it would restrict the scope of the future Convention to a manageable area.

Introducing the protocol system, he pointed out that this was an extremely valuable idea, permitting the resolution of a number of problems, that had originated with A.W.G. and I.A.T.A. The drafting process had shown how difficult it was to apply the provisions of the intended Convention to any of the specific categories of asset which it covered unless there was in place an industry group ready, first, to supply an appropriate definition of each category of equipment - a matter of some complexity as testified by the definitions of the terms "airframes" and "aircraft engines" included in the preliminary draft Protocol on matters specific to aircraft equipment - secondly, to build in a factor which would limit the category of equipment to be covered to assets of high-unit value, by reference to weight, capacity or some other such factor, thirdly, to indicate the most appropriate mode of identification of the category of equipment, and, fourthly, to indicate which special rules, relating, for example, to

registration, might be required for a particular category of equipment. Whilst it would have been possible to accommodate such equipment-specific rules in the future Convention itself, such a technique would have had a number of serious disadvantages: first, it would make the future Convention top-heavy; secondly, it would give the future Convention an undesirable slant in favour of those categories of equipment on which special industry groups were more advanced in their thinking and, thirdly, it would deprive States of the opportunity of choosing from a menu of Protocols. Article X of the Final Provisions accordingly provided that the future Convention's application would be triggered as regards a specific category of equipment only by the entry into force of a Protocol in respect of that category of equipment.

As regards the relationship between the future Convention and a given Protocol, he explained that this was broadly conceived in such a way that the latter would have the effect of overriding the former but with modifications made by a Protocol to the Convention regimen being kept to the strict minimum required by the special needs of the particular category of equipment and not undermining the general thrust of the future Convention as a whole. He noted that the monitoring of this requirement would be the task, first, of the Steering Committee and, subsequently, of governmental experts. He indicated that one of the first tasks to be performed by the Steering Committee would be to identify those provisions of the preliminary draft Protocol on matters specific to aircraft equipment which might suitably be made of general application by inclusion in the future Convention itself and to align the preliminary draft Protocol stylistically with the preliminary draft Convention. The preliminary draft Protocol was currently drafted in the style of very detailed legislation and, while this had proven very useful in permitting the identification of all the different issues needing to be dealt with, the unnecessary detail would have to be stripped away.

Turning to the individual provisions of the future Convention and, first, Chapter I, he recognised that to commence the future Convention with a set of definitions was not perhaps the most eye-catching of techniques but indicated that it had nevertheless been found both convenient and in line with a number of illustrious precedents. For ease of reference the French text of Article 1 followed the same order established in the English text, which followed the English alphabetical order. He drew particular attention to the definitions of "security agreement" (cf. Article 1(v)), "title reservation agreement" (cf. Article 1(w)), covering basically a sale with reservation of title, and "leasing agreement" (cf. Article 1(i)), which covered leases with or without an option to purchase.

Article 2 created a *sui generis* international interest in mobile equipment. This new interest was defined in Article 2(2). Any interest meeting the definitional requirements of Article 2(2) would constitute an international interest in mobile equipment. Such an interest might or might not follow a national interest. It might well be that there would be national interests which did not conform to Article 2(2): these interests would subsist as national interests under the applicable law but would fall outside the sphere of application of the future Convention. Equally it was possible that there might be interests which would conform to Article 2(2) and therefore qualify as international interests even if they would not be recognised as security interests under the applicable national law. The authors of the future Convention had accordingly taken a conscious decision potentially to expand the prospective range of interests that would be available, particularly in those jurisdictions which had hitherto taken a very restrictive view as to what might be taken as security.

Article 2(3) left it to the applicable law to determine into what category a particular international interest fell, that is whether it was to be treated under the future Convention as a security agreement, a title reservation agreement or a leasing agreement. This rule had displaced a provision, which, on reflection, he would be inclined to reinstate, providing that, if a given international interest fell within Article 2(2)(a) as an interest granted under a security agreement, it could not also fall within either Article 2(2)(b) or (c). Such a rule was necessary in particular to deal with the case of conditional sale agreements which in the United States of America would be conditional sale agreements under the law of sale but would also be security agreements under Article 9 of the Uniform Commercial Code. It was clearly undesirable to create a situation under the future Convention where two different sets of provisions might be applicable.

Article 3 set out the different categories of equipment covered. It was intended that each would be defined in due course in a Protocol.

Article 4 defined the connecting factor to a Contracting State with Article 5 defining the State where a party was to be regarded as being “located”.

Article 6 embodied an important principle underlying the future Convention, namely that contracting parties to these high-unit value transactions should in general be able to look after themselves and therefore enjoy a wide measure of freedom of contract, albeit subject to certain mandatory provisions to prevent possible abuse.

Article 7 was based on, but deviated from Article 7 of the United Nations Convention on Contracts for the International Sale of Goods in that, first, it did not make any reference to good faith, which in transactions of the size to be covered by the future Convention would, it was felt, generate an intolerable element of unpredictability, and, secondly, it introduced a reference to the need to interpret the future Convention in such a way as to promote predictability.

Chapter II set out the formalities for the constitution of an international interest. Article 8 listed these requirements as, first, an agreement in writing, secondly, the power of the chargor, the conditional seller or the lessor to enter into the agreement, thirdly, the identifiability of the asset in conformity with a Protocol and, fourthly, the identifiability of the secured obligations, in the case of a security agreement.

Chapter III contained those provisions of the future Convention dealing with relations *inter partes*, setting out a set of basic default remedies which the parties were free either to exclude or restrict, on the one hand, or, within certain limits, to expand, on the other. It thus left the parties a wide measure of freedom of contract, albeit subject to a number of mandatory provisions, for example Article 9(2) providing that remedies had be exercised in a commercially reasonable manner. Self-help, which was not familiar to all legal systems, in particular those which required the obtaining of a court order for the exercise of remedies, was permitted under the future Convention (cf. Article 9(1)). However, with a view to preserving the sensitivities of local law on methods of enforcement, a Contracting State would have the power, whether in the Convention or a Protocol, to make a declaration excluding the exercise of remedies without a court order (cf. Article 13(2)).

Article 10 dealt with modes of enforcement. Article 10(1) provided for forfeiture of the asset in satisfaction of the secured obligations by agreement of the interested parties or

court order. Article 10(2) was designed to restrict the court's powers under Article 10(1) so as to ensure that this would not result in a windfall to the chargee. Article 10(3) provided a right to redeem the security by paying off the amount secured. Article 10(4) provided that any sale by a secured creditor would pass good title to third parties, assuming that there was no interest ranking in priority to that of the chargee selling.

Article 11 specified the default remedies exercisable by virtue of the future Convention under a title reservation agreement and a leasing agreement.

Article 13 in general required remedies to be exercised in accordance with the procedural law of the place where the remedy was to be exercised but went on, in Article 13(2), to add that in cases where leave of the court was not specifically required under Articles 9 to 11 then it would not be required unless the Contracting State where the remedy was to be exercised had made a declaration under Article Y or in the relevant Protocol.

Article 14 allowed additional remedies in so far as permitted by the applicable law.

Article 15(1) embodied very important provisions for speedy judicial interim relief. These provisions were designed to deal with the situation where there was a case pending in respect, say, of an aircraft creating an urgent need to preserve and sell or to immobilise that aircraft pending the substantive hearing of the case. Article 15(3) laid down the bases of jurisdiction for courts under Article 15(1). He noted that the Aircraft Protocol Group had proposed that the provisions of Article 15 be reinforced for aircraft equipment in the preliminary draft Protocol relating thereto.

Chapters IV and V contained the provisions of the future Convention dealing with the international registration system and the modalities of registration respectively. They were largely derived from the work done by the Registration Working Group. The objective was to set up what was conceived as a single International Registry but would in practice be divided into separate registries for each different category of equipment covered by the future Convention (cf. Article 16(2)). Each such Registry would have, first, an Intergovernmental Regulator responsible for establishing the Registry, designating the Registrar and overseeing its operation and administration and, secondly, a Registrar and the necessary operating staff. This would be established for each category of equipment by the relevant Protocol with the manner in which the Intergovernmental Regulator's oversight of the Registry was to be conducted and the responsibilities of the Registrar being laid down in Regulations to be made by the Intergovernmental Regulator (cf. Article 17(3)). The Registrar would be an international Organisation and as such would not in principle be subject to the laws of the State where it was situated (cf. Article 17(4)), although he noted that it would, in his view, be necessary in due course to qualify such absolute immunity by reference to the terms of an agreement to be concluded with the host State.

The Study Group had taken the view that it would not be possible directly to expose the Registry, particularly if it were an international Organisation but even if it were not, to orders from national courts, since the result would otherwise be to create enormous complications and would, he imagined, run counter to general concepts of public international law. The only workable solution would be for a party wishing to complain that an interest had been improperly registered either to apply to the Registrar to remove or vary the registration, which might be possible in certain circumstances, or to obtain an *in personam* order from a

national court in the appropriate jurisdiction requiring a chargee who had improperly registered to remove his registration.

The Intergovernmental Regulator would have power to review acts and omissions of the Registrar and to deal with claims to compensation if anything went amiss in the operation of the international registration system (cf. Article 17(5)).

He did not believe any useful purpose would be served by his going into greater detail with the provisions of Chapters IV and V save to indicate, first, that these provided for the registration of international interests, prospective international interests (that is, international interests in negotiation which a party might wish to register, as he could under Article 9 of the Uniform Commercial Code, so that, when they crystallised into completed international interests, they would have priority as from the time of registration as prospective international interests), assignments and prospective assignments of international interests and subordinations of international interests and prospective international interests (cf. Article 16(1)) as well as amendments, extensions and discharges of such registrations (cf. Article 16(3)) and, secondly, that Article 25 provided that a document which purported to be a certificate issued by the Registry was *prima facie* proof that it had been so issued and of the facts recited in it.

Chapter VI was most important in the scheme of the future Convention. The first major issue which fell to be addressed was that of the priority rules to govern conflicts arising between holders of international interests *inter se* and between holders of international interests, on the one hand, and holders of other interests, on the other. The Study Group was conscious that this was an extremely complicated issue and therefore determined that it was very important to keep the rules to be included in the future Convention on this subject as simple and straightforward as possible. It accordingly abandoned any attempt to deal with such refinements as the question as to whether a security interest taken to secure future advances should or should not be subordinated to future advances made with notice of a later interest. The basic priority rule of the future Convention was that a registered interest had priority over any subsequently registered interest or over an unregistered interest (cf. Article 28(1)) and, with a view to protecting the integrity of the registration system and to avoiding factual disputes as to whether a party did or did not have knowledge, this rule would apply even if the registered interest was acquired with actual knowledge of the other interest (cf. Article 28(2)(a)) and even as regards further advances made by the holder of the registered interest once he had knowledge of such other interest (cf. Article 28(2)(b)). Special provision had had to be made for outright buyers in that these would not have an interest that could be protected by registration under the international registration system and it had therefore seemed unfair to expose them to the risk of loss or subordination where they had acquired their interest before there was anything on the international register. Article 28(3) accordingly provided that such a buyer took subject to a registered interest (cf. Article 28(3)(a)) but free from one which was not on the register (cf. Article 28(3)(b)). Article 28(4) provided for the variation of priorities.

Article 29 dealt with the validity of an international interest against the trustee in bankruptcy. The rule set out in Article 29(1), indicating that an international interest should be valid against the trustee in bankruptcy provided that it had been registered prior to the commencement of bankruptcy, was intended to be subject to any special rules of bankruptcy law, such as preferences and the like. This was a rule of validation and not of invalidation: it

was not therefore intended to affect the validity of an interest which would otherwise be valid against the trustee in bankruptcy under the applicable law but rather provided an additional ground of validity.

Chapter VII dealt with assignments of international interests, whether these were outright assignments or assignments by way of security (cf. Article 30(3)). Such an assignment would carry with it all the interests and priorities of the assignor under the future Convention (cf. Article 31(1)(a)) and all associated rights, such as the right to rentals, as defined in Article 1(c) (cf. Article 31(1)(b)). The assignee would, however, take subject to defences and rights of set-off (cf. Article 31(2)), although on this point it would, he noted, be necessary to look at the relationship between the future Convention and the Unidroit Convention on International Factoring. Article 32 was a shorthand way of making the provisions of Chapter V generally applicable to the registration of assignments of international interests without the need to repeat each one of them. Article 33 set out the circumstances in which the obligor would be bound by an assignment. Article 34 dealt with the question of default remedies in the case where the assignor under an assignment by way of security had defaulted by basically making the corresponding provisions of the future Convention dealing with relations between the chargor and the chargee applicable. Article 35 dealt with the question of priorities in respect of competing assignments of international interests.

Article 36 dealt with the situation where the associated rights linked with a registered assignment came into conflict with the assignment of associated rights independently of that registration. For example, there might be a transfer of the associated rights under the future Convention which went with the registration of the assignment of the international interest but separately those rights might have been given in security to a bank or a third party. It was provided that the rights associated with the registered interest would have priority in so far as they related to the purchase price, rentals or reasonable costs.

Article 37 provided for recognition of the assignment of an international interest in the bankruptcy of the assignor.

Chapter VIII dealt with two distinct ideas. The first idea, embodied in Article 38(1), was that a Contracting State should be able to add to the list of interests registrable under the future Convention by designating certain categories of non-consensual right or interest, such as repairers' liens and rights of execution creditors, as also being so registrable. It would thus be open to a State to declare that such rights and interests, once they had crystallised, would be capable of being put on the international register and, once so registered, would have effect in the same way as an international interest and be regulated by the same priority rules. The second idea, embodied in Article 38(2), related to those rules which all States had whereby, even without registration, certain non-consensual rights and interests, typically claims for taxes and wages, had preference even over security interests. The idea of Article 38(2) was to require States to set out these preferences in an instrument deposited with the depositary of the future Convention so that those dealing in the categories of equipment covered by the latter would have a means of ascertaining which State preferences might rank ahead of them.

Chapter IX was intended to deal with the question of the relationship between the future Convention and other Conventions. The whole question of competing Conventions was fast becoming very complex, as could be seen from Article 17 of the Unidroit Convention on International Financial Leasing which deferred to both previous and subsequent Conventions.

He pointed out that it only required one more Convention to do the same for a problem to arise. This was a problem which, in the context of Chapter IX, needed to be dealt with as a matter of urgency and he had taken advice from the President, who had stressed the importance of identifying the Conventions which might overlap with the future Convention. The plan was therefore for the Steering and Revisions Committee, the proposed terms of reference of which were to be laid before the Council later, to have the power to co-opt one or more experts to assist in the resolution of this issue.

The Final Provisions set out in Chapter X constituted only that fraction of the complete body of final provisions which would need to be drafted in due course that it had been found necessary to anticipate in view of specific problems that had arisen in the context of the drafting of the substantive provisions to date. He had already referred to Article X in introducing the protocol system (cf. p. 6, *supra*). Articles W, Y and Z were designed to permit Contracting States, by means of declarations, to disapply either some or all of the provisions of the future Convention.

In conclusion, he drew attention to the Resolution in support of the future Convention and Protocol on matters specific to aircraft equipment passed by the 53rd Annual General Meeting of I.A.T.A.

Mr Wool, in his capacity of Chairman of, and on behalf of his colleagues on the Aircraft Protocol Group, Dr Weber (I.C.A.O.) and Mr Clark (I.A.T.A.), summarised the guiding principles and main terms of the preliminary draft Protocol on matters specific to aircraft equipment.

He began, however, by drawing attention to the unprecedented co-operative effort represented by the membership of the Aircraft Protocol Group, bringing together, as it had, different parts of the aviation sector, namely the specialist intergovernmental Organisation, the major airlines and manufacturers and financiers. This coalition had been put together at the request of the President who in February 1997 had invited him to convene a working group for the preparation of a preliminary draft Protocol on matters specific to aircraft equipment. The participation of so many different parts of the aviation sector in the work of the Aircraft Protocol Group had, in his opinion, provided a solid foundation for the work of governmental experts. A very important part in this work had been played by various governmental observers from Canada, China, Colombia, France, Germany, India, Indonesia, Ireland, Nigeria, Russia, the United Kingdom and the United States of America as well as the Commission of the European Communities. On behalf of the Aircraft Protocol Group, he added his appreciation for the important work performed by the Canadian Ministry of Justice and the McGill Research Centre not only on the French translation but also for their important conceptual contributions to certain key points in the preliminary draft Protocol, some of which had proven to be also relevant to the preliminary draft Convention. Again on behalf of the Aircraft Protocol Group, he expressed his appreciation for the co-ordination with the Unidroit Secretariat, in particular Mr Stanford, as also with Mr Goode, in his capacity of Chairman of the Study Group, and Mr Cuming, in his capacity of Chairman of the Registration Working Group. He indicated that everything possible had been done to ensure the concordance of the preliminary draft Protocol with the preliminary draft Convention, from the conceptual, terminological and stylistic points of view. That said, a good deal of work would still be required as the project proceeded through the intergovernmental process in order to ensure full consistency and compatibility.

The protocol system had permitted the building of a consensus within the aviation sector while keeping the interest of that sector in line with the development of the multi-equipment future Convention by allowing it to articulate rules which reflected the circumstances and needs of aviation finance as well as the current legal framework within which aircraft operated. The aviation sector suspected that with time and diligent work the other industry sectors would reach the same conclusions and as regards space property this was more than pure speculation, there being a fair amount of overlap between the aviation sector and the space sector.

Turning to the guiding principles underlying the preliminary draft Protocol, he first laid emphasis on its role in facilitating the asset-based financing and leasing of aircraft equipment. The *lex situs* problem which had provided the background for the decision to draft the preliminary draft Convention was not so keenly felt in the context of aircraft because of the existence of the 1948 Geneva Convention on the International Recognition of Rights in Aircraft, which addressed that point. Rather the Aircraft Protocol Group had viewed the proposed Protocol as an instrument designed to facilitate and promote this type of transaction. In this sense the proposed Protocol was not dissimilar from the Unidroit Convention on International Financial Leasing which was prepared precisely with that purpose in mind. The reason why the Aircraft Protocol Group was so keen to promote this particular type of transaction was because of the unprecedented projected demand for aircraft in the years to come, in particular in the developing world. The cost involved was so high that Governments and national airlines either simply did not have the necessary financial resources or, in developing countries, would need significantly to divert funds needed for other important purposes. The preliminary draft Protocol by allowing the parties to take account of the asset value in their overall assessment of the risk in transactions was expected to reduce the cost of credit and facilitate the availability of the same in both the short- and the long-term. The Aircraft Protocol Group had been anxious to ensure that its work was consistent with the expectations of those making financial decisions, wherever in the world. It had accordingly commissioned an economic analysis of the implications of the proposed Protocol, in particular for lending decisions, and the likely ripple effect on macro-economic conditions in a number of countries. The conclusion reached by the report, the final draft of which was expected to be available a few weeks later, was that, to the extent that those provisions of the preliminary draft Protocol dealing with a few key features of aircraft financing were to apply, the cost of credit was likely to fall, perhaps significantly, in a number of jurisdictions.

Secondly, by responding to the key requirements of asset-based aircraft financing, which could be summed up as not only a transparent priority system but also the ability promptly to obtain access to the collateral and convert it into proceeds, notwithstanding an insolvency event, the preliminary draft Protocol would not only tend to reduce the cost of credit but also to address policy issues for Governments. The vehicle whereby the preliminary draft Protocol sought to answer these needs was in its precatory provisions. These were designed to ensure that the future Convention and Protocol would both make a significant difference in the context of aircraft financing by protecting the parties and allow States to decide for themselves whether they were interested in overriding the provisions of their national law in these important areas. The logic behind these provisions was similar to that underlying those provisions of the preliminary draft Convention dealing with non-judicial remedies or self-help and expedited interim relief. The preliminary draft Protocol carried

forward the policy decisions made by the authors of the future Convention on these subjects to reflect the special needs of asset-based aircraft financing.

Thirdly, the preliminary draft Protocol was designed to strengthen the principle of freedom of contract enshrined in the preliminary draft Convention. Aircraft financing transactions were typically concluded between highly sophisticated parties, typically governmental in character on the financing and borrowing side. The feeling of the Aircraft Protocol Group was that such parties should be able to protect themselves relatively more easily than parties to transactions involving the financing of other categories of equipment.

The final principle which had guided the authors of the preliminary draft Protocol concerned their desire to take account of specific features of the existing legal framework applicable to aircraft financing. For example, the preliminary draft Protocol extended the application of the future Convention regimen to the registration of outright transfers or sales. He indicated that this reflected customary practice in the international and national regulation of proprietary interests in aircraft, virtually every country in the world providing for the registration of transfer interests in aircraft.

The risks traditionally taken in aircraft financing by export credit agencies in Western Europe and the United States of America had led the Aircraft Protocol Group to seek to associate them fully in its work. The British, French, German and American export credit agencies had been represented at its meetings. Their representatives had played a key role on certain key issues from their point of view, in particular those surety issues which arose in the context of their financing structures.

Moving on to the text of the preliminary draft Protocol, he indicated that the guiding principles to which he had drawn the Council's attention were reflected in the preamble. Article I set out those defined terms employed in the preliminary draft Protocol. The definitions of "aircraft", "aircraft engines" and "helicopters" were fairly technical. It had taken the Aircraft Protocol Group approximately a year to finalise these definitions, the principal purpose of which was to ensure that the assets covered were of sufficiently high value that the parties dealing in them would be sophisticated business parties and that they were likely to be used for international carriage, thus justifying a new international regimen governing proprietary rights in such assets. Other definitions dealt with the Chicago Convention on International Civil Aviation (hereinafter referred to as "the Chicago Convention") and the Geneva Convention on the International Recognition of Rights in Aircraft (hereinafter referred to as "the Geneva Convention"), currently the twin pillars of the international regulation of proprietary rights in aircraft.

Article IV made slight modifications to the sphere of application of the future Convention, providing in particular that the only close connection to a Contracting State applicable in respect of aircraft equipment under Article 4(b) would be its registration in that State under the Chicago Convention.

He recalled that Article V extended the application of the future Convention to transfers.

Article VI limited the definition of "associated rights" given in the future Convention as regards rights linked to an aircraft.

Chapter III contained a number of provisions reflecting the specific financing structures employed in respect of aircraft, but also two provisions (Articles VII and VIII) which, as a number of persons had suggested, might be considered for inclusion in the future Convention. He suggested that this was a matter which the proposed Steering and Revisions Committee might usefully look at.

Article XI contained several modifications to the default remedies of the future Convention, some of which might also be potentially of general application to all the different categories of equipment covered by the future Convention. Of those that would not be of such general application, he however drew attention to the right of the obligee to deregister the aircraft for the purposes of the Chicago Convention as an uniquely essential feature of the remedies to be exercised in the case of aircraft (cf. Article XI (1)(a)). On the other hand, Article XI (7) reflected the feeling of the Aircraft Protocol Group that the criterion of “commercial reasonableness,” made a condition for the exercise of default remedies under the future Convention in the case of security agreements, should also apply in respect of the exercise of such remedies with conditional sale and leasing agreements as far as aircraft equipment was concerned; he suggested that there was moreover support for this modification being extended to the future Convention. The modifications to the regimen of the future Convention proposed under Article XI (7) should, he further suggested, be seen in the sense of a desire to defer more to the specific terms of the parties’ agreement.

Article XII, containing modifications to the priority rules of the future Convention, was essentially designed to give effect to the Aircraft Protocol Group’s decision to extend the application of the future Convention to outright transfers. It provided a special priority rule to protect those buyers availing themselves of the right to register such transfers under the preliminary draft Protocol.

The modifications to the assignment provisions of the future Convention contained in Article XIII were essentially designed to require the consent of the borrower airline to any assignment. Just as the Aircraft Protocol Group had taken the view that the parties should be free to negotiate their contract as they saw fit, it thought it appropriate, in line with past, current and anticipated future practice, that a borrower airline should have a degree of control over the assignment of its payment obligations under a specifically negotiated transaction document.

Article XIV contained special provisions applicable to suretyship. These had been prepared very much with a view to reflecting the interests of the export credit agencies. He suggested that some of these provisions might prove also to be capable of application to the generality of equipment covered by the future Convention.

Chapter IV essentially cross-referenced those provisions of the future Convention inviting a decision by Contracting States whether or not to avail themselves of the various declarations provided thereunder.

He saw Chapter V as containing the most important and potentially the most controversial provisions of the preliminary draft Protocol. It set out a number of optional provisions, all of which would be dependent for their operation on the making of a declaration by Contracting States. In deciding whether or not to avail themselves of these declarations it

would be for States to weigh the need to attract capital investment and to reduce the number of requests for sovereign guarantees of aircraft financings against the policies that underlay national law in these important areas.

Chapter VI contained detailed provisions regarding the registration of aircraft equipment. It had been recognised by the Study Group that the registration provisions of the future Convention might need to be filled out by the relevant Protocol. Considerable thought had been given by the Aircraft Protocol Group to the desirable structure for the registration provisions applicable to proprietary rights in aircraft equipment. He drew attention in particular to the alternative formulations of Article XXIII (1) dealing with the regulation and operation of the International Registry for aircraft equipment. Alternative B was consistent with the future Convention in that it drew a distinction between the Intergovernmental Regulator and the operator of the Registry. It proposed that the Council of I.C.A.O. should regulate, and that I.A.T.A. should operate the Registry. Alternative A embodied a different approach, proposing that one and the same international entity should both regulate and operate the Registry. That body would need to be either an intergovernmental Organisation or an international body designated by Contracting States. Seeing as it did arguments for and against both formulations, the Aircraft Protocol Group agreed to leave the matter to be decided by Governments.

Chapter VII contained provisions relating to jurisdiction. Jurisdiction provisions were to be found in only one article of the future Convention, namely Article 15. The Aircraft Protocol Group had been generally satisfied with the bases of jurisdiction laid down there but had taken the view that it made sense to make them generally applicable to all actions brought under the future international regimen in respect of aircraft equipment. The feeling was that, in so far as this would be the central instrument regulating aircraft financing, a clear statement of the jurisdiction provisions would be appropriate.

Chapter VIII contained a number of provisions dealing with the relationship of the future Convention with other international Conventions. As indicated by Mr Goode, these provisions would need to be reconsidered in the context of consideration of Chapter IX of the future Convention. It was nevertheless true that some of the provisions of Chapter VIII of the future Protocol related specifically to international Conventions dealing with aircraft and these had been the subject of considerable thought, in particular those relating to the Geneva Convention.

He finally drew attention to the Addendum to the preliminary draft Protocol containing some preliminary thoughts as to possible future Final Provisions offered for the consideration of Governments by the Aircraft Protocol Group. These provisions had been drafted in view of the importance certain of them represented for that group, in particular Article XLVII, providing for the establishment and responsibilities of a review board. The purpose of this provision was to ensure that the future Convention and Protocol would be living, breathing instruments capable of being amended over time as the needs of financing practice changed. It was felt that the institution of a yearly review process was desirable to ensure that these instruments continued to be the central international instruments in this field in the years to come.

Mr Weber, speaking on behalf of I.C.A.O., recalled that his Organisation was the United Nations specialised agency dealing with civil aviation matters. Its membership

currently stood at 185 States. Its headquarters were located in Montreal. It had been invited early in 1997 to participate in the preparation of a Protocol to the future Convention on matters specific to aircraft equipment. After due consideration, in April 1997 it agreed to participate in what became the Aircraft Protocol Group. Of the two sessions held by that group during 1997 one was hosted by I.C.A.O.

When initially considering its involvement in this project, I.C.A.O. had had two principal concerns. The first of these concerned the relationship of the project to the Geneva Convention, a Convention that had been adopted under the auspices of I.C.A.O. Its second concern arose out of the duality of the instruments envisaged, namely a Convention containing the rules intended to apply to all categories of equipment and a Protocol containing special rules for aircraft equipment. As regards the first of these concerns, the deliberations of the Aircraft Protocol Group had resulted in a number of modifications to the Geneva Convention the effect of which would be to permit States Parties to that Convention to maintain their treaty relationships with other States Parties thereto whilst at the same time being able to enter into new treaty relationships under the future instrument with those States that might choose to do so. The creation of this faculty had been most important for his Organisation which found it a solution that to a very large degree solved its initial concerns. However, he noted that this was a point that would doubtless have to be looked at further when the time came to consider the appropriate provisions to be included in Chapter IX of the future Convention. As regards the second of its concerns, I.C.A.O. believed, in the light of its participation in the discussions on this matter, that, notwithstanding its inherent complexities, the proposed protocol system was acceptable.

Overall, I.C.A.O. took the view that the texts as developed to date offered significant benefits for Governments in the civil aviation field and therefore merited support. On this basis the Council of I.C.A.O., which was that Organisation's equivalent of the Unidroit Governing Council and comprised 33 States, decided on 5 December 1997 to include the item "International interests in mobile equipment (aircraft equipment)" on the Work Programme of the I.C.A.O. Legal Committee. That decision had given the go-ahead for the governmental consultation process within I.C.A.O. It had also given the green light for discussing co-operation with Unidroit on this project. Discussions had therefore recently begun between representatives of the two Secretariats on ways of organising the governmental consultation process in a manner that would involve both Organisations and also representatives of the airlines and the aviation manufacturers. I.C.A.O. believed overall that the concept that had been developed satisfied I.C.A.O. procedures, although on certain points some further clarification would doubtless prove necessary. From an I.C.A.O. point of view these procedures would basically mean the involvement of the I.C.A.O. Legal Committee, which was composed of all 185 I.C.A.O. member States, acting in a first stage through a sub-committee which would be specially set up for the purpose of considering the preliminary draft Convention (in so far as it affected aircraft equipment) and, more specifically, the preliminary draft Protocol on matters specific to aircraft equipment. This sub-committee, in line with usual I.C.A.O. procedure, would be a group of about 25 Contracting States. This procedure, the details of which would naturally need to be further worked out, would require the texts, once they had been considered by the sub-committee, to go before the full Legal Committee. Under I.C.A.O. procedure the texts would then be forwarded to a diplomatic Conference. It was hoped that, subject to the Governing Council's endorsement of the proposed co-operation between the two Organisations, it would be possible on this basis to see the resulting instruments crowned by success at a diplomatic Conference.

Mr Clark, on behalf of I.A.T.A., sought to underscore three points already made. First, he emphasised the unprecedented nature of the co-operative effort involved, bringing together aerospace manufacturers, global financial institutions, the airlines of the world and intergovernmental Organisations. He suggested that the result of this effort was likely to be far more significant than the Governing Council could ever have realised when setting out on this long journey. He saw the creation of the proposed new universal legal regimen for aircraft, aircraft engines, railway rolling stock and space property as potentially as great a landmark step as the decision taken by the International Monetary Fund and the World Bank in the 1970s to create Special Drawing Rights, in that the assets involved were worth billions and billions of dollars. For 1999 alone there were orders on the books for aircraft and aircraft engines worth U.S.\$50 billion. If the proposed new international legal regimen managed to reduce the cost of financing by, say, 200 basis points over the life of the loans concerned, the saving would be a massive U.S.\$ 12 billion. To place these figures in perspective, he pointed out that the sum of U.S.\$ 50 billion mentioned was larger than the annual budgets of 90% of the world's Governments and 100 times the annual budget of I.C.A.O. These figures showed, he believed, how significant a financial benefit the proposed instruments were likely to confer on the world economy. He suggested that these benefits were particularly marked when seen against the backdrop of the Asian financial crisis and future air transport needs in that part of the world, since the airlines and Governments that were most likely to derive such benefits from the proposed improvements to the international legal regimen would be those from developing countries. He believed that this example showed how important it was that the project be moved forward as rapidly as possible.

Mr Mutz, on behalf of O.T.I.F., indicated that he did not have a great deal to add to what had already been reported by Mr Stanford regarding the ongoing work on the development of a preliminary draft Protocol on matters specific to railway rolling stock. The situation obtaining in respect of railway rolling stock differed from civil aviation in that, first, until very recently railways had been accustomed to operating essentially on a national scale with international rail transport operating as a sort of relay exercise and, secondly, rail finance had been either directly State-funded or, to the extent that private funds were involved, backed either directly or indirectly by State guarantees with the result that there were not the same problems as regards security. The world of rail finance was, however, now facing the challenge of privatisation, a phenomenon that was being very closely monitored by the Commission of the European Union. Eurofima continued to be the principal source of international financing for railway rolling stock on the basis of an international Convention but in the long-term it was important that other sources of financing also began to be used. At the last Annual European Railway Financing Conference, held in Zürich in November 1997, participants were informed that the railway rolling stock investment needs of the United Kingdom alone were estimated at £2 billion. This figure gave some idea of the enormous scale of the financing requirements facing the railway industry and of the interest which Unidroit's work in this field represented for the entire rail sector. Mr Rosen, who was co-ordinating the Rail Working Group on the basis of his experience in the fields of the private financing of, and the taking of security over railway rolling stock, had promised a first draft of a preliminary draft Protocol by the end of March 1998. Widespread lack of experience was particularly a handicap in the preparation of such a text but he was confident that the example provided by the preliminary draft Protocol on matters specific to aircraft equipment would prove invaluable to the Rail Working Group. Once a first draft was ready, that group would be reconvened so that by the end of 1998 he hoped that a preliminary draft Protocol would be

ready for submission to Governments. As the President had announced, the fourth General Assembly of O.T.I.F. had authorised his Organisation to co-ordinate the work on the preparation of a draft Protocol and he confirmed that O.T.I.F. was determined to play its part fully.

(b) *Discussion*

Mr Plantard raised a very general question relating to the structure of the project. He expressed doubts as to the manner in which the instruments were articulated, in particular the way in which provisions of the preliminary draft Protocol frequently contradicted or varied terms of the preliminary draft Convention via a series of exceptions and cross-references, and wondered whether a clearer result might not be obtained by drawing up several different Conventions rather than one framework Convention and several different Protocols. The resulting texts would be easier to read and understand while permitting the preservation of those features common to each of the different categories of equipment. He did not believe that the work involved in such a change of direction need necessarily be enormous but, by making the texts clearer, it would facilitate both their consideration by governmental experts and their promotion at the level of Governments.

Mr Boggiano gave his first impressions of the treatment by the preliminary draft Convention of the question of jurisdiction which he judged to be of great importance in the field covered by the future Convention given its connection to the question of the applicable rules of private international law. He found that Article 15(3) raised a number of problems. First, he wondered how one was to supposed to ascertain the location of space property, one of the "objects" covered by the future Convention under Article 3(h), for the purposes of Article 15(3)(a). Secondly, he was troubled by the plurality of jurisdictions opened up by a combined reading of Article 15(3)(b) and Article 5, specifying the criteria for ascertaining the "location" of a party. He finally asked for guidance as to whether the jurisdiction agreement referred to in Article 15(3)(c) was intended to be an exclusive basis of jurisdiction or merely an alternative to Article 15(3)(a) and (b). A first reading of the text as presented seemed to give the impression that, if the parties agreed to submit to the jurisdiction of a particular court in conformity with Article 15(3)(c), the jurisdiction of the courts referred to in Article 15(3)(a) and (b) was excluded.

Mr Voulgaris offered his congratulations to all concerned for the excellent work done, not only because of the enormous importance of the subject-matter - which encouraged the feeling that this would prove to be one of the most significant instruments ever prepared by the Institute - but also in view of the care and attention to detail which had been lavished on it. He was of the opinion that the preliminary draft Convention and Protocol needed to be further refined and above all better co-ordinated, in particular with a view to eradicating duplication and contradictions. As regards the question whether to continue working towards one general Convention accompanied by several Protocols or to go for several different Conventions, he expressed his preference for the current structure provided that the basic rules were set out in the future Convention and the future Protocols were limited in purpose to stating those exceptions that were justified by the special nature of each category of equipment. He had certain specific questions. First, he enquired whether a Convention interest was intended to have priority over rights and interests constituted under the applicable national law prior to the entry into force of the future Convention. Secondly, he wondered how appeals were to be brought against acts of the international registrar and in this connection whether, given that

the jurisdiction of national courts had been excluded, there might not be a case for considering the institution of Boards of Appeal on the model of the Board of Appeal set up under the European Regulations on the Community trade mark. He had the impression that this question was regulated more precisely in the preliminary draft Protocol. He finally wondered what was intended to be the sphere of application of the lists of non-consensual rights and interests that might be deposited by States pursuant to Article 38(1) of the preliminary draft Convention, in particular whether it was envisaged that their application should extend to all Contracting States. It seemed to him that such a list should only be effective within the country which deposited it. He feared lest otherwise other Contracting States might be prejudiced.

The President, suggested that remarks be limited to questions of a general character like that raised by Mr Plantard and that specific points be left for governmental experts.

Mr Goode stated that he had understood the sense of the point raised by Mr Plantard. He suggested that the problem was essentially one of style and reflected the different sources of the two texts. He explained that the intention was to identify those provisions in the preliminary draft Protocol that might be capable of general application and thus of being moved into the preliminary draft Convention and to simplify what was left of the preliminary draft Protocol. This would make the texts considerably lighter and easier to read. He stressed that this was not to criticise the work done by the Aircraft Protocol Group. He felt that it was important that they had laid out the detail in the way that they had since this made sure that no important issues were overlooked. By way of explanation of the structure that had been put in place, he indicated that the Study Group had taken the view that it was of vital importance to have an integrated Convention on mobile equipment. He believed that it would very much weaken the force of the exercise if one were to have a whole series of Conventions without any unifying factor. Separate Conventions would raise a major technical difficulty: it would be necessary either to have a Convention of general provisions which would somehow be incorporated in each equipment-specific Convention, which did not appear a particularly advantageous solution, or to repeat the general provisions in each Convention. The Study Group had favoured the idea of a specific Convention on mobile equipment as increasing enormously the potential reach of the exercise by capturing the general provisions common to all the different categories of mobile equipment which would then be supplemented by equipment-specific Protocols. He believed that the Protocol approach was the correct approach to follow and that it would be found to have many advantages.

Referring to Mr Boggiano's questions, he agreed that it would be necessary to review Article 15(3)(a) as it applied to space property. He noted that there might well be other places too where it would be necessary to review the application of the future Convention's rules to space property in that such assets would not normally be physically within any jurisdiction under the usual rules for ascertaining jurisdiction. He did not believe that the reference to the location of the parties in Article 15(3)(b) created any special problems when seen in relation to Article 5, since only one place of business could ever be involved: if a party had more than one principal place of business, then, under Article 5, that party was to be deemed to be located at its principal executive office. As drafted, Article 15(3)(c) was intended as an alternative, and not as an exclusive limb of jurisdiction but he was grateful to Mr Boggiano for having drawn his attention to the question and assured him that the provision would be reviewed to see whether any drafting amendment might be needed.

Referring to Mr Voulgaris' questions, he suggested that the place to deal with the complex question of the future Convention's application to transactions concluded before its entry into force would be in the Final Provisions. Considerable thought would need to be devoted in due course to this matter. As regards remedies in relation to the International Registry, he indicated that the general thinking of the Study Group was that liability would have to be imposed on the Registry for errors in the Registry, for example in a case where, through negligence, there had been failure to register an international interest, since such an error might have serious consequences. Such liability could conveniently be covered by insurance. On the question of the body to be given responsibility for determining such liability, he suggested that one solution would be to channel such responsibility through the Intergovernmental Regulator. He stressed that national courts would not be involved.

Mr Plantard indicated that he was satisfied with the reply of Mr Goode regarding the intended rearranging of the future Convention/Protocol so as to make them less complicated and easier to read. This still, however, left the question of the efficacy of the system proposed. He saw the future Convention raising considerable conceptual difficulties for legal systems like his, introducing as it did a whole series of novel ideas with which such systems were not familiar. It would not as a result be easy to persuade such Governments of the wisdom of widespread adoption of such a Convention as a preliminary step to persuading them of the merits of adoption of a Protocol. Already certain members of the Study Group had felt the need to register objections at the conceptual level as to some of the solutions embodied in the texts. Looking at the question from a purely strategic point of view, he felt that this highlighted the case for an aircraft only Convention that, while less ambitious in scope, could still be most important for the aviation industry. In that the conceptual sacrifices would be limited to one category of equipment only, he believed that it would be that much easier for Governments to swallow them.

The President felt that Mr Plantard had raised a very important point.

Ms Trahan expressed her pleasure at the co-operation with I.C.A.O envisaged for the intergovernmental consultation process on the two texts. She believed that such co-operation had the potential to be extraordinarily fruitful for both Organisations. Mindful of the difficulties invariably encountered in securing the adoption of Conventions and of the importance attached in this connection to the question whether they responded to the needs of practice, she was also particularly pleased to see the involvement of business circles, especially I.A.T.A. and, through the Aviation Working Group, aviation manufacturers and financiers. She thought that Mr Plantard's remarks highlighted the need for the texts to be made the subject of widespread educational exercises, such as the symposium organised by I.A.T.A. in Bangkok earlier that month. This was particularly true for Civil law countries which, with the exception of Quebec, were not familiar with the chattel mortgage concept. In this connection she also stressed the importance of the efforts always made by the drafters of the future Convention to employ neutral terminology, terminology that was associated neither with Civil law nor with Common law. She had been pleased to hear the words of appreciation addressed to the Canadian Ministry of Justice and the Quebec Research Centre for Private Comparative Law of McGill University for their work on the preparation of the French-language version of the preliminary draft Protocol, which highlighted the value of the preparation of the Institute's drafts in its two working languages as a means of improving the overall quality of these texts. For this reason she proposed that the other two preliminary draft Protocols being drawn up should also be drawn up in both languages.

As regards the question raised by Mr Plantard, she indicated that she had been fully satisfied by Mr Goode's explanation intellectually speaking but wondered whether it was practical, from the point of view, say, of the readability of the future Convention. Council members had heard that it was intended to move certain provisions from the preliminary draft Protocol on matters specific to aircraft equipment into the preliminary draft Convention but she doubted whether it would be feasible to wait for the completion of similar work on the other two preliminary draft Protocols under preparation before finalising the future Convention. Mindful of the conceptual difficulties that were likely to be encountered with Civil law jurisdictions, she too wondered whether it might not be easier to secure the acceptance of several smaller, well-structured Conventions than a general Convention accompanied by different Protocols. If merging the texts would make them easier to read, then, from a strategic point of view, this was a solution which had a great deal to commend it. Mr Clark's estimate of the enormous economic repercussions that this project was likely to have not only for those Governments having national airlines but indeed for all travellers and his consequent urging that it be completed speedily provided, she suggested, additional arguments for having separate equipment-specific Conventions starting with aircraft equipment. She found it unattractive from a stylistic point of view to begin an international instrument with an article containing definitions and suggested that it would make for a more elegant drafting style to begin the texts with the substantive provisions. She feared lest the attempt by the preliminary draft Protocol under Article XVIII to impose time-limits on national courts could end up by delaying ratification by States.

Mr Loewe expressed his appreciation for the work of Mr Goode and all his colleagues. On the question raised by Mr Plantard, he declared that, while quite willing to accept Mr Goode's reply, he nevertheless wondered whether the idea of having first to accept the future Convention in order to reap the benefits of future Protocols might not raise special difficulties for the acceptability of the future instruments by Governments and enquired whether this question had indeed been considered by the Study Group.

Ms Zhang expressed her appreciation of the work done, in particular the quality of the texts. She recalled that the market in aircraft, where supply was unlimited, was a supplier's market which meant that buyers had very little freedom of negotiation. She indicated that she would therefore like to see the objective of the future Convention clearly enunciated in the preamble in terms of the reducing of the cost of financing. She recalled that the problem faced daily by countries like hers was that, as if the costs of financing demanded by suppliers were not high enough, these same suppliers also demanded double or triple guarantees with a correspondingly high level of risk having to be borne by the Governments of these countries and all the cost being passed on to consumers. She was therefore very keen to see the principle of aircraft suppliers and financiers relying on the value of the asset rather than Government guarantees enshrined in the preamble. She saw this as crucial for the future Convention's acceptability to Governments, given the other obligations that would be expected of them thereunder.

She saw the creation of the international registration system as the single most important innovation of the future Convention. It would be essential for the efficacy of the Convention's priority rules that it contain a mechanism ensuring that the International Registry act in timely fashion and good faith. She expressed her concern at the idea that the Registry was not to be subject to the jurisdiction of national courts in cases where they

committed errors. She emphasised how important it would be, in the interest of reducing transaction costs, in line with what she had said earlier, to limit the service fee that the Registry would be able to charge. She believed that Governments might be willing to consider waiving the jurisdiction of their courts but on condition that there was an economic trade-off.

As regards the question raised by Mr Plantard, the urgency resulting from the Asian financial crisis led her to suggest that priority be given to completion of work in one field at a time with work on railway rolling stock and space property being left for a second stage when it would be possible, as suggested by Mr Mutz, to take advantage of the experience acquired with aircraft.

Mr Pirrung expressed his appreciation of the work accomplished, noting the advanced state of the texts, an achievement all the more remarkable given the highly complicated nature of their subject-matter. However, he wondered whether the Institute had the means to cope with the organisational difficulties that were bound to arise in taking such texts forward to a diplomatic Conference, particularly one where the level of interest was such that it would be reasonable to anticipate some 140 States wanting to participate. Whilst of the opinion that the Protocol system offered the only realistic means to achieve the necessary common uniform framework, he doubted whether, in view of the fact that the Council had not yet seen the other preliminary draft Protocols and that its view of the project was to that extent incomplete, it was really yet in a position to take a decision on the question of whether or not to forward these texts to governmental experts. The great number of interest groups that had already taken such an interest in the development of the texts to date highlighted for him the absolutely essential importance, if viable international instruments were to be produced, of leaving Governments sufficient time to consider the opinion of all the relevant circles. He found that Mr Boggiano's remarks testified to the existence of real difficulties at the level of detail, in particular concerning the founding of jurisdiction on the plaintiff's location. He concluded that there remained serious problems at the level of detail which led him to doubt whether the texts were ready to be transmitted to Governments.

The President explained that, if it was evidently necessary further to refine the texts, it was essential not to underestimate the pressure being brought to bear from outside for their completion as a matter of urgency. He also recalled that the question before the Council was not one of the convening of a diplomatic Conference but of the convening of governmental experts.

Mr Farnsworth considered that the proposal made by Mr Plantard was interesting. It was, he understood, the intention that the preliminary draft Convention and Protocol would in due course be submitted to a diplomatic Conference with subsequent draft Protocols being submitted for adoption by some expedited means short of a full diplomatic Conference. He recalled that diplomatic Conferences or their equivalent each had a life of their own and noted that, even if, as had been indicated, the preliminary draft aircraft Protocol were after the Council session to be co-ordinated with the preliminary draft Convention, it might prove difficult to ensure that the same could be done as effectively for each subsequent Protocol. These concerns notwithstanding, he nevertheless indicated his preference for keeping the Protocol approach.

Mr Goode stated that it was important to keep moving forward to maintain the momentum that had been generated to date. Whilst it was prudent to leave open the possibility

that draft Protocols would be ready on railway rolling stock and space property in time for the diplomatic Conference at which it was envisaged that the preliminary draft Convention and the preliminary draft Protocol on aircraft equipment would be adopted, he recognised that there could be no question of waiting indefinitely for these other texts and indicated that the urgency attached by aviation circles to the completion of the proposed Convention and aircraft Protocol meant that there could be no question of holding up these two texts by waiting for the completion of these other draft Protocols. He confirmed that, as was indicated, albeit somewhat obliquely in the text, the intention was indeed that subsequent draft Protocols would be approved by an expedited procedure which would avoid the need to convene a full diplomatic Conference. He recognised that the preliminary draft Protocol contained a number of provisions which, in the light of the preliminary draft Convention, were redundant and indicated that it would clearly be necessary to iron out any such repetitions. He had been greatly impressed by the contribution of the Civil law members of the Study Group to the reconciling of the different approaches on this subject and suggested that the measure of this contribution was to be seen in the way in which the preliminary draft Convention had managed to accommodate these different approaches, for example the self-help system of exercising remedies permitted by the Common law and the system of judicial control over such matters enforced by Civil law jurisdictions.

Mr Loewe, taking the chair in the absence of the President, indicated that, with regard to the Council's discussion of the question whether it would be better to go for a general Convention accompanied by several special Protocols or rather for several special Conventions, his feeling was that it would be better to conserve the idea of a general Convention completed by different Protocols in that this had been the assumption on which work had been conducted hitherto. This did not however exclude the possibility that governmental experts might subsequently wish to revisit this decision. He recalled that it was not the custom of the Council to examine in detail texts prepared by Study Groups or committees of governmental experts, its role regarding such texts being traditionally limited to the seeking of clarification of doubts and the raising of questions regarding possible alternative formulations, but felt that on this occasion it would be useful for the normal procedure to be departed from and for the Council to go through the two texts so that each member might have the opportunity to indicate his or her opinion on the solutions proposed by the Study Group and the Aircraft Protocol Group, all of which would be noted in the report, before reverting to the question of the procedure to be set in motion after the session.

Ms Collaço indicated that she had some problems with the presentation of the two texts. She was troubled by the fact that certain provisions of the preliminary draft Protocol appeared to contradict the terms of the preliminary draft Convention, in particular those provisions of the former purporting to delete provisions of the latter. This led her to wonder whether the idea of a mother Convention was conceivable with "offspring-like" Protocols which either purported to exclude the application of provisions of the future Convention or to go much further and suggested that the Study Group consider revisiting the division of tasks between the future Convention and the future Protocols. It was clear from reading the two texts that they had come from different sources and that there had not been sufficient time to harmonise them but, as they stood, she did not believe that they were ready to be submitted to Governments. While not wishing to enter into the detail of the two texts, she indicated that she was not sure that the preliminary draft Protocol had actually taken account of what seemed to her to be the dual regimen established under the future Convention according to whether the international interest in question had or had not been registered. She thought that the

purpose of international registration did not emerge very clearly from the texts and suggested that this might create a problem at the level of presentation for Governments. She enquired whether it was intended to have one Intergovernmental Regulator for all the different Protocols or rather a different one for each Protocol.

Mr Loewe concluded from the divergencies between the two texts to which Council members had drawn attention that it was vital to co-ordinate them before there could be any question of them going on to a further stage. He suggested that the Council discuss the modalities of this co-ordination after they had concluded their remarks on specific provisions of the two texts. He did not believe it served any useful purpose at this point to ask the drafters to respond to further individual questions. It was clear that the texts contained much that had attracted favourable comment but also much that had been the subject of criticism. He suggested that Council members should have the opportunity to send in comments by post within a short time after the session and that all comments made by them should be transmitted to those who would be responsible for the prosecution of work on the texts.

Mr Goode confirmed that all comments made by Council members would be recorded and taken into consideration in the following stage of work on the texts.

Mr Loewe invited remarks on specific provisions of the future Convention, starting with Chapter I.

Mr Voulgaris, referring to the definition of “court” in Article 1(f), suggested that the word “competent” be added so as to make it clear, for example in Article 9(1)(d), that only a competent court could issue such an order.

Mr Loewe pointed out that the term “court” as employed in the future Convention was synonymous with the term “competent court” in so far as the Convention did not regulate the question of jurisdiction. The competence of a court was a matter to be determined in accordance with national law. In relation to the role of the courts under the future Convention, he expressed concern at the possibility opened up under Article 6 for the parties to derogate from Article 9(1)(d), entitling the chargee to apply to the court for an order authorising or directing any of the remedies set forth under Article 9(1)(a)-(c). He did not believe that such a waiver of the right to apply to the court would prove acceptable to those many legal systems for which an individual’s right to apply to the court in cases where his interests had been damaged was regarded as akin to inalienable.

Mr Widmer noted that, whereas Article 6 of the future Convention appeared to make Article 9(2) mandatory, Article XI(2) of the preliminary draft Protocol purported to “delete” that same Article 9(2) “in its entirety”. This led him to enquire what was intended to be the relationship between the mandatory provisions of the future Convention and the future Protocols.

Mr Loewe responded that, however bizarre such an approach might seem, the preliminary draft Protocol was intended to modify the future Convention and could therefore do whatever it chose to.

Ms Collaço expressed doubts as to what was intended to be caught by Article 3(i). She felt the French text could be improved and wondered whether it meant that any object that was uniquely identifiable was caught.

Mr Loewe explained that the purpose of Article 3(i) was to open up the possibility of the sphere of application of the future Convention being extended to other categories of asset by the making of additional Protocols. He added that it was important to bear in mind that the future Convention was not intended to apply in respect of a given category of asset until such time as a Protocol had entered into force in respect of that category of asset (cf. Article X(a) of the future Convention). He invited remarks on Chapter II of the future Convention.

Mr Könkkölä noted that, whereas the interest created under the future Convention was defined as an “international” interest, the criteria of its internationality were nowhere to be found in the future Convention save by reference to those domestic transactions that could be made the subject of a declaration pursuant to Article W. He enquired whether he was right in deducing therefrom that all interests otherwise falling within the future Convention’s sphere of application would be “international” interests unless they fell under the terms of a declaration under Article W.

Mr Goode replied that that was indeed so. The Study Group had finally decided that the element of internationality should basically be satisfied by the nature of the equipment as mobile equipment. Whilst account had had to be taken of the fact that, even with equipment intended to remain in one State, the possibility could not be precluded of it moving elsewhere, Article W was introduced to deal with the case of, say, a train in one State running round a circle in such a way that it would never leave that State’s boundaries. Contracting States were accordingly given the possibility under Article W of making a declaration that, if the transaction was purely domestic in the sense that there was never any movement across its national frontiers, then the future Convention should not apply.

Mr Loewe, noting that Article W imposed a duty upon the courts of all Contracting States to respect any declaration made under its terms, remarked that, so long as the universal Convention on the recognition and enforcement of judgments under preparation by the Hague Conference on Private International Law was not in force, the courts of most States would continue largely to disregard the judgments handed down by the courts of other States, although somewhat less so in Europe thanks to bilateral treaties and the Conventions concluded under the auspices of the European Union. For this reason he believed that the future Convention and Protocol should avoid as far as possible imposing duties upon national courts with a view to avoiding the risk of contradictory judgments which he saw as the likeliest result of such a policy, with, for example, a court in one State holding that the chargee had the right to sell the asset and a court in another holding the opposite leading to a dispute between the new purchaser and the chargor. He believed that the future instruments’ chances of widespread acceptance would be immeasurably improved were they to steer clear of transnational law of procedure issues. This was also true of the future Convention’s rules on interim relief: he noted that the *forum actoris* established by Article 15(3) would run counter to the law of a great many States and that a number of Conventions, in particular Conventions drawn up under the auspices of the Hague Conference on Private International Law, had not been accepted by certain States because they were not prepared to accept the principle of the *forum actoris*. He had the sensation that insufficient account had been taken of these problems.

Mr Plantard suggested that the very real difficulties alluded to by *Mr Loewe* highlighted the timeliness of his proposal that the Institute should consider drawing up uniform rules on interim relief.

Mr Loewe considered that the problem was less one of which measures of interim relief could be taken at which time and more one of the recognition of interim relief measures ordered by a court in another State. Even if the relevant national laws made provision for the same interim relief in the same circumstances, this was no guarantee that a court in one State would recognise the interim relief ordered by a court in another.

Ms Zhang agreed that it would be better to concentrate efforts on the international rather than the internal implications of the subject. She also believed that it was important to improve the drafting of certain provisions of the proposed texts. In particular, she suggested that the drafting of Article 1(x) should be clarified in such a way as to indicate that, when it stated that an “unregistered interest” meant an interest “which ha[d] not been registered”, it meant an interest which had not been registered “in accordance with this Convention,” so as to make it clear that this provision was not concerned with the question as to whether the interest had been registered under domestic law. In Article 7(2), likewise with a view to avoiding possible confusion, on this occasion as to whether the reference to “general principles” might not also be interpreted as including general principles of national law, she suggested that it be made clear that this reference was to general principles of international law.

Ms Collaço raised what she saw as a fundamental observation regarding the definition of the sphere of application of the future Convention, namely the concept of the “international interest”. She noted that, whereas Article 1(h) defined such an interest as “an interest to which Article 2 applie[d],” nowhere did Article 2 indicate how such an international interest was to be distinguished from a domestic interest. Following up a point she had already touched upon, she stressed how vital it would be, in view of the novelty for many States of the international legal regimen instituted by Article 9 of the future Convention, for the sphere of application of the future Convention to be delimited more clearly as regards the criteria to be employed by a national judge for the purpose of distinguishing an international from a domestic interest.

Mr Loewe having invited comments on Chapters IV and V, *Mr Voulgaris* recalled the point he had raised earlier regarding the body or bodies that should have responsibility over the exercise of remedies against decisions of the Registrar not only as they affected the Registrar’s liability but also the parties’ relations *inter se*, for instance where an interest had been registered incorrectly.

Ms Collaço cited as an example of the type of provision in the proposed instruments which had shocked her from a technical point of view Article 17(3) in that it failed to say a word about the nature of the Intergovernmental Regulator, with all detail simply being left to the Protocol. She wondered, however, whether the fact that the future Convention referred the designation of the Regulator to the Protocol did not provide an indirect answer to her earlier enquiry as to whether one or more Regulators were envisaged: she deduced therefrom that different Regulators were probably also envisaged. She noted that, whereas Chapter IV failed to say a word about the composition of the Intergovernmental Regulator, Chapter V set forth detailed rules on the modalities of registration, some of which were in the nature of

regulations and to that extent did not perhaps merit inclusion in the body of a future international Convention, and accordingly suggested that the balance in the level of detail in these two Chapters needed to be redrawn.

Mr Loewe noted that it seemed likely that one Intergovernmental Regulator was envisaged for each Protocol, all the more so as each of the categories of equipment to be covered were so different and would therefore require different types of specialist expertise.

Mr Loewe having invited comments on Chapter VI, *Mr Voulgaris* indicated that he feared lest Article 28(3)(b), when read in conjunction with Article 4(b), delimiting the sphere of application of the future Convention, as it did, in terms of the object to which the international interest related, might lend itself to forum shopping designed to procure the discharge of existing national interests.

Mr Putzeys voiced his hesitations as to the compatibility of the rule set out in Article 29 with international Conventions on bankruptcy. He wondered in particular whether the rule provided under Article 29(1) (“an international interest is valid against the trustee in bankruptcy....if prior to the commencement of the bankruptcy....”) would be compatible with the period of insolvency (*carence*) given retrospective effect prior to the opening of bankruptcy proceedings. He suggested that it would be useful to check these provisions of the future Convention with such other Conventions.

Mr Loewe having invited comments on Chapter VII, *Mr Herrmann* echoed the remarks made by Mr C.W. Mooney, a member of the Study Group, as to the importance of due regard being paid in this chapter, as indeed throughout the preliminary draft Convention, to the parallel work on the preparation of a draft Convention on assignment in receivables financing underway within the United Nations Commission on International Trade Law (Uncitral). That project was also aimed at lowering the cost of credit, if not in the same amounts as those envisaged under the Unidroit project. He had been particularly gratified to hear in Mr Goode’s introduction to the preliminary draft Convention that one of the principal reasons underlying the Study Group’s decision in general to steer clear of proceeds was its desire to avoid any possible conflict with Uncitral’s project. He found this attitude particularly encouraging, not because of any inter-organisational rivalry in an area where both Organisations had been active at different times but rather for the eminently practical reason that inter-organisational co-operation was indispensable if future conflicts in the working of either instrument were to be avoided. It was true that, should it be decided to include proceeds or some of the receivables covered by the future Uncitral draft Convention within the sphere of application of the future Unidroit Convention, it would always be possible to resolve any future conflict between the two instruments by the inclusion in either instrument of a clause excluding those matters covered by the other. However, there would also be practical cases requiring active co-operation between the two Organisations with a view to ensuring the smooth working of either instrument in practice. One such issue concerned the need to ensure the compatibility of both instruments as regards those bulk assignments under which, for reasons of cost, a mass of receivables was sold or transferred for security purposes in bulk and in respect of which it was important that it should not be necessary to look into the question of which law applied, and which were the rights and duties of the parties attaching to each of the receivables concerned. He was grateful for the efforts that had been made by the Study Group at its last session to deal with this problem. He realised that shortage of resources did not always permit the Secretariats of the two Organisations to participate directly in one another’s

work, however interrelated the two efforts might be, as in this case. This, however, only served to highlight the need for the different Organisations working in this field - and he specifically included the Hague Conference on Private International Law in this remark - to realise that they were all working for the same cause.

Mr Loewe noted that the concerns of Mr Herrmann were intended to be dealt with under Chapter IX of the future Convention (Relationship with other Conventions). All efforts at unification had necessarily to pay due regard not only to what had been accomplished on the subject under consideration but also to what might be done thereon at some future date. This was never an easy task but he did not doubt that both the Study Group and those who would be responsible for carrying forward work on this project had done and would continue to do everything possible in this sense.

Mr Loewe having invited comments on Chapters VIII, IX and X, *Mr Putzeys* indicated that he presumed that the heading of Chapter VIII (*Non-consensual rights and interests*) was designed to cover those rights and interests vested in the State, such as the right to levy taxes and duties on the private property of its citizens as also on aircraft. He noted that Article 38(1) empowered each Contracting State to establish a list of such rights and interests. He pointed out, however, that this right to levy taxes and duties was not vested exclusively in States but also in international Organisations, in particular Eurocontrol, which was entitled to charge fees for air routes. The recovery of these fees by the asserting of real rights over the aircraft of defaulting airlines had become the subject of much litigation. The multilateral agreement establishing Eurocontrol had as a result just been amended and, while this amendment had still not been ratified by the different States, it was worth noting that it would have the effect of giving Eurocontrol real rights over aircraft. It would accordingly be desirable that Article 38(1) should be amended so as to take account not only of Contracting States but also of those Organisations of a public law character entitled to levy taxes and duties, in particular in respect of aircraft.

Ms Trahan noted that the Final Provisions featuring in the preliminary draft Convention did not contain the usual federal clause, included, for instance, in the Unidroit Conventions on International Financial Leasing and International Factoring.

Mr Loewe explained that the customary full complement of Final Provisions to the preliminary draft Convention had not been drafted to date but would be added subsequently at the appropriate time. For the time being only those Final Provisions dealing with issues that had arisen in connection with the Study Group's consideration of the substantive provisions of the preliminary draft Convention had been drafted. He enquired whether he could consider the Council to have completed its consideration of the preliminary draft Convention.

Mr Madl enquired as to the thinking of the Study Group regarding a part of the preliminary draft Convention that was missing to date, namely a preamble. This might usefully indicate the social orientation of the whole enterprise, for instance the question as to whether it should be geared towards a buyer's or a seller's market and its significance for the interests of Governments and those parties involved in the financing of such high-value mobile equipment.

Mr Loewe recalled that Mr Goode had already indicated that it was the intention in due course to prepare a preamble to the future Convention. He pointed out that the preamble was

traditionally one of the last parts of a draft Convention to be drafted. This followed logically from the fact that it was necessary to have a complete picture of the substantive rules that would feature in a draft Convention before considering what should feature in the preamble thereto.

Ms Trahan suggested that the point raised by Mr Madl went further than the simple question of a preamble and might usefully be considered in the context of the explanatory materials to be sent in due course to Governments with a view to the intergovernmental consultation process. The Secretariat was already in possession of precise economic data as regards the likely impact of the future Convention in relation to aircraft equipment. She suggested that an effort be made to extrapolate from this data precise information regarding its likely impact on the other categories of equipment covered by the preliminary draft Convention so that Governments might have a general idea as to its likely impact. She recalled that the Draft Economic Impact Assessment Study had estimated that the future Convention/Protocol would produce savings of 4% on an aircraft engine costing U.S.\$120 million. She thought that the transmission to Governments of figures like these would provide an invaluable pointer to the practical benefits that they could expect to derive from the proposed new international regimen. On a similar note, referring to the importance attached by Ms Zhang to the containment of the service fee to be charged for registration and the budgetary restrictions to which all Governments were currently subject, she suggested that it was important to indicate in the explanatory materials to be sent to Governments that one funding possibility being considered for the setting up of the International Registry was that it should be self-financing.

Mr Loewe considered that it would be difficult to include precise figures in any preamble that might be drafted to the preliminary draft Convention in that the only figures for the time being available were those relating to aircraft equipment. He moreover sounded a note of warning in relation to all the talk of savings, since, in his experience, a saving could only be made at the expense of another party, and insisted that the Council was not an appropriate forum in which to seek to improvise a preamble.

Mr Plantard enquired whether the Study Group had considered the case for including lorries and motor-cars in the sphere of application of the future Convention. There could be no doubt that the capital represented by the considerable number of such vehicles operating on a cross-border basis was substantial and he accordingly wondered whether thought had been given to the interest that the sellers and lessors of such vehicles might have in seeing them covered by the future Convention.

Mr Loewe imagined that, if it had been decided not to include motor vehicles, the International Road Transport Union (“*I.R.U.*”) must have considered that it was not advisable, at least for the time being to see them included, or that the motor industry favoured other methods of financing the acquisition of such vehicles, such as title retention agreements. He believed however that motor vehicles could well provide a possible future subject for the preparation of an additional Protocol.

Mr Putzeys believed that the question had never been raised with I.R.U. He nevertheless agreed that heavy goods vehicles, representing, as they often did, considerable amounts of money, would make a fitting subject for a future additional Protocol.

Mr Goode explained that a footnote to an earlier draft (Study LXXII-Doc.30) had invited views among members of the Study Group on the desirability of extending the sphere of application of the future Convention to embrace a whole range of additional categories of equipment, including lorries, but that the Study Group had in the event had doubts as to whether such an extension could be readily accommodated. He nevertheless drew attention to the generic provision (Article 3(i)) designed to permit the extension of the preliminary draft Convention to “objects of any other category each member of which is uniquely identifiable,” which would clearly make it possible to bring in motor vehicles, should there be general industry support for such a move. The fact that motor vehicles were not specifically referred to for the time being was not therefore to be taken as an indication that they had been overlooked but rather that the case for their inclusion had not yet been pursued with industry representatives.

Mr Loewe felt that the preliminary draft Convention should in any case be brought to the attention of the Organisations representing the interests of road hauliers, in particular I.R.U., leaving it up to them to decide whether they would be interested in becoming associated with the Institute’s work in this field. Only then should it be decided whether the equipment used by such road hauliers lent itself to treatment under the future Convention regimen.

Mr Putzeys requested that I.R.U. be approached as speedily as possible, since the Legal Affairs Committee of that Organisation was meeting on 14 May. This would enable him to request that the question be placed on the agenda at that meeting, while leaving it to that body to decide whether to refer the matter for further study.

Mr Loewe, having asked the Secretariat to make the necessary approach to I.R.U. as soon as possible, invited comments on the preliminary draft Protocol on matters specific to aircraft equipment. He recalled that Council members had already noted that the current version of the latter did not sit easily with the text of the preliminary draft Convention: this was essentially a problem of style inherent in the way in which the preliminary draft Protocol purported to disapply provisions of the preliminary draft Convention and to provide rules which had no basis in the latter. He suggested that the Council should proceed to make the necessary adaptations to the preliminary draft Protocol. Inviting comments on Chapter I, he noted that the preliminary draft Protocol started with the same American-style series of definitions favoured by the preliminary draft Convention, that Article II provided that the purpose of the Protocol was to modify the future Convention and that Article III provided for an interpretative note that was quite different from the rule on interpretation to be found in the preliminary draft Convention and asked whether Council members saw any difficulties in these provisions.

Mr Rose, noting that the future Convention was intended to apply in relation to specifically large items of mobile equipment, asked for clarification as to the size of the aircraft objects to be covered.

Mr Wool replied that the definitions of airframes and aircraft engines employed in the preliminary draft Protocol meant in simple terms that any jet aircraft, whether used for commercial or business purposes, as well as more advanced turbo-propeller aircraft, such as those used for regional transport, carrying approximately 20 passengers, would be covered.

What would not be covered would be smaller aircraft used, for example, for pleasure or agricultural purposes.

Mr Goode suggested that, in view of the short time Council members had had to study the preliminary draft Protocol and the difficult character of this text, it might be better to invite members to send in their comments in writing at such time as they had had the necessary time to consider it in more detail. Such a procedure would, he believed, permit the saving of time.

Mr Loewe endorsed Mr Goode's proposal. He suggested that, while Council members should not thereby be debarred from continuing to make comments at the session, they be given a period of time after the session to submit additional comments on both instruments in writing. These comments would assist those whose task it would be to reconcile the preliminary draft Protocol with the preliminary draft Convention. For his own part, he indicated that he was not happy with the legislative technique employed in a number of provisions of the preliminary draft Protocol purporting to "delete" provisions of the preliminary draft Convention (cf. Article XIII(5), for example). It was not for a Protocol to a Convention to delete provisions of the latter; at the most, it could provide that, in cases covered by the Protocol, certain provisions of the Convention should not apply. Neither was he happy with the way in which the preliminary draft Protocol in Article XXXI attributed jurisdiction in respect of substantive matters arising under the Protocol to the courts attributed jurisdiction in respect of interim relief under the preliminary draft Convention. It was somewhat surprising for a lawyer to see jurisdiction in respect of substantive matters attributed on the same basis as jurisdiction in respect of interim relief. Moreover, the way in which the preliminary draft Protocol sought to fix the matter of jurisdiction whereas the preliminary draft Convention did not testified, to his mind, to the different conceptual approaches taken by the two instruments. Finally, he echoed the concern expressed by Ms Zhang at the attempt made in Article XXXI(2) to create an immunity from jurisdiction. It was not a good moment to seek to create new immunities from jurisdiction and he had difficulty imagining how Governments could be expected to accept a rule the effect of which would be to exonerate the International Registry from liability for negligence.

Mr Voulgaris noted that, whilst it might not in principle seem fair to confer such an immunity from liability, it was important to bear in mind that the effect of such a rule would be restricted to Contracting States so that it would be a decision for them to take.

Mr Putzeys pointed out that the issue raised by Mr Loewe was of such importance and raised so many problems, in particular in the context of the arrest of aircraft, as to merit a complete session of the Council on its own, although he did not think it appropriate to open a debate on the subject on this occasion. His remarks were rather directed at those whose responsibility it would be to carry forward work on these texts. He referred to the injunction theory developed in the United States of America, concerning whether national courts were competent to address injunctions to international Organisations, like the proposed International Registry, even in the exercise of their functions. This theory drew a distinction between the immunity from jurisdiction of an international Organisation in the exercise of its functions of a public law character, on the one hand, and the liability flowing therefrom, in respect of which it was not entitled to invoke that immunity, on the other. This distinction was valid for the Commission of the European Union just as it would be valid for other international Organisations.

Ms Collaço requested clarification as to the meaning of the term “precatory” as employed in the heading of Chapter V of the preliminary draft Protocol.

Mr Goode wondered whether there might be a difference between the English and American usage of this term. In English it was often used in the context of wills to denote what the testator would like his executors to do, while not imposing an obligation on them. He expressed his gratitude to Mr Putzeys for drawing attention to an issue that had indeed exercised the Study Group, where he had himself urged a distinction very much on the lines of that referred to by Mr Putzeys. While he could not speak for the Aircraft Protocol Group on this issue, the Study Group had been concerned to avoid a situation in which a national court could give orders directly to the Registry to remove a registration, in view of all the problems inherent in such a situation, in particular the possibility of courts in different States giving competing orders. It had not, however, been the intention to deal with the question of the liability of the Registry for acts and omissions causing loss. It had always been clearly understood that the Registry would be liable for such acts and omissions, the only questions being who should fix the penalty and, should it be a court, whether that court should be a court of the host State of the Registry.

In response to a query from *Ms Collaço*, *Mr Loewe* confirmed that Council members would have a period of time after the session to submit further comments in writing on the two texts, in particular the preliminary draft Protocol, but that those comments made during the session would also be fully recorded. He proposed that additional comments should be submitted to the Secretariat no later than two months after the session. It had been proposed that the two texts should be transmitted to Governments with a view to both inviting their comments and convening a committee of governmental experts. He believed, however, that a preliminary step was required, namely the harmonising of the two texts. As these stood, it was all too clear that they emanated from different sources and in this state they could not be considered ready for transmission to Governments. He enquired as to the thinking of the Secretariat on this point.

Mr Stanford recalled that a steering group, set up in the context of the Study Group, was already in existence for the vetting of each preliminary draft Protocol, as and when it materialised, from the point of view of its compatibility with the preliminary draft Convention. As Mr Goode had mentioned (cf. p.7 *supra*), it would be for the Steering Group to carry out this vetting in respect of the preliminary draft Protocol on matters specific to aircraft equipment, although, as Mr Goode had also announced (cf. p.11 *supra*), it was considered that the terms of reference and composition of this group needed to be broadened so as to facilitate this process, *inter alia* by bringing into it the parties responsible for the preparation of the different preliminary draft Protocols as well as those intergovernmental Organisations having indicated their willingness to co-ordinate with Unidroit the intergovernmental consultation process in respect of each preliminary draft Protocol (for example, I.C.A.O. and O.T.I.F. in respect of the preliminary draft aircraft equipment Protocol and the preliminary draft railway rolling stock Protocol respectively). Representatives of Unidroit, including Mr Goode, had held informal discussions the previous day with representatives of I.C.A.O., I.A.T.A. and A.W.G. on this process as it related to the preliminary draft aircraft equipment Protocol and the consensus emerging from those discussions had favoured the Steering Group meeting in June 1998, not for the purpose of completely redrafting the two texts, which could, it was hoped, be transmitted in the meantime

to Governments, but rather to make the drafting adaptations necessary to bring the two texts into line, which could then also be transmitted to Governments.

Mr Loewe considered that the sense of the Council was that it would be wholly inappropriate for the texts to be transmitted to Governments prior to their consideration by the Steering Committee. It would be for the Steering Committee to improve the compatibility of the two texts one with the other, from the point of view of both their form and their content, before they could be considered to be in a state fit to be transmitted to Governments. It would not be acceptable procedure vis-à-vis Governments for Unidroit to transmit a text to them whilst, at the same time, informing them that the text in question was to be modified a couple of months later. The Steering Committee meeting could be arranged for June, as had been suggested, and he proposed that it be opened up to include, in addition to those parties responsible for the preparation of the preliminary draft aircraft equipment Protocol, those parties engaged in the preparation of other preliminary draft Protocols, so as also to enhance the compatibility of future preliminary draft Protocols with the future Convention. These additional parties might, he suggested, be invited as observers.

Mr Goode asked that the Council consider an intermediate solution designed to accommodate the anxiety of certain Governments to have the maximum time possible to consider the texts prior to the first meeting of governmental experts, even if this meant that the texts in question were not in their revised form. Under such a solution, it might be envisaged authorising the immediate transmission of both texts to Governments, accompanied, however, by a note explaining that this procedure was being followed with a view to giving them the maximum amount of time to familiarise themselves with the basic lines of the two texts but that it was intended to work on the preliminary draft Protocol with a view to transferring certain of its provisions into the body of the preliminary draft Convention and reducing or aligning, as to style, the remainder with those of the preliminary draft Convention.

Mr Loewe could not imagine his Government being anxious to consider texts that were to be modified two months later but indicated that he would be willing to consider the proposal if it were to be felt that other Governments might take a different view.

Mr Clark supported Mr Goode's proposal for a number of reasons. First, his Organisation and A.W.G. had organised a series of governmental briefings, one of which, to be co-hosted by the Commission of the European Union, was to be held in Brussels during the week commencing on 10 May. The Commission had requested early circulation of the preliminary documents so as to permit substantive discussion at the briefing. It had always, however, been understood that the two texts would need to be harmonised and that some redrafting would therefore be necessary. Secondly, each Government would have a number of departments of State that would need to be sounded in the formulation of its policy in relation to the texts. This would require a considerable degree of co-ordination, which could only be achieved on the basis of a general understanding of the major issues. These issues were already reflected in the texts, even if these were subsequently to be revised. For this work of co-ordination Governments were going to need the maximum amount of time available. This was essential if they were to be able to play a full part in the intergovernmental consultation process. He believed that Mr Goode's proposal could save them a great deal of valuable time.

Mr Loewe saw some problems with *Mr Goode's* proposal. Council members had made a number of comments criticising the two texts and were to have the opportunity of submitting further comments in writing. He could not see how the Council could authorise the transmission of the texts, even in a provisional, unrevised form, to Governments without the comments made by its members. He accordingly proposed as a compromise solution that, once the two months that Council members were to be allowed to formulate comments in writing had elapsed, the texts should be transmitted to Governments together with the comments formulated by Council members both during its 77th session - in the form of an extract from the report on the session - and subsequently in writing. Governments would thus at once see that the texts were provisional only and would not be given the illusion that they were ready for intergovernmental negotiations.

In line with a suggestion from *Mr Putzeys*, *Mr Loewe* further proposed that the time for Council members to submit additional comments in writing should be reduced to one month so as to speed up the procedure he had proposed.

Mr Plantard feared lest transmitting the texts to Governments in their unrevised form, even accompanied by Council members' comments, could be counter-productive. Looking at the matter from the point of view of his Authorities, he anticipated that their reaction might take one of two forms: either they would simply file away the texts, which were extremely complicated and not easy to understand, pending receipt of the revised versions or there might actually be an unfavourable reaction on the part of some of the several departments of State that would be interested in the project. He accordingly favoured a solution that would enable the text of the preliminary draft Protocol to be further refined and made more consistent with that of the preliminary draft Convention, along the lines suggested, prior to its transmission with the preliminary draft Convention to Governments with a view to the convening of governmental experts. Only in that way was it likely that Governments, having been informed of the dates for the holding of the first session of governmental experts and received the texts to be discussed on that occasion, would be prepared to give due consideration to the texts.

Mr Pirrung shared *Mr Plantard's* point of view. It would be very hard for Governments to know how to react to texts transmitted to them with a note that they were shortly to be substantially amended - and it seemed to him that the work of co-ordination that would be required to bring the two texts into line would necessitate amendments that would be nothing short of substantial. He emphasised the number of consultations that would have to be completed by his Authorities prior to the first session of governmental experts. In federal States like his these consultations had, moreover, to be conducted not only at the federal level but also at State level and would require at least six months. For such consultations to be meaningful they needed, furthermore, to be conducted on the basis of texts that were sufficiently definitive to be able to be considered a solid foundation for the negotiations to take place at the first session of governmental experts. He entered a plea that attention be taken not to jeopardise the creation of that solid foundation purely for the sake of speed, and on such an important subject.

Mr Goode indicated that he felt a great deal of sympathy for the views expressed by Messrs *Plantard* and *Pirrung*. He accepted that there was a risk that, if the texts were transmitted to Governments with a note indicating that they were shortly to be substantially amended, Governments might decide to delay their internal consultation procedures until their receipt of the texts as amended. This had, however, to be balanced against the need to keep up

momentum. He accordingly proposed that the Steering Committee meet, say, in June, by which time it would have the benefit of both the oral and written comments made by Council members, and that it produce as speedily as possible revised texts of the preliminary draft Convention and Protocol, with the latter being simplified and aligned, as to style, with the preliminary draft Convention and those of its provisions capable of a more general application being moved into the body of the latter. The revised texts would be transmitted to Governments as soon as possible thereafter and a first session of governmental experts convened for a date that would leave Governments a full six months for the carrying out of their internal consultations. While this might appear to involve some small delay in the short term, he believed that, in the long term, it could well save time and avoid exposing the texts to the risk of a hostile reception from Governments.

Mr Loewe noted that there was general support among Council members for the last proposal tabled by *Mr Goode*. He assured I.A.T.A. and A.W.G. that this in no way impaired their ability already to communicate the unrevised texts to their membership: it would suffice that they indicate that these texts were close to being ready for transmission to Governments and that they would be so transmitted as soon as possible after the Steering Committee meeting. He confirmed that Council members would have one month after the session in which to formulate additional comments in writing. Subject to the possibilities of the Secretariat and the availability of the persons involved, the Steering Committee could meet toward the end of May for the purpose of harmonising the texts, in particular in the light of the comments made by Council members. Governments could subsequently be invited to a first session of governmental experts, to be held approximately six months later, and at the same time to formulate comments on the revised texts with a view to that first session. This left one matter outstanding, namely the desire of the Aircraft Protocol Group to see the adoption of a resolution concerning this item on the agenda. It was not, however, customary for the Council to adopt such resolutions save in exceptional circumstances and these did not include matters regarding the Work Programme. He suggested that the result sought by the proponents of such a resolution could just as easily be obtained via the conclusions in respect of this item on the agenda to be prepared by the Secretariat. These conclusions would establish what had been decided on this item.

Mr Farnsworth suggested as a compromise solution that representatives of the Aircraft Protocol Group be able to assist the Secretariat in drafting a sentence or two of the conclusions on this item with a view to accommodating its special concerns, subject only to what was drafted being consistent with the general tenor of the Council's deliberations.

Mr Loewe agreed that the form of the conclusions to be appended to the Council's deliberation on this item should be the subject of discussion between the Secretariat and representatives of the Aircraft Protocol Group.

Following a brief pause requested by *Mr Wool* in order to consult his Aircraft Protocol Group colleagues, *Mr Goode*, reporting on the outcome of the Aircraft Protocol Group's deliberations, at the invitation of *Mr Loewe*, was able to report that the sense of the Council's decision had been taken on board by the Aircraft Protocol Group. Thus, members of the Council would have until the end of March during which to formulate any additional comments and the renamed Steering and Revisions Committee would try to meet in May 1998 for the purpose of revising the preliminary draft Convention and Protocol in such a way that clean texts could then be transmitted to Governments with a view to the convening of a first

session of governmental experts towards the end of the year. He assured members of the Council that due account of all their comments would be taken in the revision process.

Mr Loewe noted that the meeting of such deadlines, and in particular the question whether the Secretariat would be able to convene a first session of governmental experts for December 1998 or whether such a meeting might have to be held back until January 1999, was a matter that would have to be left to the Secretariat, in that it would clearly be dependent on the Secretariat's actual possibilities.

Responding to a request for clarification from *Ms Trahan*, *Mr Loewe* confirmed that the sessions of governmental experts would be convened jointly by Unidroit and I.C.A.O. He added that, in due course, it was the hope that the result of such sessions could be laid before a diplomatic Conference. In this connection he noted that the possibility should not be excluded that one or more other draft Protocols might be ready by that time for consideration by such a conference. This would depend on the rate of progress made on such other draft Protocols.

Responding to a request for clarification from *Ms Collaço*, *Mr Loewe* confirmed that the Secretariat would be free to invite those Organisations it deemed appropriate to designate representatives to attend the sessions of governmental experts as observers.

Mr van Loon indicated that his Organisation would be pleased to offer its assistance in the work that lay ahead. Attention had been drawn during the session to outstanding questions of a private international law character. His Organisation would do its best to attend the Steering and Revisions Committee meeting and in this connection he asked that the Secretariat take account in planning that meeting of the fact that his Organisation and Uncitral would be co-hosting a working group on receivables financing in the week commencing on 17 May.

Mr Loewe indicated that the Secretariat would, as was its custom, in planning the Steering and Revisions Committee meeting ensure that the dates chosen would permit all interested parties to be present.

(c) *Conclusions*

1. – The Council, noting with appreciation the work accomplished by the Study Group and the Aircraft Protocol Group with the establishment of a preliminary draft Convention on International Interests in Mobile Equipment and a preliminary draft Protocol thereto on matters specific to aircraft equipment respectively, decided that these texts should be further refined by a steering and revisions committee (“*the Steering and Revisions Committee*”) before and with a view to their submission to governmental experts. It was envisaged in particular that those provisions of the preliminary draft Protocol capable of application to the generality of equipment encompassed by the preliminary draft Convention be moved accordingly and that the preliminary draft Protocol be generally aligned, as to both style and terminology, with the preliminary draft Convention. Observations made by members of the Council during their discussion of the preliminary draft Convention and Protocol had been noted and the points made would be included in the matters to be considered by the Steering and Revisions Committee and by governmental experts. Members of the Council would also have the opportunity until the end of March 1998 to submit written comments on both texts with a view to their consideration by the Steering and Revisions Committee, which

should meet in May 1998. Its business would be to prepare clean texts of the preliminary draft Convention and Protocol in English and French such as to permit their prompt transmission to Governments with a view to a meeting of governmental experts, to be held by December 1998 and to be organised jointly by Unidroit and I.C.A.O., as part of their co-sponsorship of the intergovernmental process in respect of the two texts.

2.- The Council agreed that membership of the Steering and Revisions Committee should be open to representatives of Unidroit, I.C.A.O., and, as core members of the Aircraft Protocol Group, I.A.T.A. and A.W.G. Its terms of reference should be to co-ordinate the preliminary draft Convention and Protocol throughout intergovernmental negotiations, in particular so as to reflect decisions taken and comments received, and to deal with other matters relating to the preparation of these texts for adoption at a diplomatic Conference. It should be able to co-opt such experts as might be required to deal with special aspects of the texts.

3.- The Council noted with appreciation the work in progress in respect of preliminary draft Protocols on matters specific to railway rolling stock and space property and the agreement of O.T.I.F. to co-ordinate work with Unidroit on the intergovernmental process in respect of a preliminary draft Protocol on matters specific to railway rolling stock and the proposal of the Office for Outer Space Affairs of the United Nations that the preliminary draft Protocol on matters specific to space property, once completed, be forwarded to that Office with a request that it be made available to member States of the United Nations Committee on the Peaceful Uses of Outer Space for their information.

4. - The Council agreed that the Secretariat should promptly contact I.R.U. with a view to determining whether that Organisation might be interested in participating in further stages of the Institute's work on this subject and in particular whether its members might see merit in lorries being encompassed within the future Convention's sphere of application and therefore in the preparation of a Protocol thereto on matters specific to lorries.

APPENDIX

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