



UNIDROIT Committee of governmental  
Experts for the preparation of a draft  
Convention on International Interests  
in Mobile Equipment and a draft  
Protocol thereto on Matters specific  
to Aircraft Equipment



Sub-Committee of the ICAO Legal  
Committee on the study of international  
interests in mobile equipment  
(aircraft equipment)

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## **THIRD JOINT SESSION**

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## **REPORT**

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## OPENING

1. In opening the third Plenary Session of the Joint Session of the UNIDROIT Committee of governmental experts for the preparation of a draft Convention on International Interests in Mobile Equipment and a draft Protocol thereto on Matters specific to Aircraft Equipment, and of the Sub-Committee of the ICAO Legal Committee on the study of international interests in mobile equipment (aircraft equipment), Mr H. Kronke, Secretary-General of UNIDROIT, welcomed participants on behalf of the President of UNIDROIT, Mr B. Libonati, and the UNIDROIT Governing Council. He underlined the considerable progress that had been made since the second Joint Session, held in Montreal in August/September 1999, and thanked all those who had contributed to making this progress possible.

2. Mr Kronke stated that the envisaged structure of a “parent” Convention with equipment-specific Protocols was no longer a source of concern to States, also as a result of the efforts that had been made to move provisions that made sense for more than one type of equipment to the Convention, which had produced a greater equilibrium between the Convention and the Protocols. There was also a growing awareness that the Protocols were not intended to override the Convention as a whole, but that the Convention instructed users to look for equipment-specific details in the Protocols.

3. The concern about time expressed at the beginning of the process by the aviation Organisations was a legitimate one and provided an incentive to proceed with the greatest speed possible. He stressed that work on the *Protocol on Matters specific to Railway Rolling Stock* and on the *Protocol on Matters specific to Space Property* was progressing rapidly. In fact, a Steering and Revisions Committee for the Rail Protocol had met the previous week. He stressed that work on the other Protocols did not interfere with work on the Aircraft Protocol. Mr Kronke concluded by indicating that a diplomatic Conference for the adoption of the preliminary draft Convention and the preliminary draft Aircraft Protocol might confidently be expected to be held early in 2001.

4. In his opening statement, Mr S. Espínola, Principal Legal Officer of ICAO, welcomed participants on behalf of Mr R.C. Costa Pereira, Secretary General of ICAO, and Mr L. Weber, Director of the ICAO Legal Bureau. He recalled that this third Joint Session was expected to finalise the draft instruments under consideration in order for them to be submitted to the ICAO Legal Committee. He however drew attention to the fact that the legal and practical implications of a number of provisions had not yet been defined. Further attention needed in particular to be given to the provisions relating to self-help remedies and judicial interim relief. In this regard, he announced that two working papers prepared by the ICAO Secretariat, one on declarations and derogations (UNIDROIT CGE/Int.Int./3-WP/11; ICAO Ref. LSC/ME/3-WP/11) and the other on remedies and interim relief (UNIDROIT CGE/Int.Int./3-WP/12; ICAO Ref. LSC/ME/3-WP/12), were being distributed for the consideration of the Joint Session. He suggested that attention should be focussed on the outstanding issues so as to arrive at texts capable of obtaining broad acceptance by States and underlined that, in the view of the ICAO Secretariat, acceptability and ratifiability were overriding objectives in the finalisation of the texts.

5. Mr Espínola recalled that at the second Joint Session the ICAO Secretariat had been invited to illustrate the ICAO position as to its possible involvement in the future international registration system for aircraft objects. He stated that the indications requested would be provided in the course of the discussions on the Registry.

6. Ms E. Chiavarelli (Italy) was Chairman of the third Joint Session. The Joint Secretaries were Mr M.J. Stanford, Principal Research Officer, UNIDROIT and Mr S. Espínola, Principal Legal Officer, ICAO. Ms F. Mestre (UNIDROIT), Ms L. Peters (UNIDROIT), Ms M. Schneider (UNIDROIT), Mr A. de Fontmichel (UNIDROIT) and Mr J. Huang (ICAO) acted as Assistant Secretaries.

7. The third Joint Session was attended by 142 participants from 38 States and three intergovernmental Organisations and seven international non-governmental Organisations (cf. Attachment A).

**AGENDA ITEM 1: ADOPTION OF THE AGENDA**

8. The Agenda was adopted as proposed.

**AGENDA ITEM 2: ORGANISATION OF WORK**

9. It was decided that, in order to facilitate the work of the Drafting Committee, it would meet initially in the same composition as the restricted Drafting Group that had met in Rome from 25 to 27 November 1999 (Mr J.M. Deschamps (Canada), Mr R.M. Goode (United Kingdom/*Rapporteur*), Mr C.W. Mooney, Jr. (United States of America) and Mr O. Tell (France)). In conformity with the decision taken by the second Joint Session (cf. ICAO Ref. LSC/ME/2-Report / UNIDROIT CGE/Int.Int./2-Report, §6:2), Mr K. El Hussainy (Egypt) and Mr H.-G. Bollweg (Germany) were also invited to attend, and in addition Mr J. Wool (Aviation Working Group) (hereinafter referred to as "A.W.G.") was invited to attend the meetings as an adviser. It was further decided that the Drafting Committee would be convened in Plenary by its Chairman, Mr K.F. Kreuzer (Germany), as appropriate.

**AGENDA ITEMS 3 AND 4 (ICAO AGENDA ITEM 3): CONSIDERATION OF THE [PRELIMINARY] DRAFT [UNIDROIT] CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT (HEREINAFTER REFERRED TO AS THE "[PRELIMINARY] DRAFT CONVENTION") AND THE [PRELIMINARY] DRAFT PROTOCOL THERETO ON MATTERS SPECIFIC TO AIRCRAFT EQUIPMENT (HEREINAFTER REFERRED TO AS THE "[PRELIMINARY] DRAFT PROTOCOL"), AS REVIEWED BY THE *AD HOC* DRAFTING GROUP, CONSTITUTED BY THE SECOND JOINT SESSION, AT ITS MEETING HELD IN ROME FROM 25 TO 27 NOVEMBER 1999, AND IN THE LIGHT OF THE REPORT ON THE SESSION OF THE PUBLIC INTERNATIONAL LAW WORKING GROUP, HELD IN CAPE TOWN AND ON THE BLUE TRAIN FROM 8 TO 10 DECEMBER 1999**

***Presentation of the progress made in relation to the preliminary draft Protocol on Matters specific to Railway Rolling Stock***

10. A presentation of the progress made with respect to the preliminary draft Rail Protocol was made by Mr H. Rosen, observer of the Rail Working Group (hereinafter referred to as "R.W.G."). He stressed the differences that existed between the rail and the aircraft sectors by reason of the traditionally heavy involvement of States in national railways and of the difficulties that privatisation had given rise to. He announced that a study assessing the economic impact of the preliminary draft Protocol would be prepared shortly. Mr Rosen indicated that the Rail Protocol would soon be ready for consideration by a committee of governmental experts.

11. The observer from the Intergovernmental Organisation for International Carriage by Rail (O.T.I.F.) stressed the changes that the privatisation process had brought to the railway sector. He expressed the strong support of his Organisation for the presently envisaged structure of a "parent" Convention with equipment-specific Protocols.

***Presentation of the progress made in relation to the preliminary draft Protocol on Matters specific to Space Property***

12. Mr D. Panahy, observer of the Space Working Group (hereinafter referred to as “S.W.G.”), illustrated the progress made with respect to the preliminary draft Space Protocol and the importance that the Protocol would have in economic terms.

13. The observer of the European Space Agency also stressed the economic importance of the preliminary draft Space Protocol and the need to consider the interests of all parties in the process. He observed that both the Convention and the Space Protocol would be well received by States as well as by the private sector. He indicated that it would however be necessary to ensure appropriate co-ordination between the future Convention in its application to space property and the existing body of international space law.

14. Mr Stanford (UNIDROIT Secretariat) indicated the different initiatives in which the UNIDROIT Secretariat had participated since the previous Joint Session with a view to publicising awareness of the issues involved in the preliminary draft Space Protocol.

***General discussion***

15. A number of delegations expressed their support for the presently envisaged Convention/Protocol structure, one delegation indicating that the reservations it had previously entertained no longer had reason to exist, although an informal integrated text would make it easier to understand the overall regimen. One delegation however suggested that a single structure might be preferable, and another that it would prefer to keep its options open.

16. Several delegations and observers expressed their concern in relation to the opening statement made by the ICAO Secretariat, which appeared to reopen discussion on the philosophy underlying the instruments. It was stressed that the purpose of the instruments under preparation was to make aircraft or equipment financing more available and at much lower cost, primarily in the markets that were in need of such financing and that the means to achieve this purpose was the introduction of modern asset-based financing laws. A number of delegations however stated that they were not in a position to take a stand on the ICAO Secretariat’s comments as they had not yet examined the papers concerned.

17. One delegation expressed the view that the draft instruments had so far been creditor-oriented and that they should be looked at in more depth.

18. Mr Espínola (ICAO Secretariat) indicated that the intention of the ICAO Secretariat’s papers was to assist the discussion of the Joint Session, in particular by flagging the concerns of the ICAO Secretariat. The ICAO Secretariat considered that a better balance could facilitate acceptance of the draft instruments.

19. One observer stressed his Organisation’s commitment to the rapid progress of the Aircraft Protocol and expressed strong support for the work underway in relation to the Rail and Space Protocols. He stated that the reports on the progress made with respect to these Protocols clearly showed that the only international Organisation capable of pulling together all the different strands was UNIDROIT. The central role of UNIDROIT must, he stated, be maintained also in relation to the Rail and Space Protocols.

20. It was decided that Items 3 and 4 on the UNIDROIT Agenda would be dealt with in parallel.

***Presentation of the Report of the Public International Law Working Group***

21. Ms G.T. Serobe (South Africa), Chairman of the Public International Law Working Group, presented the Report of the meetings of the Working Group that had taken place on 20 and 21 March 2000 (UNIDROIT CGE/Int.Int./3-WP/18; ICAO Ref. LSC/ME/3-WP/18).

22. A number of delegations proposed amendments to the Report. The Chairman of the Joint Session pointed out that it was not for Plenary to modify the Report of the Working Group, which had to remain unchanged in so far as it represented the conclusions reached by that Group. Delegations' comments on the Report would be reflected in the Report on the Joint Session.

23. In relation to paragraph 5 of the Report, the *Rapporteur* indicated that the last sentence should be deleted, as it was inconsistent with the remaining text of the paragraph.

24. Article XXII of the [preliminary] draft Protocol as proposed by the Public International Law Working Group was approved and referred to the Drafting Committee for final drafting.

25. With reference to the single or dual system of registration, whilst one delegation stressed the importance of a single registration system, another delegation supported a dual registration system for the registration of national and international interests, considering also the system presently in force under the Geneva Convention. In support of this view, that delegation indicated that for developing countries the fees under the new system might be very high and, depending on where the Registry was located, access might also be difficult. It furthermore considered the word "impracticable" in paragraph 7 of the Report to be too strong. Another delegation indicated that in an electronic system access would be from any country.

26. One delegation insisted on the role of national registries as correspondents for the International Registry, indicating that these bodies would themselves be required to distinguish between their national and international roles.

27. One delegation reiterated its preference for the inclusion of aircraft as such in the list of equipment in Article 2.

28. It was decided that the Drafting Committee should consider the inclusion of a new opt-out provision relating specifically to the 1933 Rome Convention for the Unification of Certain Rules relating to the Precautionary Attachment of Aircraft.

29. In relation to the Convention/Protocol structure envisaged for the [preliminary] draft Convention and Protocol, it was agreed that one delegation and the Secretary-General of UNIDROIT would provide the Joint Session with a list of the precedents indicated in paragraph 9 of the Report. It was stated that the proposed system was not inconsistent with the 1969 Vienna Convention on the Law of Treaties (hereinafter referred to as the "Vienna Convention") or general treaty practices.

30. With reference to the procedure to be adopted for additional Protocols, the options envisaged in addition to the traditional diplomatic Conference procedure were a fast-track opting-in procedure and an expedited form of the traditional diplomatic Conference procedure. One possibility considered was that the General Assembly of UNIDROIT might be empowered to adopt the instruments under such an expedited form of the diplomatic Conference procedure.

31. The question was raised whether the fast-track approach was only intended for the future Rail and Space Protocols, or whether it had also been considered to be appropriate for other possible future Protocols. There was general agreement that a differentiation had to be made between the future Rail and Space Protocols, on the one hand, and other possible future Protocols, on the other. Some delegations however felt that it was too early to decide upon the procedure to be employed in respect of additional future Protocols.

32. Whilst one delegation favoured the fast-track approach at least as regards the future Rail and Space Protocols, others questioned the possibility of opting for such an approach, considering the fact that Governments had not participated in their preparation and stated a clear preference for a traditional diplomatic Conference procedure.

33. As regards the possibility that UNIDROIT might be called upon to act as depositary for the future Convention and Protocols, some delegations indicated that other solutions should also be kept open.

34. One delegation suggested that the sentence in paragraph 10 of the report “[h]owever, this was balanced by concerns about the political acceptability of a process that would substantially reduce the scope for governmental control” should be reformulated so as to read “[h]owever, it was recognised that a balance needed to be established with the appropriate governmental processes”.

35. As regards the number of ratifications that should be necessary for the entry into force of the future Convention/Aircraft Protocol, there was general agreement that it should be kept low.

36. As regards the entry into force of amendments, one delegation indicated that there had not been a consensus within the Public International Law Working Group regarding the words inside brackets in paragraph 16 (“and in any case less than 50%”). Other delegations agreed on this point and stated that more traditional percentages (for example, 75% of Contracting States) should be adopted instead.

37. In relation to the chapeau of Article U(1), one delegation indicated that the word “accession” caused problems and suggested that it be deleted.

38. As regards the question of whether States could be a party only to the Convention, without being a party to one of the Protocols, opinions were divided. Whilst one delegation stated that as States had to be Parties to a Protocol for the Convention to become operative, the future Convention would not in itself constitute a treaty as understood by the Vienna Convention another delegation indicated that it was not apparent why a State should not be able to ratify the Convention itself. The only importance this question had was, in that delegation’s opinion, the fact that the Convention would not produce legal effects unless, and only to the extent that, a State had ratified a Protocol.

39. As regards the three months that the Report (paragraph 18) proposed should be required for the entry into force of the instruments following the deposit of a State’s instrument of ratification, one delegation expressed a preference for the customary six months, as the three months proposed would cause constitutional problems. It was decided that this question should be left for the diplomatic Conference to decide.

40. In relation to the international liability, immunity and privileges of the Supervisory Authority and Registrar, one delegation suggested that the Convention should be modified to make it clear that the power given to the Supervisory Authority to give directions to the Registrar did not include the power to make the Registrar change what was on the Registry.

41. One delegation suggested that Article 26(4)(a) might be deleted.

42. In relation to whether the immunity and privileges should be specified in the future Convention or in the future Headquarters Agreement of the Supervisory Authority or Registrar, one delegation stated that minimal requirements needed to be spelled out in the future Convention or in the future Protocol, but that a Headquarters Agreement would in any case be necessary. The same delegation felt that the possible circumscription of the control to be exercised by the Supervisory Authority over the Registrar to administrative matters, as indicated in paragraph 20 of the Report, was too restrictive, as the Supervisory Authority would be expected to have certain regulatory functions.

43. As regards the relationship between the future Convention/Aircraft Protocol and the 1944 Chicago Convention on International Civil Aviation, one delegation suggested that it be made clear that this relationship, as well as that between the future Convention/Aircraft Protocol and the Geneva Convention system, would not change. This was particularly relevant for registration, as it was likely that filing in both registries would be required for some time to come for parties to ensure maximum protection for their rights.

44. As regards the relationship between the future Convention/Aircraft Protocol and the 1988 UNIDROIT Convention on International Financial Leasing, one delegation indicated that it was not in a position to take a final stand and that this question needed further study. It suggested that this applied also to the relationship between the future Convention/Aircraft Protocol and the 1988 UNIDROIT Convention on International Factoring.

45. As regards the question of the priority of pre-existing interests and the two options that the Working Group had submitted to Plenary (paragraph 28 of the Report, Options A and B), a number of delegations indicated that further consideration would be necessary.

46. Whilst a couple of delegations indicated a preference for Option B, one delegation observed that airlines would not be in favour of that Option. A majority of delegations showed their preference for Option A.

47. It was agreed that a Federal State extension clause should be included in the Protocol. With reference to the interpretation clause for States with a non-unified legal system, one delegation suggested that States with an interest in this regard should meet to identify the terms in the future Convention and Protocol that required definitions.

#### ***Preamble to the [preliminary] draft Convention***

48. It was decided to delete the clause of the Preamble in square brackets in the [preliminary] draft Convention, and to defer consideration of its possible inclusion in the Space Protocol to the discussions on that Protocol.

#### ***Preamble to the [preliminary] draft Protocol***

49. The Preamble to the [preliminary] draft Protocol was adopted without modification.

#### ***Article 1 of the [preliminary] draft Convention***

50. Modifications or suggestions were made *inter alia* in relation to the following definitions and referred to the Drafting Committee:

(b) “assignment” – it was suggested that the Drafting Committee examine whether the definition was broad enough to cover pledges of receivables;

(n) “insolvency administrator” – it was suggested that the Drafting Committee consider replacing “appointed” by “authorised”, or combining the two terms: “appointed or authorised”;

(p) “interested persons” – it was suggested that the Drafting Committee consider whether the reference to “insolvency administrator in (n) should be included in (p), or whether it should be inferred that the reference to the debtor in Article 28 included a reference to the insolvency administrator;

(x) “proceeds” – it was suggested that it should be made clear that partial as well as total loss was covered;



(bb) “Protocol” – it was decided that the question of whether the definition of category of object dealt with in the Protocols could have geographic scope should be dealt with in the context of the Protocols;

(ff) “Registrar” – it was suggested that the words “or body” should be added after “person” so as to cover both legal and physical persons;

(mm) “title reservation agreement” – it was suggested that the Drafting Committee re-examine this definition in the light of the inter-relationship of the definitions of the different terms used in the definition;

(oo) “writing” – it was suggested adding the words “where required” after “which indicates” and that the following words should be amended to read “by reasonable means the approval of the record and the initiator of it”.

### ***Article I of the [preliminary] draft Protocol***

51. Modifications or suggestions were made in relation to the following definitions:

(a) “aircraft” – it was suggested that the definition of “aircraft” in the Annexes to the Chicago Convention should be followed, although it was also suggested that in following the Chicago Convention definition the technical definitions of “aircraft engines” and “airframes” should not be extended;

(c) “aircraft objects” – it was suggested that this definition should be reconsidered, as in accordance with this definition and the definition of “aircraft” helicopters constituted both aircraft and aircraft objects;

(f) “Chicago Convention” – it was suggested to add the words “and its Annexes” after “Chicago Convention”;

(h) “de-register the aircraft” – it was suggested to add “or from a common mark registering authority”;

(m) “insolvency-related event” – it was suggested that the reference to Chapter III of the Convention in sub-paragraph (ii) should be deleted. In relation to the commencement of the insolvency proceedings in sub-paragraph (i), it was suggested that the provision should be brought into line with Article XI, Alternative A, paragraph 2;

(o) “national registry authority” – it was suggested that the definition should specify that this reference was to the national authority and the common mark registering authority “as defined in Annex VII to the Chicago Convention”;

(p) “primary jurisdiction” – it was felt that the footnote to this provision was misleading and needed to be re-examined by the Drafting Committee;

(q) “State of registry” – it was suggested that reference should be made to the State of registry or the State where the common mark registering authority was located.

52. In the context of discussion of “aircraft object,” one delegation referred to the interest shown by its manufacturing circles for the holders of interests in spare parts being able to hold international interests in such equipment. Whilst it realised that it would not be possible for such equipment to be treated as “aircraft objects” under the [preliminary] draft Protocol, it nevertheless suggested that the extension of the proposed new international regimen to such equipment be looked at in future. One observer supported this suggestion, indicating that consideration could be given to this idea in due course, whether in the context of the preparation of a future preliminary draft Protocol or through an amendment to a Protocol.

***Article 2 of the [preliminary] draft Convention***

53. In relation to Article 2 of the preliminary draft Convention, the UNIDROIT Secretariat submitted a paper regarding the substantive sphere of application of the [preliminary] draft Convention (UNIDROIT CGE/Int.Int./3-WP/14; ICAO Ref. LSC/ME/3-WP/14), which advocated the reinstatement of a list of the categories of mobile equipment that the [preliminary] draft Convention was intended to cover. This proposal was made in response to the concern expressed in relation to the present open-endedness of the provision, in particular by States engaged in the discussions underway within the United Nations Commission on International Trade Law (UNCITRAL) in relation to that Organisation's draft Convention on Assignment in Receivables Financing. The list was short, and in addition to airframes (sub-paragraph (a)), aircraft engines (sub-paragraph (b)), helicopters (sub-paragraph (c)), oil-rigs (sub-paragraph (d)), containers (sub-paragraph (e)), railway rolling stock (sub-paragraph (f)), and space property (sub-paragraph (g)), contained a catch-all clause in sub-paragraph (h), which referred to "objects of any other category of high-value capital infrastructure equipment each member of which is uniquely identifiable".

54. Several delegations expressed support for the proposal by the UNIDROIT Secretariat. One delegation however expressed concern that the proposed formulation could be understood as a political promise to make rules applicable to all the categories listed, which might lead some States to defer ratification of the Convention until Protocols had been adopted for all those categories of equipment. To obviate this problem, it was suggested that the proposed Article might be formulated "[t]his Convention may apply" rather than "applies". It was however noted that this might raise problems for judges faced with a question as to the applicability of the future Convention. It was therefore agreed that it would be wiser in the circumstances to retain the existing language "shall apply".

55. A proposal to add the qualification "mobile" to "high-level capital infrastructure equipment" in the proposed sub-paragraph (h) was accepted.

56. One delegation proposed broadening the list of categories of equipment to include "aircraft" as a whole, all the more so since helicopters were treated as aircraft under the Chicago Convention. It was explained that the future Convention was concerned with the financing of aircraft objects and that airframes and aircraft engines were currently typically subject to the taking of separate security.

57. A preference for an even shorter list than that proposed emerged in the course of the discussions, in particular with a view to facilitating co-ordination with the UNCITRAL draft Convention, which was expected to be finalised in June 2000. A consensus emerged as to this list comprising only "airframes", "aircraft engines", "helicopters", "railway rolling stock" and "space property". "Containers" and "oil rigs" would thus fall under the residual category of sub-paragraph (h) for future consideration.

58. It was however agreed that, with a view to addressing the general concerns evoked in the course of Plenary's discussion of this item, the proposed sub-paragraph (h) should be moved to the Final Provisions, its purpose being to leave open the possibility for the preparation of future Protocols in respect of categories of equipment other than aircraft objects, railway rolling stock and space property.

***Examination of the Public International Law Provisions as revised by the Restricted Group of the Drafting Committee taking into consideration the results of the meetings of the Public International Law Working Group on 20 and 21 March 2000 and the comments made in Plenary on 23 and 24 March 2000 on the Report of the Public International Law Working Group (UNIDROIT CGE/Int.Int./3-WP/28 Rev.; ICAO Ref. LSC/ME/3-WP/28 Rev.)***

59. The revised articles prepared by the Restricted Group of the Drafting Committee taking into consideration the results of the meetings of the Public International Law Working Group on 20 and 21 March 2000 and the comments made in Plenary on 23 and 24 March 2000 on the Report of the Public International Law Working Group were submitted to Plenary (UNIDROIT CGE/Int.Int./3-WP/28 Rev.; ICAO Ref.

LSC/ME/3-WP/28 Rev.). It was decided to examine the provisions proposed, and to integrate this examination with the continuation of the examination of the [preliminary] draft Convention.

60. With reference to the revised text of Article 2 of the [preliminary] draft Convention, one delegation suggested that the words “subject to Article W *bis*” should be added to paragraph 3 in order to make a liaison between that paragraph and Article W *bis*.

#### ***Article II of the [preliminary] draft Protocol***

61. With reference to Article II of the [preliminary] draft Protocol, the need to harmonise the terminology used with that adopted for the [preliminary] draft Convention was stressed, as was the need to take the discussion on the proposed list of categories of equipment into consideration.

62. With reference to the citation of the future Convention and Protocol in Article II(2) as the “UNIDROIT Convention on International Interests in Mobile Equipment as applied to aircraft objects”, the ICAO Secretariat observed that it was customary for the plenipotentiaries meeting at a Diplomatic Conference to give the official name to the instrument they were adopting. Furthermore, it was not ICAO custom to refer to the Organisation in the title of the instruments it adopted. It therefore expressed its reservations as to the citation.

63. In relation to the comment made by the ICAO Secretariat, it was suggested by one delegation that, as a courtesy to the future diplomatic Conference, the citation might be placed in square brackets.

#### ***Article 3 of the [preliminary] draft Convention***

64. With reference to Article 3 of the [preliminary] draft Convention, one delegation expressed concern in relation to the construction of the sphere of application in that the application of the Convention would depend heavily on the determination of the applicable law by judges applying their own private international law rules. In accordance with private international law rules the determining factor was registration, and courts would, at least until all States became Contracting States to the new Convention, check registration in the national registers. It was therefore suggested that it be made clear that the sphere of application did not refer to the agreement, but to the registration of the object itself.

65. The *Rapporteur* indicated that it was not possible to wait for registration to see if the Convention would apply, as Chapter III was concerned with default remedies irrespective of registration.

66. A proposal for the re-drafting of Article 3 was submitted with a view to defining the internationality element also in terms of the parties to the transaction, as the present formulation made it possible for purely domestic situations to be covered by the Convention (see UNIDROIT CGE/Int.Int./3-WP/17; ICAO Ref. LSC/ME/3-WP/17).

67. A number of delegations expressed support for the proposal. One delegation however felt it necessary to add a priority rule with reference to national mortgages, with a view to informing third parties, possibly by way of a remark entered for this purpose in the register, of the existence of a prior national mortgage.

68. Other delegations and observers however expressed the fear that the proposal if adopted would seriously undermine the Convention. It was also observed that the terms “domestic” and “international” in any event were of no relevance in the context of the Aircraft and Space Protocols.

69. The differences that existed between the air and rail sectors in relation to the determination of internationality were stressed. In the rail sector there was a clear distinction between assets that were capable of travelling across borders and those that were not. This was not the case in the air sector.

70. The *Rapporteur* recalled that the internationality element had been considered to be adequately satisfied by the concept of mobility, which indeed made it possible that a purely domestic situation might be covered. The reason was that it was impossible to predict whether the equipment would move. It was essential for financiers contemplating advancing funds in respect of such high-value equipment to know in advance which regimen would apply regardless of actual movement. He furthermore observed that it was not possible simply to focus on the debtor and creditor, as there were third parties who might have interests that must be taken into consideration. It had therefore been decided that each Contracting State should have the ability to decide how to determine the internationality of the transaction and how to deal with it.

71. In consideration of the division of opinion among delegations, it was decided to set up a small Working Group, co-ordinated by Mr J. Sánchez Cordero (Mexico), Second Vice-Chairman of the Joint Session, to examine the proposal and its effects. This Group, the members of which would be France, Mexico, Canada and the United Kingdom, would represent the two positions. The observers of A.W.G. and R.W.G. were invited to assist the Group in its deliberations. The Group was invited to report back to Plenary, at the opening of the afternoon session of 22 March.

***Presentation of the Report of the Special Working Group on Article 3 of the [preliminary] draft Convention***

72. Mr Sánchez Cordero (Mexico), Chairman of the Special Working Group on Article 3 of the [preliminary] draft Convention, indicated that a compromise had been reached and was put forward in the Report of the Group (UNIDROIT CGE/Int.Int./3-WP/27; ICAO Ref. LSC/ME/3-WP/27). Paragraph 3 of the Report listed three principles upon which the Group had agreed.

73. It was agreed that the Drafting Committee insert into the Article or the [preliminary] draft Aircraft Protocol a reference to the connecting factor to aircraft registration in Contracting States, as it had inadvertently been omitted.

74. There was general agreement as to the first and third of the three principles presented.

75. As regards the third principle, one delegation requested clarification as regards the legal effect of giving notice in the International Registry of the national interest, and as regards which Articles were relevant for the first-to-file rule, as it was not clear whether it referred to the notice, to the registration or to both.

76. The second of the three principles was the subject of considerable debate. A main concern related to the statement that at the time of acceding to the Protocol States may declare “that the Convention will not apply to a purely internal transaction unless the parties decide otherwise and the purely internal transaction is subject to the mandatory rules of that State”. One delegation however objected to, and raised serious concerns regarding the approach consisting in including the internal transaction concept.

77. The first question in relation to the above statement related to whether, if a State made a declaration to the effect that the Convention would not apply to a purely internal transaction, the parties themselves could register their interest in the International Registry notwithstanding this declaration.

78. While one delegation clearly considered that it would not be possible for the parties to do so, another felt that it would, but on condition that the mandatory rules of the State applied. Other delegations instead felt that it would be possible for the parties to register their interest.

79. In replying to a question as to the reasons for which a party should enter a national interest on the International Registry, the *Rapporteur* indicated that such a registration gave the holder of the interest the means to protect itself. He observed that the entry on the Registry had nothing to do with the Contracting State. If no entry was made on the register, Article 27 would apply.

80. One delegation raised the question of the date of priority of the notice, that is, whether the date would be the date when the notice was placed on the International Registry or the date of registration in the national registry of the State. One observer having indicated that the system would only work if the date were the former of the two, the delegation suggested that it would be better to state explicitly that it referred to the registering of the international interest in the International Registry.

81. As regards the application of the priority rules of the future Convention to purely internal transactions, one delegation indicated that there had been a clear understanding in the Working Group that they would so apply.

82. In the end, it was decided that while there was support for the first and third principles stated in the Report of the Working Group, there was none for the second, also as a result of the fact that its second sentence was picked up by the third principle. The Drafting Committee was therefore requested to redraft Articles 3, 27 and V of the [preliminary] draft Convention.

#### ***Article III of the [preliminary] draft Protocol***

83. With reference to Article III(2) of the [preliminary] draft Protocol, it was decided to add “or in the register of a common mark registering authority” after “national aircraft register of a Contracting State” and to add “or the common mark registering authority” at the end of the paragraph, in order to harmonise the formulation with that already adopted in the definitions article.

84. As regards the reference to “aircraft object”, the possibility of modifying this reference to a reference to “aircraft” was considered. It was however pointed out that aircraft were of necessity registered in registries, whereas there were aircraft objects that were not, namely aircraft engines.

#### ***Article 4 of the [preliminary] draft Convention***

85. It was observed that, as this provision was inspired by Article 3 of the preliminary draft Convention on Jurisdiction and Foreign Judgments in Civil and Commercial Matters under preparation under the auspices of the Hague Conference on Private International Law (hereinafter referred to as the “preliminary draft Hague Convention”), the formulation adopted here should follow that of that preliminary draft Convention. Another view however was that, since that preliminary draft Convention had not yet been finalised, it could not serve as a precedent on this point.

86. It was suggested that the words “registered office or” be added to “statutory seat” in paragraph (1)(b), as the concept “statutory seat” was foreign to some jurisdictions.

87. It was observed that the debtor could be situated in more than one Contracting State.

#### ***Article 6 of the [preliminary] draft Convention***

88. In relation to Article 6(1), which concerned the interpretation of the Convention, one delegation requested clarification as to why only the Preamble, and not also the *travaux préparatoires* and other articles, was referred to. It also suggested that a reference to the Vienna Convention be added.

89. It was suggested that the insertion of the word “namely” in paragraph 1 might take care of the concerns raised.

90. It was observed that the present formulation was the same as that of the 1980 United Nations Convention on Contracts for the International Sale of Goods. All commercial law Conventions adopted since 1980 had used that formulation and, if it were modified in this instrument, it might cast doubt on those other commercial law Conventions. Furthermore, not all States were party to the Vienna Convention and a reference to that Convention would be unacceptable to such States.

91. It was decided that no change should be made to the Article, but that the Report should reflect the points raised in the debate. Any State that wished to do so might raise the question at the diplomatic Conference.

***Article 7 of the [preliminary] draft Convention***

92. It was observed that, according to the [preliminary] draft Convention, the agreement creating the interest did not need to state the maximum sum to be secured, which would create problems where the indication of such a maximum sum was required by law.

93. The *Rapporteur* indicated that the reason why no indication of the maximum sum to be secured was provided for was that the creditor did not necessarily know in advance how much money was going to be needed or extended under a certain credit. Furthermore, the junior creditor would never know how much had been drawn in practice, even if the maximum sum were stated. There was need for flexibility.

94. One delegation wondered how the words “power to dispose” in paragraph (b) should be interpreted and if the case of an object being sold under retention of title and being mounted on an airframe, in which case title was not transferred, would be covered.

95. The *Rapporteur* indicated that it was necessary to separate the power of disposal and the effect of an object being incorporated in another object. The Convention did not deal with the latter, but he observed that whether or not this question should be dealt with in the Convention or be left to the applicable law was one that should perhaps be considered. If, under the applicable law, the first object became part of the latter, the power of disposal would be lost; otherwise it would not.

96. Another delegation raised the problem of whether an item which had been installed on an aircraft when security had been taken would continue to be covered by the security if it were removed from the aircraft.

97. In the end, it was decided that the present wording of Article 7 should not be modified and that the question of the effects of the incorporation of an object in another object should be dealt with in the Protocols.

***Article 11 of the [preliminary] draft Convention***

98. It was suggested to add “or material” after “substantial” in line 2 of paragraph 2.

99. The ICAO Secretariat introduced a document on the provisions relating to remedies and interim relief (UNIDROIT CGE/Int.Int./3-WP/12; ICAO Ref. LSC/ME3-WP/12). The purpose of the proposals in this document was to re-establish a certain equilibrium between the parties to a transaction where one might be considered to be commercially weaker. In this respect it was proposed to indicate with greater precision in Article 11 the circumstances which constituted default in accordance with Articles 8 to 10 and 14. It was suggested to limit default to primary obligations.

100. Whilst one delegation queried the appropriateness of the Secretariat of either of the sponsoring inter-governmental Organisations taking such a strong stand, two expressed their appreciation to the ICAO Secretariat for the initiative it had taken. No consensus was however reached in relation to this proposal. A number of delegations indicated that they feared that the benefits of the Convention would be substantially reduced should the proposal be accepted. It was observed that it was not possible to draw a distinction between primary and secondary obligations in certain types of contract, and in particular in relation to transactions in the aircraft sector. One observer moreover underlined that the notion of “commercially weaker party” had to be viewed in the context of the nature of the parties involved, their objectives and the impact on State financing needs. Furthermore, it was suggested that the proposed modification would have

serious effects for the rail sector, in that it would undermine the standard industry agreements that were used in that sector.

101. It was suggested that, in order to promote certainty, the addition of the words “in writing” after “agree” in paragraph 1 might be considered, as was suggested in the ICAO Secretariat’s paper.

102. In the end, it was decided to keep the present formulation of Article 11, with the sole addition of the words “or material” after “substantial” in paragraph 2.

#### ***Article 12 of the [preliminary] draft Convention***

103. In relation to Article 12, one delegation wanted it to be clarified that the reference to procedural law would not prejudice the application of Article 6(2) of the [preliminary] draft Convention.

#### ***Article 13 of the [preliminary] draft Convention***

104. One delegation requested clarification as to whether the applicable law in Article 13 would be the *lex fori* or the *lex contractus*.

105. The *Rapporteur* referred to Article 6(3), which stated that references to the applicable law were to the domestic rules of law applicable by virtue of the rules of private international law of the forum State, unless exceptions had been specifically decided upon. He suggested that it might not be necessary to make any exception with reference to Article 13.

#### ***Article 14 of the [preliminary] draft Convention***

106. A number of issues were raised in relation to Article 14, among which the inclusion of the sale of the object in Article 14(1)(d), which, it was suggested, was misplaced as the Article was intended to deal with relief granted before final determination of the claim. One delegation observed that the sale of an object in some legal systems was permitted in certain circumstances only, such as when the object in question was perishable. The objection to the inclusion of sale extended also to the inclusion of the proceeds or income of the object in Article 14(1)(e). Furthermore, it was felt that the reference to *prima facie* evidence in the chapeau of the Article was not a sufficiently high standard considering the effects of the remedies envisaged.

107. Other delegations stressed the importance of Article 14, in particular the provision on sale in paragraph 1, for the Convention, which was intended to facilitate the financing of high-value mobile equipment.

108. The inter-connection of Article 14 and Article X of the [preliminary] draft Protocol was stressed. One observer suggested that the sale element in sub-paragraphs (d) and (e) of paragraph 1 might be moved into the [preliminary] draft Protocol.

109. One delegation raised an ambiguity in the interpretation of Article 14(1) in relation to the discretion of the court and expressed its reservations regarding the provision in so far as it limited the discretion of the court.

110. In view of the opposing views that were expressed by a number of delegations, it was decided to set up a small Working Group to examine Article 14 and its relationship with Article X of the [preliminary] draft Protocol, which should report back to Plenary at its afternoon session of 23 March. The delegation of Japan was asked to co-ordinate the meeting of this Group, the other members of which were Canada, France, Singapore and Sweden. The observers from A.W.G. and R.W.G. were invited to attend as advisers.

***Presentation of the Report of the Special Working Group on Article 14 of the [preliminary] draft Convention and selected aspects of Article X of the [preliminary] draft Protocol***

111. Mr S. Masuda (Japan), Chairman of the Special Working Group on Article 14 of the [preliminary] draft Convention and selected aspects of Article X of the [preliminary] draft Protocol, introduced the Report of the Working Group (UNIDROIT CGE/Int.Int./3-WP/24; ICAO Ref. LSC/ME/3-WP/24), which submitted proposed revised texts for the two Articles.

112. One delegation suggested that Article X(4) would be essential if Article 14(2) were to be included and that without Article X(4) the benefits of the future Convention/Protocol would be lost. Its understanding was that the Articles had originally been intended to refer to all remedies, and as now proposed as interim remedies they had become too complex.

113. There was general agreement with the deletion of the words *prima facie* in Article 14(1). A number of delegations indicated that the word “clear” which had been put in their place was acceptable, but that they could also consider not including it at all.

114. There was general agreement that Article 14 of the future Convention should be an “opt-out” provision, whereas Article X of the future Protocol should be an “opt-in” provision. It was suggested that the Drafting Committee might reword Article X to ensure that this was clear.

115. One delegation expressed support for a suggestion made by an observer to move the sale-related elements of Article 14(1) to the [preliminary] draft Protocol.

116. With reference to Article 14(2), under which the court “may impose such terms, including the giving of prior notices, as it considers necessary to protect the interested persons”, one delegation indicated that it should be clear that the notices were to be given to the interested persons. Furthermore, with respect to Article X(4) of the [preliminary] draft Protocol, it stated that it had thought that there was agreement that a waiver in an agreement between a debtor and creditor could not be binding upon third parties.

117. Three delegations supported the removal of the brackets around Article 14(2).

118. A lengthy discussion took place with regard to a proposal submitted by a delegation (UNIDROIT CGE/Int.Int./3-WP/25; ICAO Ref. LSC/ME/3-WP/25) for an opt-in Annex to, or Article in the [preliminary] draft Protocol. While paragraphs 2 and 3 of the proposal raised no objections, paragraph 1, according to which “[a] Contracting State shall ensure that judicial proceedings relating to the remedies under the Convention will be completed within the period set forth in a declaration to this Protocol”, was found to be highly controversial.

119. Several delegations indicated that their countries would have constitutional problems with such a provision. Furthermore, even if some delegations would have been prepared to accept the addition of such a provision in the context of Article X of the [preliminary] draft Protocol, on the understanding that the provision would be an opt-in provision, a clarification from the delegation proposing the provision that what it was intended to cover was not only speedy or interim relief but all judicial proceedings raised considerable doubts among delegates as to the appropriateness of such a solution.

120. Another issue raised concerned whether it was in the discretion of the court to choose the remedy granted, irrespective of which remedy had been requested by the creditor, or whether the court’s discretion only extended to choosing an option within the category of remedies requested.

121. In view of the issues raised in the course of the discussions, one observer suggested that Article 14 should be retained in the Convention with a few drafting changes, and that no attempt should be made at this stage to push the discretion of the courts in either direction. He also suggested that Article X of the [preliminary] draft Protocol should be retained without brackets and that paragraph 4 thereof should be



modified to take account of the observation raised in relation to waivers. He suggested that a footnote should be added to the effect that one delegation had proposed a rather more comprehensive approach, but that the proposal had raised concern. This suggestion was accepted.

***Article 15 of the [preliminary] draft Convention***

122. In reply to a question raised by one delegation regarding the problem of establishing a hierarchy in the rights and interests registered without an authenticated copy of the agreements, it was explained that it would not be consistent with a modern state-of-the-art registry to have a requirement for a paper copy of the documents as part of the registration system.

123. Mr R.C.C. Cuming (Canada), Chairman of the Registration Working Group, indicated that the type of registry envisaged was an electronic remote access registry. For the purposes of such a registry what was required was a notice containing minimal information: the details of the relationship would not be included in the data base. It was intended to be an international registry, and it was therefore reasonable to assume that access would be electronic. He stressed that the Registrar did not have any controlling function as regards the information entered into the data base, but was merely entrusted with the maintenance of the hardware and software.

124. With reference to paragraph 2, one delegation suggested that, considering the definition of “International Registry” under Article 1(r), the last part of the paragraph be deleted, and that it instead be stated that “[d]ifferent international registries may be established for different categories of objects and associated rights”. It asked what the difference was between the expressions “discharge registration” and “de-register”. The *Rapporteur* indicated that “deregistration” was used in particular for aircraft, but that the meaning of the two expressions was much the same.

125. The Chairman of the Registration Working Group indicated that in some systems discharge of registration was also registered.

126. One delegation stressed that it should be stated that registration also included the original registration.

127. In relation to subrogation, one delegation wondered whether registration was required for the enjoyment of rights, as Article 15(1)(c) provided for the acquisition of international interests by subrogation to be registered.

128. The *Rapporteur* indicated that the provision was not intended to interfere with the general effect of subrogation. Article 15 was intended to provide a mechanism by which the subrogated party could have its name put on the register in place of the original creditor if it so wished.

***Article 16 of the [preliminary] draft Convention***

129. One delegation suggested adding “or replace” in paragraph 2(b).

130. With reference to the establishment and management of the International Registry, one delegation submitted a paper (UNIDROIT CGE/Int.Int./3-WP/16; ICAO Ref. LSC/ME/3-WP/16) which *inter alia* urged the participation of the Contracting States in the drawing up of the regulations to apply to the Registry. In order to do this, it suggested that a Supervisory Board might be established.

131. The idea of Contracting States participating in the drawing up of the regulations was supported by another delegation, although no strong feelings were expressed as to the means by which this might be achieved. One delegation had reservations with regard to the setting up of yet another body.

132. With reference to paragraph 3, one delegation suggested that any international body would normally have the right to conclude any agreement to fulfil its functions.

***Article 16 bis of the [preliminary] draft Convention***

133. One delegation suggested that the wording needed to be adjusted to make it clear that, with the sole exception relating to compliance with fees and any administrative requirements, no person would be denied access to the Registry.

***Articles 17 and 19 of the [preliminary] draft Convention***

134. One delegation suggested that the word “or” should be deleted in Article 17(1)(a).

135. With reference to footnote 11, one delegation suggested, and another agreed that it was necessary to maintain a separation between national and non-national registries.

136. One delegation suggested that paragraph 2 should be deleted as it carried with it potential confusion, as the requirements could be viewed as essential to the priority of the interests.

137. One observer suggested that the bracketed language in Article 19(3) might also be deleted.

138. Another delegation however wondered if the deletion of Article 17(2) and of the bracketed language in Article 19(3) would not affect the balance of the system that was being established. Furthermore, with reference to Article 17(2), that same delegation raised the question of when registration would have legal effect. As presently envisaged, the national registries would have two functions, that of being the national register for the assets concerned and that of being the correspondent or entry point for the International Registry with respect to the transmission of the registration of international interests. The question was whether the registration of an international interest would have legal effect when it was entered in the national registry or only when it had been transmitted to the International Registry. As it appeared that it would be possible for a State not to designate a single point of entry to the International Registry, the legal consequences of registration through the national registries had to be made clear. Furthermore, the situation was unclear as regards future interests.

139. The Chairman of the Registration Working Group and the *Rapporteur* underlined that the national registries did not form part of the international registration system, that there was no legal relationship between the International Registry and the national registries and that the latter would not be under the control of the former.

140. A question raised by an observer concerned the searchability of the national registries and/or the International Registry. The Chairman of the Registration Working Group shared the concern of the observer, as he felt that there was a dangerous possibility that, because of the way a particular facility operated, a record might not be searchable there and this might lead to the conclusion that it had not been registered. He therefore suggested removing the reference to “facility” in Article 19(2)(b).

141. One delegation stressed that the national body forwarding the registration must be responsible as soon as it received the information and that the information should take effect vis-à-vis the creditors as from that moment in time, so that the creditor would not be penalised. As presently formulated the national registries had no obligations and there was no indication as to whether it was the registration in the national registries or in the International Registry which had legal effect on the priority issue.

142. The *Rapporteur* indicated that he had a serious problem with considering a registration effective merely as a result of registration on the national register. He stressed the need to maintain the integrity of the international registration.

***Article 20 of the [preliminary] draft Convention***

143. A preference for Alternative B in Article 20(1) emerged in the course of the discussion. There was however also general agreement that paragraph 1 of Alternative B should be reformulated along the lines indicated in the proposal made by one delegation (UNIDROIT CGE/Int.Int./3-WP/16; ICAO Ref. LSC/ME/3-WP/16).

144. A proposal for the modification of Article 20(3), to the effect that the consent of the debtor should also be required for amendments or extensions of registrations, was put forward by the ICAO Secretariat (UNIDROIT CGE/Int.Int./3-WP/12; ICAO Ref. LSC/ME/3-WP/12).

145. It was agreed that the Drafting Committee should reformulate the Article along the lines agreed.

***Article 21 of the [preliminary] draft Convention***

146. With reference to the bracketed language in Article 21, several delegations and one observer expressed a preference for the second alternative.

147. One delegation suggested that the Article also state that the registration of an international interest ceased in the event of total destruction of the object.

148. The *Rapporteur* indicated that Article 27(5) extended priority to proceeds. If the object were destroyed, the security would extend to those proceeds, so that it was necessary to maintain registration until the proceeds had been paid, after which the registration would effectively cease.

149. It was suggested that Article 27(5) should be applied first, after which Article 21 should be applied.

150. It was decided to approve Article 21 provisionally, and that Article 21 should be re-examined if Article 27(5) were not to be retained.

***Article 22 of the [preliminary] draft Convention***

151. One delegation referred to the proposal it had put forward (UNIDROIT CGE/Int.Int./3-WP/16; ICAO Ref. LSC/ME/3-WP/16) and indicated that the wording it proposed was intended to clarify that, in order to be able to conduct a search, it was not necessary for the person who intended to conduct the search to prove a special interest.

152. While the sense of the proposal was approved, it was agreed that the Drafting Committee should improve the wording.

***Article 26 of the [preliminary] draft Convention***

***Examination of the Public International Law Provisions as revised by the Restricted Group of the Drafting Committee taking into consideration the results of the meetings of the Public International Law Working Group on 20 and 21 March 2000 and the comments made in Plenary on 23 and 24 March 2000 on the Report of the Public International Law Working Group (UNIDROIT CGE/Int.Int./3-WP/28 Rev.; ICAO Ref. LSC/ME/3-WP/28 Rev.)***

153. With reference to Article 26(2) and (4)(b), a discussion took place as regards the immunity that should be granted to the Supervisory Authority and Registrar. Article 26(2) provided for full immunity for the Supervisory Authority, whereas Article 26(4)(b) provided for “functional immunity” for the Registrar.

154. One delegation referred to Appendix II of the Report of the Public International Law Working Group (UNIDROIT CGE/Int.Int./3-WP/18; ICAO Ref. LSC/ME/3-WP/18), the first paragraph of which, it felt, reflected the agreement that had been reached, and that stated that the “privileges and immunities given to the Supervisory Authority and the Registrar in the text of the Convention should be only such as are functionally necessary”, which appeared to contradict the approach of granting full immunity to the Supervisory Authority in Article 26(2).

155. The *Rapporteur* indicated that there was no inconsistency with the Report of the Public International Law Working Group. Paragraph 20 of that Report indicated that the control to be exercised by the Supervisory Authority over the Registrar should be limited to administrative matters, with the consequence that the Supervisory Authority would not be able to modify the data inserted in the data base. If the Supervisory Authority did not have the possibility to affect the data, then there was no need to limit the immunity to functional immunity.

156. One of the delegations that had submitted the Note contained in Appendix II indicated that what was intended with the reference to “immune from legal process” in Article 26(2) was that the Supervisory Authority would operate under United Nations standards and would not be subject to local labour laws and the like. As regards the exception in Article 26 *bis* referred to in Article 26(4), that delegation suggested that, as that exception dealt with improper handling of the Registry and not with immunity, the formulation be changed to “[e]xcept for the purposes of Article 26 *bis*”. This last suggestion was supported by another delegation.

157. Two delegations indicated that they had also understood the immunity of the Supervisory Authority to be limited to functional immunity. One of the delegations indicated that, if full immunity were granted, a procedure for the revocation of that immunity would have to be provided for. It suggested that the word “functional” should be inserted in paragraph 2, but that it should be in square brackets. Whether or not it would be retained should be decided by the diplomatic Conference. The other suggested that paragraph 3 should be deleted altogether.

158. One delegation stated that the revised text of paragraph 4(a) did not reflect the discussions within the Public International Law Working Group. It stressed that, while the Supervisory Authority should have full immunity, the Registrar should in no case benefit from diplomatic-type immunity or immunity from legal process. What the Registrar should benefit from were working conditions which would avoid its being subjected to unfounded interference by the host State.

159. One delegation suggested that the square brackets around the exemption from taxes in paragraph 3 should be deleted, as it was necessary for the Registry to be a low-cost Registry to the greatest extent possible and cutting expenditure was an important means to attain this. Another delegation instead insisted that the tax exemption remain in brackets.

160. Two delegations pointed out that, whereas the future Convention/Protocol decided whether or not there should be immunities, these would be implemented by the Headquarters Agreement with the host State. The last part of paragraph 3 was therefore superfluous.

161. In the end, it was decided that the word “functional” should be inserted in square brackets in paragraph 2, as there was no consensus on the possible limits of the immunity. Furthermore, the brackets in paragraph 3 should remain, as there was no consensus for their deletion.

***Article 26 bis of the [preliminary] draft Convention***

***Examination of the Public International Law Provisions as revised by the Restricted Group of the Drafting Committee taking into consideration the results of the meetings of the Public International Law Working Group on 20 and 21 March 2000 and the comments made in Plenary on 23 and 24***

***March 2000 on the Report of the Public International Law Working Group (UNIDROIT CGE/Int.Int/3-WP/28 Rev.; ICAO Ref. LSC/ME/3-WP/28 Rev.)***

162. The Rapporteur indicated that the liability referred to in Alternative A of Article 26 *bis* was strict liability, whereas the liability referred to in Alternative B was fault liability.

163. A large majority of the delegations that took the floor expressed a preference for Alternative A. One delegation observed that in an electronic environment it was not possible to establish precisely who would bear liability. Furthermore, the strict liability standard would reduce potential litigation and the cost of insurance.

164. Two delegations however felt that it was too early to make a selection and that it was necessary to wait until more information was available as to what the insurance cost would be.

165. Two delegations proposed that the remedies should not be limited to compensation claims, but that it should also be possible to request a correction of the error or omission.

166. In the end, it was decided that both Alternatives should remain in the draft, even if there had been large support for Alternative A, so as to permit more detailed information being obtained in relation to insurance coverage.

***Article 27 of the [preliminary] draft Convention***

167. In relation to Article 27(3), one delegation asked for clarification as regards the manner in which the [preliminary] draft Convention resolved conflicts between competing interests, namely, whether in the case of an international interest arising under a conditional sale or leasing agreement but which was not registered, the third party, based on Article 27(3), was the buyer and would be able to take the object free of the interest of the conditional seller.

168. The Rapporteur gave an affirmative reply to both hypothetical cases.

169. With reference to Article 27(3)(b), one delegation, supported by two other delegations, indicated that the fact that a buyer of an object could acquire its interest in an object free from an unregistered interest even if it had actual knowledge of such an interest was a source of major concern and proposed that a requirement of good faith be introduced.

170. With reference to Article 27(2)(a), one delegation reiterated its concern as regards the priority of a registered interest over a pre-existing interest which had not been registered but the existence of which was known, as this might lead to behaviour which according to the law of its country might be considered to be criminal. It therefore urged the inclusion of the good faith standard in the provision. Several delegations agreed and stressed that it was not possible for this Convention to legalise illegal transactions.

171. It was observed by a number of delegations and an observer that the [preliminary] draft Convention did not address criminal law, just as it did not address tort law. They suggested that it was inappropriate for the future Convention to contain a good faith standard, as it would introduce an element of uncertainty, whereas, as envisaged, the registration system with its system of priorities was intended to provide certainty and predictability. If it were not possible to rely on the Registry, the efficacy of the international registration system would be undermined. They furthermore indicated that nothing prevented the application of tort law, criminal or other public policy laws in cases of fraud or illicit behaviour.

172. The Rapporteur indicated that Article 27(2)(a) was intended to preserve the integrity of the registered interest to avoid disputes about whether there was knowledge or not.

173. One observer suggested including a clause saying that nothing in the Convention affected criminal or tort law. This suggestion was taken up by one delegation and supported by others.

174. One delegation raised similar concerns with respect to Article 27(3)(b) as had been raised in relation to Article 27(2)(a), as according to this provision a buyer of an interest was placed in a better position than the original acquirer of the interest. Furthermore, Article 27(3)(b) overrode Articles 37 and 38, which dealt with non-consensual rights.

175. One delegation pointed out that Article 1(nn), which defined “unregistered interest”, referred only to Article 38, whereas it should refer also to Article 37. Another delegation suggested deleting the words in brackets in Article 1(nn). The *Rapporteur* however observed that the words in brackets were essential, as their effect was precisely that of ensuring that Article 38 interests were not subordinated to the buyer of the object under Article 27(3)(b).

176. One delegation submitted a written proposal (UNIDROIT CGE/Int.Int./3-WP/16; ICAO Ref. LSC/ME/3-WP/16) relating to cases where registration was contested. This proposal was supported by another delegation.

177. In the end, it was decided that the Drafting Committee should examine this last proposal, as well as the proposal for the inclusion of a reference to criminal and tort law and should examine the possibility of including a reference to good faith in paragraph 3.

#### ***Article 28 of the [preliminary] draft Convention***

178. In relation to Article 28(3), one delegation suggested that the language in square brackets be deleted.

179. One delegation stressed the connection between Article 28 and the insolvency provisions of the future Protocol. As the future Convention and Protocol were intended to be read together, there should be no contradiction between the provisions they contained and that delegation found that there were inconsistencies between them. It observed that, as presently drafted, Article 28 was insufficient if it intended to cover all kinds of mobile equipment. Clarifications were necessary as regards the meaning of the word “effective” and as regards the time periods indicated in paragraph 1 of Alternative A of Article XI of the future Protocol. Furthermore, it suggested that it would be useful to include the insolvency provision of the Convention in a separate Chapter on insolvency.

180. The *Rapporteur* stated that Article 28 was intended to be very light. The purpose of Article XI of the future Protocol was to modify Article 28 for aircraft. He pointed out that, although Article XI was presented in two Alternatives, there was also a third alternative, and that was that States might want neither of the two Alternatives proposed.

181. It was decided to delete the words in square brackets in Article 28(3).

#### ***Article VI of the [preliminary] draft Protocol***

182. With respect to Article VI, one delegation wondered whether the words “to the exclusion” should not be removed and the matter left to national law. If the provision stated that a person had a right to the exclusion of the person or persons represented, a provision allowing the registration of replacement agents for cases when the agent did not agree to sign an assignment had to be included.

183. One delegation stated that it shared the above concern and that in particular it had reservations as regards the exclusion of the beneficiary, and wondered whether this should not be deleted from the provision.

***Article IX of the [preliminary] draft Protocol***

184. As regards the term “commercially reasonable manner” in Article IX(3)(b)(ii), one delegation wondered whether the agreement between the parties as to what was commercially reasonable was conclusive as between the parties, or also vis-à-vis the judge.

185. The *Rapporteur* replied that the agreement of the parties could not be challenged, but observed that the consent of the parties must be legally operative. If the consent had been obtained by fraud, it would not be a true consent.

186. The ICAO Secretariat expressed its concern regarding the determination of commercial reasonableness by the parties to the contract, and referred to the proposal contained in its paper (UNIDROIT CGE/Int.Int/3-WP/12; ICAO Ref. LSC/ME/3-WP/12) for paragraph 3(b).

187. One observer expressed his concern at this suggestion. He indicated that the intention was to promote predictability and the ICAO Secretariat proposal had the opposite effect. He stated that a typical aircraft contract included ten pages or more stating exactly what the parties agreed and what should be avoided was that this position was moved away from.

188. While one delegation observed that, if what the observer had described was ordinary practice, then it could not see how the ICAO Secretariat’s suggestion could damage predictability, other delegations urged that attention be focussed on the type of transaction concerned, as the intention was to create certainty and predictability in the aircraft business.

189. One delegation suggested that “de-register” in Article IX(1)(a) be modified to read “obtain de-registration of the aircraft” and that the definition of “de-register” in Article I(2)(h) add “in accordance with the Chicago Convention and in a manner to carry out the purposes of this Protocol”. As regards footnote 9, it suggested that a relationship with the Geneva Convention was not needed. It was decided that the Drafting Committee should take these observations into account.

190. With reference to Article IX(3), one delegation stated that Article 8(2) of the Convention should apply to aircraft as well. If this were not the case, some States would not be able to ratify the Protocol. It also suggested that there were possible conflicts between the person who had an interest in the aircraft on the one hand and the person who had an interest in the aircraft engine on the other.

191. The *Rapporteur* observed that the future Convention did not apply to aircraft at all but that it rather applied to airframes and engines. The only reason aircraft were mentioned in the Protocol was because of the reference to the Chicago Convention for de-registration purposes.

***Article XI of the [preliminary] draft Protocol***

192. With reference to Article XI of the [preliminary] draft Protocol, one observer drew attention to the inter-relationship between this article and Article XXX. He recalled that one of the main issues was whether States would be required to select either of the two options presented, or whether they would be permitted to select neither.

193. One delegation referred to a paper of comments it had submitted to the Joint Session (UNIDROIT CGE/Int.Int/3-WP/13; ICAO Ref. LSC/ME/3-WP/13). In addition to the points raised in the document, the delegation requested clarification as regards “the date on which the creditor would be entitled to possession of the aircraft object if this Article did not apply” (Alternative A, paragraph 1(b)), as what was meant by this phrase was not clear.

194. As regards the interpretation of Article XXX(2), which stated that, at the time of ratification, acceptance, approval of, or accession to the Protocol, a Contracting State should declare whether it would

apply Alternative A or Alternative B to which types of insolvency proceedings, one delegation stated that it would like to see a distinction drawn between liquidation and re-organisation. Alternative B was as unacceptable for liquidation as Alternative A was for re-organisation. Alternative A was acceptable for liquidation. As regards the “waiting period” referred to in Alternative A, paragraph 2, this delegation indicated it would want no waiting period and wondered whether Alternative A would make sense or would apply if there were no waiting period.

195. One delegation referred to a paper it had submitted to the Joint Session (UNIDROIT CGE/Int.Int./3-WP/19; ICAO Ref. LSC/ME/3-WP/19), in which it asked for confirmation that a single Contracting State would have the option to select Alternative A for certain types of insolvency proceedings and Alternative B for other types.

196. Another delegation also referred to a paper it had submitted to the Joint Session (UNIDROIT CGE/Int.Int./3-WP/6; ICAO Ref. LSC/ME/3-WP/6), in which it had considered the possibility that States adopt neither Alternative and apply their national law instead. It stated that it saw the benefits of such a possibility.

197. One delegation indicated that it had a conceptual difficulty with Alternative A, paragraph 4(a), as, when it came to implementation, this provision obliged the insolvency administrator to dip into the pool of assets available to unsecured creditors. Another delegation noted that, on the contrary, the administrator could make an election so as to avoid drawing on such assets.

198. One delegation wondered if it would be possible to exclude re-organisation proceedings from the future Convention.

199. The *Rapporteur* stated that the Convention applied except to the extent that it was modified by the Protocol. Article XI, Alternative A, was simply concerned with the ability to acquire possession, the power of sale would apply by virtue of the Protocol and not of the Convention, and then Article 8 of the Convention would come into play. He indicated that Alternative A was confined to an insolvency-related event, whereas Alternative B applied to two different situations, namely where the insolvency proceedings involving the debtor had been commenced, or where the debtor was not eligible for, or subject to insolvency proceedings under the applicable law, and had declared its intention to suspend, or had actually suspended, payments to creditors generally.

200. One delegation suggested that the Drafting Committee might consider the priority provisions in this context, as it should flow from those provisions that the holder of a registered international interest had priority over an execution or attaching creditor, but this was not stated.

201. The *Rapporteur* felt that the situation was clear, as the attachment creditor’s interest was an unregistered interest unless the State had made a declaration in accordance with Article 37. Article 27(1) of the future Convention stated clearly that a registered interest had priority over a non-registered interest.

202. It was decided that the Drafting Committee should improve the wording of Article XI, taking into consideration the proposals referred to in §193, *supra* and the discussion that had taken place.

### ***Article XIII of the [preliminary] draft Protocol***

203. The ICAO Secretariat referred to its paper (UNIDROIT CGE/Int.Int./3-WP/12; ICAO Ref. LSC/ME/3-WP/12) and suggested that Articles XIII(3), X(3) and Section (ii) of the Form appended to the Protocol should be amended in order to state that the actions required from administrative authorities should be taken in accordance with the applicable national law and regulations, considering that registration of aircraft was subject to such national laws and regulations pursuant to Article 19 of the Chicago Convention.



204. One delegation indicated that a reference to national laws in Article XIII would increase understanding of the provision.

205. In the end, it was decided that the Drafting Committee should take the comments of the ICAO Secretariat into consideration, but should not change the substance of Article XIII.

*Article XVI of the [preliminary] draft Protocol*

206. One delegation observed that, as regards the appointment of the Registrar, Article XVI(3) stated that the Registrar was appointed for a period of five years, but no indication was given as to whether the Registrar could be re-appointed and, if so, for how many terms. Furthermore, reference had earlier in the discussion been made to a process for the appointment of the Registrar that involved Contracting States. This delegation requested clarification as to what form such involvement by States might take.

207. It was decided that the appointment of the Registrar and the procedure to be followed were questions that were best left to be decided by the diplomatic Conference, as they were of an eminently political nature.

208. One delegation indicated that it supported the text as it stood, as it was not possible at this stage to eliminate the uncertainty in the Article. It was not yet known who would be the Supervisory Authority, although it observed that ICAO would be best suited to fulfil that role. The ICAO Council had however not pronounced itself as to whether it would accept a mandate to act as Supervisory Authority. The parts left blank in the Article should therefore be finalised by the ICAO Legal Committee, if convened, or the diplomatic Conference.

209. The ICAO Secretariat recalled that, at the previous Joint Session, ICAO had been requested to examine the question of the possible role of ICAO in relation to the Supervisory Authority and the Registrar. This question had been examined at the previous session of the Council, on 1 March 2000. Several different scenarios had been considered: ICAO assuming the role of Supervisory Authority, ICAO assuming the role of Supervisory Authority and Registrar and ICAO assuming the role of Supervisory Authority and operator of the International Registry in co-operation with an existing registry. The Council had not wanted to pronounce itself as it had felt that a number of questions arising from the present text were still open. One of these questions was liability, as it had been pointed out that the text made reference to liability for the Supervisory Authority, even if in principle it should benefit from immunity. The International Registry was itself potentially subject to liability. The contradiction between the principle of immunity and the strict or fault liability envisaged had been pointed out. A number of provisions were furthermore still in square brackets. The Council had therefore decided that it wanted to await further information as to the outcome of the third Joint Session before it pronounced itself. The ICAO Secretariat indicated that only the Council could decide on a matter such as the one considered, and indicated that it might benefit from the advice of the Legal Committee at the appropriate moment in time.

210. One delegation supported the ICAO Secretariat's comments as regards the position of the ICAO Council, and added that concerns had also been expressed as regards the expenditure which the Supervisory Authority would have to face. The question was whether the costs would be compensated by fees. There was also a question of the link between the drafts under discussion and the basic mandate of ICAO.

211. The Secretary-General of UNIDROIT indicated that, as far as UNIDROIT was concerned, the Governing Council would at its forthcoming meeting in April examine these matters in the light of the outcome of the Joint Session and would decide what its position would be thereafter. He stated that it was however the diplomatic Conference that would take the final decision.

212. One observer indicated that, although the possibility had been aired on a number of occasions, his Organisation had no interest in being the Registrar or the operator of the International Registry. The concerns that observer had expressed in the past had been allayed by the progress that had been made and by

the excellent work that had been accomplished in the registry area by Governments and governmental bodies. With reference to the previous meeting of the ICAO Council, he observed that a fourth scenario that had been examined was that of no involvement whatsoever by ICAO.

213. In connection with a report on the progress of the *ad hoc* Registration Task Force, one delegation stated that it was not interested in the management of the International Registry.

214. It was decided that the Drafting Committee should consider Articles XVI to XIX from a technical point of view, whereas the political aspects should be left to be decided at the diplomatic Conference.

#### ***Article 29 of the [preliminary] draft Convention***

215. One delegation reiterated the strong reservations regarding the Chapter on assignment of international interests it had expressed in the paper it had submitted to the Joint Session (UNIDROIT CGE/Int.Int/3-WP/4; ICAO Ref. LSC/ME/3-WP/4). It indicated that the text of the [preliminary] draft Convention completely overturned the concept of security interests in that it reversed the widely followed principle that security followed the claim and made the obligation accessory to the international interest.

#### ***Article 30 of the [preliminary] draft Convention***

216. With reference to Article 30(1)(b), one delegation suggested that, in order to meet the objections raised by a number of delegations, the formulation might be modified so as to ensure that the assignment of the associated right carried with it the assignment of the claim, rather than the opposite.

217. The *Rapporteur* observed that the future Convention was not a Convention that dealt with the independent assignment of claims and that making the proposed modification would make substantial changes to the draft necessary. Furthermore, it would interfere with the UNCITRAL draft Convention.

218. One delegation stated that it believed that the Convention did deal with the assignment of claims, as the assignment of a security interest would be worth nothing if the claim was not assigned at the same time. In substance, the Convention dealt with the assignment of certain receivables. It stated that it believed that it was possible to recast the provisions, even if it would take some time to do so.

219. The ICAO Secretariat referred to the proposal it had presented to the Joint Session (UNIDROIT CGE/Int.Int/3-WP/12; ICAO Ref. LSC/ME/3-WP/12) and suggested deleting paragraph 3.

220. While three delegations and one observer supported the ICAO Secretariat's proposal to delete paragraph 3, one observer, supported by one delegation, expressed the view that the deletion of paragraph 3 would restrict the ability of airlines to decide what to waive.

221. Two delegations wondered what difference the deletion of paragraph 3 would make in practice, as if nothing were stated it would always be possible for airlines to decide what to waive.

#### ***Articles 32 and 35 of the [preliminary] draft Convention***

222. One delegation referred to the chapeau of Article 32, which, it stated, would not work in practice. It also pointed out that there was a similar problem with Article 35.

223. It was decided that three assistants to the Chair (Canada, France and the United States of America) should meet to consider the points raised in relation to Chapter IX on Assignment of International Interests and Rights of Subrogation and should submit any proposal they might agree on to Plenary. Any other delegations that wished to contribute were invited to do so.

***Relationship of the [preliminary] draft Convention and [preliminary] draft Protocol with the UNCITRAL draft Convention on Assignment [in Receivables Financing] [of Receivables in International Trade]***

224. The observer from the United Nations Commission on International Trade Law (UNCITRAL) referred to the paper submitted by the UNCITRAL Secretariat relating to the relationship of the [preliminary] draft Convention and Protocol with the UNCITRAL draft Convention on Assignment [in Receivables Financing] [of Receivables in International Trade] (UNIDROIT CGE/Int.Int./3-WP/10; ICAO Ref. LSC/ME/3-WP/10), in which it had indicated that the UNCITRAL Working Group on International Contract Practices had decided to leave the matter to Article 36, under which the UNCITRAL draft Convention would not prevail over an international Convention dealing with matters governed by the UNCITRAL draft Convention. He stated that the Commission was expected to review the decision at its forthcoming session in June. He indicated that the re-introduction of the list of equipment in Article 2 of the future Convention should limit the conflicts that might arise between the instruments. He suggested that the Joint Session might wish to consider the possibility of reducing potential conflicts when it examined the specific assignment-related provisions. The potential conflict related to the coverage of payment claims, that is, the principal obligation in the case of the sale of equipment or a loan.

225. One delegation proposed (UNIDROIT CGE/Int.Int./3-WP/29; ICAO Ref. LSC/ME/3-WP/29) as a solution to the problem of the relationship between the two draft instruments that States should be given the opportunity, at the time of ratifying, approving or acceding to the relevant Protocol, to declare which of the two instruments should prevail. The observer from UNCITRAL indicated that this possibility had also been considered by the UNCITRAL Working Group which had found it less attractive as a solution than the other approach referred to in the paper containing the proposal in question (namely, that of the [preliminary] draft Convention or Protocol including a provision stating either that it would supersede any other Convention dealing with matters that it governed or that it would specifically supersede the UNCITRAL draft Convention) on the ground that it would lead to uncertainty, with one State opting to give precedence to the [preliminary] draft Convention and another giving precedence rather to the UNCITRAL draft Convention.

226. One observer stated that the best approach would be for the UNCITRAL draft Convention explicitly to exclude aircraft receivables.

227. One delegation agreed with the previous observer and added that the proposal referred to in §225, *supra* that a specific provision be included in the [preliminary] draft Convention stating that it would prevail over any international agreement containing provisions concerning the matters governed by it was acceptable.

228. Two other delegations supported the suggestion of including such a provision in the Convention, also in view of the fact that the UNCITRAL draft Convention was more general in character and the [preliminary] draft Convention, being more specific, would normally take priority under general rules of law.

229. One delegation suggested that a provision on the relationship between the two Conventions could be included in the draft in square brackets, considering that both instruments were still under preparation.

230. The Secretary-General of UNIDROIT drew attention to a proposal submitted by the UNIDROIT Secretariat (UNIDROIT CGE/Int.Int./3-WP/14; ICAO Ref. LSC/ME/3-WP/14), in which it was pointed out that A.W.G., R.W.G. and S.W.G. had “all enunciated a clear desire that assignment of receivables taken as security in aircraft, rail and space financing transactions should be dealt with in equipment-specific instruments, namely the [preliminary] draft Convention as implemented by the relevant [preliminary] draft Protocol, rather than in the draft Convention”.

231. In the end, it was decided to reconsider the question of the possible inclusion of a specific provision on the relationship between the [preliminary] draft Convention and Protocol and the UNCITRAL draft Convention in the context of the Final Clauses at the diplomatic Conference.

***Proposal for revised text of Chapter IX of the [preliminary] draft Convention***

232. The three delegations that had been appointed assistants to the Chair with respect to Chapter IX of the [preliminary] draft Convention (Canada, France and the United States of America) submitted two alternative drafts of the relevant provisions to Plenary for consideration (UNIDROIT CGE/Int.Int./3-WP/31; ICAO Ref. LSC/ME/3-WP/31).

233. One of the three delegations introduced the proposal and suggested that, considering the preliminary character of the drafts, the working paper containing this proposal should be appended to the Report on the Joint Session.

234. One observer, supported by five delegations, suggested that Alternative A of the proposed Articles be inserted into the text of the [preliminary] draft Convention with an explanatory note referring to Alternative B.

235. One delegation, supported by ten other delegations, opposed the insertion of Alternative A in the text, as the Joint Session had not had the opportunity to discuss it in depth and it would not be possible to take a final view at this Joint Session. It suggested appending the working paper referred to in §§232 and 233, *supra* to the Report on the Joint Session and inserting a footnote in the draft. Two of the proponent delegations also stated their acquiescence to this proposal.

236. The observer from UNCITRAL expressed his appreciation for the improvements made to the text by the proposal. He suggested, however, that the key issue was in Article 34, as the risk was that, if more than one regimen existed, the cost of transactions would increase dramatically if parties had to examine a number of different registries to discover which of the regimes applied to their interests. He also stated that these risks might be absorbed.

237. It was decided that the text of Chapter IX should be retained as presently in the text, and that a footnote should be added making reference to the solutions contained in the working paper referred to in §232. The final text should be considered by the diplomatic Conference. It was also decided that any drafting changes should be made in accordance with what had appeared to be necessary in the course of the discussion.

***Articles 37 and 38 of the [preliminary] draft Convention***

238. One delegation requested clarification as regards the scope of non-consensual rights and interests, in particular under Article 38. Furthermore, with reference to Article 38(3), it observed that a Contracting State could protect itself against the effects of the paragraph by making a declaration referring to categories of non-consensual right created in the future. The problem arose when States acceded subsequently. The delegation indicated that a Contracting State should be able to protect its position no matter when it acceded to the Convention.

239. The *Rapporteur* indicated that the future Convention was a private law Convention and consequently dealt only with private law rights and not with public law rights. As regards the second point, he suggested that it was adequately dealt with in the new Article *Z ter*, as revised by the Restricted Group of the Drafting Committee (UNIDROIT CGE/Int.Int./3-WP/28 Rev.; ICAO Ref. LSC/ME/3-WP/28 Rev.). The delegation that had raised the question however did not feel that this was the case.

240. One observer suggested modifying the definition of non-consensual rights in Article 1(v) by adding as a second sub-paragraph “a right conferred by law to a State to retain or sell an object”. He

observed that a declaration under Article XXX of the [preliminary] draft Protocol would apply to all interests, including international interests.

241. One delegation requested clarification as to the inter-relationship between Article 37 and the words in brackets in Article 38.

242. The *Rapporteur* stated that Article 37 gave Contracting State the right to list categories of non-consensual right or interest and that these would then take their place in the priority system. Article 38 was intended to enable States to protect their rights where they did not wish to make any registration, in which case they had the power to make a declaration. The effect of this declaration was that the interest would have priority even if it was not on the register. The two Articles were intended to be mutually exclusive: if a declaration was made under Article 38, Article 37 would not apply.

243. The delegation that had requested the clarification observed that as both Articles dealt with non-consensual rights they could be merged. The ambiguity that existed could be removed if the words in brackets in Article 38 were deleted.

244. It was decided that the Drafting Committee should take all observations into consideration.

#### ***Article 40 of the [preliminary] draft Convention***

245. One delegation advocated restraint in regulating jurisdiction, as there was a risk of interference with the 1968 Brussels Convention on the Recognition of Judgments in Civil and Commercial Matters and the 1988 Lugano Convention on the same subject-matter, as well as with the preliminary draft Hague Convention. It also wondered why Article 40 also gave jurisdiction to non-Contracting States, whereas Article 41 limited it to Contracting States.

246. The *Rapporteur* indicated that Article 40 was confined to claims *in rem* and related to Article 14(1). Article 41 was limited to one jurisdiction, as it gave jurisdiction for a much wider range of types of claim.

247. One delegation stressed the importance of providing at least limited guidance in the future Convention, considering that the Brussels and Lugano Conventions applied to a limited number of countries and it was not known when work on the preliminary draft Hague Convention would be completed.

248. One delegation referred to the paper it had submitted to the Joint Session (UNIDROIT CGE/Int.Int./3-WP/4; ICAO Ref. LSC/ME/3-WP/4) in which it had warned that the [preliminary] draft Convention could not, without incurring the risk of grave dysfunction, derogate in such a flagrant manner from the rules normally used by States for the founding of jurisdiction in respect of the granting of interim relief, all the more so since the [preliminary] draft Convention carried no rule on the recognition of judgments by such courts. Its paper furthermore contained a proposed rewording for Article 40.

249. One delegation indicated that, if the brackets were removed in paragraph 1, jurisdiction under Article 40 would be exclusive. This would mean that also a non-Contracting State would have exclusive jurisdiction and that the court of a Contracting State would be obliged to enforce the judgment of a court in a non-Contracting State. It therefore proposed deleting the brackets and adding the words “of a contracting State” after “the courts”. This proposal was supported by another delegation.

250. One delegation suggested that the order of Articles 40 to 41 should be modified, Article 41 being placed first. It furthermore suggested adding the words “for the final determination of the claim” after “trial” in Article 40(2).

251. It was decided that the Drafting Committee should examine how the proposal referred to in §248 could be accommodated, as it had received some support.

***Article 40 bis of the [preliminary] draft Convention.***

252. One delegation suggested broadening the scope of paragraph 2 to give the court wider jurisdiction to allow it to make orders directing the Registrar to proceed with the discharge of registration or the correction of data. This proposal was supported by two other delegations.

***Article 41 of the [preliminary] draft Convention***

253. One delegation observed that the present version of the text referred to the courts of the forum State and that this created a problem in relation to the determination of the competent forum. Furthermore, the Article introduced into the system of the [preliminary] draft Convention the *forum arresti*, which would be against the domestic rules on international civil procedure of a number of countries, the Brussels and Lugano Conventions, as well as the preliminary draft Hague Convention. The Article should be limited to the forum of the place where the debtor was located or the forum chosen by the parties.

254. One observer indicated that he would not be comfortable with a reference to the forum of the State of the debtor, which he felt was in any event already covered by Article 41(1).

255. The above delegation suggested stating in Article 41(2) that the court had exclusive jurisdiction if it was felt that the debtor's court should not prevail over the court chosen by the parties. If the court had exclusive jurisdiction, then what the parties agreed would be compulsory, unless the parties choose otherwise, which would seem to be in line with both the interests and the expectations of all the parties involved.

***Examination of the Public International Law Provisions as revised by the Restricted Group of the Drafting Committee taking into consideration the results of the meetings of the Public International Law Working Group on 20 and 21 March 2000 and the comments made in Plenary on 23 and 24 March 2000 on the Report of the Public International Law Working Group (UNIDROIT CGE/Int.Int/3-WP/28 Rev.; ICAO Ref. LSC/ME/3-WP/28 Rev.)***

256. One delegation suggested that the reference to the "Protocol" should be plural, as the intention was to refer not only to the Aircraft Protocol, but also to the Rail and Space Protocols.

***Article U of the [preliminary] draft Convention***

***Examination of the Public International Law Provisions as revised by the Restricted Group of the Drafting Committee taking into consideration the results of the meetings of the Public International Law Working Group on 20 and 21 March 2000 and the comments made in Plenary on 23 and 24 March 2000 on the Report of the Public International Law Working Group (UNIDROIT CGE/Int.Int/3-WP/28 Rev.; ICAO Ref. LSC/ME/3-WP/28 Rev.)***

257. Ms Serobe (South Africa), Chairman of the Public International Law Working Group, observed that the time-limit for the entry into force of the Convention was still indicated as six months in paragraph 1, whereas the Public International Law Working Group had recommended that it be reduced to three months.

258. One delegation explained that it would have constitutional problems with a time-period shorter than six months.

259. One delegation suggested that the word "accession" should be deleted in paragraph 1, as it referred to the procedure following the entry into force of the Convention. This was supported by two other delegations, one of which recalled that the time-period for the coming into force of a Convention following accession was normally dealt with in a separate Article.

260. It was agreed that Article V would have to be re-examined when Article 3 was re-considered, in view of the fact that Plenary had only agreed to the principles developed by the Special Working Group on Article 3 in relation to Articles 3, 27 and V.

***Article W of the [preliminary] draft Convention***

***Examination of the Public International Law Provisions as revised by the Restricted Group of the Drafting Committee taking into consideration the results of the meetings of the Public International Law Working Group on 20 and 21 March 2000 and the comments made in Plenary on 23 and 24 March 2000 on the Report of the Public International Law Working Group (UNIDROIT CGE/Int.Int/3-WP/28 Rev.; ICAO Ref. LSC/ME/3-WP/28 Rev.)***

261. One delegation observed that in paragraph 4 the word “shall” should be used instead of “will”.

262. With reference to paragraph 1, one delegation wondered whether it was UNIDROIT that had to decide which other international Organisations should be involved, or whether it was not Governments that should do so.

263. One delegation queried whether it was appropriate to include this Article in the text of the Convention. The Secretary-General of UNIDROIT indicated that the essential purpose of this Article was to indicate to the UNIDROIT Rail and Space Working Groups that their interests had not been overlooked, as had been suggested at the time of the reintroduction of the new short list in Article 2 of the [preliminary] draft Convention. Another delegation suggested that the drafting of Article W might usefully be revisited. It was accordingly decided to place Article W in square brackets.

***Article Z bis of the [preliminary] draft Convention***

***Examination of the Public International Law Provisions as revised by the Restricted Group of the Drafting Committee taking into consideration the results of the meetings of the Public International Law Working Group on 20 and 21 March 2000 and the comments made in Plenary on 23 and 24 March 2000 on the Report of the Public International Law Working Group (UNIDROIT CGE/Int.Int/3-WP/28 Rev.; ICAO Ref. LSC/ME/3-WP/28 Rev.)***

264. One delegation indicated that in paragraphs 1 and 2 the term “authorised” should be replaced by “specified or provided for”.

***Article Z ter of the [preliminary] draft Convention***

***Examination of the Public International Law Provisions as revised by the Restricted Group of the Drafting Committee taking into consideration the results of the meetings of the Public International Law Working Group on 20 and 21 March 2000 and the comments made in Plenary on 23 and 24 March 2000 on the Report of the Public International Law Working Group (UNIDROIT CGE/Int.Int/3-WP/28 Rev.; ICAO Ref. LSC/ME/3-WP/28 Rev.)***

265. One delegation stated that it had a preference for Alternative A, but observed that it would only work if priority rules were added for internal transactions. This suggestion was supported by three other delegations, which also expressed a preference for Alternative A.

266. One delegation felt that both Alternatives would require more work and therefore suggested that they should be kept for the time being in brackets. It observed that airlines in different countries often had diametrically opposing views, and that its country’s airlines had expressed a preference for Alternative B with a long transitional period.

***Article XX of the [preliminary] draft Protocol***

267. One delegation pointed out that Articles 40 and 41 of the [preliminary] draft Convention had been modified, and that Article XX of the [preliminary] draft Protocol should take those changes into account. It also pointed out that, in cases of common mark registries, for the purpose of determining the competent jurisdiction, reference should be made to the State where the register was located.

***Article XXV of the [preliminary] draft Protocol***

268. One delegation observed that neither the [preliminary] draft Convention nor the [preliminary] draft Protocol provided details as to the procedure to be followed for the adoption of amendments to the instruments and expressed the hope that it would be possible to consider such a procedure at the diplomatic Conference.

***Article XXX of the [preliminary] draft Protocol***

269. One delegation recalled that it had been decided to re-examine in the context of Article XXX the possibility of States selecting either Alternative A or Alternative B, or neither Alternative under Article XI of the future Protocol. This delegation expressed a strong preference for allowing such a possibility. Three other delegations supported this view.

270. One delegation, while supporting the view expressed by the other delegations, referred to the paper it had submitted to the Joint Session (UNIDROIT CGE/Int.Int./3-WP/19; ICAO Ref. LSC/ME/3-WP/19) in which it had sought confirmation that a single Contracting State would be able to select Alternative A for certain types of insolvency proceedings and Alternative B for other types.

271. It was observed that it should not be possible for the Alternatives to be split and re-assembled as thought best by Contracting States, and that they should apply in their entirety or not apply at all.

***Article XXXI of the [preliminary] draft Protocol***

272. One delegation referred to a recommendation it had made earlier in the discussions, to either have a parallel Article to Article XXXI in the [preliminary] draft Convention or to move Article XXXI to the Convention. The reason for this was that at present the impression was that a Contracting State had to make all declarations at the time it acceded to the instruments, whereas this was not the case.

***Article XXXIII of the [preliminary] draft Protocol***

273. With reference to paragraph 2, one delegation observed that it had been the general feeling in the Public International Law Working Group that a denunciation should take effect after a short period of time after its deposit, for example six months. With reference to paragraph 3, it had been agreed by the Public International Law Working Group that a prospective international interest should be converted into a full international interest on the date the denunciation took effect.

***Article XXXIV of the [preliminary] draft Protocol***

274. With reference to paragraph 1, one delegation suggested that the words in square brackets should be deleted, as consultations between the Organisations would be conducted as a matter of course. It was decided that the Drafting Committee should consider this proposal.



***Report by the Drafting Committee (UNIDROIT CGE/Int.Int./ 3-WP/40 and ICAO Ref. LSC/ ME/ 3-WP/40; cf. Attachment C)***

275. The report by the Drafting Committee, on the work it had accomplished during the Joint Session, was laid before the latter at its final plenary session. The report was introduced by the Chairman of the Committee. He explained that the texts of the [preliminary] draft Convention and the [preliminary] draft Aircraft Protocol appended thereto were based on the texts that had come out of the second Joint Session as completed by the *ad hoc* Drafting Group, amended to reflect the decisions taken by Plenary during the third Joint Session. These revised texts had been first prepared by a restricted group of the Drafting Committee before being amended and approved by the Drafting Committee as a whole on 30 March.

276. He expressed his gratitude to the Chairman of the Joint Session, Plenary, the Drafting Committee and the UNIDROIT and ICAO Secretariats for the trust reposed in the Restricted Group of the Drafting Committee. He also expressed his gratitude to the Drafting Committee for its constructive and co-operative attitude toward the work carried out by the Restricted Group. He expressed particular thanks to the members of that group (Mr J.M. Deschamps, Mr C.W. Mooney and his substitute Mr H.S. Burman (United States of America), Mr O. Tell and his substitute Mr G. Grall (France), Sir Roy Goode, Messrs K. El-Hussainy and H.-G. Bollweg, Ms C. Chinkin (on behalf of the Public International Law Working Group) and Mr J. Wool) without whose expertise and tireless efforts and the spirit of mutual co-operation and trust that had informed these efforts it would not have been possible for the Drafting Committee to complete its work in time. He finally extended his warm thanks to the Secretariats for their dedication which had also played an essential part in enabling the Committee to complete its work in time.

277. He craved indulgence for those imperfections that, for reasons of time and technical difficulties, it had not been possible entirely to iron out. He assured Plenary that these imperfections would be taken care of in the aftermath of the session by the Secretariats.

278. The Chairman of the Joint Session warmly congratulated the Drafting Committee, on behalf of the Joint Session, on the accomplishment of its task, while nevertheless noting that it seemed to have overlooked the question whether the references to “aircraft equipment” in the title of, and the preamble to the [preliminary] draft Protocol should be brought into line with the term “aircraft objects” employed elsewhere in that text in this connection.

279. A number of delegations echoed the congratulations addressed by the Chairman of the Joint Session to the Drafting Committee, adding special congratulations to the Chairman of that Committee and to the Secretariats. One delegation paid special thanks to those members of the UNIDROIT Secretariat without whose round-the-clock efforts the Drafting Committee’s work could not have been laid before Plenary on time.

280. Three delegations voiced their concern at the fact that the Drafting Committee had not seen fit to introduce a criterion of good faith in Article 27(3)(b) (cf. §177 *in fine*). It was pointed out by six delegations that this was an issue that had already been fully debated by Plenary and that it was not appropriate to re-open the matter at such a late stage. It was pointed out, first, that what was valid as a general principle of law in many jurisdictions was not justified in the very special circumstances addressed by the [preliminary] draft Convention, where what was being dealt with was very expensive, sophisticated equipment and very sophisticated parties and where what was important was for those advising the party advancing funds to be able, by reference to the International Register, to assure that party exactly where it would stand in relation to the asset concerned, secondly, that the maintenance of the first-to-file priority rule as a cornerstone of the proposed new international regimen was important so as to establish a degree of predictability sufficient to enable airlines, in particular, greater access to financing alternatives and to lower financing costs and that any exception to the first-to-file principle would open up the prospect of costly litigation and, thirdly, that the decision not to include a reference to good faith in Article 27(3)(b) did not entail the exclusion of the application of those domestic rules of public policy that would otherwise apply in this regard. It was added by the *Rapporteur* that the issue raised had reflected only minority concern during

the discussions in Plenary and that a clear majority had favoured making no change to Article 27(3)(b): that provision had accordingly been referred by the Chairman of Plenary to the Drafting Committee merely with a view to that body considering whether something could be done to accommodate the concerns expressed by the aforesaid minority, in particular so as to avoid conveying any impression that it was intended to override criminal law. He added that the Drafting Committee had in the event concluded that the best solution was to leave Article 27(3)(b) unchanged and to introduce a new Article Q.

281. One delegation called for deletion of the term “registered office” in Article 4(1)(b) of the [preliminary] draft Convention. It had understood that Plenary had already agreed to the deletion of this term. It was explained by the *Rapporteur* that the Drafting Committee had decided after reflection to maintain the language in question in order to accommodate those jurisdictions that did not have any concept of “statutory seat”, even though what was meant by that term seemed to be the same as what was meant by “registered office,” and in view of the fact that the European Convention on Insolvency Proceedings employed the term “registered office”. Both terms, “registered office” and “statutory seat,” had accordingly been included in Article 4(1)(b) so as to indicate that they were intended to be synonymous. Another delegation disagreed with the proposal for the deletion of the term “registered office”.

282. However, on a proposal from the chair, it was agreed that it was too late for any changes to be made to the texts of the [preliminary] draft Convention and the [preliminary] draft Protocol laid before Plenary by the Drafting Committee and that it would be quite inappropriate for matters fully debated and decided by Plenary to be re-opened by means of comments on the Report of the Drafting Committee. It was agreed that all questions relating to the manner in which the Drafting Committee had implemented the decisions of Plenary should rather be considered in the context of the draft Report on the Joint Session.

283. One delegation expressed its reservations on two issues that it would be looking into thoroughly after the session, namely the question of the objects to be covered by the [preliminary] draft Convention and the [preliminary] draft Aircraft Protocol and the relationship between the latter texts and domestic rules of public policy, including those guaranteed by national Constitutions.

284. One delegation expressed its reservations regarding the scope of, and need for Article Q of the [preliminary] draft Convention as drafted. It remarked that there were a great many matters other than the questions of criminal and tortious liability that were not dealt with by the [preliminary] draft Convention, for example the questions of States’ laws on immigration and national security. It was accordingly concerned at the implication as regards these other matters that could be read into the fact that the [preliminary] draft Convention only referred to criminal and tortious liability.

#### **AGENDA ITEM 5: FUTURE WORK**

285. One delegation noted with satisfaction the fact that the Joint Session had been able to complete the first fundamental step on the way towards adoption of the two [preliminary] drafts. It noted that significant progress had been made on a number of issues and congratulated participants for the spirit of compromise that had prevailed. It added that there was, however, work still to be done on a number of issues involving points of substance, in particular Chapter IX of the [preliminary] draft Convention. Moreover, Governments would need to reflect on the consequences at domestic level of the possibility given to States to derogate from the provisions of the [preliminary] draft Convention and Protocol in respect of internal transactions as also on the difficulties which still needed to be resolved in the context of the [preliminary] draft Convention concerning the relationship between the international interest and national interests. Work also remained to be done on the finalisation of an effective international registration system, involving the taking of a number of decisions, of both a technical and a political nature, regarding the bodies to be given responsibility for running this system and the time within which it should be operational. It was pleased in this connection that Plenary had seen fit to accept the proposal for the creation of a task force to look at the practical issues involved in the setting up of the future International Registry. This delegation wished to see

the project completed within a reasonable time compatible with the interests of both industry and States. The Chairman added that she believed that these words echoed the general feeling of Plenary.

286. One delegation considered that the revised texts prepared by the Drafting Committee demonstrated that considerable progress had been made by the Third Joint Session but that some important legal and political problems still remained to be settled: the square brackets around, and the alternative versions of a number of provisions still had to be decided. It expressed its scepticism as to whether all these decisions were capable of being taken by a diplomatic Conference and without further preparation. It was the task of the Joint Session to create new international rules for the financing of high-value mobile equipment which was of enormous economic importance. This involved the need, on the one hand, of providing the relevant manufacturers, users and financiers with these rules as fast as possible but also, on the other hand, of providing them with rules that were drafted sufficiently clearly and correctly so that they would work in practice. This process required some time. It was right to press on with all due expedition but it was also necessary to take the requisite degree of care.

287. The Director of the ICAO Legal Bureau indicated that, on the ICAO side, he believed that the next step would be for the ICAO Council to take at its forthcoming meeting, to be held six weeks after the Joint Session. He expressed confidence that the Council would take a decision regarding moving forward the project in the right way towards a diplomatic Conference.

288. The Secretary-General of UNIDROIT noted that considerable progress had been made at the Joint Session and considered the texts that had emerged therefrom to be good products. He was firmly convinced that success was at hand. He considered it remarkable that delegations that had not had the benefit of attending all three Joint Sessions had not been overwhelmed by a subject the economic and legal implications of which were so demanding in their proportions. The complexity of the issues involved nevertheless made it very difficult for newcomers without the requisite economic and legal backgrounds and intellectual curiosity to come fully to grips with the two instruments. These were unlike any other instruments for the harmonisation and modernisation of commercial law: they were to be seen as a very special, fragile and sophisticated vessel capable of reaching yet unknown shores but just as capable of being smashed up against the cliffs by the uncontrollable power of the sea. Both Organisations should in his opinion keep this in the forefront of their minds in planning for the future. Representatives of member Governments of the ICAO Council had met during the session and a frank and useful discussion had taken place. This discussion had however raised more questions than answers. What was clear was that one of the two intergovernmental Organisations sponsoring the consultation process on these instruments could not expect the other to shape its decision-making process and timetable wholly according to its own rules. In any event, competence in respect of this matter vested in the UNIDROIT Governing Council, due to meet a fortnight later, and the ICAO Council, due to meet a month later. He indicated that a fourth Joint Session would not be possible during 2000 because of budgetary restrictions. A fourth Joint Session in 2001 would meet stiff resistance from members of the UNIDROIT Finance Committee. For these reasons he believed it was necessary to exclude the hypothesis of a further Joint Session. Such a hypothesis should also be excluded because, as was well known, many of the beneficiaries of the proposed new international regimen (both States and private industry) were demanding that the project be moved forward to completion with all due expedition.

#### **AGENDA ITEM 6: REVIEW OF REPORT**

289. The Report was reviewed and approved with a number of amendments.

**AGENDA ITEM 7: ANY OTHER BUSINESS**

***Proposal for the Establishment of an ad hoc Task Force with a view to the Establishment of the International Registry***

290. Two delegations presented a joint proposal for the setting up of an *ad hoc* task force to prepare for the establishment of the International Registry (UNIDROIT CGE/Int.Int./3-WP/30; ICAO Ref. LSC/ME/3-WP/30).

291. This proposal was approved, on the understanding that the *ad hoc* task force should keep the Secretariats of UNIDROIT and ICAO at all times informed of its work and that the Secretariats should also be consulted in relation to its composition with a view to satisfying certain criteria.

292. Mr J.R. Standell (United States of America) informed Plenary at the conclusion of the Joint Session that the *ad hoc* Registration Task Force, of which he and Mr G. Grall (France) had been elected Co-chairmen, had already met twice informally. 15 States as well as advisers had indicated their interest in following its work. The Task Force would continue with its work on developing the basic requirements for the International Registry and a process for the evaluation of proposals. The Task Force planned next to meet as early as the latter part of June 2000 with a view to facilitating the work of a provisional Supervisory Authority by means of the submission of a report later in Summer 2000.

**CLOSURE**

293. A number of representatives expressed their gratitude and congratulations to the Chairman of the Joint Session, to the Drafting Committee and the Restricted Group thereof, to the Chairman of those bodies and to the two Secretariats for their excellent work.

294. The Director of the ICAO Legal Bureau echoed those representatives who has commended the Chairman of the Joint Session for the excellent manner in which she had guided it through all three sessions.

295. The Secretary-General of UNIDROIT noted that the success of the Joint Session was due to the work of many, not least to the dedication of the representatives of Governments and observers and their spirit of co-operation, but also to the two Secretariats and the members of the different committees, especially the Drafting Committee, the Restricted Group thereof and their dedicated Chairman; however, it was due above all to the persons without whose dedication, intelligence, scholarly knowledge and loving patience this result would not have been possible, to wit the Chairman, the *Rapporteur* and the two Vice-Chairmen.

296. In closing the session, the Chairman expressed her warm thanks to the *Rapporteur*, her two Vice-Chairmen, the chairmen of all the committees but especially the Chairman of the Drafting Committee and the two Secretariats. She looked forward to the results of the Joint Session, in the form of satisfactory texts, being able to be submitted for adoption to a diplomatic Conference, at such time as such a Conference was convened.

LIST OF PARTICIPANTS

MEMBERS OF UNIDROIT / MEMBERS OF THE ICAO SUB-COMMITTEE †

ARGENTINA (*)(**)	Ms Mercedes PARODI
AUSTRIA (*)	Mr Klaus FAMIRA
BELGIUM (*)	Mr Lucien DE LEEBEECK Ms Trees PAELINCK Mr José COMPERE
BRAZIL (*)(**)	Mr Pedro BITTENCOURT DE ALMEIDA Mr Fernando de OLIVEIRA PONTES
CAMEROON (**)	Mr Thomas TEKOU
CANADA (*)(**)	Me Gilles LAUZON Me Philippe LORTIE Ms Mounia ALLOUCH Mr Ronald CUMING Me J. Michel DESCHAMPS Ms Patricia NICOLL Me Suzanne POTVIN PLAMONDON
PEOPLE'S REPUBLIC OF CHINA (*)(**)	Mr LI Chengang Ms FENG Yao Mr LU Guohua Ms ZHAO Hong Mr WANG Xilu Mr JIN Fengchun Mr DU Lixin Ms LIU Fang
COLOMBIA (*)	Mr Alfredo José ALDANA
CROATIA (*)	Mr Branimir ČEČUK

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† In this list member States of UNIDROIT are indicated by an asterisk (\*) and members of the ICAO Sub-Committee by a double asterisk (\*\*).

CZECH REPUBLIC (*)	Mr Jan RAYM Mr Petr HRON Mr Václav ROMBALD Mr Karel HOLBA Ms Zoja LADOVÁ Ms Ludmila KOSATÍKOVÁ
DENMARK (*)	Mr Michael B. ELMER
EGYPT (ARAB REPUBLIC OF) (*)(**)	Mr Khayri EL-HUSSAINY Mr Mohamed Mostafa SHEBL EL-SAWEY Mr Samir MOHAMED DESOKY Mr Ahmed FAROUK Mr Bahader HASSAN Mr Ahmed RIHAN Mr Tarek RASHAD
FINLAND (*)(**)	Mr Matti TUPAMÄKI
FRANCE (*)(**)	Mr Olivier TELL Mr Jacques LAGARDE Mr Georges GRALL Mr Alain VEILLARD Ms Dominique LARROCHE Ms Frédérique CONAN
GERMANY (*)(**)	Mr Hans-Georg BOLLWEG Mr Klaus T. WIMMER Mr Karl KREUZER Mr Jens SCHNOOR
GREECE (*)	Mr Elias KRISPIS Ms Elina MOUSTAIRA
HUNGARY (*)	Mr Zoltán FEJES
INDONESIA (**)	Mr Anda DJOJONEGORO
IRELAND (*)(**)	Ms Caitriona O'BRIEN Mr Martin DARCY Ms Catherine TREACY Mr John O'SULLIVAN Mr Feargal O'DUBHGHAILL
ITALY(*)(**)	Ms Emilia CHIAVARELLI, <i>Chairman of the Joint Session</i> Mr Giuseppe TUCCI Mr Guido RINALDI BACCELLI

	Mr Damiano CIRIELLO Ms Anna VENEZIANO Ms Lorenza SIMONDI
JAPAN (*)(**)	Mr Susumu MASUDA Mr Ryoichi HANAMURA Mr Toshiyuki ONUMA Mr Takashi KOZUKA Mr Ikuo SHOJI
MEXICO (*)	Mr Jorge A. SÁNCHEZ CORDERO DAVILA, <i>Second Vice-Chairman of the Joint Session</i>
NETHERLANDS (*)	Mr Han VAN DER BEEK
NORWAY (*)	Mr Thomas BUSKOP
PORTUGAL (*)	Mr José Augusto MOUTEIRA GUERREIRO
REPUBLIC OF KOREA (*)	Mr Jung-Jae LEE Mr KIM Moon Hwan Mr Dae-Hyun KANG
RUSSIAN FEDERATION (*)(**)	Mr Vladimir Victorovich VOZHCHOV Mr Vadim Alexandrovich SAVELYEV Mr Igor Borisovich POROKHINE Mr Nikolai OSTROUMOV Mr Vladlen I. KOROVKIN Mr Vitaly CHIZNIKOV
SINGAPORE (**)	Ms Beng Tee TAN Ms Angela PNG Mr Wing Tuck LEONG Ms Deena BAJRAI
SLOVAKIA (*)	Mr Lubomir MICEK
SLOVENIA (*)	Mr Marko GORJANC
SOUTH AFRICA (*)	Mr Enver DANIELS Mr Nasser SOLOMON Ms Gloria Tomatoe SEROBE, <i>First Vice-Chairman of the Joint Session</i> Ms Swazi Bajabulile TSHABALALA Mr Gasant ORRIE Mr Khalatse C. MAROBELA Ms Nozipho SITHOLE Mr Ntobeleo MAQUBELA

	Mr Edward X. MAKAYA
SPAIN (*)(**)	Mr Álvaro VELOSO LOZANO Ms Maria Asunción CORNEJO PABLOS Mr Ricardo FERNÁNDEZ RODRÍGUEZ
SWEDEN (*)	Mr Henrik KJELLIN
SWITZERLAND (*)	Mr Laurent NOËL Mr Bénédict FOËX
TUNISIA (*)	Mr Hédi MOUGAÏDA Mr Lassaad KHECHANA Mr Mohamed Tahar EL HAMDI
TURKEY (*)	Ms Gul SARIGUL Ms Berrak ASCI Ms Lale KAPLAN Ms Arzu SADIKOGLU
UNITED KINGDOM (*)(**)	Mr Carl WARREN Miss Catherine ALLEN Mr Bryan WELCH Sir Roy GOODE, <i>Rapporteur to the Joint Session</i> Miss Emma LOCKWOOD
UNITED STATES OF AMERICA (*)(**)	Mr Peter BLOCH Mr Harold BURMAN Mr Louis EMERY Mr Jeffrey KLANG Mr Robert MORIN Mr Joseph STANDELL Ms Vonda Kimble DELAWIE Mr Charles W. MOONEY Jr.

#### INTERGOVERNMENTAL ORGANISATIONS

EUROPEAN SPACE AGENCY	Mr Gabriel LAFFERRANDERIE
INTERGOVERNMENTAL ORGANISATION FOR INTERNATIONAL CARRIAGE BY RAIL	Mr Gerfried MUTZ
UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW	Mr Spiros V. BAZINAS



## INTERNATIONAL NON-GOVERNMENTAL ORGANISATIONS

AVIATION WORKING GROUP	Mr Jeffrey WOOL, <i>Co-ordinator of the Aviation Working Group</i> Mr David WALTON Mr Claude BRANDES Mr Scott WILSON
INTERNATIONAL AIR TRANSPORT ASSOCIATION	Mr Lorne S. CLARK Mr Andrew G. CHARLTON
INTERNATIONAL BAR ASSOCIATION	Ms Lisa CURRAN
INTERNATIONAL LAW ASSOCIATION	Mr Giuseppe GUERRERI Mr Giorgio BOSCO
INTERNATIONAL UNION OF RAILWAYS	Mr David GECHT
RAIL WORKING GROUP	Mr Howard ROSEN, <i>Co-ordinator of the Rail Working Group</i> Mr Louis P. WARCHOT Ms Karin KILBEY
SPACE WORKING GROUP	Mr Dara PANAHY

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ADVISER TO THE PUBLIC INTERNATIONAL LAW WORKING GROUP	Ms Christine CHINKIN
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**ATTACHMENT B**

**LIST OF WORKING PAPERS**

<b>UNIDROIT references CGE/Int. Int/3</b>	<b>Title</b>	<b>ICAO references LSC/ME/3</b>
WP/1	Draft Agenda	WP/1
Int.Int./2 - Report	Second Joint Session (24 August – 3 September 1999): report	Int.Int./2 - Report
WP/2	<i>Ad hoc</i> Drafting Group (Rome, 25-27 November 1999): report	WP/2
WP/3	Public International Law Working Group (Cape Town/en route to Pretoria, 8-11 December 1999): report	WP/3
WP/4	Preliminary comments (submitted by the Government of France)	WP/4
WP/5	Summary comments on the international registration system and its effects (submitted by the Government of Portugal)	WP/5
WP/6	Comments (submitted by the Government of the United States of America)	WP/6
WP/6 Corrigendum	Comments (submitted by the Government of the United States of America): corrigendum	WP/6 Corrigendum
WP/7	Comments (submitted jointly by the Aviation Working Group and the International Air Transport Association)	WP/7
WP/8	Discussion-purpose memorandum on public aircraft equipment (submitted by the Aviation Working Group)	WP/8
WP/9	Comments (submitted by the Government of Egypt)	WP/9
WP/10	Comments (submitted by the Secretariat of UNCITRAL)	WP/10
WP/11	Declarations and derogations (presented by the ICAO Secretariat)	WP/11
WP/12	Remedies and interim relief (submitted by the ICAO Secretariat)	WP/12
WP/13	Comments (submitted by the Government of the Federal Republic of Germany)	WP/13

WP/14	Proposal regarding the substantive sphere of application of the preliminary draft Convention (submitted by the UNIDROIT Secretariat)	WP/14
WP/15	Sphere of application and main provisions (submitted by the Government of Italy)	WP/15
WP/16	Proposals regarding the establishment and management of the International Registry (submitted by the Government of the Federal Republic of Germany)	WP/16
WP/17	Proposal regarding Article 3 of the preliminary draft Convention (submitted by the French delegation)	WP/17
WP/18	Public International Law Working Group (Rome, 20 and 21 March 2000): report	WP/18
WP/19	Proposal regarding Articles XI and XXX of the preliminary draft Aircraft Protocol (submitted by the Government of Japan)	WP/19
WP/20	Special Working Group on Article 3 of the preliminary draft Convention: report	WP/20
WP/21	Proposal regarding the International Registry (submitted by the Government of Portugal)	WP/21
WP/22	Comments (submitted by the International Federation of Insolvency Practitioners) (INSOL International)	WP/22
WP/23	Draft Report – Plenary Session: 20 March 2000	WP/23
WP/24	Special Working Group on Article 14 of the preliminary draft Convention and selected aspects of Article X of the preliminary draft Aircraft Protocol: report	WP/24
WP/25	Proposal regarding Article 14 of the preliminary draft Convention and Article X of the preliminary draft Aircraft Protocol (submitted by the delegation of the United States of America)	WP/25
WP/26	Draft Report – Plenary Session: 21 March 2000	WP/26
WP/27	Special Working Group on Article 3 of the preliminary draft Convention: second report	WP/27
WP/27 Corr.	Special Working Group on Article 3 of the preliminary draft Convention: second report: corrigendum	WP/27 Corr.
WP/28	Restricted Group of the Drafting Committee (Saturday 25 March 2000): Public International Law Provisions	WP/28

WP/28 rev.	Restricted Group of the Drafting Committee (Monday 27 March 2000): Public International Law Provisions	WP/28 rev.
WP/29	Proposal regarding the relationship between the draft UNIDROIT Convention (and the draft Protocol thereto) and the draft UNCITRAL Convention (submitted by the French delegation)	WP/29
WP/30	Proposal concerning the establishment of the International Registry (submitted jointly by the delegations of France and the United States of America)	WP/30
WP/31	Proposal for revised text of Chapter IX of the preliminary draft Convention (submitted jointly by the delegations of Canada, France and the United States of America)	WP/31
WP/32	Draft Report – Plenary Session: 22 March 2000	WP/32
WP/33	Draft Report – Plenary Session: 23 March 2000	WP/33
WP/34	Draft Report – Plenary Session: 24 March 2000	WP/34
WP/35	Draft Report – Plenary Session: 27 March 2000	WP/35
WP/36	Restricted Group of the Drafting Committee: report	WP/36
WP/37	Draft Report – Plenary Session: 28 March 2000	WP/37
WP/38	Draft Report – Plenary Session: 30 March 2000	WP/38
WP/39	Draft Report – Plenary Sessions: 20-30 March 2000	WP/39
WP/40	Drafting Committee: report	WP/40

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## ATTACHMENT C

### REPORT BY THE DRAFTING COMMITTEE

1. The Drafting Committee set up by the first Joint Session in Rome on 3 February 1999 met on one occasion during the third Joint Session on 30 March 2000. Representatives of the following States attending this meeting as members: Canada, France, Germany, Japan, Republic of Korea, Singapore, South Africa and the United States of America. A representative of the following States attended this meeting as observers: Greece and Tunisia. An observer of the Aviation Working Group attended as adviser. The Drafting Committee was assisted by the UNIDROIT and ICAO Secretariats.

2. The Drafting Committee was chaired by Mr K.F. Kreuzer (Germany). Sir Roy Goode (United Kingdom), *Rapporteur* to the Joint Session, also took part in the work of the Drafting Committee, in accordance with the invitation addressed to him by the Chairman of the Joint Session on the occasion of the first Joint Session.

3. The business of the Drafting Committee was to give effect to the matters referred to it by the Joint Session in the light of its third reading of the [preliminary] draft [UNIDROIT] Convention on International Interests in Mobile Equipment (cf. UNIDROIT CGE/Int.Int./3-WP/2 – ICAO Ref. LSC/ME/3-WP/2, Appendix I) (hereinafter referred to as the *draft Convention*) and the [preliminary] draft Protocol thereto on Matters specific to Aircraft Equipment (cf. UNIDROIT CGE/Int.Int./3-WP/2 – ICAO Ref. LSC/ME/3-WP/2, Appendix II) (hereinafter referred to as the *draft Protocol*), in particular in the light of the Reports submitted by the Public International Law Working Group on its sessions held in Cape Town and en route to Pretoria from 8 to 11 December 1999 (cf. UNIDROIT CGE/Int.Int./3-WP/3 – ICAO Ref. LSC/ME/3-WP/3) and in Rome on 20 and 21 March 2000 (cf. UNIDROIT CGE/Int.Int./3-WP/18 – ICAO Ref. LSC/ME/3-WP/18).

4. Pursuant to the decision taken by Plenary at the opening session of the Third Joint Session (cf. UNIDROIT CGE/Int.Int./3-WP/23 – ICAO Ref. LSC/ME/3-WP/23, § 7), the work of the Drafting Committee was prepared by the work accomplished by a restricted group of the Drafting Committee, which had met on nine occasions, on 20, 21, 22, 23, 24, 25, 27, 28, 29 and 30 March 2000. Representative of the following States had attended these meetings as members: Canada, France, Germany and the United States of America. An observer of the Aviation Working Group had attended as adviser. Ms C. Chinkin had attended as adviser to the Public International Law Working Group in order to assist the restricted group with its implementation of certain aspects of the Public International Law Working Group's aforementioned Reports.

5. The restricted group of the Drafting Committee had noted that the reference in Article 13 to the applicable law covers not only the *lex fori* but also the *lex contractus*. It was explained that, if the conflicts rules of the *lex fori* characterised the issue as substantive, the courts would apply the *lex causae* and, if as procedural, then the *lex fori*.

6. One member of the Drafting Committee reserved his position regarding the solution proposed in Article V of the draft Convention.

7. The text of the provisions of the draft Convention as reviewed by the restricted group is appended hereto as [Appendix I](#), with the text of the provisions of the draft Protocol as reviewed by the restricted group appended as [Appendix II](#).

8. While the Drafting Committee did not consider the text of the Proposal for a revised text of Chapter IX of the draft Convention submitted by the delegations of Canada, France and the United States of America (cf. UNIDROIT CGE/Int.Int./3-WP/31 – ICAO Ref. LSC/ME/3-WP/31), it considered it opportune to append the text of that Proposal as an Annex to Appendix I to this Report.

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**APPENDIX I**

**TEXT OF THE [PRELIMINARY] DRAFT [UNIDROIT] CONVENTION ON  
INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT**

*as reviewed by the Drafting Committee  
in the light of the Joint Session's third reading thereof*

**[PRELIMINARY] DRAFT [UNIDROIT] CONVENTION ON INTERNATIONAL  
INTERESTS IN MOBILE EQUIPMENT**

**PREAMBLE**

**CHAPTER I        SPHERE OF APPLICATION AND GENERAL PROVISIONS**

Article 1	Definitions
Article 2	The international interest
Article 3	Sphere of application
Article 4	Where debtor is situated
Article 5	Interpretation and applicable law

**CHAPTER II        CONSTITUTION OF AN INTERNATIONAL INTEREST**

Article 6	Formal requirements
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**CHAPTER III        DEFAULT REMEDIES**

Article 7	Remedies of chargee
Article 8	Vesting of object in satisfaction; redemption
Article 9	Remedies of conditional seller or lessor
Article 10	Meaning of default
Article 11	Additional remedies
Article 12	Relief pending final determination
Article 13	Procedural requirements
Article 14	Derogation

**CHAPTER IV THE INTERNATIONAL REGISTRATION SYSTEM**

- Article 15 The International Registry  
Article 16 The Supervisory Authority and the Registrar

**CHAPTER V MODALITIES OF REGISTRATION**

- Article 17 Registration requirements  
Article 18 When registration takes effect  
Article 19 Who may register  
Article 20 Duration of registration  
Article 21 Searches  
Article 22 List of declared non-consensual rights or interests  
Article 23 Evidentiary value of certificates  
Article 24 Discharge of registration  
Article 25 Access to the international registration facilities

**CHAPTER VI PRIVILEGES AND IMMUNITIES OF THE SUPERVISORY AUTHORITY AND THE REGISTRAR**

- Article 26 Legal personality; immunity

**CHAPTER VII LIABILITY OF THE REGISTRAR**

- Article 27 Liability and insurance

**CHAPTER VIII EFFECTS OF AN INTERNATIONAL INTEREST AS AGAINST THIRD PARTIES**

- Article 28 Priority of competing interests  
Article 29 Effects of insolvency

**CHAPTER IX ASSIGNMENTS OF INTERNATIONAL INTERESTS AND RIGHTS OF SUBROGATION**

- Article 30 Formal requirements of assignment  
Article 31 Effects of assignment  
Article 32 Debtor's duty to assignee  
Article 33 Default remedies in respect of assignment by way of security  
Article 34 Priority of competing assignments  
Article 35 Assignee's priority with respect to associated rights  
Article 36 Effects of assignor's insolvency  
Article 37 Subrogation



**CHAPTER X NON-CONSENSUAL RIGHTS OR INTERESTS**

- Article 38 Registrable non-consensual rights or interests  
Article 39 Priority of non-registrable non-consensual rights or interests

**CHAPTER XI APPLICATION OF THE CONVENTION TO SALES**

- Article 40 Sale and prospective sale

**CHAPTER XII JURISDICTION**

- Article 41 Choice of forum  
Article 42 Jurisdiction under Article 12(1)  
Article 43 Jurisdiction to make orders against the Registrar  
Article 44 General jurisdiction

**CHAPTER XIII RELATIONSHIP WITH OTHER CONVENTIONS**

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- [Article Q Criminal and tortious liability]  
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**ANNEX                      PROPOSAL FOR REVISED TEXT OF CHAPTER IX**

**CHAPTER IX                ASSIGNMENTS OF ASSOCIATED RIGHTS, INTERNATIONAL  
INTERESTS AND RIGHTS OF SUBROGATION**

*Alternative A*

Article 30	Formal requirements of assignment
Article 31	Effects of assignment
Article 32	Debtor's duty to assignee
Article 33	Default remedies in respect of assignment by way of security
Article 34	Priority of competing assignments
Article 35	Assignee's priority with respect to associated rights
Article 36	Effects of assignor's insolvency
Article 37	Subrogation

*Alternative B*

Article 30	Requirements in respect of assignment
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## PREAMBLE

THE STATES PARTIES TO THIS CONVENTION,

AWARE of the need to acquire and use mobile equipment of high value or particular economic significance and to facilitate the financing of the acquisition and use of such equipment in an efficient manner,

RECOGNISING the advantages of asset-based financing and leasing for this purpose and desiring to facilitate these types of transaction by establishing clear rules to govern them,

MINDFUL of the need to ensure that interests in such equipment are recognised and protected universally,

DESIRING to provide broad economic benefits for all interested parties,

BELIEVING that such rules must reflect the principles underlying asset-based financing and leasing and promote the autonomy of the parties necessary in these transactions,

CONSCIOUS of the need to establish a legal framework for international interests in such equipment and for that purpose to create an international registration system for their protection,

HAVE AGREED upon the following provisions:

## CHAPTER I

### SPHERE OF APPLICATION AND GENERAL PROVISIONS

#### Article 1 *Definitions*

In this Convention, except where the context otherwise requires, the following terms are employed with the meanings set out below:

(a) “agreement” means a security agreement, a title reservation agreement or a leasing agreement; [ l ]

(b) “assignment” means a contract which, whether by way of security or otherwise, confers on the assignee rights in the international interest; [ h ]

(c) “associated rights” means all rights to payment or other performance by a debtor under an agreement which are secured by or associated with the object; [ w ]

(d) “buyer” means a buyer under a contract of sale; [ a ]

- (e) “chargee” means a grantee of an interest in an object under a security agreement; [ r)]
- (f) “chargor” means a grantor of an interest in an object under a security agreement; [ k)]
- (g) “commencement of the insolvency proceedings” means the time at which the insolvency proceedings are deemed to commence under the applicable insolvency law ; [ gg)]
- (h) “conditional buyer” means a buyer under a title reservation agreement; [ b)]
- (i) “conditional seller” means a seller under a title reservation agreement; [ rr)]
- (j) “contract of sale” means a contract for the sale of an object which is not an agreement as defined in (a) above; [ o)]
- (k) “court” means a court of law or an administrative or arbitral tribunal established by a Contracting State; [ pp)]
- (l) “creditor” means a chargee under a security agreement, a conditional seller under a title reservation agreement or a lessor under a leasing agreement; [ q)]
- (m) “debtor” means a chargor under a security agreement, a conditional buyer under a title reservation agreement, a lessee under a leasing agreement or a person whose interest in an object is burdened by a registrable non-consensual right or interest; [ s)]
- (n) “insolvency administrator” means a person<sup>1</sup> authorised to administer the reorganisation or liquidation, including one authorised on an interim basis ; [ c)]
- (o) “insolvency proceedings” means collective judicial or administrative proceedings, including interim proceedings, in which the assets and affairs of the debtor are subject to control or supervision by a court for the purposes of reorganisation or liquidation; [ jj)]
- (p) “interested persons” means:
- (i) the debtor;
- (ii) any person who, for the purpose of assuring performance of any of the obligations in favour of the creditor, gives or issues a suretyship or demand guarantee or a standby letter of credit or any other form of credit insurance;
- (iii) any other person having rights in or over the object; [ hh)]
- (q) “internal transaction” means a transaction of a type listed in Article 2(2)(a)-(c) where the centre of the main interests of all parties to such transaction is situated, and the relevant object is located (as specified in the Protocol), in the same Contracting State at the time of the conclusion of the transaction; [ ff)]
- (r) “international interest” means an interest to which Article 2 applies; [ z)]
- (s) “International Registry” means the international registration facilities established for the purposes of this Convention or the Protocol; [ mm)]

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<sup>1</sup> The word “person” is to be understood as including a debtor in possession under the applicable insolvency law.

- (t) “leasing agreement” means an agreement by which a lessor grants a right to possession or control of an object (with or without an option to purchase) to a lessee in return for a rental or other payment; [ n]
- (u) “lessee” means a lessee under a leasing agreement; [ ii]
- (v) “lessor” means a lessor under a leasing agreement; [ f]
- (w) “national interest” means an interest in an object created by an internal transaction; [ bb]
- (x) “non-consensual right or interest” means a right or interest conferred by law to secure the performance of an obligation, including an obligation to a State or State entity; [ t]
- (y) “notice of a national interest” means a notice that a national interest has been registered in a public registry in the Contracting State making a declaration to the Protocol pursuant to Article S (1); [ e]
- (z) “object” means an object of a category to which Article 2 applies; [ g]
- (aa) “pre-existing right or interest” means a right or interest of any kind in an object created or arising under the law of a Contracting State before the entry into force of this Convention in respect of that State, including a right or interest of a category covered by a declaration pursuant to Article 39 and to the extent of that declaration; [ v]
- (bb) “proceeds” means money or non-money proceeds of an object arising from the total or partial loss or physical destruction of the object or its total or partial confiscation, condemnation or requisition; [ kk]
- (cc) “prospective assignment” means an assignment that is intended to be made in the future, upon the occurrence of a stated event, whether or not the occurrence of the event is certain; [ i]
- (dd) “prospective international interest” means an interest that is intended to be created or provided for in an object as an international interest in the future, upon the occurrence of a stated event (which may include the debtor’s acquisition of an interest in the object), whether or not the occurrence of the event is certain; [ aa]
- (ee) “prospective sale” means a sale which is intended to be made in the future, upon the occurrence of a stated event, whether or not the occurrence of the event is certain; [ tt]
- (ff) “Protocol” means, in respect of any category of object and associated rights to which this Convention applies, the Protocol in respect of that category of object and associated rights; [ ll]
- (gg) “registered” means registered in the International Registry pursuant to Chapter V; [ dd]
- (hh) “registered interest” means an international interest, a registrable non-consensual right or interest or a national interest specified in a notice of a national interest registered pursuant to Chapter V; [ y]
- (ii) “registrable non-consensual right or interest” means a non-consensual right or interest registrable pursuant to a declaration deposited under Article 38; [ u]

(jj) “Registrar” means, in respect of the Protocol, the person or body designated by that Protocol or appointed under Article 16(2)(b); [ j)]

(kk) “regulations” means regulations made or approved by the Supervisory Authority pursuant to the Protocol; [ nn)]

(ll) “sale” means a transfer of ownership of an object pursuant to a contract of sale; [ ss)]

(mm) “secured obligation” means an obligation secured by a security interest; [ ee)]

(nn) “security agreement” means an agreement by which a chargor grants or agrees to grant to a chargee an interest (including an ownership interest) in or over an object to secure the performance of any existing or future obligation of the chargor or a third person; [ l)]

(oo) “security interest” means an interest created by a security agreement; [ oo)]

(pp) “seller” means a seller under a contract of sale; [ qq)]

(qq) “Supervisory Authority” means, in respect of the Protocol, the Supervisory Authority referred to in Article 16(1); [ d)]

(rr) “title reservation agreement” means an agreement for the sale of an object on terms that ownership does not pass until fulfilment of the condition or conditions stated in the agreement; [ p)]

(ss) “unregistered interest” means a consensual interest or non-consensual right or interest (other than an interest to which Article 39 applies) which has not been registered, whether or not it is registrable under this Convention; [cc)] and

(tt) “writing” means a record of information (including information communicated by teletransmission) which is in tangible or other form and is capable of being reproduced in tangible form on a subsequent occasion and which indicates by reasonable means a person’s approval of the record. [ x)]<sup>2</sup>

## Article 2

### *The international interest*

1. – This Convention provides for the constitution and effects of an international interest in certain categories of mobile equipment and associated rights.

2. – For the purposes of this Convention, an international interest in mobile equipment is an interest, constituted under Article 6, in a uniquely identifiable object of a category of such objects listed in paragraph 3 and designated in the Protocol:

(a) granted by the chargor under a security agreement ;

(b) vested in a person who is the conditional seller under a title reservation agreement; or

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<sup>2</sup> It was noted by the Drafting Committee that this definition would need to be reconsidered in the light of advice from specialists.

(c) vested in a person who is the lessor under a leasing agreement.

An interest falling within sub-paragraph (a) does not also fall within sub-paragraph (b) or (c).

3. – The categories referred to in the preceding paragraphs are :

- (a) airframes, aircraft engines and helicopters ;
- (b) railway rolling stock ; and
- (c) space property.

4. – This Convention does not determine whether an interest to which paragraph 2 applies falls within sub-paragraph (a), (b) or (c) of that paragraph.

5. – An international interest in an object extends to proceeds of that object.

### Article 3 *Sphere of application*

1. – This Convention applies when, at the time of the conclusion of the agreement creating or providing for the international interest, the debtor is situated in a Contracting State.

2. – The fact that the creditor is situated in a non-Contracting State does not affect the applicability of this Convention.

### Article 4 *Where debtor is situated*

1. – For the purposes of this Convention, the debtor is situated in any Contracting State:

- (a) under the law of which it is incorporated or formed;
- (b) where it has its registered office or statutory seat;
- (c) where it has its centre of administration; or
- (d) where it has its place of business.

2. – A reference in this Convention to the debtor's place of business shall, if it has more than one place of business, mean its principal place of business or, if it has no place of business, its habitual residence.

## Article 5

### *Interpretation and applicable law*

1. – In the interpretation of this Convention, regard is to be had to its purposes as set forth in the preamble, to its international character and to the need to promote uniformity and predictability in its application.

2. – Questions concerning matters governed by this Convention which are not expressly settled in it are to be settled in conformity with the general principles on which it is based or, in the absence of such principles, in conformity with the applicable law.

3. – References to the applicable law are to the domestic rules of the law applicable by virtue of the rules of private international law of the forum State.

4. – Where a State comprises several territorial units, each of which has its own rules of law in respect of the matter to be decided, and where there is no indication of the relevant territorial unit, the law of that State decides which is the territorial unit whose rules shall govern. In the absence of any such rule, the law of the territorial unit with which the case is most closely connected shall apply.

## CHAPTER II

### CONSTITUTION OF AN INTERNATIONAL INTEREST

## Article 6

### *Formal requirements*

An interest is constituted as an international interest under this Convention where the agreement creating or providing for the interest:

- (a) is in writing;
- (b) relates to an object of which the chargor, conditional seller or lessor has power to dispose;
- (c) enables the object to be identified in conformity with the Protocol; and
- (d) in the case of a security agreement, enables the secured obligations to be determined, but without the need to state a sum or maximum sum secured.



## CHAPTER III

### DEFAULT REMEDIES

#### Article 7

##### *Remedies of chargee*

1. – In the event of default as provided in Article 10, the chargee may, to the extent that the chargor has at any time so agreed, exercise any one or more of the following remedies:

- (a) take possession or control of any object charged to it;
- (b) sell or grant a lease of any such object;
- (c) collect or receive any income or profits arising from the management or use of any such object,

or apply for a court order authorising or directing any of the above acts.

2. – Any remedy given by sub-paragraph (a), (b) or (c) of the preceding paragraph or by Article 12 shall be exercised in a commercially reasonable manner. A remedy shall be deemed to be exercised in a commercially reasonable manner where it is exercised in conformity with a provision of the security agreement except where such a provision is manifestly unreasonable.

3. – A chargee proposing to sell or grant a lease of an object under paragraph 1 otherwise than pursuant to a court order shall give reasonable prior notice in writing of the proposed sale or lease to:

- (a) interested persons specified in Article 1(p)(i) and (ii); and
- (b) interested persons specified in Article 1(p)(iii) who have given notice of their rights to the chargee within a reasonable time prior to the sale or lease.

4. – Any sum collected or received by the chargee as a result of exercise of any of the remedies set out under paragraph 1 shall be applied towards discharge of the amount of the secured obligations.

5. – Where the sums collected or received by the chargee as a result of the exercise of any remedy given in paragraph 1 exceed the amount secured by the security interest and any reasonable costs incurred in the exercise of any such remedy, then unless otherwise ordered by the court the chargee shall pay the excess to the holder of the registered interest ranking immediately after its own or, if there is none, to the chargor.

#### Article 8

##### *Vesting of object in satisfaction; redemption*

1. – At any time after default as provided in Article 10, the chargee and all the interested persons may agree that ownership of (or any other interest of the chargor in) any

object covered by the security interest shall vest in the chargee in or towards satisfaction of the secured obligations.

2. – The court may on the application of the chargee order that ownership of (or any other interest of the chargor in) any object covered by the security interest shall vest in the chargee in or towards satisfaction of the secured obligations.

3. – The court shall grant an application under the preceding paragraph only if the amount of the secured obligations to be satisfied by such vesting is reasonably commensurate with the value of the object after taking account of any payment to be made by the chargee to any of the interested persons.

4. – At any time after default as provided in Article 10 and before sale of the charged object or the making of an order under paragraph 2, the chargor or any interested person may discharge the security interest by paying in full the amount secured, subject to any lease granted by the chargee under Article 7(1) (b). Where, after such default, the payment of the amount secured is made in full by an interested person other than the debtor, that person is subrogated to the rights of the chargee.

5. – Ownership or any other interest of the chargor passing on a sale under Article 7(1)(b) or passing under paragraph 1 or 2 of this Article is free from any other interest over which the chargee's security interest has priority under the provisions of Article 28.

#### Article 9

##### *Remedies of conditional seller or lessor*

In the event of default under a title reservation agreement or under a leasing agreement as provided in Article 10, the conditional seller or the lessor, as the case may be, may:

- (a) terminate the agreement and take possession or control of any object to which the agreement relates; or
- (b) apply for a court order authorising or directing either of these acts.

#### Article 10

##### *Meaning of default*

1. – The debtor and the creditor may at any time agree in writing as to the events that constitute a default or otherwise give rise to the rights and remedies specified in Articles 7 to 9 and 12.

2. – In the absence of such an agreement, “default” for the purposes of Articles 7 to 9 and 12 means a substantial default.

Article 11  
*Additional remedies*

Any additional remedies permitted by the applicable law, including any remedies agreed upon by the parties, may be exercised to the extent that they are not inconsistent with the mandatory provisions of this Chapter as set out in Article 14.

Article 12  
*Relief pending final determination*

1. – A Contracting State shall ensure that a creditor who adduces evidence of default by the debtor may, pending final determination of its claim and to the extent that the debtor has at any time so agreed, obtain from a court speedy relief in the form of such one or more of the following orders as the creditor requests:

- (a) preservation of the object and its value;
- (b) possession, control or custody of the object;
- (c) immobilisation of the object ; and/or
- (d) lease or management of the object and the income therefrom.

2. – In making any order under the preceding paragraph, the court may impose such terms as it considers necessary to protect the interested persons in the event that the creditor:

- (a) in implementing any order granting such relief, fails to perform any of its obligations to the debtor under this Convention or the Protocol; or
- (b) fails to establish its claim, wholly or in part, on the final determination of that claim.

3. – Before making any order under paragraph 1, the court may require notice of the request to be given to any of the interested persons.

4. – Nothing in this Article affects the application of Article 7(2) or limits the availability of forms of interim relief other than those set out in paragraph 1.

Article 13  
*Procedural requirements*

Subject to Article W(2), any remedy provided by this Chapter shall be exercised in conformity with the procedure prescribed by the law of the place where the remedy is to be exercised.

Article 14  
*Derogation*

In their relations with each other, the parties may, by agreement in writing, derogate from or vary the effect of any of the preceding provisions of this Chapter, except as stated in Articles 7(2)-(5), 8(3) and (4), 12(2) and 13.

**CHAPTER IV**  
**THE INTERNATIONAL REGISTRATION SYSTEM**

Article 15  
*The International Registry*

1. – An International Registry shall be established for registrations of:
  - (a) international interests, prospective international interests and registrable non-consensual rights and interests;
  - (b) assignments and prospective assignments of international interests;
  - (c) acquisitions of international interests by legal or contractual subrogation;
  - (d) subordinations of interests referred to in sub-paragraph (a) of this paragraph;
  - (e) sales or prospective sales of objects to which this Convention is made applicable by the Protocol under Article 40; and
  - (f) notices of national interests.
2. – Different international registries may be established for different categories of object and associated rights.
3. – For the purposes of this Chapter and Chapter V, the term “registration” includes, where appropriate, an amendment, extension or discharge of a registration.

Article 16  
*The Supervisory Authority and the Registrar*

1. – There shall be a Supervisory Authority as provided by the Protocol.
2. – The Supervisory Authority shall:
  - (a) establish or provide for the establishment of the International Registry;
  - (b) except as otherwise provided by the Protocol, appoint and dismiss the Registrar;

(c) after consultation with the Contracting States, make or approve and ensure the publication of regulations pursuant to the Protocol dealing with the operation of the International Registry;<sup>3</sup>

(d) establish administrative procedures through which complaints concerning the operation of the International Registry can be made to the Supervisory Authority;

(e) supervise the Registrar and the operation of the International Registry ;<sup>4</sup>

(f) at the request of the Registrar, provide such guidance to the Registrar as the Supervisory Authority thinks fit;

(g) set and periodically review the structure of fees to be charged for the services and facilities of the International Registry;<sup>5</sup>

(h) do all things necessary to ensure that an efficient registration system exists to implement the objectives of this Convention and the Protocol; and

(i) report periodically to Contracting States concerning the discharge of its obligations under this Convention and the Protocol.

3. – The Supervisory Authority may enter into any agreement requisite for the performance of its functions, including any agreement referred to in Article 26(3).

4. – The Registrar shall ensure the efficient operation of the International Registry and perform the functions assigned to it by this Convention, the Protocol and the regulations.

## CHAPTER V

### MODALITIES OF REGISTRATION

#### Article 17

##### *Registration requirements*

1. – The Protocol and regulations shall specify the requirements, including the criteria for the identification of the object:

(a) for effecting a registration;

(b) for making searches and issuing search certificates, and, subject thereto,

(c) for ensuring the confidentiality of information and documents of the International Registry.

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<sup>3</sup> The procedure of consultation referred to in this sub-paragraph will need to be further examined at the diplomatic Conference.

<sup>4</sup> This does not empower the Supervisory Authority to require or permit the Registrar to change any data relating to a registration.

<sup>5</sup> The question whether the Registrar shall operate as a non-profit-making entity is a policy question which may need to be determined separately for each category of object and accordingly left to the Protocol.

2. – Such requirements shall not include any evidence that a consent to registration required by Article 19(1), (2) or (3) has been given.

3. – Registration shall be effected in chronological order of receipt at the International Registry data base, and the file shall record the date and time of receipt.

4. – The Protocol may provide that a Contracting State may designate an entity in its territory as the entity through which the information required for registration shall or may be transmitted to the International Registry.

## Article 18

### *When registration takes effect*

1. – A registration shall be valid only if made in conformity with Article 19 and shall take effect upon entry of the required information into the International Registry data base so as to be searchable.

2. – A registration shall be searchable for the purposes of the preceding paragraph at the time when:

(a) the International Registry has assigned to it a sequentially ordered file number; and

(b) the registration information, including the file number, is stored in durable form and may be accessed at the International Registry.

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

4. – The preceding paragraph applies with necessary modifications to the registration of a prospective assignment of an international interest.

5. – A registration shall be searchable in the International Registry data base according to the criteria prescribed by the Protocol.

## Article 19

### *Who may register*

1. – An international interest, a prospective international interest or an assignment or prospective assignment of an international interest may be registered, and any such registration amended or extended prior to its expiry, by or with the consent in writing at any time of the debtor or assignor or intending debtor or assignor.

2. – The subordination of an international interest to another international interest may be registered by or with the consent in writing at any time of the person whose interest has been subordinated.

3. – A registration may be discharged by or with the consent in writing of the party in whose favour it was made.
4. – The acquisition of an international interest by legal or contractual subrogation may be registered by the subrogee.
5. – A registrable non-consensual right or interest may be registered by the holder thereof.
6. – A notice of a national interest may be registered by the holder thereof.

Article 20  
*Duration of registration*

Registration of an international interest remains effective until discharged or until expiry of the period specified in the registration.

Article 21  
*Searches*

1. – Any person may, in the manner prescribed by the Protocol or regulations, make or request a search of the International Registry concerning interests registered therein.
2. – Upon receipt of a request therefor, the Registrar, in the manner prescribed by the Protocol or regulations, shall issue a registry search certificate with respect to any object:
  - (a) stating all registered information relating thereto, together with a statement indicating the date and time of registration of such information; or
  - (b) stating that there is no information in the International Registry relating thereto.

Article 22  
*List of declared non-consensual rights or interests*

The Registrar shall maintain a list of the categories of non-consensual right or interest communicated to the Registrar by the depositary State as having been declared by Contracting States in conformity with Article 39 and the date of each such declaration. Such list shall be recorded and searchable in the name of the declaring State and shall be made available as provided in the Protocol or regulations to any person requesting it.

Article 23  
*Evidentiary value of certificates*

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

- (a) that it has been so issued; and
- (b) of the facts recited in it, including the date and time of a registration.

Article 24  
*Discharge of registration*

1. – Where the obligations secured by a registered security interest or the obligations giving rise to a registered non-consensual right or interest have been discharged, or where the conditions of transfer of title under a registered title reservation agreement have been fulfilled, the holder of such interest shall procure the discharge of the registration upon written demand by the debtor delivered to or received at its address stated in the registration.

2. – Where a prospective international interest or a prospective assignment of an international interest has been registered, the intending creditor or intending assignee shall procure the discharge of the registration upon written demand by the intending debtor or assignor which is delivered to or received at its address stated in the registration before the intending creditor or assignee has given value or incurred a commitment to give value.

3. – Where the obligations secured by a national interest specified in a registered notice of a national interest have been discharged, the holder of such interest shall procure the discharge of the registration upon written demand by the debtor delivered to or received at its address stated in the registration.

Article 25  
*Access to the international registration facilities*

No person shall be denied access to the registration and search facilities of the International Registry on any ground other than its failure to comply with the procedures prescribed by this Chapter.



## CHAPTER VI

### PRIVILEGES AND IMMUNITIES OF THE SUPERVISORY AUTHORITY AND THE REGISTRAR

#### Article 26

##### *Legal personality; immunity*

1. – The Supervisory Authority shall have international legal personality where not already possessing such personality.

2. – The Supervisory Authority and its officers and employees shall enjoy [functional] immunity from legal [or administrative] process.

[3. – (a) The Supervisory Authority shall enjoy [exemption from taxes and] such [other] privileges as may be provided by agreement with the host State.

(b) For the purposes of this paragraph, “host State” means the State in which the Supervisory Authority is situated. <sup>6]</sup>

[4.] – Except for the purposes of Article 27(1) and in relation to any claim made under that paragraph and for the purposes of Article 43:

(a) the Registrar and its officers and employees shall enjoy functional immunity from legal [or administrative] process;

(b) the assets, documents, databases and archives of the International Registry shall be inviolable and immune from seizure or other legal [or administrative] process.

## CHAPTER VII

### LIABILITY OF THE REGISTRAR

#### Article 27

##### *Liability and insurance*

##### *Alternative A*

[ 1. – The Registrar shall be liable for compensatory damages for loss suffered by a person directly resulting from an error or omission of the Registrar or from a malfunction of the international registration system.]

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<sup>6</sup> The Drafting Committee noted that a provision relating to the host State agreement will need to be inserted at this point at the diplomatic Conference.

2. – The Registrar shall provide insurance or a financial guarantee covering the liability referred to in the preceding paragraph to the extent provided by the Protocol.<sup>7</sup>

*Alternative B*

[ 1. – The Registrar shall be liable for compensatory damages for loss suffered by a person directly resulting from the failure of the Registrar to exercise reasonable care and skill in the performance of its duties.]<sup>8</sup>

2. – The Registrar shall provide insurance or a financial guarantee covering the liability referred to in the preceding paragraph to the extent provided by the Protocol.<sup>9</sup>

## CHAPTER VIII

### EFFECTS OF AN INTERNATIONAL INTEREST AS AGAINST THIRD PARTIES

#### Article 28

##### *Priority of competing interests*

1. – A registered interest has priority over any other interest subsequently registered and over an unregistered interest.

2. – The priority of the first-mentioned interest under the preceding paragraph applies:  
(a) even if the first-mentioned interest was acquired or registered with actual knowledge of the other interest; and  
(b) even as regards value given by the holder of the first-mentioned interest with such knowledge.

3. – The buyer of an object acquires its interest in it:  
(a) subject to an interest registered at the time of its acquisition of that interest;  
and  
(b) free from an unregistered interest even if it has actual knowledge of such an interest.

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<sup>7</sup> During Plenary's discussions a strong majority of delegations was in favour of Alternative A. Alternative B however has been retained purely to enable the question of insurance or financial guarantees to be considered at a later time.

<sup>8</sup> The Drafting Group meeting in November 1999 noted that Plenary's discussions during the second Joint Session of this issue in the context of the preliminary draft Convention were based on the establishment of a strict liability regimen but when discussing the same issue in the context of the preliminary draft Aircraft Protocol it had requested the Drafting Group to prepare alternative texts.

<sup>9</sup> Cf. footnote 7, *supra*.

4. – The priority of competing interests under this Article may be varied by agreement between the holders of those interests, but an assignee of a subordinated interest is not bound by an agreement to subordinate that interest unless at the time of the assignment a subordination had been registered relating to that agreement.

5. – Any priority given by this Article to an interest in an object extends to proceeds.

6. – This Convention does not determine priority as between the holder of an interest in an item held prior to its installation on, or after its removal from, an object and the holder of an international interest in that object.

### Article 29 *Effects of insolvency*

1. – In insolvency proceedings against the debtor an international interest is effective if prior to the commencement of the insolvency proceedings that interest was registered in conformity with this Convention.

2. – Nothing in this Article impairs the effectiveness of an international interest in the insolvency proceedings where that interest is effective under the applicable law.

3. – Nothing in this Article affects any rules of insolvency law relating to the avoidance of a transaction as a preference or a transfer in fraud of creditors or any rules of insolvency procedure relating to the enforcement of rights to property which is under the control or supervision of the insolvency administrator.

## CHAPTER IX<sup>10</sup>

### ASSIGNMENTS OF INTERNATIONAL INTERESTS AND RIGHTS OF SUBROGATION

#### Article 30

##### *Formal requirements of assignment*

1. – The holder of an international interest (“the assignor”) may make an assignment of it to another person (“the assignee”) wholly or in part.
2. – An assignment of an international interest shall be valid only if it:
  - (a) is in writing;
  - (b) enables the international interest and the object to which it relates to be identified;
  - (c) in the case of an assignment by way of security, enables the obligations secured by the assignment to be determined in accordance with the Protocol but without the need to state a sum or maximum sum secured.

#### Article 31

##### *Effects of assignment*

1. – An assignment of an international interest in an object made in conformity with the preceding Article transfers to the assignee, to the extent agreed by the parties to the assignment:
  - (a) all the interests and priorities of the assignor under this Convention; and
  - (b) all associated rights.
2. – Subject to paragraph 3, the applicable law shall determine the defences and rights of set-off available to the debtor against the assignee.

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<sup>10</sup> At the third Joint Session the Chairman invited three delegations to develop proposals designed to bring Chapter IX more into line with those national legal systems under which an assignment of associated rights would carry with it the interest securing those rights. A proposal containing two Alternatives (attached as an Annex to this Appendix with some adjustments made to reflect the views expressed during the Plenary session of the third Joint Session held on 30 March 2000) was discussed but there was insufficient time to give the Alternatives full consideration, particularly given the highly specialised nature of the topic. Substantial support for the approach taken in the proposal was expressed. However, it was agreed that the Alternatives required further careful study by experts and a number of delegations expressed their wish to proceed with further informal consultations. In particular, Alternative B would recognise that the approach taken for security agreements (where an international interest could not be assigned independently of the related associated rights) might not be appropriate for other international interests (arising under leasing agreements and title reservation agreements).

3. – The debtor may at any time by agreement in writing waive all or any of the defences and rights of set-off referred to in the preceding paragraph, but the debtor may not waive defences arising from fraudulent acts on the part of the assignee.

4. – In the case of an assignment by way of security, the assigned rights revert in the assignor, to the extent that they are still subsisting, when the obligations secured by the assignment have been discharged.

### Article 32 *Debtor's duty to assignee*

1. – To the extent that an international interest has been assigned in accordance with the provisions of this Chapter, the debtor in relation to that interest is bound by the assignment, and, in the case of an assignment within Article 31(1)(b), has a duty to make payment or give other performance to the assignee, if but only if:

(a) the debtor has been given notice of the assignment in writing by or with the authority of the assignor;

(b) the notice identifies the international interest [; and

(c) the debtor [consents in writing to the assignment, whether or not the consent is given in advance of the assignment or identifies the assignee] [has not been given prior notice in writing of an assignment in favour of another person].

2. – Irrespective of any other ground on which payment or performance by the debtor discharges the latter from liability, payment or performance shall be effective for this purpose if made in accordance with the preceding paragraph.

3. – Nothing in the preceding paragraph shall affect the priority of competing assignments.

### Article 33 *Default remedies in respect of assignment by way of security*

In the event of default by the assignor under the assignment of an international interest made by way of security, Articles 7, 8 and 10 to 13 apply in the relations between the assignor and the assignee (and, in relation to associated rights, apply in so far as they are capable of application to intangible property) as if references:

(a) to the secured obligation and the security interest were references to the obligation secured by the assignment of the international interest and the security interest created by that assignment;

(b) to the chargee and chargor were references to the assignee and assignor of the international interest;

(c) to the holder of the international interest were references to the holder of the assignment; and

- (d) to the object were references to the assigned rights relating to the object.<sup>11</sup>

#### Article 34

##### *Priority of competing assignments*

Where there are competing assignments of international interests and at least one of the assignments is registered, the provisions of Article 28 apply as if the references to an international interest were references to an assignment of an international interest.

#### Article 35

##### *Assignee's priority with respect to associated rights*

Where the assignment of an international interest has been registered, the assignee shall, in relation to the associated rights transferred by virtue of or in connection with the assignment, have priority under Article 28 only to the extent that such associated rights relate to:

- (a) a sum advanced and utilised for the purchase of the object;
- (b) the price payable for the object; or
- (c) the rentals payable in respect of the object,

and the reasonable costs referred to in Article 7(5).

#### Article 36

##### *Effects of assignor's insolvency*

The provisions of Article 29 apply to insolvency proceedings against the assignor as if references to the debtor were references to the assignor.

#### Article 37

##### *Subrogation*

1. – Subject to paragraph 2, nothing in this Convention affects the acquisition of an international interest by legal or contractual subrogation under the applicable law.

2. – The priority between any interest within the preceding paragraph and a competing interest may be varied by agreement in writing between the holders of the respective interests.

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<sup>11</sup> The Drafting Committee noted that this provision would require further technical consideration.

## CHAPTER X

### NON-CONSENSUAL RIGHTS OR INTERESTS

#### Article 38

##### *Registrable non-consensual rights or interests*

A Contracting State may at any time in a declaration deposited with the depositary of the Protocol list the categories of non-consensual right or interest which shall be registrable under this Convention as regards any category of object as if the right or interest were an international interest and be regulated accordingly.

#### Article 39

##### *Priority of non-registrable non-consensual rights or interests*

1. – A Contracting State may at any time in a declaration deposited with the depositary of the Protocol declare, generally or specifically, those categories of non-consensual right or interest (other than a right or interest to which Article 38 applies) which under that State's law would have priority over an interest in the object equivalent to that of the holder of the international interest and shall have priority over a registered international interest, whether in or outside the insolvency of the debtor. Such a declaration may be modified from time to time.

2. – A declaration made under the preceding paragraph may be expressed to cover categories that are created after the deposit of that declaration.

3. – An international interest has priority over a non-consensual right or interest of a category not covered by a declaration deposited prior to the registration of the international interest.

## CHAPTER XI

### APPLICATION OF THE CONVENTION TO SALES

#### Article 40

##### *Sale and prospective sale*

The Protocol may provide for the application of this Convention, wholly or in part and with such modifications as may be necessary, to the sale or prospective sale of an object.

## CHAPTER XII

### JURISDICTION

#### Article 41

##### *Choice of forum*

1. – The court or courts of a Contracting State chosen by the parties under an agreement that is valid under the applicable law may exercise jurisdiction in respect of any claim brought under this Convention.

2. – For the purposes of the preceding paragraph, a choice of forum is not invalid by reason of the fact that the chosen forum State has no connection with the parties or the agreement.

#### Article 42

##### *Jurisdiction under Article 12(1)*

1. – Subject to Article 41, only the courts of a Contracting State on the territory of which the object is situated may exercise jurisdiction to grant relief under Article 12(1)(a), (b) and (c).

2. – The courts of a Contracting State on the territory of which the debtor is situated may exercise jurisdiction to grant relief under Article 12(1)(d) and, where applicable, related provisions of the Protocol.

3. – A court may exercise jurisdiction under the preceding paragraphs even if the final determination of the claim referred to in Article 12(1) will or may take place in a court of another State or in an arbitral tribunal.

#### Article 43

##### *Jurisdiction to make orders against the Registrar*

1. – The courts of the place in which the Registrar has its centre of administration shall have exclusive jurisdiction to award damages against the Registrar under Article 27.

2. – Where a person fails to respond to a demand made under Article 24(1) or (2) and that person has ceased to exist or cannot be found for the purpose of enabling an order to be made against it requiring it to procure discharge of the registration, the courts referred to in paragraph 1 shall have exclusive jurisdiction, on the application of the debtor or intending debtor, to make an order directed to the Registrar requiring the Registrar to discharge the registration.

3. – Where a person fails to comply with an order of a court having jurisdiction under this Convention or, in the case of a national interest, an order of a court of competent jurisdiction



requiring that person to procure the amendment or discharge of a registration, the courts referred to in paragraph 1 may direct the Registrar to take such steps as will give effect to that order.

4. – Except as otherwise provided by the preceding paragraphs, no court may make orders or give judgments or rulings against or purporting to bind the Registrar.

Article 44  
*General jurisdiction*

Except as provided by Articles 41, 42 and 43, the courts of a Contracting State having jurisdiction under the law of that State may exercise jurisdiction in respect of any claim brought under this Convention.<sup>12</sup>

**CHAPTER XIII**

**RELATIONSHIP WITH OTHER CONVENTIONS**<sup>13</sup>

Article 45  
*Relationship with the UNIDROIT Convention on International Financial Leasing*

The Protocol may determine the relationship between this Convention and the UNIDROIT Convention on International Financial Leasing, opened for signature in Ottawa on 28 May 1988.

Article 46  
*Relationship with the [draft] UNCITRAL Convention on Assignment [in Receivables Financing]  
[of Receivables in International Trade]*

[This Convention shall supersede the [draft] UNCITRAL Convention on Assignment [in Receivables Financing] [of Receivables in International Trade] as it relates to the assignment of receivables which are associated rights related to international interests in objects of the categories referred to in Article 2(3).]<sup>14</sup>

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<sup>12</sup> The Drafting Committee drew the attention of Plenary to the fact that this might lead to over-broad jurisdiction. Moreover, the implications of this provision were seen as raising problems for Article 43.

<sup>13</sup> It is thought that relations between this Convention and other equipment-specific Conventions should be left to each Protocol.

<sup>14</sup> This provision may be modified or deleted depending on the final form of the future UNCITRAL Convention.

## CHAPTER XIV

### [OTHER] FINAL PROVISIONS

#### [Article Q

#### *Criminal and tortious liability*

Nothing in this Convention exonerates a person from criminal or tortious liability.]

#### Article R

#### *Entry into force*

1. – This Convention enters into force on the first day of the month following the expiration of six months after the date of deposit of the [third/fifth] instrument of ratification, acceptance, approval or accession<sup>15</sup> but only as regards a category of objects to which a Protocol applies:

- (a) as from the time of entry into force of that Protocol;
- (b) subject to the terms of that Protocol; and
- (c) as between Contracting States Parties to that Protocol.

2. – This Convention and the Protocol shall be read and interpreted together as a single instrument.

#### Article S

#### *Internal transactions*

1. – A Contracting State may declare at the time of ratification, acceptance, approval of, or accession to the Protocol that this Convention shall not apply to a transaction which is an internal transaction in relation to that State.

2. – Notwithstanding the preceding paragraph, the provisions of Articles 7(3) and 8(1), Chapter V, Article 28, and any provisions of this Convention relating to registered interests shall apply to an internal transaction.

#### [Article T

#### *Protocols on Railway Rolling Stock and Space Property*

1. – The International Institute for the Unification of Private Law (UNIDROIT) shall communicate the text of any preliminary draft Protocol relating to a category of objects

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<sup>15</sup> The question as to whether States would be permitted to ratify the Convention separately from a Protocol was left open by Plenary.

falling within Article 2 (3)(b) or (c) prepared by a working group convened by UNIDROIT to all Contracting States Parties to the Convention through their adherence to any existing Protocol, all Member States of UNIDROIT and all Member States of any intergovernmental Organisation represented in the working group. Such States shall be invited to participate in intergovernmental negotiations for the completion of a draft Protocol on the basis of such a preliminary draft Protocol.

2. – UNIDROIT shall also communicate the text of any preliminary draft Protocol prepared by a working group to relevant non-governmental Organisations as UNIDROIT considers appropriate. Such non-governmental Organisations shall be invited to submit comments on the text of the preliminary draft Protocol to UNIDROIT or, as appropriate, to participate as observers in the preparation of a draft Protocol.

3. – Upon completion of a draft Protocol, as provided by the preceding paragraphs, the draft Protocol shall be submitted to the Governing Council of UNIDROIT for approval with a view to adoption by the General Assembly of UNIDROIT and such other intergovernmental Organisations as may be determined by UNIDROIT .

4. – The procedure for the adoption of Protocols covered by this Article shall be determined by the States participating in their preparation.]

#### Article U

##### *Other future Protocols*

1. – UNIDROIT may create working groups to assess the feasibility of extending the application of this Convention, through one or more Protocols, to objects of any category of high-value mobile equipment, other than a category referred to in Article 2 (3), each member of which is uniquely identifiable, and associated rights relating to such objects.

2. – The Protocols referred to in the preceding paragraph shall be prepared and adopted in accordance with the procedures provided for under Article T.

#### [Article V

##### *Determination of courts*

A Contracting State shall declare at the time of ratification, acceptance, approval of, or accession to the Protocol the relevant “court ” or “courts” for the purposes of Article 1 and Chapter XII of this Convention.]

#### Article W

##### *Declarations regarding remedies*

1. – A Contracting State may declare at the time of signature, ratification, acceptance, approval of, or accession to the Protocol that while the charged object is situated within, or controlled from its territory the chargee shall not grant a lease of the object in that territory.

2. – A Contracting State at the time of signature, ratification, acceptance, approval of, or accession to the Protocol shall declare whether or not any remedy available to the creditor under any provision of this Convention which is not there expressed to require application to the court may be exercised only with leave of the court.

#### Article X

##### *Declarations regarding relief pending final determination*

A Contracting State may declare at the time of signature, ratification, acceptance, approval of, or accession to the Protocol that it will not apply the provisions of Article 12, wholly or in part.

#### Article Y

##### *Reservations, declarations and non-application of reciprocity principle*

1. – No reservations are permitted except those expressly authorised in this Convention and the Protocol.

2. – No declarations are permitted except those expressly authorised in this Convention and the Protocol.

3. – The provisions of this Convention subject to any reservation or declaration shall be binding on the Contracting States that do not make such reservations or declarations in their relations vis-à-vis the reserving or declaring Contracting State.

#### Article Z

##### *Transitional provisions*

##### *Alternative A*

[ This Convention does not apply to a pre-existing right or interest, which shall retain the priority it enjoyed before this Convention entered into force. ]

##### *Alternative B*<sup>16</sup>

[1. – Except as provided by paragraph 2, this Convention does not apply to a pre-existing right or interest.]

2. – Any pre-existing right or interest of a kind referred to in Article 2(2) shall retain the priority it enjoyed before this Convention entered into force if it is registered in the International Registry before the expiry of a transitional period of [...] years after the entering

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<sup>16</sup> The Drafting Committee recognised that it would be necessary, should Alternative B be adopted, to consider the question of the costs that would be associated with acceptance of this Alternative

into force of this Convention in the Contracting State under the law of which it was created or arose. Where such a pre-existing right or interest is not so registered, its priority shall be determined in accordance with Article 28.

3. – The preceding paragraph does not apply to any right or interest in an object created or arising under the law of a State which has not become a Contracting State. ]

[Remaining Final Provisions to be prepared by the Diplomatic Conference]

ANNEX

**PROPOSAL FOR REVISED TEXT OF CHAPTER IX OF THE  
PRELIMINARY DRAFT CONVENTION**

Following is a revised text of two alternative approaches for Chapter IX of the Convention developed for discussion purposes only by the delegations of Canada, France, and the United States of America at the request of the Chair of the Joint Session.

**CHAPTER IX**

**ASSIGNMENTS OF ASSOCIATED RIGHTS, INTERNATIONAL INTERESTS  
AND RIGHTS OF SUBROGATION**

*Alternative A*

[Article 30

*Formal requirements of assignment*

1. – The holder of associated rights and the related international interest (“the assignor”) may make an assignment of the rights and interest to another person (“the assignee”) wholly or in part.

2. – An assignment of associated rights and the related international interest is valid only if it:

- (a) is in writing;
- (b) enables the associated rights, the related international interest and the object to which it relates to be identified; and,
- (c) in the case of an assignment by way of security, enables the obligations secured by the assignment to be determined in accordance with the Protocol but without the need to state a sum or maximum sum secured.

Article 31

*Effects of assignment*

1. – An assignment of associated rights and the related international interest in an object made in conformity with the preceding Article transfers to the assignee, to the extent agreed by the parties to the assignment:

- (a) the associated rights;
- (b) the international interest related to the associated rights; and

(c) all the interests and priorities of the assignor under this Convention.

2. – Subject to paragraph 3, the applicable law shall determine the defences and rights of set-off available to the debtor against the assignee.

3. – The debtor may at any time by agreement in writing waive all or any of the defences and rights of set-off referred to in the preceding paragraph, but the debtor may not waive defences arising from fraudulent acts on the part of the assignee.

4. – In the case of an assignment by way of security, the assigned rights revert in the assignor, to the extent that they are still subsisting, when the obligations secured have been discharged.

### Article 32

#### *Debtor's duty to assignee*

1. – To the extent that associated rights and the related international interest have been assigned in accordance with the provisions of this Chapter, the debtor in relation to those rights and that interest is bound by the assignment and has a duty to make payment or give other performance to the assignee, if but only if:

(a) the debtor has been given notice of the assignment in writing by or with the authority of the assignor;

(b) the notice identifies the associated rights and international interest [; and

(c) the debtor [consents in writing to the assignment, whether or not the consent is given in advance of the assignment or identifies the assignee] [has not been given prior notice in writing of an assignment in favour of another person].

2. – Irrespective of any other ground on which payment or performance by the debtor discharges the latter from liability, payment or performance shall be effective for this purpose if made in accordance with the preceding paragraph.

3. – Nothing in the preceding paragraph shall affect the priority of competing assignments.

### Article 33

#### *Default remedies in respect of assignment by way of security*

In the event of default by the assignor under the assignment of associated rights and the related international interest made by way of security, Articles 7, 8 and 10 to 13 apply in the relations between the assignor and the assignee (and, in relation to associated rights, apply in so far as those provisions are capable of application to intangible property) as if references:

(a) to the secured obligation and the security interest were references to the obligation secured by the assignment of the international interest and the security interest created by that assignment;

- (b) to the chargee and chargor were references to the assignee and assignor;
- (c) to the holder of the international interest were references to the holder of the assignment; and
- (d) to the object were references to the assigned rights and the international interest related to the object.

#### Article 34

##### *Priority of competing assignments*

Where there are competing assignments of associated rights and related international interests and at least one of the assignments is registered, the provisions of Article 28 apply as if the references to an international interest were references to an assignment of the associated rights and the related international interest.

#### Article 35

##### *Assignee's priority with respect to associated rights*

Where the assignment of an international interest has been registered, the assignee shall, in relation to the associated rights transferred in connection with the assignment, have priority under Article 28 only to the extent that the associated rights relate to:

- (a) a sum advanced and utilised for the purchase of the object;
- (b) the price payable for the object; or
- (c) the rentals payable in respect of the object,

and the reasonable costs referred to in Article 7(5).

#### Article 36

##### *Effects of assignor's insolvency*

The provisions of Article 29 apply to insolvency proceedings against the assignor as if references to the debtor were references to the assignor.

#### Article 37

##### *Subrogation*

1. – Subject to paragraph 2, nothing in this Convention affects the acquisition of associated rights and the related international interest by legal or contractual subrogation under the applicable law.

2. – The priority between any interest within the preceding paragraph and a competing interest may be varied by agreement in writing between the holders of the respective interests.]



*Alternative B*

[Article 30  
*Requirements in respect of assignment*

1. – The holder of an international interest (“the assignor”) may make an assignment of it to another person (“the assignee”) wholly or in part.
2. – An assignment of an international interest shall be valid only if it:
  - (a) is in writing;
  - (b) enables the international interest and the object to which it relates to be identified;
  - (c) in the case of an assignment by way of security, enables the obligations secured by the assignment to be determined in accordance with the Protocol but without the need to state a sum or maximum sum secured ;
  - (d) in the case of an assignment of [an international interest which is] a security agreement, includes the related associated rights and enables such associated rights to be identified.

Articles 31-37 as in Appendix I]

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[Return to “REPORT: Attachment C”](#)

**APPENDIX II**

**TEXT OF THE [PRELIMINARY] DRAFT PROTOCOL TO THE [PRELIMINARY]  
DRAFT [UNIDROIT] CONVENTION ON INTERNATIONAL INTERESTS IN  
MOBILE EQUIPMENT ON MATTERS SPECIFIC TO AIRCRAFT EQUIPMENT**

*as reviewed by the Drafting Committee  
in the light of the Joint Session's third reading thereof*

**[PRELIMINARY] DRAFT PROTOCOL TO THE [PRELIMINARY] DRAFT  
[UNIDROIT] CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE  
EQUIPMENT ON MATTERS SPECIFIC TO AIRCRAFT EQUIPMENT <sup>1</sup>**

**PREAMBLE**

**CHAPTER I                      SPHERE OF APPLICATION AND GENERAL PROVISIONS**

Article I	Defined terms
Article II	Application of Convention as regards aircraft objects
Article III	Sphere of application
Article IV	Application of Convention to sales
Article V	Formalities and effects of contract of sale
Article VI	Representative capacities
Article VII	Description of aircraft objects
Article VIII	Choice of law

**CHAPTER II                    DEFAULT REMEDIES, PRIORITIES AND ASSIGNMENTS**

Article IX	Modification of default remedies provisions
Article X	Modification of provisions regarding relief pending final determination
Article XI	Remedies on insolvency
Article XII	Insolvency assistance
Article XIII	De-registration and export authorisation
Article XIV	Modification of priority provisions
Article XV	Modification of assignment provisions

**CHAPTER III                 REGISTRY PROVISIONS RELATING TO INTERNATIONAL  
INTERESTS IN AIRCRAFT OBJECTS**

Article XVI	The Supervisory Authority and the Registrar
Article XVII	First regulations

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<sup>1</sup> Consideration needs to be given to the desirability of replacing this reference to “aircraft equipment” by one to “aircraft objects”.

Article XVIII	Designated entry points
Article XIX	Additional modifications to Registry provisions

**CHAPTER IV JURISDICTION**

Article XX	Modification of jurisdiction provisions
Article XXI	Waivers of sovereign immunity

**CHAPTER V RELATIONSHIP WITH OTHER CONVENTIONS**

Article XXII	Relationship with the Convention on the International Recognition of Rights in Aircraft
Article XXIII	Relationship with the Convention for the Unification of Certain Rules Relating to the Precautionary Attachment of Aircraft
Article XXIV	Relationship with the UNIDROIT Convention on International Financial Leasing

**ADDENDUM**

**CHAPTER VI [OTHER] FINAL PROVISIONS**

Article XXV	Adoption of Protocol
Article XXVI	Entry into force
Article XXVII	Territorial units
Article XXVIII	Declarations relating to certain provisions
Article XXIX	Subsequent declarations
Article XXX	Withdrawal of declarations and reservations
Article XXXI	Denunciations
Article XXXII	Establishment and responsibilities of Review Board
Article XXXIII	Depositary arrangements

**APPENDIX FORM OF IRREVOCABLE DE-REGISTRATION AND EXPORT REQUEST AUTHORISATION**

## PREAMBLE

THE STATES PARTIES TO THIS PROTOCOL,

CONSIDERING it necessary to implement the [UNIDROIT] Convention on International Interests in Mobile Equipment as it relates to aircraft equipment,<sup>2</sup> in the light of the purposes set out in the preamble to the Convention,

MINDFUL of the need to adapt the Convention to meet the particular requirements of aircraft finance and to extend the sphere of application of the Convention to include contracts of sale of aircraft equipment,<sup>3</sup>

HAVE AGREED upon the following provisions relating to aircraft equipment<sup>4</sup>:

## CHAPTER I

### SPHERE OF APPLICATION AND GENERAL PROVISIONS

#### Article I *Defined terms*

1. – In this Protocol, except where the context otherwise requires, terms used in it have the meanings set out in the Convention.

2. – In this Protocol the following terms are employed with the meanings set out below:

(a) “aircraft” means aircraft as defined for the purposes of the Chicago Convention which are either airframes with aircraft engines installed thereon or helicopters; [(a)]

(b) “aircraft engines” means aircraft engines [ (other than those used in military, customs or police services) ] powered by jet propulsion or turbine or piston technology and:

(i) in the case of jet propulsion aircraft engines, have at least 1750 lbs of thrust or its equivalent; and

(ii) in the case of turbine-powered or piston-powered aircraft engines, have at least 550 rated take-off shaft horsepower or its equivalent,

together with all modules and other installed, incorporated or attached accessories, parts and equipment and all data, manuals and records relating thereto; [(k)]

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<sup>2</sup> *idem.*

<sup>3</sup> *idem.*

<sup>4</sup> *idem.*

(c) “aircraft objects” means airframes, aircraft engines and helicopters; [(d)]

(d) “aircraft register” means a register maintained by a State or a common mark registering authority for the purposes of the Chicago Convention; [(n)]

(e) “airframes” means airframes [ (other than those used in military, customs or police services) ] that, when appropriate aircraft engines are installed thereon, are type certified by the competent aviation authority to transport:

(i) at least eight (8) persons including crew; or

(ii) goods in excess of 2750 kilograms,

together with all installed, incorporated or attached accessories, parts and equipment (other than aircraft engines), and all data, manuals and records relating thereto; [(e)]

(f) “authorised party” means the party referred to in Article XIII(2); [(l)]

(g) “Chicago Convention” means the Convention on International Civil Aviation, opened for signature in Chicago on 7 December 1944, as amended, and its annexes; [(g)]

(h) “common mark registering authority” means the authority maintaining a register in accordance with Article 77 of the Chicago Convention as implemented by the Resolution adopted on 14 December 1967 by the Council of the International Civil Aviation Organization on nationality and registration of aircraft operated by international operating agencies; [(b)]

(i) “de-registration of the aircraft” means deletion or removal of the registration of the aircraft from its aircraft register in accordance with the Chicago Convention; [(m)]

(j) “guarantee contract” means a contract entered into by a person as guarantor; [(f)]

(k) “guarantor” means a person who, for the purpose of assuring performance of any obligations in favour of a creditor secured by a security agreement or under an agreement, gives or issues a suretyship or demand guarantee or a standby letter of credit or any other form of credit insurance; [(i)]

(l) “helicopters” means heavier-than-air machines [ (other than those used in military, customs or police services) ] supported in flight chiefly by the reactions of the air on one or more power-driven rotors on substantially vertical axes and which are type certified by the competent aviation authority to transport:

(i) at least five (5) persons including crew; or

(ii) goods in excess of 450 kilograms,

together with all installed, incorporated or attached accessories, parts and equipment (including rotors), and all data, manuals and records relating thereto; [(j)]

(m) “insolvency-related event” means:

(i) the commencement of the insolvency proceedings; or

(ii) the declared intention to suspend or actual suspension of payments by the debtor where the creditor’s right to institute insolvency proceedings against the debtor

or to exercise remedies under the Convention is prevented or suspended by law or State action; [(p)]

(n) “primary insolvency jurisdiction” means the Contracting State in which the centre of the debtor’s main interests is situated, which for this purpose shall be deemed to be the place of the debtor’s statutory seat or, if there is none, the place where the debtor is incorporated or formed, unless proved otherwise; [(o)]

(o) “registry authority” means the national authority or the common mark registering authority, maintaining an aircraft register in a Contracting State and responsible for the registration and de-registration of an aircraft in accordance with the Chicago Convention; [(c)] and

(p) “State of registry” means, in respect of an aircraft, the State on the national register of which an aircraft is entered or the State of location of the common mark registering authority maintaining the aircraft register. [(h)]

## Article II

### *Application of Convention as regards aircraft objects*

1. – The Convention shall apply in relation to aircraft objects as provided by the terms of this Protocol.

2. – The Convention and this Protocol shall be known as the [UNIDROIT] Convention on International Interests in Mobile Equipment as applied to aircraft objects.

## Article III

### *Sphere of application*

1. – Article 3(1) of the Convention shall apply in relation to a sale as if the references to an agreement creating or providing for the international interest were references to the contract of sale and as if the references to the debtor were references to the seller under the contract of sale.

2. – Without prejudice to Article 3(1) of the Convention, the Convention shall also apply if an aircraft is registered in an aircraft register of a Contracting State [or if the agreement provides that the aircraft shall be registered, and the aircraft becomes so registered, in a Contracting State].

3. – For the purposes of the definition of “internal transaction” in Article 1 of the Convention:

(a) an airframe is located in the State of registry of the aircraft of which it is a part;

(b) an aircraft engine is located in the State of registry of the aircraft on which it is installed or, if it is not installed on an aircraft, where it is physically located; and

(c) a helicopter is located in its State of registry,

at the time of the conclusion of the agreement creating or providing for the interest.

4. – The parties may, by agreement in writing, exclude the application of Article XI and, in their relations with each other, derogate from or vary the effect of any of the provisions of this Protocol, except as stated in Article IX(2)-(4).

#### Article IV

##### *Application of Convention to sales*

Except where the context otherwise requires, the following provisions of the Convention apply in relation to a sale and a prospective sale as they apply in relation to an international interest and a prospective international interest:

Article 19(1);

Article 24(1) and (2);

Chapter VIII other than Article 28(3); and

Article 39.

#### Article V

##### *Formalities and effects of contract of sale*

1. – For the purposes of this Protocol, a contract of sale is one which:

- (a) is in writing;
- (b) relates to an aircraft object of which the seller has power to dispose; and
- (c) enables the aircraft object to be identified in conformity with this Protocol.

2. – A contract of sale transfers the interest of the seller in the aircraft object to the buyer according to its terms.

3. – A sale may be registered in the International Registry by or with the consent in writing of the seller.

#### Article VI

##### *Representative capacities*

A person may enter into an agreement or a sale, and register an international interest in, or a sale of, an aircraft object, in an agency, trust or other representative capacity. In such case, that person is entitled to assert rights and interests under the Convention.

Article VII  
*Description of aircraft objects*

A description of an aircraft object that contains its manufacturer's serial number, the name of the manufacturer and its model designation is necessary and sufficient to identify the object for the purposes of Article 6(c) of the Convention and Article V(1)(c) of this Protocol.

Article VIII  
*Choice of law*

1. – The parties to an agreement, or a contract of sale, or a related guarantee contract or subordination agreement may agree on the law which is to govern their contractual rights and obligations under the Convention, wholly or in part.

2. – Unless otherwise agreed, the reference in the preceding paragraph to the law chosen by the parties is to the domestic rules of law of the designated State or, where that State comprises several territorial units, to the domestic law of the designated territorial unit.

**CHAPTER II**

**DEFAULT REMEDIES, PRIORITIES AND ASSIGNMENTS**

Article IX  
*Modification of default remedies provisions*

1. – In addition to the remedies specified in Chapter III of the Convention, the creditor may, to the extent that the debtor has at any time so agreed and in the circumstances specified in that Chapter:

- (a) procure the de-registration of the aircraft; and
- (b) procure the export and physical transfer of the aircraft object from the territory in which it is situated.

2. – The creditor shall not exercise the remedies specified in the preceding paragraph without the prior consent in writing of the holder of any registered interest ranking in priority to that of the creditor.

3. –
- (a) Article 7(2) of the Convention shall not apply to aircraft objects.
  - (b) In relation to aircraft objects the following provisions shall apply:
    - (i) any remedy given by the Convention shall be exercised in a commercially reasonable manner;



(ii) an agreement between the debtor and the creditor as to what is a commercially reasonable manner shall be conclusive.

4. – A chargee giving ten or more calendar days’ prior written notice of a proposed sale or lease to interested persons shall be deemed to satisfy the requirement of providing “reasonable prior notice” specified in Article 7(3) of the Convention. The foregoing shall not prevent a chargee and a chargor or a guarantor from agreeing to a longer period of prior notice.

## Article X

### *Modification of provisions regarding relief pending final determination*

1. – This Article applies only where a Contracting State has made a declaration to that effect under Article XXVIII(2) and to the extent stated in such declaration.

2. – For the purposes of Article 12(1) of the Convention, “speedy” in the context of obtaining relief means within such number of calendar days from the date of filing of the application for relief as is specified in a declaration made by the Contracting State in which the application is made.

3. – Article 12(1) of the Convention applies with the following being added immediately after sub-paragraph (d):

“(e) sale and application of proceeds therefrom”.

4. – Ownership or any other interest of the debtor passing on a sale under the preceding paragraph is free from any other interest over which the creditor’s international interest has priority under the provisions of Article 28 of the Convention.

5. – The creditor and the debtor or any other interested person may agree in writing to exclude the application of Article 12(2) of the Convention.

6. – The remedies specified in Article IX(1) shall be made available by the registry authority and other administrative authorities, as applicable, in a Contracting State no later than [...] calendar days after the relief specified in paragraph 2 is granted or, in the case of relief granted by a foreign court, recognised by courts of that Contracting State, in accordance with applicable aviation safety laws and regulations.

## Article XI

### *Remedies on insolvency*

1. – This Article applies only where a Contracting State that is the primary insolvency jurisdiction has made a declaration pursuant to Article XXVIII(3).

*[Alternative A]*

2. – Upon the occurrence of an insolvency-related event, the insolvency administrator or the debtor, as applicable, shall, subject to paragraph 7, give possession of the aircraft object to the creditor no later than the earlier of:

- (a) the end of the waiting period; and
- (b) the date on which the creditor would be entitled to possession of the aircraft object if this Article did not apply.

3. – For the purposes of this Article, the “waiting period” shall be the period specified in a declaration of the Contracting State which is the primary insolvency jurisdiction.

4. – References in this Article to the “insolvency administrator” shall be to that person in its official, not in its personal, capacity.

5. – Unless and until the creditor is given the opportunity to take possession under paragraph 2:

- (a) the insolvency administrator or the debtor, as applicable, shall preserve the aircraft object and maintain it and its value in accordance with the agreement; and
- (b) the creditor shall be entitled to apply for any other forms of interim relief available under the applicable law.

6. – Sub-paragraph (a) of the preceding paragraph shall not preclude the use of the aircraft object under arrangements designed to preserve the aircraft object and maintain it and its value.

7. – The insolvency administrator or the debtor, as applicable, may retain possession of the aircraft object where, by the time specified in paragraph 2, it has cured all defaults and has agreed to perform all future obligations under the agreement. A second waiting period shall not apply in respect of a default in the performance of such future obligations.

8. – The remedies specified in Article IX(1)(a) and (b) of this Protocol shall be made available by the registry authority and other administrative authorities, as applicable, no later than [ . . . ] working days after the date on which the creditor notifies such authorities that it has been given possession of the aircraft object.

9. – No exercise of remedies permitted by the Convention or this Protocol may be prevented or delayed after the date specified in paragraph 2.

10. – No obligations of the debtor under the agreement may be modified without the consent of the creditor.

11. – Nothing in the preceding paragraph shall be construed to affect the authority, if any, of the insolvency administrator under the applicable law to terminate the agreement.

12. – No rights or interests, except for preferred non-consensual rights or interests of a category covered by a declaration pursuant to Article 39(1), shall have priority in the insolvency over registered interests.

13. – The Convention as modified by Article IX of this Protocol shall apply to the exercise of any remedies under this Article.

*[Alternative B]*

2. – Upon the occurrence of an insolvency-related event, the insolvency administrator or the debtor, as applicable, upon the request of the creditor, shall give notice to the creditor within the time specified in a declaration of a Contracting State pursuant to Article XXVIII(3) whether it will:

(a) cure all defaults and agree to perform all future obligations, under the agreement and related transaction documents; or

(b) give the creditor the opportunity to take possession of the aircraft object, in accordance with the applicable law.

3. – The applicable law referred to in sub-paragraph (b) of the preceding paragraph may permit the court to require the taking of any additional step or the provision of any additional guarantee.

4. – The creditor shall provide evidence of its claims and proof that its international interest has been registered.

5. – If the insolvency administrator or the debtor, as applicable, does not give notice in conformity with paragraph 2, or when he has declared that he will give possession of the aircraft object but fails to do so, the court may permit the creditor to take possession of the aircraft object upon such terms as the court may order and may require the taking of any additional step or the provision of any additional guarantee.

6. – The aircraft object shall not be sold pending a decision by a court regarding the claim and the international interest.

Article XII  
*Insolvency assistance*

The courts of a Contracting State in which an aircraft object is situated shall, in accordance with the law of the Contracting State, co-operate to the maximum extent possible with foreign courts and foreign insolvency administrators in carrying out the provisions of Article XI.

### Article XIII

#### *De-registration and export authorisation*

1. – Where the debtor has issued an irrevocable de-registration and export request authorisation substantially in the form annexed to this Protocol and has submitted such authorisation for recordation to the registry authority, that authorisation shall be so recorded.

2. – The person in whose favour the authorisation has been issued (the “authorised party”) or its certified designee shall be the sole person entitled to exercise the remedies specified in Article IX(1) and may do so only in accordance with the authorisation and applicable aviation safety laws and regulations. Such authorisation may not be revoked by the debtor without the consent in writing of the authorised party. The registry authority shall remove an authorisation from the registry at the request of the authorised party.

3. – The registry authority and other administrative authorities in Contracting States shall expeditiously co-operate with and assist the authorised party in the exercise of the remedies specified in Article IX.

### Article XIV

#### *Modification of priority provisions*

1. – A buyer under a registered contract of sale takes its interest free from an interest subsequently registered and from an unregistered interest, even if the buyer has actual knowledge of the unregistered interest, but subject to a previously registered interest.

2. – Notwithstanding the provisions of Article 28(6) of the Convention, the provisions of Article 28(1)-(4) of the Convention determine the priority of the holder of an interest in an aircraft engine held prior to its installation on, or after its removal from, an airframe and the holder of an international interest in that airframe.

3. – Ownership of an aircraft engine shall not pass solely by virtue of its installation on, or removal from, an airframe.

### Article XV

#### *Modification of assignment provisions*

1. – Article 30(2) of the Convention applies with the following being added immediately after sub-paragraph (c):

“(d) is consented to in writing by the debtor, whether or not the consent is given in advance of the assignment or identifies the assignee.”<sup>5</sup>

[2. – Article 32(1) of the Convention applies with the omission of sub-paragraph (c).]

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<sup>5</sup> This provision will be deleted if the words “consents in writing to the assignment, whether or not the consent is given in advance of the assignment or identifies the assignee” are accepted in Article 32(1)(c) of the preliminary draft Convention.

[[3.]– Article 35 of the Convention applies as if the words following the phrase “ under Article 28” were omitted.]<sup>6</sup>

### CHAPTER III

#### REGISTRY PROVISIONS RELATING TO INTERNATIONAL INTERESTS IN AIRCRAFT OBJECTS

##### Article XVI

##### *The Supervisory Authority and the Registrar*

1. – The Supervisory Authority shall be ... .
2. – [The first Registrar shall be ... ] [The Supervisory Authority shall appoint the Registrar.]
3. – The first Registrar shall operate the International Registry for a period of five years from the date of entry into force of this Protocol. Thereafter, the Registrar shall be appointed or re-appointed at regular five-yearly intervals by the [Contracting States] [Supervisory Authority].

##### Article XVII

##### *First regulations*

The first regulations shall be made by the Supervisory Authority so as to take effect on the entry into force of this Protocol.

##### Article XVIII

##### *Designated entry points*

1. – At the time of ratification, acceptance, approval of, or accession to this Protocol, a Contracting State may, subject to paragraph 2, designate an entity in its territory as the entity through which the information required for registration shall or may be transmitted to the International Registry.
2. – A Contracting State may make a designation under the preceding paragraph only in relation to:

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<sup>6</sup> Article 35 of the preliminary draft Convention, as it may be modified by this preliminary draft Protocol, will have important implications for the competing rights of a receivables financier and an asset-based financier. Consideration should be given to the appropriate rule in the context of aviation financing as well as to its effects on general receivables financing.

- (a) international interests in, or sales of, helicopters or airframes pertaining to aircraft for which it is the State of registry;
- (b) registrable non-consensual rights or interests created under its domestic law; and
- (c) notices of national interests.

#### Article XIX

##### *Additional modifications to Registry provisions*

1. – For the purposes of Article 18(5) of the Convention, the search criterion for an aircraft object shall be its manufacturer's serial number, supplemented as necessary to ensure uniqueness. Such supplementary information shall be specified in the regulations.

2. – For the purposes of Article 24(2) of the Convention and in the circumstances there described, the holder of a registered prospective international interest or a registered prospective assignment of an international interest shall take such steps as are within its power to procure the discharge of the registration no later than five calendar days after the receipt of the demand described in such paragraph.

##### ***Alternative A***

[3. – The fees referred to in Article 16(2)(g) of the Convention shall be determined so as to recover the reasonable costs of operating the International Registry and the registration facilities and, in the case of the initial fees, of designing and implementing the international registration system.]

##### ***Alternative B***

[3. – The Registrar shall, in the performance of its functions as operator of the International Registry, be a non-profit-making organisation.]

4. – The centralised functions of the International Registry shall be operated and administered by the Registrar on a twenty-four hour basis. The various registration facilities shall be operated and administered during working hours in their respective territories.

5. – The insurance or financial guarantee referred to in Article 27(2) shall cover all liability of the Registrar under the Convention.

## **CHAPTER IV**

### **JURISDICTION**

#### Article XX *Modification of jurisdiction provisions*

For the purposes of Articles 42 and 44 of the Convention, a court of a Contracting State also has jurisdiction where that State is the State of registry.

#### Article XXI *Waivers of sovereign immunity*

1. – Subject to paragraph 2, a waiver of sovereign immunity from jurisdiction of the courts specified in Articles 41, 42 or 44 of the Convention or relating to enforcement of rights and interests relating to an aircraft object under the Convention shall be binding and, if the other conditions to such jurisdiction or enforcement have been satisfied, shall be effective to confer jurisdiction and permit enforcement, as the case may be.

2. – A waiver under the preceding paragraph must be in a writing that contains a description of the aircraft object.

## **CHAPTER V**

### **RELATIONSHIP WITH OTHER CONVENTIONS**

#### Article XXII *Relationship with the Convention on the International Recognition of Rights in Aircraft*

The Convention shall, for a Contracting State that is a party to the Convention on the International Recognition of Rights in Aircraft, opened for signature in Geneva on 19 June 1948, supersede that Convention as it relates to aircraft, as defined in this Protocol, and to aircraft objects.

#### Article XXIII *Relationship with the Convention for the Unification of Certain Rules Relating to the Precautionary Attachment of Aircraft*

1. – The Convention shall, for a Contracting State that is a Party to the Convention for the Unification of Certain Rules Relating to the Precautionary Attachment of Aircraft,

opened for signature in Rome on 29 May 1933, supersede that Convention as it relates to aircraft, as defined in this Protocol.

2. – A Contracting State Party to the above Convention may declare, at the time of ratification, acceptance, approval of, or accession to this Protocol, that it will not apply this Article.<sup>7</sup>

#### Article XXIV

##### *Relationship with the UNIDROIT Convention on International Financial Leasing*

The Convention shall supersede the UNIDROIT Convention on International Financial Leasing as it relates to aircraft objects.

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<sup>7</sup> This paragraph will be moved to the final provisions in due course.



## ADDENDUM

### CHAPTER VI

#### [OTHER] FINAL PROVISIONS <sup>8</sup>

##### Article XXV

##### *Adoption of Protocol*

1. – This Protocol is open for signature at the concluding meeting of the Diplomatic Conference for the Adoption of the Draft Protocol to the [UNIDROIT] Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment and will remain open for signature by all Contracting States at [...] until [...].

2. – This Protocol is subject to ratification, acceptance or approval of Contracting States which have signed it.

3. – This Protocol is open for accession by all States which are not signatory States as from the date it is open for signature.

4. – Ratification, acceptance, approval or accession is effected by the deposit of a formal instrument to that effect with the depositary.<sup>9</sup>

##### Article XXVI

##### *Entry into force*

1. – This Protocol enters into force on the first day of the month following the expiration of [three] months after the date of deposit of the [third/fifth] instrument of ratification, acceptance, approval or accession.

2. – For each Contracting State that ratifies, accepts, approves or accedes to this Protocol after the deposit of the [third/fifth] instrument of ratification, acceptance, approval or accession, this Protocol enters into force in respect of that Contracting State on the first day of

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<sup>8</sup> It is envisaged that, in line with practice, draft Final Provisions will be prepared for the Diplomatic Conference at such time as governmental experts have completed their preparation of the draft Protocol. The proposals for draft Final Provisions set out in the Addendum to this preliminary draft Protocol below are in no way intended to prejudge that process but simply to indicate the suggestions of the Aircraft Protocol Group on this matter as developed by the Joint Session. Particular attention is drawn to Articles XXIX(3) and XXXI(3) (limiting the effect of any future declaration or reservation and denunciation respectively as regards established rights) and Article XXXII (establishing a Review Board and contemplating review and revision of this Protocol).

<sup>9</sup> It is recommended that a resolution be adopted at, and contained in the Final Acts and Proceedings of, the Diplomatic Conference, contemplating the use by Contracting States of a model ratification instrument that would standardise, *inter alia*, the format for the making and/or withdrawal of declarations and reservations.

the month following the expiration of [three] months after the date of the deposit of its instrument of ratification, acceptance, approval or accession.

Article XXVII  
*Territorial units*

1. – If a Contracting State has two or more territorial units in which different systems of law are applicable in relation to the matters dealt with in this Protocol, it may, at the time of ratification, acceptance, approval or accession, declare that this Protocol is to extend to all its territorial units or only to one or more of them and may substitute its declaration by another declaration at any time.

2. – These declarations are to be notified to the depositary and are to state expressly the territorial units to which this Protocol extends.

3. – If a Contracting State makes no declaration under paragraph 1, this Protocol is to extend to all territorial units of that Contracting State.

Article XXVIII  
*Declarations relating to certain provisions*

1. – A Contracting State may declare, at the time of ratification, acceptance, approval of, or accession to this Protocol, that it will apply any one or more of Articles VIII, XII and XIII of this Protocol.

2. – A Contracting State may declare, at the time of ratification, acceptance, approval of, or accession to this Protocol, that it will apply Article X of this Protocol wholly or in part. If it so declares with respect to Article X(2), it shall specify the time-period required thereby.

3. – A Contracting State may declare, at the time of ratification, acceptance, approval of, or accession to this Protocol, that it will apply the entirety of Alternative A, or the entirety of Alternative B of Article XI and, if so, shall specify the types of insolvency proceeding, if any, to which it will apply Alternative A and the types of insolvency proceeding, if any, to which it will apply Alternative B. A Contracting State making a declaration pursuant to this paragraph shall specify the time-period required by Article XI.

4. – The courts of Contracting States shall apply Article XI in conformity with the declaration made by the Contracting State which is the primary insolvency jurisdiction.

Article XXIX  
*Subsequent declarations*

1. – A Contracting State may make a subsequent declaration at any time after the date on which it enters into force for that Contracting State, by the deposit of an instrument to that effect with the depositary.

2. – Any such subsequent declaration shall take effect on the first day of the month following the expiration of [six/twelve] months after the date of deposit of the instrument in which such declaration is made with the depositary. Where a longer period for that declaration to take effect is specified in the instrument in which such declaration is made, it shall take effect upon the expiration of such longer period after its deposit with the depositary.

3. – Notwithstanding the previous paragraphs, this Protocol shall continue to apply, as if no such subsequent declaration had been made, in respect of all rights and interests arising prior to the effective date of that subsequent declaration.

### Article XXX

#### *Withdrawal of declarations and reservations*

Any Contracting State which makes a declaration under, or a reservation to this Protocol may withdraw it at any time by a formal notification in writing addressed to the depositary. Such withdrawal is to take effect on the first day of the month following the expiration of [three] months after the date of the receipt of the notification by the depositary.

### Article XXXI

#### *Denunciations*

1. – This Protocol may be denounced by any Contracting State at any time after the date on which it enters into force for that Contracting State, by the deposit of an instrument to that effect with the depositary.

2. – Any such denunciation shall take effect on the first day of the month following the expiration of [six/twelve] months after the date of deposit of the instrument of denunciation with the depositary. Where a longer period for that denunciation to take effect is specified in the instrument of denunciation, it shall take effect upon the expiration of such longer period after its deposit with the depositary.

3. – Notwithstanding the previous paragraphs, this Protocol shall continue to apply, as if no such denunciation had been made, in respect of all rights and interests arising prior to the effective date of that denunciation.<sup>10</sup>

### Article XXXII

#### *Establishment and responsibilities of Review Board*

1. – A five-member Review Board shall promptly be appointed to prepare yearly reports for the Contracting States addressing the matters specified in sub-paragraphs (a)-(d) of paragraph 2.

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<sup>10</sup> The effect of this paragraph in relation to prospective international interests should be considered further.

2. – At the request of not less than twenty-five per cent of the Contracting States, conferences of the Contracting States shall be convened from time to time to consider:

(a) the practical operation of this Protocol and its effectiveness in facilitating the asset-based financing and leasing of aircraft objects;

(b) the judicial interpretation given to the terms of the Convention, this Protocol and the regulations;

(c) the functioning of the international registration system and the performance of the Registrar and its oversight by the Supervisory Authority; and

(d) whether any modifications to this Protocol or the arrangements relating to the International Registry are desirable.

Article XXXIII  
*Depositary arrangements*

1. – This Protocol shall be deposited with the [...].

2. – The [depositary] shall:

(a) inform all Contracting States of this Protocol and [...] of:

(i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession, together with the date thereof;

(ii) each declaration made in accordance with this Protocol;

(iii) the withdrawal of any declaration;

(iv) the date of entry into force of this Protocol; and

(v) the deposit of an instrument of denunciation of this Protocol together with the date of its deposit and the date on which it takes effect;

(b) transmit certified true copies of this Protocol to all signatory States, to all States acceding to the Protocol and to [...];

(c) provide the Registrar with the contents of each instrument of ratification, acceptance, approval or accession so that the information contained therein may be made publicly accessible; and

(d) perform such other functions customary for depositaries.

appendix

**FORM OF IRREVOCABLE DE-REGISTRATION  
AND EXPORT REQUEST AUTHORISATION**

[Insert Date]

To: [Insert Name of Registry Authority]

Re: Irrevocable De-Registration and Export Request Authorisation

The undersigned is the registered [operator] [owner]\* of the [insert the airframe/helicopter manufacturer name and model number] bearing manufacturer’s serial number [insert manufacturer’s serial number] and registration [number] [mark] [insert registration number/mark] (together with all installed, incorporated or attached accessories, parts and equipment, the “**aircraft**”).

This instrument is an irrevocable de-registration and export request authorisation issued by the undersigned in favour of [insert name of creditor] (“the **authorised party**”) under the authority of Article XIII of the Protocol to the [UNIDROIT] Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment. In accordance with that Article, the undersigned hereby requests:

(i) recognition that the authorised party or the person it certifies as its designee is the sole person entitled to:

(a) procure the de-registration of the aircraft from the [insert name of aircraft register] maintained by the [insert name of registry authority] for the purposes of Chapter III of the Chicago Convention of 1944 on International Civil Aviation; and

(b) procure the export and physical transfer of the aircraft from [insert name of country]; and

(ii) confirmation that the authorised party or the person it certifies as its designee may take the action specified in clause (i) above on written demand without the consent of the undersigned and that, upon such demand, the authorities in [insert name of country] shall co-operate with the authorised party with a view to the speedy completion of such action.

The rights in favour of the authorised party established by this instrument may not be revoked by the undersigned without the written consent of the authorised party.

Please acknowledge your agreement to this request and its terms by appropriate notation in the space provided below and lodging this instrument in [insert name of registry authority].

[insert name of operator/owner]  
\_\_\_\_\_

Agreed to and lodged this  
[insert date] Its: [insert title of signatory]

By: [insert name of signatory]

\_\_\_\_\_  
[insert relevant notational details]

\* Select the term that reflects the relevant nationality registration criterion.